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Justine M. Cherne  
Legal Assistant

October 21, 2010

*By Messenger Delivery*

Ms. Donna Ospina  
Fort Bend County Judge's Office  
301 Jackson, Suite 719  
Richmond TX 77469

10-26-10  
AGENDA ITEM 29

Re: Fort Bend County Toll Road Authority (the "Authority")

Dear Ms. Ospina:

Enclosed are three (3) original contracts with Mar-Con Services, LLC in the amount of \$723,276.21 for the construction of the Fort Bend Parkway Segment No. 4 Ramp Improvement (Lake Olympia ramp modification project). If approved, please return to me two (2) originally executed contracts for the Authority's and contractor's files.

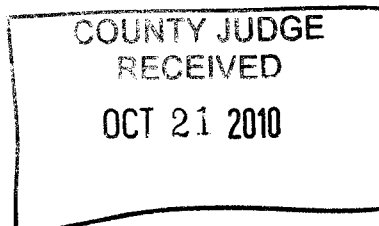
Thank you for your assistance.

Sincerely,



Justine M. Cherne  
Legal Assistant

Enclosures



## Justine Cherne

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**To:** Justine Cherne; 'Ann Werlein'; 'Bronsell Mandi (E-mail)'; 'D'Neal Brown'; 'Evans-Smith Felicia (E-mail)'; 'Hegemier Jesse (E-mail)'; 'Johnson Laura (E-mail)'; 'Judge Hebert'; 'McCarver Jean (E-mail)'; 'Meyers Andy (E-mail)'; 'Ospina Donna (E-mail)'; 'Patterson James (E-mail)'; 'Prestage Grady (E-mail)'; 'Robin Vrana'; 'richard.morrison@co.fort-bend.tx.us'; 'Sue Brock'; 'gubbepam@co.fort-bend.tx.us'; 'rodgeher@co.fort-bend.tx.us'; 'Cordes Jr., Roy L. (corderoy@co.fort-bend.tx.us)'; 'harrisli@co.fort-bend.tx.us'; 'gutierrez@co.fort-bend.tx.us'; 'chingjen@co.fort-bend.tx.us'; 'Reveles, Mary (revelmar@co.fort-bend.tx.us)'

**Cc:** 'Bill Jameson (billj@wjinterests.com)'; 'Mike Stone (mikestone@cpmguru.com)'; 'Arroyave Bob (barroyave@browngay.com)'; 'Gary Gehbauer (ggehbauer@browngay.com)'; 'Cliff Kavanaugh (ckavanaugh@firstsw.com)'; 'Joe B. Allen; Rich Muller; Tina Tobias; 'batallas@hartmannnews.com'; 'Jim Condrey (E-mail)'; 'Sturdivant K (E-mail)'; 'james.harris@publicans.com'; 'Graham PE, Glenn D (PBS&J).EML (gdgraham@pbsj.com)'; 'Logsdon, Pamela (pmlgson@sbcglobal.net)'; 'ccotter@browngay.com'; 'Spackman P.E., James (Jim) (jspackman@jaengineering.com)'; 'Fields, Richard A. (richard.fields@aguirre-fields.com)'; 'jimenmel@co.fort-bend.tx.us'; 'vaughjas@co.fort-bend.tx.us'; 'chadessex@cpmguru.com'; 'Cindy Acree; mbrannen@browngay.com'; 'Terrell, Cliff (terrellc@wcjc.edu)'; 'Terrell, Cliff (cliffterrell@yahoo.com)'; 'Howard, Olen D.'; 'Rencher, Charles (cgrencher@comcast.net)'; mhess@newfirst.com; McFarland, Charles (cmcfarland@jmmllp.com); Alia Vinson

**Subject:** RE: Fort Bend County Toll Road Authority Agenda Item Request

October 21, 2010

Dear Judge and Commissioners:

The Board of Directors of the Fort Bend County Toll Road Authority (the "Authority") reviewed the following item at their regular meeting held on October 20, 2010, and makes the following recommendation to Commissioners Court:

1. Approval of contract with Mar-Con Services, LLC in the amount of \$723,276.21 for the construction of the Fort Bend Parkway Segment No. 4 Ramp Improvement (Lake Olympia ramp modification project).

A copy of the contract is attached for your review. Please place this item for consideration by Commissioners Court on the agenda for the meeting scheduled on October 26, 2010.

As always, if you should have any questions regarding this matter, please don't hesitate to contact any member of the Board of Directors or the Authority's consultants.

Very truly yours,



Alia Vinson  
Allen Boone Humphries Robinson LLP  
713-860-6449

THE STATE OF TEXAS §  
COUNTY OF FORT BEND §

Contractor hereby contracts and agrees with Fort Bend County to perform the work and services and to furnish the materials, supplies, and equipment, and incidentals necessary to complete this contract in a good and workmanlike manner in accordance with his bid and with the plans, specifications, and special provisions prepared by the Engineer, for

**FORT BEND COUNTY TOLL ROAD AUTHORITY**  
**FORT BEND PARKWAY**  
**Segment No. 4 Ramp Improvement**

**Unit and Section**

The Contractor represents to Fort Bend County that he has carefully examined this contract and the plans, specifications, and special provisions attached to and made a part of this contract on which his bid is based, and is thoroughly familiar therewith.

The County agrees to pay to the Contractor for the performance of all the obligations of this contract in a good and workmanlike manner in accordance with the plans, specifications, and special provisions, the several installments, at the rates and at the times and in the manner specified therein, not exceeding in the aggregate the sum of SEVEN HUNDRED TWENTY THREE THOUSAND TWO HUNDRED SEVENTY SIX AND 2/XX dollars (\$ 723,276.21).

The Contractor agrees to begin the performance of the work on the date fixed in the contract requisition when it shall have been issued, and to prosecute it diligently to completion.

The deposit of a copy of the contract requisition in the United States mail addressed to the Contractor at \_\_\_\_\_

\_\_\_\_\_  
P.O. Box 837, Deer Park, TX 77536

shall be sufficient notice of the issuance of such requisition and of the date performance shall begin.

Wherever any notice to the Contractor by the County may be required or desirable under the terms of this agreement and related documents, such notice shall be sufficient if it be in writing, addressed to the Contractor at the above address, and deposited in the United States mail.

This contract and all obligations therein are performable in Fort Bend County, Texas. Executed at Richmond, Texas, this 26 day of October, 2010, by Fort Bend County, Texas, Judge Robert E. Hebert.

FORT BEND COUNTY, TEXAS

ATTEST:

Dianne Wilson

BY:

Robert E. Hebert

County Judge and Agent

10-26, 2010

BY:

MAR-CON SERVICES, LLC

Contractor

BY:

[Signature]

OWNER

(TITLE)

RECOMMENDED FOR APPROVAL

(ENGINEER)

**COUNTY CLERK'S CERTIFICATE**

I certify that the Commissioners' Court approved this contract and the attached bond on the 26 day of October, 2010.

Dianne Wilson

County Clerk, Fort Bend County, Texas

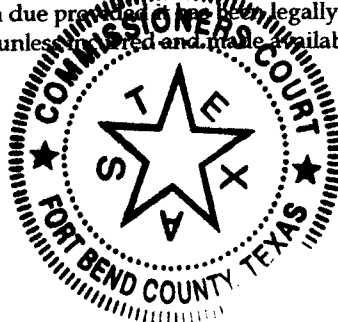
BY:

Sherry Fier

Deputy

**COUNTY AUDITOR'S CERTIFICATE**

APPROVED 10/27, 2010. Funds in the exact sum of \$ 723,276.21 are, or will be on hand to meet his obligation when due provided he has been legally and properly performed. No amount in excess of the above sum will be available or paid unless ordered and made available in exact accord with the provisions of this contract, and set aside and approved by me.



Robert E. Hebert  
County Auditor, Fort Bend County, Texas

# THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. HSIFSU0546092

AIA Document A312

## Performance Bond

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

CONTRACTOR (Name and Address):

Mar-Con Services, LLC  
P. O. Box 837  
Deer Park, TX 77536

OWNER (Name and Address):

Fort Bend County Toll Road Authority  
c/o Jacobs Engineering Group, Inc., 5985 Rogerdale Road  
Houston, TX 77072

SURETY (Name and Principal Place of Business):

International Fidelity Insurance Company  
24900 Pitkin, Suite 145  
Spring, TX 77386

### CONSTRUCTION CONTRACT

Date:

Amount: \$723,276.21 Seven Hundred Twenty Three Thousand Two Hundred Seventy Six Dollars and 21/100

Description (Name and Location): Fort Bend County Toll Road Authority Fort Bend Parkway Segment No. 4 Ramp Improvement

### BOND

Date (Not earlier than Construction Contract Date):

Amount: \$723,276.21 Seven Hundred Twenty Three Thousand Two Hundred Seventy Six Dollars and 21/100

Modifications to this Bond:

☒ None

☐ See Page 3

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Mar-Con Services, LLC

Signature:

Name and Title: MARIO RAMOS - Owner

### SURETY

Company: (Corporate Seal)

International Fidelity Insurance Company

Signature:

Name and Title: Philip Baker  
Attorney-in-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

Technical Assurance, L.L.C.  
26623 Oak Ridge Drive  
The Woodlands, TX 77380  
281-296-9997

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Jacobs Engineering Group, Inc.  
5985 Rogerdale Road  
Houston, TX 77072

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

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

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

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

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

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

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

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

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

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

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

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

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

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

**10** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

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

## **12 DEFINITIONS**

**12.1** Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**12.2** Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**12.3** Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

**12.4** Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

## **MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

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

CONTRACTOR AS PRINCIPAL  
Company: \_\_\_\_\_ (Corporate Seal)

SURETY  
Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

# THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. HSIFSU0546092

AIA Document A312

## Payment Bond

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

CONTRACTOR (Name and Address):

Mar-Con Services, LLC  
P. O. Box 837  
Deer Park, TX 77536

OWNER (Name and Address):

Fort Bend County Toll Road Authority  
c/o Jacobs Engineering Group, Inc., 5985 Rogerdale Road  
Houston, TX 77072

SURETY (Name and Principal Place of Business):

International Fidelity Insurance Company  
24900 Pitkin, Suite 145  
Spring, TX 77386

### CONSTRUCTION CONTRACT

Date:

Amount: \$723,276.21 Seven Hundred Twenty Three Thousand Two Hundred Seventy Six Dollars and 21/100

Description (Name and Location): Fort Bend County Toll Road Authority Fort Bend Parkway Segment No. 4 Ramp Improvement

### BOND

Date (Not earlier than Construction Contract Date):

Amount: \$723,276.21 Seven Hundred Twenty Three Thousand Two Hundred Seventy Six Dollars and 21/100

Modifications to this Bond:

☐ None

☒ See Page 6

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Mar-Con Services, LLC

Signature:

Name and Title: MARIO RAMOS - owner

(Any additional signatures appear on page 6)

### SURETY

Company: (Corporate Seal)

International Fidelity Insurance Company

Signature:

Name and Title: Philip Baker  
Attorney-in-Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

Technical Assurance, L.L.C.

26623 Oak Ridge Drive

The Woodlands, TX 77380

281-296-9997

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Jacobs Engineering Group, Inc.

5985 Rogerdale Road

Houston, TX 77072

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

**2** With respect to the Owner, this obligation shall be null and void if the Contractor:

**2.1** Promptly makes payment, directly or indirectly, for all sums due Claimants, and

**2.2** Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

**3** With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

**4.** The Surety shall have no obligation to Claimants under this Bond until:

**4.1** Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

**4.2** Claimants who do not have a direct contract with the Contractor:

**.1** Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

**.2** Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

**.3** Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

**5** If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

**6** When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

**6.1** Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

**6.2** Pay or arrange for payment of any undisputed amounts.

**7** The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

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

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

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

**11** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**12** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

**13** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond

Bond shall be construed as a statutory bond and not as a common law bond.

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

#### 15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

#### MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

1. Amend paragraphs 4.1 and 4.2.3 dealing with notice to the surety by adding at the end of each paragraph "and furnished to surety an explanation of the claim and copies of documents on which the Claimant relies to support the claim."

2. Amend paragraph 5 by changing "or" to "and" so it reads:

5. If a notice required by paragraph 4 is given by the Owner to the Contractor and to the Surety, that is sufficient compliance.

3. Paragraph 6 above is deleted in its entirety and the following is substituted in its place:

6. When the Claimant has satisfied the conditions of paragraph 4 and has submitted any additional supporting documentation, and any sworn proof of claim, requested by the Surety, the Surety shall, within a reasonable period of time, which shall not be less than 45 days, respond to the Claimant and offer to pay or arrange for payment of any undisputed amount; provided, however, that the failure of the Surety to fully and/or timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or part of a claim shall not be deemed an admission of liability by the Surety or otherwise constitute a waiver of any rights or defenses the Contractor and/or Surety may have or acquire as to such claim, including, without limitation, any right to dispute such claim. In no event shall the Surety's liability to any Claimant under this Bond exceed the sum properly due such claimant.

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

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

# POWER OF ATTORNEY INTERNATIONAL FIDELITY INSURANCE COMPANY

HOME OFFICE: ONE NEWARK CENTER, 20TH FLOOR  
NEWARK, NEW JERSEY 07102-5207

**KNOW ALL MEN BY THESE PRESENTS:** That **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing laws of the State of New Jersey, and having its principal office in the City of Newark, New Jersey, does hereby constitute and appoint

**EDWARD ARENS, MICHELE BONNIN, PHILIP BAKER**

The Woodlands, TX.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **INTERNATIONAL FIDELITY INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of Article 3-Section 3, of the By-Laws adopted by the Board of Directors of **INTERNATIONAL FIDELITY INSURANCE COMPANY** at a meeting called and held on the 7th day of February, 1974.

The President or any Vice President, Executive Vice President, Secretary or Assistant Secretary, shall have power and authority

(1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and,

(2) To remove, at any time, any such attorney-in-fact and revoke the authority given.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and held on the 29th day of April, 1982 of which the following is a true excerpt:

Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.



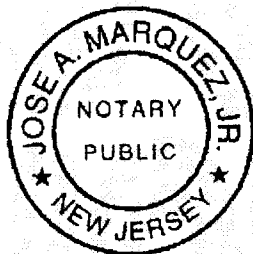
IN TESTIMONY WHEREOF, **INTERNATIONAL FIDELITY INSURANCE COMPANY** has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 16th day of October, A.D. 2007.

**INTERNATIONAL FIDELITY INSURANCE COMPANY**

STATE OF NEW JERSEY  
County of Essex

Secretary

On this 16th day of October 2007, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said the he is the therein described and authorized officer of the **INTERNATIONAL FIDELITY INSURANCE COMPANY**; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.



IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

A NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Nov. 21, 2010

## CERTIFICATION

I, the undersigned officer of **INTERNATIONAL FIDELITY INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the **ORIGINALS ON** IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect

IN TESTIMONY WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_

Assistant Secretary

## **IMPORTANT NOTICE**

### **TO OBTAIN INFORMATION OR MAKE A COMPLAINT:**

**You may call International Fidelity Insurance Company's toll-free telephone number for information or to make a complaint at:**

**800-333-4167**

**You may also write to International Fidelity Insurance Company at:**

**Attn: Claims Department  
One Newark Center, 20<sup>th</sup> Floor  
Newark, NJ 07102**

**You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:**

**800-252-3439**

**You may write the Texas Department of Insurance at:**

**P.O. Box 149104  
Austin, TX 78714-9104**

**ATTACH THIS NOTICE TO YOUR BOND. This notice is for information only and does not become a part or a condition of the attached document and is given to comply with Section 2253.048, Government Code, and Section 53.202, Property Code, effective September 1, 2001.**

<b>ACORD<sup>TM</sup> CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 10/12/2010
<b>PRODUCER</b> Phone: 713-688-1500 Fax: 713-688-7967 Brady, Chapman, Holland & Associates 10055 West Gulf Bank Houston TX 77040		<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>
<b>INSURED</b> Mar-Con Services, LLC 1410 Preston Avenue, Suite H Pasadena TX 77503		
		<b>INSURERS AFFORDING COVERAGE</b>
		<b>NAIC #</b>
		INSURER A: Travelers Indemnity Co of Ct 25658
		INSURER B: Travelers Lloyds (Travelers) 41262
		INSURER C: Travelers Property Casualty (T 36161
		INSURER D:
		INSURER E:

### COVERAGES

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

INSR	ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CO6711L391TLC	10/3/2010	10/3/2011	EACH OCCURRENCE \$1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300000 MED EXP (Any one person) \$5000 PERSONAL & ADV INJURY \$1000000 GENERAL AGGREGATE \$2000000 PRODUCTS - COMP/OP AGG \$2000000
C		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> MCS 90	BA6683L40609	10/3/2010	10/3/2011	COMBINED SINGLE LIMIT (Ea accident) \$1000000  BODILY INJURY (Per person) \$  BODILY INJURY (Per accident) \$  PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$  OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10000	CUP5461B889TCT	10/3/2010	10/3/2011	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000 \$ \$ \$
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	UB6985L37709	10/3/2010	10/3/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <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
B		<b>OTHER</b> Contractors Equipment	6604268B152	10/3/2010	10/3/2011	Rented/Leased Equipment \$250,000 Any one Item Ded: \$2,500 except 5,000 Theft VMM Cranes 2.5% with \$5,000 Min. Ded


**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 Certificate holder and others when required by written contract are named as additional insured on the general liability includes products/completed operations and automobile with a waiver of subrogation on the general liability, automobile and workers' compensation, to the extent of liabilities assumed under written contract, subject to the terms, conditions and exclusions of the policy. This insurance is primary and non-contributory as respects to general liability, to the extent of liabilities assumed under written contract, subject to the terms, conditions and exclusions of the policy. Umbrella Follows Form.  
 See Attached...

### CERTIFICATE HOLDER

Fort Bend County Toll Road Authority  
 c/o Jacobs Engineering Group Inc.  
 5995 Rogerdale Road  
 Houston TX 77072

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS, EXCEPT 10 DAYS FOR NON-PAYMENT OF PREMIUM WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

**AUTHORIZED REPRESENTATIVE**  


## **IMPORTANT**

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

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

## **DISCLAIMER**

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

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS / SPECIAL PROVISIONS**

General Liability includes XCU, contractual liability and personal injury exclusion deleted from contractual liability.  
Job: Fort Bend County Toll Road Authority Fort Bend Parkway  
Segment No. 4 Ramp Improvement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**DESIGNATED PROJECT(S)  
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

## SCHEDULE

## Designated Project(s):

Each "project" **other than** RE: City of Houston Project WBS No. N-000602-0003-4 W. Orem from Alameda Street to West Bank of Sims Bayou, for which you have agreed, in a written contract which is in effect during this policy period, to provide a separate General Aggregate Limit, provided that the contract is signed and executed by you before the "bodily injury" or "property damage" occurs.

Designated Project  
General Aggregate(s):

\$GENERAL AGGREGATE  
LIMIT SHOWN ON  
DECLARATIONS.

A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A. (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which can be attributed only to operations at a single designated "project" shown in the Schedule above:

1. A separate Designated Project General Aggregate Limit applies to each designated "project", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations, unless separate Designated Project General Aggregate(s) are scheduled above.
2. The Designated Project General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A.**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C**, regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".

3. Any payments made under **COVERAGE A.** for damages or under **COVERAGE C.** for medical expenses shall reduce the Designated Project General Aggregate Limit for that designated "project". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Project General Aggregate Limit for any other designated "project" shown in the Schedule above.

4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Project General Aggregate Limit.

B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A. (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C. (SECTION I)**, which cannot be attributed only to operations at a single designated "project" shown in the Schedule above:

## COMMERCIAL GENERAL LIABILITY

1. Any payments made under **COVERAGE A.** for damages or under **COVERAGE C.** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Project General Aggregate Limit.
- C. Part 2. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:
2. The General Aggregate Limit is the most we will pay for the sum of:
    - a. Damages under **Coverage B;** and
    - b. Damages from "occurrences" under **COVERAGE A (SECTION I)** and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)** which cannot be attributed only to operations at a single designated "project" shown in the **SCHEDULE** above.
- D. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Project General Aggregate Limit.
- E. For the purposes of this endorsement the **Definitions Section** is amended by the addition of the following definition:
- "Project" means an area away from premises owned by or rented to you at which you are performing operations pursuant to a contract or agreement. For the purposes of determining the applicable aggregate limit of insurance, each "project" that includes premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad shall be considered a single "project".
- F. The provisions of **SECTION III – LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

## BLANKET ADDITIONAL INSURED (CONTRACTORS)

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED – (Section II) is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
  - a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
  - b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
  - a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
  - b) The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
    - i. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
    - ii. Supervisory, inspection, architectural or engineering activities.
- c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance".
4. As a condition of coverage provided to the additional insured by this endorsement:
  - a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

## COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
  - ii. The names and addresses of any injured persons and witnesses; and
  - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b) If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
  - ii. Notify us as soon as practicable.
- The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d) The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.

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

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

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

## **CONTRACTORS XTEND ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**GENERAL DESCRIPTION OF COVERAGE** – Provisions A.-H. and J.-N. of this endorsement broaden coverage, and provision I. of this endorsement may limit coverage. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the **PROVISIONS** of this endorsement carefully to determine rights, duties, and what is and is not covered.

- |   |  |
|---|--|
| <p>A. Broadened Named Insured</p> <p>B. Extension of Coverage – Damage To Premises Rented To You</p> <ul style="list-style-type: none"> <li>• Perils of fire, explosion, lightning, smoke, water</li> <li>• Limit increased to \$300,000</li> </ul> <p>C. Blanket Waiver of Subrogation</p> <p>D. Blanket Additional Insured – Managers or Lessors of Premises</p> <p>E. Incidental Medical Malpractice</p> <p>F. Extension of Coverage – Bodily Injury</p> <p>G. Contractual Liability – Railroads</p> | <p>H. Additional Insured – State or Political Subdivisions</p> <p>I. Other Insurance Condition</p> <p>J. Increased Supplementary Payments</p> <ul style="list-style-type: none"> <li>• Cost of bail bonds increased to \$2,500</li> <li>• Loss of earnings increased to \$500 per day</li> </ul> <p>K. Knowledge and Notice of Occurrence or Offense</p> <p>L. Unintentional Omission</p> <p>M. Personal Injury – Assumed by Contract</p> <p>N. Blanket Additional Insured –Lessor of Leased Equipment</p> |
|---|--|

### **PROVISIONS**

#### **A. BROADENED NAMED INSURED**

1. The Named Insured in Item 1. of the Declarations is as follows:

The person or organization named in Item 1. of the Declarations and any organization, other than a partnership, joint venture or limited liability company, of which you maintain ownership or in which you maintain the majority interest on the effective date of the policy. However, coverage for any such additional organization will cease as of the date, if any, during the policy period, that you no longer maintain ownership of, or the majority interest in, such organization.

2. WHO IS AN INSURED (Section II) Item 4.a. is deleted and replaced by the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

3. This Provision A. does not apply to any person or organization for which coverage is excluded by endorsement.

#### **B. EXTENSION OF COVERAGE – DAMAGE TO PREMISES RENTED TO YOU**

1. The last paragraph of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages) is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

- a. Fire;
- b. Explosion;
- c. Lightning;
- d. Smoke resulting from such fire, explosion, or lightning; or
- e. Water.

A separate limit of insurance applies to this coverage as described in Section III Limits Of Insurance.

## COMMERCIAL GENERAL LIABILITY

2. This insurance does not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:
  - a. Rupture, bursting, or operation of pressure relief devices;
  - b. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water;
  - c. Explosion of steam boilers, steam pipes, steam engines, or steam turbines.

3. Paragraph 6. of LIMITS OF INSURANCE (Section III) is deleted and replaced by the following:

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under COVERAGE A. for the sum of all damages because of "property damage" to any one premises while rented to you, or temporarily occupied by you with permission of the owner, caused by: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water. The Damage To Premises Rented To You Limit will apply to all "property damage" proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these causes.

The Damage To Premises Rented To You Limit will be the higher of:

- a. \$300,000; or
  - b. The amount shown on the Declarations for Damage To Premises Rented To You Limit.
4. Paragraph a. of the definition of "insured contract" (DEFINITIONS – Section V) is deleted and replaced by the following:
    - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water, is not an "insured contract";

5. This Provision B. does not apply if coverage for Damage To Premises Rented To You of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages) is excluded by endorsement.

### C. BLANKET WAIVER OF SUBROGATION

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of: premises owned or occupied by or rented or loaned to you; ongoing operations performed by you or on your behalf, done under a contract with that person or organization; "your work"; or "your products". We waive this right where you have agreed to do so as part of a written contract, executed by you before the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

### D. BLANKET ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (referred to below as "additional insured") with whom you have agreed in a written contract, executed before the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed, to name as an additional insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you, subject to the following provisions:

1. Limits of Insurance. The limits of insurance afforded to the additional insured shall be the limits which you agreed to provide in the written contract, or the limits shown on the Declarations, whichever are less.
2. The insurance afforded to the additional insured does not apply to:
  - a. Any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense which is committed, after you cease to be a tenant in that premises;
  - b. Any premises for which coverage is excluded by endorsement; or
  - c. Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
3. The insurance afforded to the additional insured is excess over any valid and collectible

"other insurance" available to such additional insured, unless you have agreed in the written contract that this insurance must be primary to, or non-contributory with, such "other insurance".

#### E. INCIDENTAL MEDICAL MALPRACTICE

1. The following is added to paragraph 1. Insuring Agreement of COVERAGE A. – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):

"Bodily injury" arising out of the rendering of, or failure to render, the following will be deemed to be caused by an "occurrence":

- a. Medical, surgical, dental, laboratory, x-ray or nursing service, advice or instruction, or the related furnishing of food or beverages;
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances;
- c. First aid; or
- d. "Good Samaritan services." As used in this Provision E., "Good Samaritan services" are those medical services rendered or provided in an emergency and for which no remuneration is demanded or received.

2. Paragraph 2.a.(1)(d) of WHO IS AN INSURED (Section II) does not apply to any registered nurse, licensed practical nurse, emergency medical technician or paramedic employed by you, but only while performing the services described in paragraph 1. above and while acting within the scope of their employment by you. Any "employees" rendering "Good Samaritan services" will be deemed to be acting within the scope of their employment by you.

3. The following exclusion is added to paragraph 2. Exclusions of COVERAGE A. – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):

(This insurance does not apply to:) "Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by or with the knowledge or consent of the insured.

4. For the purposes of determining the applicable limits of insurance, any act or omission

together with all related acts or omissions in the furnishing of the services described in paragraph 1. above to any one person will be deemed one "occurrence".

5. This Provision E. does not apply if you are in the business or occupation of providing any of the services described in paragraph 1. above.

6. The insurance provided by this Provision E. shall be excess over any valid and collectible "other insurance" available to the insured, whether primary, excess, contingent or on any other basis, except for insurance that you bought specifically to apply in excess of the Limits of Insurance shown on the Declarations of this Coverage Part.

#### F. EXTENSION OF COVERAGE – BODILY INJURY

The definition of "bodily injury" (DEFINITIONS – Section V) is deleted and replaced by the following:

"Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

#### G. CONTRACTUAL LIABILITY – RAILROADS

1. Paragraph c. of the definition of "insured contract" (DEFINITIONS – Section V) is deleted and replaced by the following:
  - c. Any easement or license agreement;
2. Paragraph f.(1) of the definition of "insured contract" (DEFINITIONS – Section V) is deleted.

#### H. ADDITIONAL INSURED – STATE OR POLITICAL SUBDIVISIONS – PERMITS

WHO IS AN INSURED (Section II) is amended to include as an insured any state or political subdivision, subject to the following provisions:

1. This insurance applies only when required to be provided by you by an ordinance, law or building code and only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
2. This insurance does not apply to:
  - a. "Bodily injury," "property damage," "personal injury" or "advertising injury" arising out of operations performed for the state or political subdivision; or

*This is the EQUIVALENT CG 2417*

## COMMERCIAL GENERAL LIABILITY

- b. "Bodily injury" or "property damage" included in the "products-completed operations hazard".

### I. OTHER INSURANCE CONDITION

- A. COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), paragraph 4. (Other Insurance) is deleted and replaced by the following:

#### 4. Other Insurance

If valid and collectible "other insurance" is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

##### a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the "other insurance" is also primary. Then, we will share with all that "other insurance" by the method described in c. below.

##### b. Excess Insurance

This insurance is excess over any of the "other insurance", whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk, or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (3) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (4) If the loss arises out of the maintenance or use of aircraft, "autos", or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability; or
- (5) That is available to the insured when the insured is an additional

insured under any other policy, including any umbrella or excess policy.

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

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

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

We will share the remaining loss, if any, with any "other insurance" that is not described in this Excess Insurance provision.

##### c. Method Of Sharing

If all of the "other insurance" permits contribution by equal shares, we will follow this method also. Under this approach each provider of insurance contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

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

- B. The following definition is added to DEFINITIONS (Section V):

"Other insurance":

- a. Means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (1) Another insurance company;
- (2) Us or any of our affiliated insurance companies, except when the Non cumulation of Each Occurrence Limit section of Paragraph 5 of LIMITS OF INSURANCE (Section III) or the Non cumulation of Personal and Advertising Injury limit sections of Paragraph 4 of LIMITS OF INSURANCE (Section III) applies;
- (3) Any risk retention group;
- (4) Any self-insurance method or program, other than any funded by you and over which this Coverage Part applies; or
- (5) Any similar risk transfer or risk management method.

- b. Does not include umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the Limits of Insurance shown on the Declarations of this Coverage Part.

**J. INCREASED SUPPLEMENTARY PAYMENTS**

Paragraphs 1.b. and 1.d. of SUPPLEMENTARY PAYMENTS – COVERAGES A AND B (Section I – Coverages) are amended as follows:

1. In paragraph 1.b., the amount we will pay for the cost of bail bonds is increased to \$2500.
2. In paragraph 1.d., the amount we will pay for loss of earnings is increased to \$500 a day.

**K. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

1. The following is added to COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), paragraph 2. (Duties In The Event of Occurrence, Offense, Claim or Suit):

Notice of an "occurrence" or of an offense which may result in a claim must be given as soon as practicable after knowledge of the "occurrence" or offense has been reported to you, one of your "executive officers" (if you are a corporation), one of your partners who is an individual (if you are a partnership), one of your managers (if you are a limited liability company), or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice.

Knowledge by any other "employee" of an "occurrence" or offense does not imply that you also have such knowledge.

2. Notice of an "occurrence" or of an offense which may result in a claim will be deemed to be given as soon as practicable to us if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice of the "occurrence" or offense to us as soon as practicable after you, one of your "executive officers" (if you are a corporation), one of your partners who is an individual (if you are a partnership), one of your managers (if you are a limited liability company), or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice discovers that the "occurrence" or offense may involve this policy.

3. This Provision K. does not apply as respects the specific number of days within which you are required to notify us in writing of the abrupt commencement of a discharge, release or escape of "pollutants" that causes "bodily injury" or "property damage" which may otherwise be covered under this policy.

**L. UNINTENTIONAL OMISSION**

The following is added to COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), paragraph 6. (Representations):

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy shall not prejudice your rights under this insurance. However, this Provision L. does not affect our right to collect additional premium or to exercise our right of cancellation or nonrenewal in accordance with applicable state insurance laws, codes or regulations.

**M. PERSONAL INJURY – ASSUMED BY CONTRACT**

1. The following is added to Exclusion e. (1) of Paragraph 2., Exclusions of Coverage B. **Personal Injury, Advertising Injury, and Web Site Injury Liability** of the Web XTEND Liability endorsement:

Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "personal injury" provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been as-

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sumed in the same "insured contract"; and

- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.
- 2. Paragraph 2.d. of SUPPLEMENTARY PAYMENTS – COVERAGES A AND B (Section I – Coverages) is deleted and replaced by the following:
  - d. The allegations in the "suit" and the information we know about the "occurrence" or offense are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- 3. The third sentence of Paragraph 2 of SUPPLEMENTARY PAYMENTS – COVERAGES A AND B (Section I – Coverages) is deleted and replaced by the following:

Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, or the provisions of Paragraph 2.e.(1) of Section I – Coverage B – Personal Injury, Advertising Injury And Web Site Injury Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage", or damages for "personal injury", and will not reduce the limits of insurance.
- 4. This provision M. does not apply if coverage for "personal injury" liability is excluded by endorsement.

## N. BLANKET ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (referred to below as "additional insured") with whom you have agreed in a written contract, executed before the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed, to name as an additional insured, but only with respect to their liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such additional insured, subject to the following provisions:

- 1. Limits of Insurance. The limits of insurance afforded to the additional insured shall be the limits which you agreed to provide in the written contract, or the limits shown on the Declarations, whichever are less.
- 2. The insurance afforded to the additional insured does not apply to any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense which is committed, after the equipment lease expires.
- 3. The insurance afforded to the additional insured is excess over any valid and collectible "other insurance" available to such additional insured, unless you have agreed in the written contract that this insurance must be primary to, or non-contributory with, such "other insurance".