

AGREEMENT

AGREEMENT FOR YAMHILL COUNTY 2017 STRIPING PROJECT (Yamhill County and Hicks Striping & Curbing, Inc.)

THIS AGREEMENT is made effective the last date set forth adjacent to the signatures of the parties below between **Yamhill County**, a political subdivision of the State of Oregon (referred to as Owner in this Agreement) and Hicks Striping & Curbing, Inc., Federal Tax Identification Number 91-1796826 referred to as Contractor in this Agreement) for the project known as YAMHILL COUNTY 2017 ROAD STRIPING PROJECT for which bids were opened June 8, 2017 (referred to in this Agreement as the "Project").

STATEMENT OF PURPOSE AND IDENTIFICATION OF CONTRACT DOCUMENTS

A. Owner has budgeted funds to perform the Project. Owner conducted a competitive bidding process to select the lowest responsible bidder to complete the Project. Contractor was the lowest responsible bidder. This Agreement is made to specify the mutual obligations of Owner and Contractor for completion of the Project.

B. This Agreement includes by reference the following Contract Documents that are part of the Project:

- (A) Competitive Quote Package for:
 - (1) Materials Supply for Road Maintenance and Repairs
 - (2) Contract Trucking Services
 - (3) Highway Striping Servicesand Call for Competitive Quotes, May 2017
- (B) Special Provisions and Supplemental Standard Specifications for County Road Construction, including Standard and Supplemental General Conditions in form of Oregon Standard Specifications for Construction 2008 published by ODOT
- (C) Bid Schedules and Signature Page
- (D) First-tier subcontractor disclosure form
- (E) Bid Bond (not required on this project)
- (F) Prevailing Wage Rates effective January 1, 2017
- (G) Addenda (if any)
- (H) Public Works Bond filed with the Construction Contractors Board (ORS 279C.836)
- (I) Notice of Intent to Award
- (J) This Agreement
- (K) Agreement Amendments (if any)
- (L) Insurance Certificates
- (M) Notice to Proceed
- (N) Change Orders (if any)
- (O) Notice of Substantial Completion or Project Acceptance
- (P) Warranty Period

B.O. 17-294

AGREEMENT: In consideration of the mutual covenants contained below, Owner and Contractor hereby agree as follows:

1. **Scope of work and services; filing of payment and performance bond.** The Contractor will commence and complete the construction of the Project in strict accordance with the Contract Documents identified above. The Contractor acknowledges receipt of all Contract Documents in existence at the date it executed this Agreement. Contractor represents to Owner that Contractor has made a reasonable inspection of the Project site(s) and is reasonably familiar with the Project site(s) conditions that might affect Contractor's performance if the Project pursuant to this Agreement. Services provided by Contractor under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions. No performance bond is anticipated to be required for this project. In addition, if applicable, before commencing work, the successful proposer shall have a public works bond as described in ORS 279C.836 filed with the Construction Contractors Board and shall include a provision in any subcontract for the project that their subcontractor shall also have a public works bond filed with the Construction Contractors Board before they commence work.
2. **Agreement performed at Contractor's expense as Independent Contractor.** The Contractor will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the Project as described in the Contract Documents. The Contractor is an independent contractor under this Agreement.
3. **Commencement and completion date.** The Contractor will commence the work and services required by the Contract Documents upon Owner's issuance of a Notice to Proceed and will complete the same by no later than March 31, 2018 unless the Contract Period is extended or otherwise modified by written notice or executed Change Order.
4. **Termination.** Owner may terminate this Agreement if the Contractor fails to comply with a material term of this Agreement or for any other reason considered to be in the public interest. If this Agreement is terminated, the Owner will pay for all work and services accepted by the Supervisor, as defined in Section 16, prior to termination.
5. **Penalty for failure to meet deadline.** The parties agree that Owner has a substantial interest in the timely completion of the Project and all work and services to be performed under this Agreement in accordance with the agreed upon schedule. However, the parties agree that the damages to be anticipated from the failure of Contractor to complete this Agreement in the specified time are uncertain and difficult to establish. The parties therefore desire to liquidate Owner's damages for Contractor's failure to complete the Project and all work and services on time. The parties therefore agree that the Contractor is liable for and shall pay as liquidated damages to Owner the sum of \$1,008.18 (equal to Contract Price times .005) per day for each calendar day to commence on the first calendar day after the required completion date under this Agreement and to continue after each and every calendar day until all work is satisfactorily completed as specified in the Contract Documents.
6. **Compensation.** The Contractor agrees to perform all of the work and services described in the Contract Documents and comply with the terms therein at the rates set forth in Contractor's responsive bid schedule for the fixed sum of \$201,637.00 unless the Contract Price is modified by executed Change Order. Payment shall be made by Owner either in a single payment following final approval of the project by the Yamhill County Director of Public Works, or as otherwise provided in the General Conditions, subject to a 5% retainage. Upon

satisfactory completion of Project tasks the Contractor shall notify the Supervisor in writing that Contractor has completed performance under this Agreement and shall request payment of applicable retained amounts. Upon receipt of written notice, Supervisor will review the Project work and services completed to date and if acceptable, Supervisor shall authorize payment of applicable retained amounts.

7. **Prevailing wages; certified statement.** The Contractor hereby certifies, and it shall be a condition of the Payment and Performance Bond, as provided by ORS 279C.800 through 279C.870, that in performing this Agreement the Contractor will pay and cause to be paid and all subcontractors will pay and cause to be paid not less than the prevailing rate of wages as of the date of the Call for Bids, per hour, per day, and per week for and to each and every worker who may be employed in and about the performance of this Agreement. In the event the Contractor is obligated to abide by prevailing wage requirements imposed by federal law, the Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141 et seq). The Contractor shall file with the Owner certified statements as required under ORS 279C.845 with regard to payment of prevailing wages. Pursuant to ORS 279C.845(7) until Owner receives the certified statements, Owner shall retain 25% of any amount earned by the Contractor as required by law. Owner shall pay Contractor any retained amounts under this Section within 14 days of receipt of certified statements.

8. **Incorporation of statutory provisions required for public contracts.** The Contractor certifies it shall comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated into this Agreement by reference.

9. **Workers' compensation.** The Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

10. **BOLI fee.** In accordance with ORS 279C.825, as amended in 2009, the Owner shall pay a fee to the Bureau of Labor and Industries (BOLI), Wage and Hour Division, Rom 1160, Prevailing Wage Unit, 800 NE Oregon Street, #32, Portland, Oregon 97232. The fee is an amount equal to one-tenth of one percent (0.1 percent) of the Contract Price, with a minimum fee of \$250.00 and a maximum fee of \$7,500.00. The fee shall be paid at the time Owner enters into this Agreement. The fee shall be paid in accordance with the administrative rules of BOLI.

11. **Certification of compliance with laws.** The Contractor certifies, under penalty of perjury, that Contractor is not in violation of any federal, state or local tax laws, rules or regulations or any federal, state or local laws, rules, codes or regulations applicable to the Project and that Contractor shall remain in compliance with all such laws, codes, rules and regulations during the entire term of this Agreement. In addition, Contractor agrees that it has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620 and ORS Chapters 316, 317 and 318.

12. **Certification of reading and understanding of documents.** The Contractor certifies it has read and fully understands all Contract Documents including Solicitation Documents and

terms and conditions. The Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the same.

13. **Payment.** The Owner agrees to pay the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Agreement, unless otherwise modified by written notice or executed Change Order.

14. **Warranty Period.** Where the warranty period is not otherwise stated in the General Conditions, the warranty period is 365 days commencing upon the date Project Acceptance is issued by Owner.

15. **Public Works Bond.** Before commencing work, the Contractor shall have a public works bond as described in ORS 279C.836 filed with the Construction Contractors Board. Contractor shall include a provision in any subcontract for the Project that the subcontractor shall have a public works bond filed with the Construction Contractors Board before commencing work.

16. **Status of the Project Supervisor.** William A. Gille, County Engineer, is the Project Supervisor (the "Supervisor"). The Supervisor or his designee shall perform technical inspections of work and services and shall have authority to stop the work or services whenever such stoppage shall be necessary to insure proper execution of the Agreement. The Supervisor or his designee may reject all work and materials that do not conform to the Agreement and shall decide questions that arise in the execution of the Project work or services. The Supervisor has authority to reject or accept the Project work or services.

17. **Prohibition of Discrimination.** In hiring employees for performance of work under this Agreement neither Contractor, any subcontractor or any other person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap or sex discriminate against a person who is qualified and available to perform work or services to which employment relates.

18. **Risk of Loss.** The risk of loss or damage to the subject matter of this Agreement arising from any cause whatsoever, including acts of God, shall be upon the Contractor until such time as the Owner has accepted the work and services as provided in this Agreement.

19. **Indemnification.** Contractor shall indemnify, defend and save harmless Owner from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorney fees, in any way connected with any injury to any person or damage to any property occasioned in any way by Contractor's or Contractor's subcontractors' prosecution of work or services under this Agreement.

20. **Insurance.** Contractor, at its expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement:

1. Workers Compensation Insurance in compliance with statutory requirements;
2. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;

- 3 Professional Liability Insurance, including Errors and Omissions coverage, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by Owner or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to the Project work or services provided under the Agreement.
4. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the services provided under the Agreement;

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to Owner. Evidence of such insurance will be furnished to Owner before commencing Project work or services. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to Owner. The Commercial General Liability and Commercial Automobile Liability shall (i) name Owner, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of Owner and that any insurance maintained by Owner is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

21. **Nonwaiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of Owner to enforce at any time any of the terms of this Agreement, or to exercise any option which is provided, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Agreement, or the right of Owner to thereafter enforce each and every provision.

22. **Contractor's Representation.** Contractor, by entering into this Agreement, represents that its bid for this Project is made without connection with any person, firm or corporation making or refraining from making a bid for the same or similar project and was in all respects fair and without collusion or fraud.

23. **Severability.** Should any clause or section of this Agreement be declared by court to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

24. **Dispute resolution through mediation and arbitration.** Any dispute between the parties to this Agreement shall be resolved according to the following process:

(a) The parties first shall submit to mediation of the dispute to be conducted by a mutually acceptable mediator. If the parties cannot agree on a mediator, they shall request a mediator to be appointed by the U.S. Mediation and Arbitration service in Portland, Oregon. The mediator's charges and expenses shall be borne equally by the parties. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

(b) If the dispute is not resolved in mediation, the parties shall then submit the dispute to binding arbitration. Arbitration shall be conducted in accordance with the rules set forth in the Oregon International Commercial Arbitration and Conciliation Act, ORS 36.450 to 36.558, 2007 replacement part. The decision of the arbitrator shall be final and binding on the parties. The party that does not prevail, as determined by the arbitrator, shall pay the arbitrator's fees and expenses in arbitration. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

25. **Attorney fees and costs.** Except as provided in Section 24(b), in the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

26. **Applicable laws.** This Agreement is executed in the State of Oregon and is subject to Oregon law and jurisdiction in Yamhill County.

27. **Subcontractors bound.** Contractor covenants and agrees to bind any and all Subcontractor(s) for performance of work under this Agreement. Any reference to Contractor shall include any and all Subcontractor(s) ad infinitum.

28. **Written changes required.** The rights and duties under this Agreement shall not be modified, delegated, transferred, or assigned, except upon written signed consent of both parties.

29. **Successors bound.** This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

THIS AGREEMENT AND THE CONTRACT DOCUMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOTICE SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

Hicks Striping & Curbing, Inc.

By: 
(signature)
Date: 7-11-17

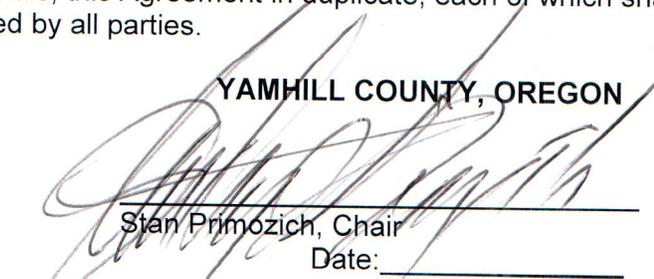
Ron Hicks
(printed name)

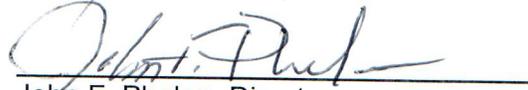
Title: President

Fed. Tax I.D. No: 91-1796826

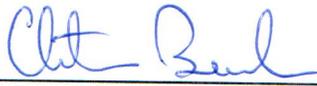
Contractor
Registration No: 64685

YAMHILL COUNTY, OREGON


Stan Primozych, Chair
Date: _____


John F. Phelan, Director
Department of Public Works
Date: 7-18-17

APPROVED AS TO FORM

By: 
Christian Boenisch
County Counsel

Accepted by Yamhill County
Board of Commissioners on
7-27-17 by Board Order
17-294

Oregon Workers' Compensation Certificate of Insurance



Mail to:

HICKS STRIPING & CURBING INC
PO BOX 9127
SALEM, OR 97305-0127

Certificate holder:

YAMHILL COUNTY
535 NE FIFTH ST.
MCMINNVILLE, OR 97128

The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by this policy is subject to all the terms, exclusions and conditions of such policy; this policy is subject to change or cancellation at any time.

Insured

Hicks Striping & Curbing Inc
PO Box 9127
Salem, Or 97305-0127

Producer/contact

SAIF Corporation
Diane Hyland-Edwards
503.373.8474 diahyl@saif.com

Issued 07/11/2017

Policy 947202

Period 10/01/2016 to 10/01/2017

Limits of liability

Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each employee
Body Injury by Disease	\$1,000,000 policy limit

Description of operations/locations/special items

YAMHILL COUNTY 2017 ROAD STRIPING PROJECT

Important

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above. This certificate does not constitute a contract between the issuing insurer, authorized representative or producer and the certificate holder.

Authorized representative

A handwritten signature in black ink, appearing to read "Kerry Barnett".

Kerry Barnett
President and CEO

400 High Street SE
Salem, OR 97312
P: 800.285.8525
F: 503.584.9812



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/12/2017

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 KPD Insurance, Inc. PO Box 784 Springfield OR 97477	CONTACT NAME: PHONE (A/C, No, Ext): 541-741-0550 FAX (A/C, No): 541-741-1674 E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
INSURED Hicks Striping & Curbing Inc PO Box 9127 Brooks OR 97305	INSURER A: Alaska National Insurance Co	NAIC # 38733
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 993021824 **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 SUBR INSD 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 <input checked="" type="checkbox"/> WA Stop Gap <input checked="" type="checkbox"/> Lmted Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		17APS31852	1/1/2017	1/1/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 WA Stop Gap \$1,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> Limited Poll		17AAS31852	1/1/2017	1/1/2018	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 checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		17ALU31852	1/1/2017	1/1/2018	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

Re: Yamhill County 2017 Striping Project. Yamhill County, its directors, officers, and employees are additional insured on a primary basis per form ANICGL1061 03/08 on the General Liability and per form ANICCA1150 10/13 on the Auto Liability. Waiver of Subrogation applies per form ANICGL1162 12/15 on the General Liability and per form ANICCA1150 10/13 on the Auto Liability.

CERTIFICATE HOLDER

Yamhill County
535 NE Fifth Street
McMinnville OR 97128

CANCELLATION

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

ADDITIONAL INSURED (CONTRACTORS) - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. Who Is An Insured (Section II) is amended to include as an insured any person or organization (herein referred to as an additional insured), but only if you are required to add that person or organization as an insured to this policy by a written contract that is in effect prior to the "bodily injury", "property damage", or "personal and advertising injury".
 - ii. supervisory, inspection, or engineering services.
2. The insurance provided to the additional insured is limited as follows:
 - a. That person or organization is only an additional insured if, and only to the extent that, the injury or damage is caused by negligent acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract applies. The person or organization does not qualify as an additional insured with respect to injury or damage caused in whole or in part by independent negligent acts or omissions of such person or organization.
 - b. The insurance provided to the additional insured does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
 - i. the preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, design or specifications; and
 3. If other valid and collectible insurance, whether on a primary, excess, contingent or any other basis, is available to the additional insured for a loss we cover under this endorsement, then the insurance provided by this endorsement is excess over that other insurance. However, the insurance provided by this endorsement will be primary to other insurance on which the additional insured is a named insured for the covered loss, if the written contract, referred to in paragraph 1. of this



endorsement, contains a specific requirement that this insurance be primary or primary and non-contributory. In that case we will not share with that other insurance on a pro-rata or other basis. If the other insurance available to the additional insured, whether on a primary, excess, contingent or any other basis, is coverage for which it has been named as an additional insured, then the coverage provided by this endorsement is excess over that other insurance.

This endorsement changes the policy to which it is attached and, unless otherwise stated, is effective on the date issued at 12:01 A.M. standard time at your mailing address shown in the policy. **The information below is required only when this endorsement is issued subsequent to commencement of the policy.**

Endorsement Effective 1/01/16

Policy No. 16APS31852

Insured Hicks Striping & Curbing, Inc.

Endorsement No. 14

Countersigned By _____

COMMERCIAL GENERAL LIABILITY COVERAGE ENHANCEMENT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Various provisions in this endorsement restrict coverage. Read the entire policy carefully to determine rights, duties, and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us", and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – DEFINITIONS** in the Commercial General Liability Coverage Form.

The coverages provided by this endorsement apply per "occurrence" and, unless otherwise specified, are subject to all of the terms, conditions, exclusions and deductible provisions of the policy, to which it is attached.

NON-OWNED WATERCRAFT AMENDMENT

A. If endorsement **CG 21 09**, **CG 21 10**, **CG 24 50**, or **CG 24 51** is attached to the policy, Paragraph A. 2. g. (2) (b) is replaced by the following:

(b) A watercraft that you do not own that is:

(i) Less than 50 feet long; and

(ii) Not being used to carry persons or property for a charge.

B. If Paragraph A. does not apply, Paragraph g. (2) of 2. **EXCLUSION** under **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

(2) A watercraft that you do not own that is:

(a) Less than 50 feet long; and

(b) Not being used to carry persons or property for a charge.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B, Paragraph 1.b. is replaced by the following:

b. Up to \$10,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B, Paragraph 1.d. is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit, including actual loss of earnings up to \$500 a day because of time off from work.

SECTION II – WHO IS AN INSURED, paragraph 2.e. is added as follows:

e. Any person(s) or organization(s) (referred to throughout this coverage form as vendor) for whom you have agreed in writing to provide insurance such as is afforded by this coverage form but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

However:

(1) The insurance afforded to such vendor only applies to the extent permitted by law; and

- (2) If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

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

The insurance afforded the vendor does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (1) The exceptions contained in Sub-paragraphs d. or f.; or

- (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

SECTION II – WHO IS AN INSURED, paragraph 2.f. is added as follows:

- f. Any person(s) or organization(s) for whom you have agreed in writing to provide insurance as is afforded by this coverage form but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you by such person(s) or organization(s).

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person(s) or organization(s).

However:

- (1) The insurance afforded to such additional insured only applies to the extent permitted by law; and
- (2) The coverage to the additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

SECTION III – LIMITS OF INSURANCE, Paragraph 6. Is replaced by the following:

6. Subject to Paragraph 5. above, the Damage to Premises Rented to You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

If a limit is shown for Damage to Premises Rented to You the most we will pay under Coverage A for damages because of "property damage" to any one premises is the Limit shown in the Declarations or \$500,000, whichever is greater.

SECTION III – LIMITS OF INSURANCE, Paragraph 7. Is replaced by the following:

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

If a limit is shown for Medical Expense in the Declarations the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person is the Limit shown in the Declarations or \$15,000, whichever is greater.

SECTION III – LIMITS OF INSURANCE, the following is added:

With respect to the insurance afforded to the insureds described in Paragraphs 2.e. and 2.f. of **Section II – Who Is An Insured**, if coverage provided to such insured is required by a contract or agreement, the most we will pay on behalf of such insured is the amount of insurance:

- (1) Required by the contract or agreement;
or
- (2) Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This provision shall not increase the applicable Limits of Insurance shown in the Declaration.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS – Paragraph 4. – **Other Insurance** is amended to add:

d. Primary and Noncontributory Insurance

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

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

This Paragraph d. supersedes any provision to the contrary in Paragraphs a. through c. above.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS – Paragraph 6. – **Representations** is replaced by the following:

6. Representations

By accepting this policy, you agree:

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

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



SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS – is amended to add Paragraph 10.

10. Blanket Waiver of Transfer of Rights of Recovery Against Others

We waive any right of recovery we may have against any person or organization as required in a written contract because of payments we make for injury or damage arising out of "your work" done under a written contract.

The waiver applies only to the person or organization required by written contract and then only if the contract requires you to obtain this agreement from us.

SECTION V – DEFINITIONS – Paragraph 3. – "Bodily Injury" is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these. Mental anguish means any type of mental or emotional illness or disease

This endorsement changes the policy to which it is attached and, unless otherwise stated, is effective on the date issued at 12:01 A.M. standard time at your mailing address shown in the policy. **The information below is required only when this endorsement is issued subsequent to commencement of the policy.**

Endorsement Effective 1/01/16

Policy No. 16APS31852

Insured Hicks Striping & Curbing, Inc.

Endorsement No. 17

Countersigned By _____

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