

RESOLUTION NUMBER 19-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SPRING VALLEY VILLAGE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF CONTRACT BY AND BETWEEN THE CITY OF SPRING VALLEY VILLAGE, TEXAS AND W.W. PAYTON CORPORATION FOR THE NEW PRODUCTION WELL PROJECT (BID #2019-01-01B); PROVIDING FOR THE INCORPORATION OF PREAMBLE; AUTHORIZING THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE SUCH AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City Council has been presented a proposed Contract by and between the City of Spring Valley Village, Texas and W.W. Payton Corporation for the New Production Well Project (Bid #2019-01-01B) (hereinafter called "Contract"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

**WHEREAS**, upon full review and consideration of the Contract and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the Mayor should be authorized to execute the Contract and any and all documents necessary to effectuate such Contract on behalf of the City of Spring Valley Village;

**NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRING VALLEY VILLAGE, TEXAS, THAT:**

Section 1. The facts and matters set forth in the preamble of this Resolution are hereby found to be true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. The terms and conditions of the Contract, having been reviewed by the City Council of the City of Spring Valley Village and found to be acceptable and in the best interests of the City of Spring Valley Village and its citizens, are hereby in all things approved.

Section 3. The Mayor is hereby authorized to execute the Contract and empowered, for and on behalf of the City, to take all such actions and to execute, verify, acknowledge, certify to, file and deliver all such instruments and documents required in the Contract as shall in the judgment of the Mayor be appropriate in order to effect the purposes of the foregoing resolution and Contract.

Section 4. This Resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** on this the 26<sup>th</sup> day of March, 2019.

  
\_\_\_\_\_  
Tom Ramsey, Mayor  
City of Spring Valley Village, Texas

ATTEST:

  
\_\_\_\_\_  
Roxanne Benitez, City Secretary  
City of Spring Valley Village, Texas

EXHIBIT "A"

TO

RESOLUTION NUMBER 19-06

**City of Spring Valley Village**

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**THIS AGREEMENT** is dated as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year by and between City of Spring Valley Village (hereinafter called OWNER) and  
W.W. Payton Corporation  
\_\_\_\_\_ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK.**

1.1. CONTRACTOR shall perform the Work in a good and workmanlike manner and in the best way and most expeditious and economical manner consistent with the interests of the OWNER, shall exercise the degree of care, skill, and diligence in the performance of the Work in accordance with and consistent with industry standards for similar circumstances, shall utilize its best skill, efforts, and judgment in furthering the interests of the OWNER, and shall furnish efficient business administration and supervision (collectively, CONTRACTOR's "Standard of Care").

1.2. CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Drilling, construction, development and testing of a new production well at the City of Spring Valley Village Water Plant, installation of chlorine, ammonia, polyphosphate and fluoride systems, piping from Well 1 and the new production well to the existing ground storage tanks, other miscellaneous site improvements and site restoration.

**Article 2. PROJECT MANAGER AND ENGINEER.**

**2.1 PROJECT MANAGER.**

WSP USA has been designated as the PROJECT MANAGER and is to assume all duties and responsibilities assigned to PROJECT MANAGER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**2.2 ENGINEER.**

The Project has been designed by WSP USA, who is to assume all duties and responsibilities assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**Article 3. CONTRACT TIMES.**

3.1. The Work will be substantially completed within 365 days after the date when the Contract Times commence to run as provided in Paragraph 2.3 of the General Conditions and will be completed and ready for final payment in accordance with Paragraph 14.9 of the General Conditions within 400 days after the date when the Contract Times commence to run.

3.2. *Liquidated Damages.* OWNER and CONTRACTOR recognize that time is of the essence to this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER One Thousand Two Hundred dollars (\$ 1,200.00 ) for each day that expires after the time specified in Paragraph 3.1 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 3.1 above for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER One Thousand Two Hundred dollars (\$ 1,200.00 ) for each day that expires after the time specified in Paragraph 3.1 for completion and readiness for final payment.

**Article 4. CONTRACT PRICE.**

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts as indicated in the Bid, Section 00410.

As provided in Paragraph 11.4.1 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by PROJECT MANAGER as provided in Paragraph 9.7 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.4 of the General Conditions.

**Article 5. PAYMENT PROCEDURES.**

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by PROJECT MANAGER as provided in the General Conditions.

5.1. *Progress Payments; Retainage.* Subject to OWNER's right to withhold payment in Paragraph 15.4.4 of the General Conditions, OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's completed Applications for

Payment as recommended by PROJECT MANAGER, on or about the 25<sup>th</sup> day of each month during construction as provided in Paragraphs 5.1.1. and 5.1.2. below. All such payments will be measured by the schedule of values established in Paragraph 2.4.2.3 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as PROJECT MANAGER shall determine, or OWNER may withhold, in accordance with Paragraph 15.4.4 of the General Conditions.

95 percent of Work completed and included in the Application for Payment (with the balance being retainage).

85 percent (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in Paragraph 15.2 of the General Conditions) and included in the Application for Payment.

5.1.2. Upon Substantial Completion and submission of a completed Application for Payment, in an amount sufficient to increase total payments to CONTRACTOR to 98 percent of the Contract Price (with the balance being retainage), less such amounts as PROJECT MANAGER shall determine, or OWNER may withhold, in accordance with Paragraph 15.4.4 of the General Conditions.

5.2. *Final Payment.* Upon final completion and acceptance of the Work in accordance with Paragraph 15.9 of the General Conditions and submission of a completed Application for Payment, OWNER shall pay the remainder of the Contract Price as recommended by PROJECT MANAGER as provided in said Paragraph 15.9.

## **Article 6. NOT USED**

## **Article 7. CONTRACTOR'S REPRESENTATIONS.**

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations and warranties:

7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and the other related data identified in the Bidding Documents including "technical data."

7.2. CONTRACTOR has visited the site, has conducted all testing at the site CONTRACTOR deems necessary, has become familiar with, has taken into consideration in formulating its BID, and accepts the general, local, and site conditions that may affect cost, progress, performance and furnishing of the Work;

7.3. CONTRACTOR is familiar with and has taken into consideration in formulating its BID and accepts all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

7.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR understands, acknowledges, and agrees that such reports are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR understands, acknowledges, and agrees that OWNER, PROJECT MANAGER, and ENGINEER are not responsible for and make no warranties regarding the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to surface and subsurface conditions. CONTRACTOR has obtained and carefully studied and is responsible for obtaining and studying any and all such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto as may be necessary. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.

7.5. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to Work for which this BID is submitted as indicated in the Contract Documents.

7.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and PLANS identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

7.7. CONTRACTOR has given PROJECT MANAGER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by PROJECT MANAGER is acceptable to CONTRACTOR, CONTRACTOR has no questions regarding the Work, CONTRACTOR has all information necessary to make a fully informed BID, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this BID is submitted.

## City of Spring Valley Village

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7.8. CONTRACTOR represents and warrants that CONTRACTOR (i) is qualified and experienced, (ii) is capable of performing the Work and has available resources to perform the Work, and (iii) understands and agrees to the terms of all of the Contract Documents.

### **Article 8. CONTRACT DOCUMENTS.**

The Contract Documents that comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 8, inclusive).
- 8.2. Bid Form (pages A1 to 6, inclusive) marked Section 00410.
- 8.3. Performance, Payment, and other Bonds, identified as Sections 00610, 00620, and 00630 consisting of 4, 2, and 4 pages, respectively.
- 8.4. Other Exhibits to this Agreement (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive) (if any).
- 8.5. Notice to Proceed.
- 8.6. General Conditions (pages i to 60, inclusive), marked Section 00700.
- 8.7. Supplementary Conditions (pages i to B-1-5, inclusive), marked Section 00800.
- 8.8. Specifications, bearing the title City of Spring Valley New Production Well Project and consisting of 1 volume(s), as listed in table of contents thereof.
- 8.9. PLANS consisting of a cover sheet and sheets numbered 1 through 37, inclusive with each sheet bearing the following general title:
- 8.10. Addenda numbers 1 to 1, inclusive.

The documents listed in Article 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraphs 3.3.1 and 3.3.2 of the General Conditions.

### **Article 9. MISCELLANEOUS.**

9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2. No assignment by CONTRACTOR of any rights under or interests in the Contract Documents will be binding on OWNER or effective without the prior written consent of the OWNER; and, specifically but without limitation, moneys that may become due and moneys

that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. If, however, the void or unenforceable provision is of the essence of this Agreement, nothing in this Paragraph 9.4 shall prevent this entire Agreement from being void.

9.5. OTHER PROVISIONS. As noted hereinafter:

9.5.1. The following Articles shall survive termination of this Agreement: 3 (Contract Times); 7 (Contractor's Representations); and 9 (Miscellaneous).

9.5.2. Headings and titles of Articles in this Agreement are included herein for convenience of reference only and shall not constitute a part of the Agreement for any other purpose and will not affect in any way the meaning or interpretation of this Agreement.

9.5.3. This Agreement as executed by authorized representatives of OWNER and CONTRACTOR constitutes the entire Agreement between the parties with respect to matters herein, and there are no oral or written understandings, representations, or commitments of any kind, express or implied, not expressly set forth herein.

9.5.4. This Agreement, its interpretation, and any disputes relating to, arising out of, or connected with this Agreement, shall be governed by the laws of the State of Texas, without regard to conflicts of law provisions. Any dispute relating to, arising out of, or connected with this Agreement shall be filed and maintained in the state or federal courts located in Harris County, Texas, unless otherwise agreed by the parties in connection with an Alternative Dispute Resolution Agreement.

9.5.5. Each party hereto represents and warrants that the person executing this Agreement on its behalf is duly authorized and empowered to do so and that all formalities necessary for its approval of this Agreement have been satisfied.

9.5.6. CONTRACTOR undertakes performance of the Work as an independent contractor. Nothing herein shall create a relationship of employer and employee, joint venture, or

partnership between OWNER and CONTRACTOR, its agents, representatives, employees, or subcontractors for any purpose whatsoever. Nothing herein shall create a relationship of principal and agent between OWNER and CONTRACTOR, its agents, employees, representatives, or subcontractors. Neither party shall have the authority to bind or obligate the other in any manner as a result of the relationship created hereby.

9.5.7. Upon payment of a portion of the Work, CONTRACTOR shall be deemed to have sold and conveyed to OWNER, and OWNER shall be deemed to have purchased from CONTRACTOR all of CONTRACTOR's right, title, and interest in the Work. From and after the date of such payment, within fifteen (15) days of the request of OWNER, CONTRACTOR shall execute and deliver such bills of sale and other instruments of conveyance, assignment, transfer, and delivery as OWNER may reasonably request in order to convey such right, title, and interest to OWNER. From and after the date of such payment, title to the Work shall remain with OWNER.

9.5.8. CONTRACTOR fully understands, and will assure that its subcontractors and suppliers fully understand that OWNER is a public entity and thus (1) an entity against which no mechanics lien may be asserted, and (2) an entity that can be bound only by agents with actual authority and (3) an entity that can only be bound to make payments from funds actually available for the performance of this Agreement.

9.5.9. Waiver of any breach of the Contract shall not constitute waiver of a subsequent breach.

9.5.10. Although the Contract Documents have been largely drafted by OWNER, in the event of any disputes over meaning and application, the Contract Documents shall be interpreted fairly and reasonably neither more strongly for nor against either party.

**City of Spring Valley Village**

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IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR, and PROJECT MANAGER. All portions of the Contract Documents have been signed, initialed, or identified by OWNER and CONTRACTOR or identified by PROJECT MANAGER on their behalf.

This Agreement will be effective on \_\_\_\_\_, (which is the Effective Date of the Agreement).

OWNER City of Spring Valley Village CONTRACTOR W.W. Payton Corporation

By: \_\_\_\_\_

[CORPORATE SEAL]

By:  \_\_\_\_\_

Wesley W. Payton - President

[CORPORATE SEAL]

Attest \_\_\_\_\_

Address for giving notices

1025 Campbell Road

Houston, TX 77055

Attest  \_\_\_\_\_

Marilyn R. Payton - Secretary

Address for giving notices

P.O. Box 1056

Katy, Texas 77492-1056

(OWNER is public body. Evidence of authority to sign and resolution or other documents authorizing execution of Agreement is attached.)

If CONTRACTOR is a corporation, attach evidence of authority to sign).

APPROVED:

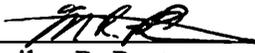


Ms. Julie Robinson  
City Administrator

**END OF SECTION**

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Marilyn R. Payton, certify that I am the secretary of the corporation named as Contractor in the Agreement; and that Wesley W. Payton, who signed the Agreement on behalf of Contractor, was then President of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Agreement was duly signed for and on behalf of the corporation by authority of its governing body.

  
\_\_\_\_\_  
Marilyn R. Payton                      Secretary

(Corporate Seal)

Document 00510

STANDARD FORM OF AGREEMENT

STATE OF TEXAS

COUNTY OF HARRIS

THIS AGREEMENT, made and entered into this, \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_, by and between the City of Spring Valley Village, Texas of the County of Harris and State of Texas, duly incorporated and existing under and by virtue of the Constitution and the laws of the State of Texas, acting by and through the undersigned Mayor of the City of Spring Valley Village, Texas, thereunto duly authorized to do so, hereinafter referred to as "Owner", and <sup>W.W. Payton</sup> Corporation, a corporation duly authorized to do business and existing under the laws of the State of Texas, acting by and through a duly authorized officer thereof as attested to by the Secretary of said corporation of the City of Brookshire, County of Waller, State of Texas, hereinafter referred to as "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner and under the conditions expressed in the bond(s) bearing even date herewith (if any), the Contractor hereby agrees with the Owner to commence and complete the construction of certain improvements described as follows:

**City of Spring Valley Village New Production Well Project**

and all necessary work of every kind or nature, including all extra work in connection therewith necessary to complete said improvements, under the terms as stated in the contract documents, including the General Conditions of Agreement, and, at its own proper cost, and expense, to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, General and Special Conditions of Agreement, plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefore, as prepared by WSP USA, Inc., hereinafter called "PROFESSIONAL", each of which has been identified by the CONTRACTOR and the PROFESSIONAL, together with the CONTRACTOR's written Proposal, the General Conditions of Agreement and the Performance and Payment Bonds hereto

attached, all of which are made a part thereof and collectively evidence and constitute the entire Contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date of written notice to do so shall have been given to it and to complete the same within the time specified in the contract documents, subject to such extensions of time as shall be specified in the General and Special Conditions or shall have been specifically agreed to in writing by the parties hereto, which writing shall be attached to this Contract as a part thereof.

The Owner agrees to pay the CONTRACTOR in current funds for the performance of the Contract in accordance with the Proposal submitted therefor, which forms a part of this Contract, subject to additions and deductions as provided in the contract documents, and to make payment on account thereof as provided therein.

In accordance with Chapter 2270 of the Texas Government Code, Contractor hereby verifies that it (a) does not boycott Israel, and (2) will not boycott Israel during the term of this Contract or any extensions thereof.

The undersigned persons executing this Contract and all other documents executed simultaneously herewith, do certify and attest that they are executing the same in their capacity as herein stated as the act and deed of the municipality and that they have authority to do so under the terms of the resolutions of said municipality and that, unless more specifically set out in the resolutions of said municipality, the following is an excerpt of the official minutes of said municipality as found and contained in the official minute book of said municipality:

RESOLVED that Tom S. Ramsey holding the office of Mayor of Spring Valley Village, Texas is authorized to execute, for and on behalf of this municipality, a Contract with the City of Spring Valley Village, Texas, a copy of which is attached hereto and marked "Exhibit A".

IN WITNESS WHEREOF, the Mayor of Spring Valley Village, Texas and the City Administrator of the City of Spring Valley Village, Texas, hereunto, has executed this Agreement in the year and date first above written, under the authority granted to them under the provisions duly enacted by the City Council of the City of Spring Valley Village, Texas.



MAYOR, City of Spring Valley Village, Texas



City Administrator, City of Spring Valley Village, Texas

City of Spring Valley Village

IN WITNESS WHEREOF, the undersigned officers of the corporation, whose names are hereinafter set out, do certify and attest that they have executed this Agreement in their capacities as herein stated, for and on behalf of said corporation and that they have authority to do so under specific authorization granted to them under a resolution duly adopted by the City Council of the City of Spring Valley Village, Texas, as set out in the official minute book of said corporation, and an excerpt of said resolution is herein previously set out.

W.W. Payton Corporation

CONTRACTING CORPORATION  
(CONTRACTOR)



Officer Wesley W. Payton

President

Office Held

ATTEST:



Secretary Marilyn R. Payton

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**CONSTRUCTION PERFORMANCE BOND**

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

CONTRACTOR (Name and Address):  
W.W. Payton Corporation  
P.O. Box 1056  
Katy, Texas 77492-1056

SURETY (Name and Principal Place of Business):  
Hartford Fire Insurance Company  
3000 Internet Blvd., #600  
Frisco, Texas 75034

OWNER (Name and Address):  
City of Spring Valley Village  
1025 Campbell Road  
Houston, Texas 77055

**CONSTRUCTION CONTRACT**

Date:

Amount (In Numbers and Words):

Three Million One Hundred Fifty Thousand and no/100 Dollars (\$3,150,000.00)

Description (Name and Location):

City of Spring Valley Village New Production Well

**BOND**

Date (Not earlier than Contract Date):

Amount (In Numbers and Words):

Three Million One Hundred Fifty Thousand and no/100 Dollars (\$3,150,000.00)

Modifications to this Bond Form: n/a

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)  
W.W. Payton Corporation  
Signature: [Signature]  
Name and Title: Wesley W. Payton  
President

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)  
Hartford Fire Insurance Company  
Signature: [Signature]  
Name and Title: Francine Hay  
Attorney-in-Fact

**City of Spring Valley Village**

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**WHEREAS:**

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their officers, directors, shareholders, partners, 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 hereinafter.
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 that the OWNER has requested and attempted to arrange a conference with the CONTRACTOR and Surety to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the Construction Contract. If the OWNER, the CONTRACTOR, and 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 (20) 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, within thirty (30) days after notice of default, 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 hereinafter, in excess of the balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR's default; or

City of Spring Valley Village

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

4.4.1. 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

4.4.2. 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, the Surety shall be deemed to be in default on this Bond. The OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in Subparagraph 4.4 above, 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, and subject to mitigation of costs and damages on the Construction Contract, the Surety is obligated and subject 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 above; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or nonperformance 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 subcontractors, 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 one year after CONTRACTOR Default, or within one year after the CONTRACTOR ceased working, or within two years after the Surety refuses or fails to perform its

obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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 here from, 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 contractual adjustments, have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to which the CONTRACTOR, in accordance with the Contract, is due.

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.

**END OF SECTION**

City of Spring Valley Village

Project No. \_\_\_\_\_

PAYMENT BOND

TEXAS STATUTORY PAYMENT BOND

Bond No. 46BCSIA4586

THE STATE OF TEXAS §

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF \_\_\_\_\_ §

**THAT WE** <sup>Hartford Fire Insurance</sup> ~~W.W. Payton Corporation~~ as Principal, hereinafter called "Principal" and the other subscriber hereto ~~Company~~, a corporation organized and existing under the laws of the State of CT, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of Spring Valley Village "Owner", in the sum of Three Million One Hundred Fifty Thousand and No/100 (~~\$3,150,000.00~~) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS**, Principal has entered into a certain contract with Owner, dated the day of \_\_\_\_\_, 2019 ~~200~~, for City of Spring Valley Village New Production Well

\_\_\_\_\_ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

**NOW THEREFORE**, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

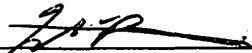
**IN WITNESS THEREOF**, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

City of Spring Valley Village

ATTEST, SEAL: (if a corporation)  
WITNESS: (if not a corporation)

W.W. Payton Corporation  
(Name of Contractor)

By:   
Name: Marilyn R. Payton  
Title: Secretary

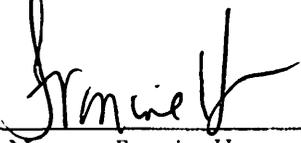
By:   
Name: Wesley W. Payton  
Title: President  
Date:

ATTEST/WITNESS (SEAL)

Hartford Fire Insurance Company  
(Full Name of Surety)

By:   
Name: Kourtney Reece  
Title: Witness  
Date:

3000 Internet Blvd., #600  
(Address of Surety for Notice)  
Erisco, Texas 75034

By:   
Name: Francine Hay  
Title: Attorney-in-Fact  
Date

**EXHIBIT "B"**  
**CONSTRUCTION MAINTENANCE BOND**

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

**CONTRACTOR (Name and Address):**

W.W. Payton Corporation  
P.O. Box 1056  
Katy, Texas 77492

**SURETY (Name and Principal Place of Business):**

Hartford Fire Insurance Company  
3000 Internet Blvd., #600  
Frisco, Texas 75034

**OWNER (Name and Address):**

City of Spring Valley Village  
1025 Campbell Road  
Houston, TX 77055

**CONSTRUCTION CONTRACT**

Date:

Amount (In Numbers and Words):

Three Million One Hundred Fifty Thousand and No/100 (\$3,150,000.00)

Description (Name and Location):

City of Spring Valley Village New Production Well

**BOND**

Date (Not earlier than Contract Date):

Amount (In Numbers and Words):

Three Million One Hundred Fifty Thousand and No/100 (3,150,000.00)

Modifications to this Bond Form: n/a

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

W.W. Payton Corporation

Signature:  \_\_\_\_\_

Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Hartford Fire Insurance Company

Signature:  \_\_\_\_\_

Name and Title: Francine Hay  
Attorney-in-Fact

City of Spring Valley Village

---

**WHEREAS:**

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their officers, directors, shareholders, partners, heirs, executors, administrators, successors, and assigns to the OWNER for the performance of the Construction Contract during the warranty and guarantee periods, which is incorporated herein by reference.
2. If the CONTRACTOR repairs any and all Defects in Work during the maintenance period, 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 Surety to be held not later than fifteen (15) 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 Warranty Work, 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 Warranty Work. Such CONTRACTOR Default shall not be declared earlier than twenty (20) days after the CONTRACTOR and the Surety have received notice as provided in Subparagraph 3.1; and
4. When the OWNER has satisfied the conditions of Paragraph 3 above, the Surety shall, within thirty (30) days after notice of default, 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 Warranty Work; or
  - 4.2. Undertake to perform and complete the Warranty Work itself, through its agents or through independent contractors; or
  - 4.3. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
    - 4.3.1 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
    - 4.3.2 Deny liability in whole or in part and notify the OWNER citing reasons therefor.

City of Spring Valley Village

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5. If the Surety does not proceed as provided in Paragraph 4, the Surety shall be deemed to be in default on this Bond fifteen (15) calendar 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 4.3, 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 Warranty Work, and if the Surety elects to act under Subparagraph 4.1 or 4.2 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, the Surety is obligated without duplication for:

6.1. The responsibilities of the CONTRACTOR for correction of defective work;

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 above; and

7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Construction Contract. 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 subcontractors, 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 one year after CONTRACTOR Default, or within one year after the CONTRACTOR ceased working, or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law; the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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. Construction Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.2. 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.

12.3. 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.

**END OF SECTION**

# POWER OF ATTORNEY

Direct Inquiries/Claims to:  
**THE HARTFORD**  
 BOND, T-12  
 One Hartford Plaza  
 Hartford, Connecticut 06155  
[Bond.Claims@thehartford.com](mailto:Bond.Claims@thehartford.com)  
 call: 888-268-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: MARSH & MCLENNAN AGENCY LLC  
 Agency Code: 46-505987

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint **up to the amount of Unlimited** :

Roxanne G. Brune, Sharen Groppell, Francine Hay, Beverly A. Ireland, Edward L. Moore, Kurt A. Risk, James W. Tomforde, Gloria Villa of Houston TX, C.W. Adams, Sharon Cavanaugh of HOUSTON, Texas

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 6, 2015 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*John Gray*

John Gray, Assistant Secretary

*M. Ross Fisher*

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT }  
 COUNTY OF HARTFORD } ss. Hartford

On this 5th day of January, 2018, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

*Kathleen T. Maynard*  
 Kathleen T. Maynard  
 Notary Public  
 My Commission Expires July 31, 2021

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of Signed and sealed at the City of Hartford.



*Kevin Heckman*  
 Kevin Heckman, Assistant Vice President

## **IMPORTANT NOTICE**

To obtain information or make a complaint:

You may contact your agent.

You may call Hartford Insurance Group at the toll free telephone number for information or to make a complaint at:

**1-800-392-7805**

You may also write to The Hartford:

**The Hartford  
Hartford Financial Products  
2 Park Avenue, 5<sup>th</sup> Floor  
New York, New York 10016  
1-212-277-0400**

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

**1-800-252-3439**

You may write the Texas Department of Insurance

P.O. Box 149104  
Austin, TX 78714-9104  
Fax Number (512) 490-1007  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

**PREMIUM OR CLAIMS DISPUTES:** Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**ATTACH THIS NOTICE TO YOUR POLICY:** This notice is for your information only and does not become a part or condition of the attached document.

F-4276-1, JTX4276-1  
HR 42 H008 00 0807

## **AVISO IMPORTANTE**

Para obtener informacion o para someter una queja.

Puede comunicarse con su agente.

Usted puede llamar al numero de telefono gratis de The Hartford Insurance Group para informacion o para someter una queja al

**1-800-392-7805**

Usted tambien puede escribir a The Hartford.

**The Hartford  
Hartford Financial Products  
2 Park Avenue, 5<sup>th</sup> Floor  
New York, New York 10016  
1-212-277-0400**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de compañías, coberturas, derechos o quejas al:

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104  
Austin, TX 78714-9104  
Fax Number (512) 490-1007  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

**DISPUTAS SOBRE PRIMAS O RECLAMOS:** Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con su agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

**UNA ESTE AVISO A SU POLIZA:** Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

**IMPORTANT NOTICE**

To obtain information or make a complaint:  
You may contact your Agent.

You may call The Hartford's Consumer Affairs toll-free telephone number for information or to make a complaint at:  
**1-800-451-6944**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights, or complaints at:  
**1-800-252-3439**

You may write the Texas Department of Insurance:  
P.O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 490-1007  
Web: [www.tdi.texas.gov](http://www.tdi.texas.gov)  
E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

**PREMIUM OR CLAIM DISPUTES:**

Should you have a dispute concerning your premium or about a claim, you should contact the (agent) (company) (agent or the company) first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**ATTACH THIS NOTICE TO YOUR POLICY:**

This notice is for information only and does not become a part or condition of the attached document.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/12/2019

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

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

<b>PRODUCER</b> Marsh & McLennan Agency LLC 2500 City West Blvd, Ste 2400 Houston TX 77042	<b>CONTACT NAME:</b> Adriana Medina	
	<b>PHONE (A/C No, Ext):</b> 713-780-6124	<b>FAX (A/C, No):</b>
<b>E-MAIL ADDRESS:</b> Adriana.medina@marshmma.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> BITCO General Insurance Corporation		20095
<b>INSURER B:</b> Travelers Lloyds Insurance Company		41262
<b>INSURER C:</b>		
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**INSURED** WWPAY-2  
 W W Payton Corporation  
 Wesley Payton  
 PO Box 1056  
 Katy TX 77492-1056

**COVERAGES**

CERTIFICATE NUMBER: 725218971

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	CLP3671444	8/1/2018	8/1/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/POP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	CAP3671442	8/1/2018	8/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	CUP2815430	8/1/2018	8/1/2019	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	<input checked="" type="checkbox"/> 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/A	WC3671443	8/1/2018	8/1/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Bldrs Risk	Y	Y	QT6608078X307	8/1/2018	8/1/2019	Per Job 7,000,000

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

The General Liability, Auto Liability, & Umbrella Liability policies include a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is an executed written contract between the named insured and the certificate holder that requires such status. The General Liability, Auto Liability, Umbrella Liability, Workers' Compensation policies include a blanket waiver of subrogation endorsement that provides this feature only when there is an executed written contract between the named insured and the certificate holder that requires it. The General Liability policy & Umbrella policy contains "Primary and Noncontributory" wording. The Builders Risk Policy contains a waiver of subrogation endorsement in favor of certificate holder that requires it. The Umbrella is not excess over General Liability Limited Work site Pollution Endorsement or Builders Risk Policy. Blanket 30 day notice of cancellation applicable to automobile and workers' compensation.

Re: Construction of New Production Well to serve the City of Spring Valley Village, Harris County, Texas.

See Attached...

<b>CERTIFICATE HOLDER</b>  City of Spring Valley Village 1025 Campbell Road Houston, TX 77055	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  Brett Herrington

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**ADDITIONAL REMARKS SCHEDULE**

AGENCY Marsh & McLennan Agency LLC		NAMED INSURED W W Payton Corporation Wesley Payton PO Box 1056 Katy TX 77492-1056	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

Additional Insureds: City of Spring Valley Village (Owner), WSP USA, its officers, agents, and employees, Project Manager, Project Manager's Subconsultants, Engineer, Engineer's Subconsultants, and any other persons or entities - applies per the Blanket Additional Insured endorsement which grants additional insured status only where such status is required by a written contract.

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

## **BUILDERS EXTENDED LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

It is agreed that the provisions listed below apply only upon the entry of an  in the box next to the caption of such provision.

- |  |   |
|--|---|
| A. <input checked="" type="checkbox"/> Partnership and Joint Venture Extension                                   | N. <input checked="" type="checkbox"/> Construction Project General Aggregate Limits  |
| B. <input checked="" type="checkbox"/> Contractors Automatic Additional Insured Coverage – Ongoing Operations    | O. <input checked="" type="checkbox"/> Fellow Employee Coverage   |
| C. <input checked="" type="checkbox"/> Automatic Waiver of Subrogation   | P. <input checked="" type="checkbox"/> Property Damage Liability - Elevators  |
| D. <input checked="" type="checkbox"/> Extended Notice of Cancellation, Nonrenewal                               | Q. <input checked="" type="checkbox"/> Property Damage to the Named Insured's Work  |
| E. <input checked="" type="checkbox"/> Unintentional Failure to Disclose Hazards                                 | R. <input checked="" type="checkbox"/> Care, Custody or Control   |
| F. <input checked="" type="checkbox"/> Broadened Mobile Equipment  | S. <input checked="" type="checkbox"/> Concrete Rework Labor Reimbursement Coverage   |
| G. <input checked="" type="checkbox"/> Personal and Advertising Injury - Contractual Coverage                    | T. <input checked="" type="checkbox"/> Lost Key Coverage  |
| H. <input checked="" type="checkbox"/> Nonemployment Discrimination  | U. <input checked="" type="checkbox"/> Electronic Data Liability Coverage   |
| I. <input checked="" type="checkbox"/> Liquor Liability  | V. <input checked="" type="checkbox"/> Consolidated Insurance Program Residual Liability Coverage   |
| J. <input checked="" type="checkbox"/> Broadened Conditions  | W. <input checked="" type="checkbox"/> Automatic Additional Insureds – Managers or Lessors of Premises  |
| K. <input checked="" type="checkbox"/> Automatic Additional Insureds – Equipment Leases                          | X. <input checked="" type="checkbox"/> Automatic Additional Insureds – State or Governmental Agency or Political Subdivisions – Permits or Authorizations |
| L. <input checked="" type="checkbox"/> Insured Contract Extension - Railroad Property and Construction Contracts | Y. <input checked="" type="checkbox"/> Contractors Automatic Additional Insured Coverage – Completed Operations   |
| M. <input checked="" type="checkbox"/> Turnkey Jobs - Coverage For Alienated Premises                            | Z. <input checked="" type="checkbox"/> Additional Insured – Engineers, Architects or Surveyors  |

### **A. PARTNERSHIP AND JOINT VENTURE EXTENSION**

The following provision is added to **SECTION II - WHO IS AN INSURED:**

The last full paragraph which reads as follows:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

WW Payton Corp.  
Policy #CLP3671444  
08/01/2018-19

is deleted and replaced with the following:

With respect to the conduct of any past or present joint venture or partnership not shown as a Named Insured in the Declarations and of which you are or were a partner or member, you are an insured, but only with respect to liability arising out of "your work" on behalf of any partnership or joint venture not shown as a Named Insured in the Declarations, provided no other similar liability insurance is available to you for "your work" in connection with your interest in such partnership or joint venture.

## **B. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE – ONGOING OPERATIONS**

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization who is required by written contract to be an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the project(s) designated in the written contract.

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

This insurance does not apply to "bodily injury" or "property damage" occurring after:

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

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

## **C. AUTOMATIC WAIVER OF SUBROGATION**

Item 8. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, is deleted and replaced with the following:

8. **Transfer of Rights of Recovery Against Others to Us and Automatic Waiver of Subrogation.**
  - a. If the Insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The Insured must do nothing after loss to impair those rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.
  - b. If required by a written contract executed prior to loss, 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 "your work" for that person or organization.

**D. EXTENDED NOTICE OF CANCELLATION, NONRENEWAL**

Item A.2.b. of the **COMMON POLICY CONDITIONS** , is deleted and replaced with the following:

**A.2.b.** 60 days before the effective date of the cancellation if we cancel for any other reason.

Item 9. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** , is deleted and replaced with the following:

**9. WHEN WE DO NOT RENEW**

- a. If we choose to nonrenew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.
- b. If we do not give notice of our Intent to nonrenew as prescribed in a. above, it is agreed that you may extend the period of this policy for a maximum additional sixty(60) days from its scheduled expiration date. Where not otherwise prohibited by law, the existing terms, conditions and rates will remain in effect during that extension period. It is further agreed that so long as it is not otherwise prohibited by law, this one time sixty day extension is the sole remedy and liquidated damages available to the insured as a result of our failure to give the notice as prescribed in 9. a. above.

**E. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

Although we relied on your representations as to existing and past hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

**F. BROADENED MOBILE EQUIPMENT**

Item 12.b. of **SECTION V - DEFINITIONS** , is deleted and replaced with the following:

**12.b.** Vehicles maintained for use solely on or next to premises, sites or locations you own, rent or occupy.

**G. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL COVERAGE**

Exclusion 2.e. of **SECTION I, COVERAGE B** is deleted.

**H. NONEMPLOYMENT DISCRIMINATION**

Unless "personal and advertising injury" is excluded from this policy:

Item 14. of **SECTION V - DEFINITIONS** , is amended to include:

"Personal and advertising injury" also means embarrassment or humiliation, mental or emotional distress, physical illness, physical impairment, loss of earning capacity or monetary loss, which is caused by "discrimination."

**SECTION V - DEFINITIONS** , is amended to include:

"Discrimination" means the unlawful treatment of individuals based on race, color, ethnic origin, age, gender or religion.

Item 2. Exclusions of SECTION I, COVERAGE B , is amended to include:

"Personal and advertising injury" arising out of "discrimination" directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured.

"Personal and advertising injury" arising out of "discrimination" by or at your, your agents or your "employees" direction or with your, your agents or your "employees" knowledge or consent.

"Personal and advertising injury" arising out of "discrimination" directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any dwelling, permanent lodging or premises by or at the direction of any insured.

Fines, penalties, specific performance or injunctions levied or imposed by a governmental entity, or governmental code, law, or statute because of "discrimination."

#### I. LIQUOR LIABILITY

Exclusion 2.c. of SECTION I, COVERAGE A , is deleted.

#### J. BROADENED CONDITIONS

Items 2.a. and 2.b. of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS , are deleted and replaced with the following:

##### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit:

a. You must see to it that we are notified of an "occurrence" or an offense which may result in a claim as soon as practicable after the "occurrence" has been reported to you, one of your officers or an "employee" designated to give notice to us. Notice should include:

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

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Record the specifics of the claim or "suit" and the date received as soon as you, one of your officers, or an "employee" designated to record such information is notified of it; and
- (2) Notify us in writing as soon as practicable after you, one of your officers, your legal department or an "employee" you designate to give us such notice learns of the claims or "suit."

Item 2.e. is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS :

2.e. If you report an "occurrence" to your workers compensation insurer which develops into a liability claim for which coverage is provided by the Coverage Form, failure to report such "occurrence" to us at the time of "occurrence" shall not be deemed in violation of paragraphs 2.a., 2.b., and 2.c. However, you shall give written notice of this "occurrence" to us as soon as you are made aware of the fact that this "occurrence" may be a liability claim rather than a workers compensation claim.

#### K. AUTOMATIC ADDITIONAL INSURED - EQUIPMENT LEASES

SECTION II - WHO IS AN INSURED is amended to include any person or organization with whom you agree in a written equipment lease or rental agreement to name as an additional insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, at least in part, by

your maintenance, operation, or use by you of the equipment leased to you by such person or organization, subject to the following additional exclusions.

The insurance provided to the additional insured does not apply to:

1. "Bodily injury" or "property damage" occurring after you cease leasing the equipment.
2. "Bodily injury" or "property damage" arising out of the sole negligence of the additional insured.
3. "Property damage" to:
  - a. Property owned, used or occupied by or rented to the additional insured; or
  - b. Property in the care, custody or control of the additional insured or over which the additional insured is for any purpose exercising physical control.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

#### **L. INSURED CONTRACT EXTENSION - RAILROAD PROPERTY AND CONSTRUCTION CONTRACTS**

Item 9. of **SECTION V - DEFINITIONS** , is deleted and replaced with the following.

9. "Insured Contract" means:
- 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 by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

**M. TURNKEY JOBS - COVERAGE FOR ALIENATED PREMISES**

It is agreed that:

**Exclusion 2j.(2) of SECTION I, COVERAGE A**, does not apply if the premises are "your work" and were not occupied, rented or held for rental by you for more than 12 months after completion.

**N. CONSTRUCTION PROJECT GENERAL AGGREGATE LIMITS**

This modifies **SECTION III - LIMITS OF INSURANCE** .

- A.** For all sums which can be attributed only to ongoing operations at a single construction project for which the insured becomes legally obligated to pay as damages caused by an "occurrence" under **SECTION I - COVERAGE A**, and for all medical expenses caused by accidents under **SECTION I - COVERAGE C** :
1. A separate Construction Project General Aggregate Limit applies to each construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Construction 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 Construction Project General Aggregate Limit for that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Construction Project General Aggregate Limit for any other construction project.
  4. The limits shown in the Declarations for Each Occurrence, Fire Damage 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 Construction Project General Aggregate Limit.
- B.** For all sums which cannot be attributed only to ongoing operations at a single construction project for which the insured becomes legally obligated to pay as damages caused by an "occurrence" under **SECTION I - COVERAGE A**, and for all medical expenses caused by accidents under **SECTION I - COVERAGE C** :
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 Construction Project General Aggregate Limit.

- C. 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 Construction Project General Aggregate Limit.
- D. If a construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of **SECTION III - LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to be applicable.

**Q. FELLOW EMPLOYEE COVERAGE**

**Exclusion 2.a. Employers Liability of SECTION I, COVERAGE A,** is deleted and replaced with the following:

**2.e. "Bodily injury" to**

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
- (2) Liability arising from any action or omission of a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business.

Item **2.a.(1)(a)** of **SECTION II - WHO IS AN INSURED** , is deleted and replaced with the following:

**2.a.(1)(a)** To you, to your partners or members (if you are a partnership or joint venture) or to your members (if you are a limited liability company), or to your "volunteer workers" while performing duties related to the conduct of your business.

**P. PROPERTY DAMAGE LIABILITY - ELEVATORS**

"Property damage" liability is changed as follows:

- 1. **Exclusions 2.j.(3) and 2.j.(4) of SECTION I, COVERAGE A** , do not apply to the use of elevators.
- 2. The insurance afforded by reason of this provision is excess over any valid and collectible property insurance (including any deductible portion thereof) available to the insured whether primary, excess, contingent or on any other basis, and the **OTHER INSURANCE** condition is changed accordingly.

WW Payton Corp.  
 Policy #CLP3671444  
 08/01/2018-19

**Q. PROPERTY DAMAGE TO THE NAMED INSURED'S WORK**

Exclusion I of SECTION I, COVERAGE A is deleted and replaced with the following:

**I. Damage to Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products completed operation hazard."

This exclusion applies only to that portion of any loss in excess of \$50,000 per occurrence if the damaged work and the work out of which the damage arises was performed by you.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**R. CARE, CUSTODY OR CONTROL**

Exclusion 2.j.4 of SECTION I, COVERAGE A is deleted and replaced with the following:

2.j.4 Personal property in the care, custody or control of the insured. However, for personal property in the care, custody or control of you or your "employees," this exclusion applies only to that portion of any loss in excess of \$25,000 per occurrence, subject to the following terms and conditions:

- (a) The most that we will pay under this provision as an annual aggregate is \$100,000, regardless of the number of occurrences.
- (b) This provision does not apply to "employee" owned property or any property that is missing where there is not physical evidence to show what happened to the property.
- (c) The aggregate limit for this coverage provision is part of the General Aggregate Limit and SECTION III - LIMITS OF INSURANCE is changed accordingly.
- (d) In the event of damage to or destruction of property covered by this exception, you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto, at actual cost to you, exclusive of prospective profit or overhead charges of any nature.
- (e) \$2,500 shall be deducted from the total amount of all sums you became obligated to pay as damages on account of damage to or destruction of all property of each person or organization, including the loss of use of that property, as a result of each "occurrence." Our limit of liability under the endorsement as being applicable to each "occurrence" shall be reduced by the amount of the deductible indicated above; however, our aggregate limit of liability under this provision shall not be reduced by the amount of such deductible. The conditions of the policy, including those with respect to duties in the event of "occurrence," claims or "suit" apply irrespective of the application of the deductible amount. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**S. CONCRETE REWORK LABOR REIMBURSEMENT COVERAGE**

As it applies to this coverage,

SECTION I - COVERAGE A is amended as follows:

1. Insuring Agreement, is deleted and replaced by the following:

We will reimburse you for your direct labor expense associated with your "concrete rework" which was performed by you during the policy period due to the original "concrete product" failing to meet contractual specifications as ordered for the job or accepted industry standards for its specific

intended use, verified by testing by an ASTM (American Society of Testing & Materials) accredited independent testing agency.

**2. Exclusions, is deleted and replaced by the following:**

The insurance provided by this endorsement does not apply to:

- a. "Cosmetic Defects"
- b. Loss of use
- c. Changes to the "concrete product" contractual specifications not acknowledged by the named insured in writing prior to the beginning of the job
- d. "Loss" arising from the "subsidence" of land
- e. "Loss" arising from work performed on your behalf by a subcontractor, except for the supply of the "concrete product"
- f. Cost of materials used in the installation of the "concrete product" or "concrete rework"
- g. Damages or "loss" that is covered by a Property or Inland Marine coverage form for your financial interest in your project and structures
- h. "Loss" unless the "concrete rework" is completed within one year from the completion of the original "concrete product" installation performed by you
- i. "Loss" caused by the failure to order the "concrete product" as required:
  - a. In the contractual specifications; or
  - b. By accepted industry standards for its specific intended use
- j. "Loss" expected or intended from the standpoint of the insured
- k. "Concrete product" supplied by you

**SECTION III - LIMITS OF INSURANCE is amended to include the following:**

- 1. The Limits of Insurance as shown and the rules below fix the most we will pay regardless of the number of
  - a. Insureds covered under this insurance;
  - b. "Concrete rework" projects to which this insurance applies.

"Concrete Rework" Project Limit	\$50,000
"Concrete Rework" Policy Aggregate Limits	\$50,000
"Concrete Rework" Deductible	\$ 1,000
- 2. The "Concrete Rework" Project Limit shown above is the most we will reimburse you for your direct labor expense arising out of any single "concrete rework" project.
- 3. Subject to 2. above, the "Concrete Rework" Policy Aggregate Limit shown above is the most we will reimburse you for your direct labor expenses for the sum of all "concrete rework" projects.

WW Payton Corp.  
Policy #CLP3671444  
08/01/2018-19

4. The "Concrete Rework" Project Limit and the "Concrete Rework" Policy Aggregate Limits shall be included within and not be in addition to the General Aggregate Limit or the Products-Completed Operations Aggregate Limit (whichever applies), as stated in the declarations and as described in **SECTION III - LIMITS OF INSURANCE** .
5. Our obligation to reimburse you applies only to the amount of your direct labor expense in excess of the "Concrete Rework" Deductible stated above. This deductible shall apply separately to each "concrete rework" project.

The Limits of Insurance of this coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with either the beginning of the policy period shown in the Declarations, or the effective date of the endorsement, whichever is less. If the policy period is extended after issuance for an additional period of less than 12 months the additional period will be deemed part of the preceding period for purposes of determining the Limits of Insurance.

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

**Item 2** Duties in The Event Of Occurrence, Offense, Claim Or Suit is deleted and replaced by the following:

**2** Duties in The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified prior to completing the "concrete rework" which may result in labor reimbursement. Notice should include:
  - (1) How, when and where the incident took place;
  - (2) The names and addresses of any witnesses, and
  - (3) The estimated labor expense for the "concrete rework"
- b. You must promptly take all steps to minimize the expenses involved.
- c. You must cooperate with us and upon request, assist in enforcing any right of contribution or indemnity against any person or organization.
- d. You must provide us with proof of loss and any other required documents within 60 days of our request. You must also permit us to examine and copy any of your books and records at any reasonable time. You, your "employees" and your agents must, if we require you to, submit to examination under oath at such times as may be required, and sign a copy of the examination.
- e. No insureds will, except at their own cost, assume any obligation, or incur any expense without our consent.

**SECTION V - DEFINITIONS** is amended to add the following:

"Concrete rework" means the alteration, repair, removal or replacement of a "concrete product"

"Concrete product" means any product you directly install consisting of concrete, cement, sand, mortar mix or related materials

"Cosmetic defects" means a superficial or surface defect that does not affect the structural integrity of the "concrete product"

"Loss" means your direct labor expense associated with a "concrete rework" project

"Subsidence" means earth movement, including but not limited to:

- a. Landslide;

WW Payton Corp.  
Policy #CLP3671444  
08/01/2018-19

- b. Mud flow;
- c. Earth sinking;
- d. Earth rising;
- e. Collapse or movement of fill;
- f. Improper compaction;
- g. Earth settling, slipping, falling away, caving in, eroding, tilting or shifting;
- h. Earthquake; or
- i. Any other movement of land or earth.

**T. LOST KEY COVERAGE**

As it applies to this coverage,

**SECTION I, COVERAGE A**, is amended to include as follows:

We will pay those sums, subject to the limits of liability and deductible stated herein, that you become legally obligated to pay as damages due to the loss or mysterious disappearance of keys entrusted to or in the care, custody or control of you or your "employees" or anyone acting on your behalf. The damages covered by this endorsement are limited to the:

- 1. Actual cost of the keys;
- 2. Cost to adjust locks to accept new keys; or
- 3. Cost of new locks, if required, including the cost of installation.

Item 2. Exclusions of **SECTION I, COVERAGE A**, is amended to include the following:

- 1. Keys owned by any insured, employees of any insured, or anyone acting on behalf of any insured.
- 2. Any resulting loss of use from the loss or mysterious disappearance of keys; or
- 3. Any of the following acts by any insured, employees of any insured, or anyone acting on behalf of any insured:
  - a. Misappropriation;
  - b. Concealment;
  - c. Conversion;
  - d. Fraud; or
  - e. Dishonesty

Exclusions 2.j.(3) and 2.j.(4) of **SECTION I, COVERAGE A** do not apply to Lost Key Coverage.

**SECTION III - LIMITS OF INSURANCE** is amended to include the following:

- 1. The Lost Key Coverage Occurrence Limit shown below is the most we will pay for each occurrence for damages for Lost Key Coverage provided in this endorsement.

2. The Lost Key Coverage Policy Aggregate Limit shown below is the most we will pay for all occurrences covered by this endorsement during the policy period.

Lost Key Coverage Occurrence Limit	\$50,000
Lost Key Coverage Policy Aggregate Limit	\$50,000
Lost Key Coverage Deductible	\$ 1,000

3. The Lost Key Coverage Policy Aggregate Limit shall be included within and not be in addition to the General Aggregate Limit or the Products-Completed Operations Aggregate Limit (whichever applies), as stated in the declarations and as described in **SECTION III - LIMITS OF INSURANCE**.

Our obligation under this coverage to pay damages on your behalf applies only to the amount of damages in excess of the Lost Key Coverage Deductible stated above. The deductible applies on an "occurrence" basis.

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

#### **U. ELECTRONIC DATA LIABILITY COVERAGE**

1. **Exclusion 2.p. Electronic Data** of **SECTION I, COVERAGE A**, is deleted and replaced with the following:

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

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

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

3. For the purposes of this coverage, the definition of "property damage" in **SECTION V - DEFINITIONS** is replaced by the following:

"Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

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

#### **V. CONSOLIDATED INSURANCE PROGRAM RESIDUAL LIABILITY COVERAGE**

With respect to "bodily injury", "property damage", or "personal and advertising injury" arising out of your ongoing operations; or operations included within the "products-completed operations hazard", the policy to

which this coverage is attached shall apply as excess insurance over coverage available to "you" under a Consolidated Insurance Program (such as an Owner Controlled Insurance Program or Contractors Controlled Insurance Program).

Coverage afforded by this endorsement does not apply to any Consolidated Insurance Program involving a "residential project" or any deductible or insured retention, specified in the Consolidated Insurance Program.

The following is added to **Section V – Definitions**

"Residential project" means any project where 30% or more of the total square foot area of the structures on the project is used or is intended to be used for human residency. This includes but is not limited to single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments and appurtenant structures (including pools, hot tubs, detached garages, guest houses or any similar structures). A "residential project" does not include military owned housing, college/university owned housing or dormitories, long term care facilities, hotels, motels, hospitals or prisons.

All other terms, provisions, exclusions and limitations of this policy apply.

#### **W. AUTOMATIC ADDITIONAL INSUREDS - MANAGERS OR LESSORS OF PREMISES**

**SECTION II – WHO IS AN INSURED** is amended to include:

Any person or organization with whom you agree in a written contract or written agreement to name as an additional insured but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises, designated in the written contract or written agreement, that is leased to you and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured listed in the written contract or written agreement.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

#### **X. AUTOMATIC ADDITIONAL INSUREDS - STATE OR GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISIONS – PERMITS OR AUTHORIZATIONS**

**SECTION II – WHO IS AN INSURED** is amended to include any state or governmental agency or subdivision or political subdivision with whom you are required by written contract, ordinance, law or building code to name as an additional insured subject to the following provisions:

This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality, or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

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This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

#### **Y. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE – COMPLETED OPERATIONS**

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization who is required by written contract to be an additional insured on your policy for completed operations, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the project designated in the contract, performed for that additional insured and included in the "products-completed operations hazard".

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

#### **Z. ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS**

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any architect, engineer or surveyor who is required by written contract to be an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations performed by you or on your behalf.

This includes such architect, engineer or surveyor, who may not be engaged by you, but is contractually required to be added as an additional Insured to your policy.

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

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

1. The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
2. Supervisory, inspection or engineering services.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

WW Payton Corp.  
Policy #CLP3671444  
08/01/2018-19

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**TEXAS CHANGES – AMENDMENT OF CANCELLATION  
PROVISIONS OR COVERAGE CHANGE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCT WITHDRAWAL COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

In the event of cancellation or material change that reduces or restricts the insurance afforded by this Coverage Part, we agree to mail prior written notice of cancellation or material change to:

**SCHEDULE**

<b>1. Name:</b>	SEE BLANKET 30 DAY NOTICE OF CANCELLATION
<b>2. Address:</b>	SEE BLANKET 30 DAY NOTICE OF CANCELLATION
<b>3. Number of days advance notice:</b>	30
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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

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

This endorsement modifies insurance provided under the following:

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

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

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

**Named Insured:**

**Endorsement Effective Date:**

**SCHEDULE**

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

"Any person or organization for whom the named insured is operating under written contract when such contract requires a waiver of subrogation."

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

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

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

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

This endorsement modifies insurance provided under the following:

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

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

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

**Named Insured:**

**Endorsement Effective Date:**

**SCHEDULE**

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

"Any person or organization for whom the named insured is operating under written contract when such contract requires a waiver of subrogation."

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

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

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

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

This endorsement modifies insurance provided under the following:

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

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

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

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

**Named Insured:**

**Endorsement Effective Date:**

### **SCHEDULE**

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

Any person or organization for whom the named insured has agreed by written "insured contract" to designate as an additional insured subject to all the provisions and limitations of this policy.

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

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.

**MANUSCRIPT ENDORSEMENT**

BLANKET 30 DAY NOTICE OF CANCELLATION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADVANCE NOTICE OF CANCELLATION, OR COVERAGE REDUCTION OR RESTRICTION PROVIDED BY US

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL CRIME COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
COMMERCIAL UMBRELLA LIABILITY POLICY  
POLLUTION LIABILITY COVERAGE PART

SCHEDULE

NUMBER OF DAYS ADVANCED NOTICE: 30

IF THIS POLICY IS CANCELLED FOR ANY REASON OTHER THAN NONPAYMENT OF PREMIUM, OR WE MAKE A MATERIAL CHANGE THAT REDUCES OR RESTRICTS THE INSURANCE AFFORDED BY A COVERAGE PART OR POLICY (EXCEPT FOR ANY REDUCTION IN THE LIMITS OF INSURANCE DUE TO CLAIMS PAYMENTS), WE WILL MAIL ADVANCED NOTICE TO ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT TO PROVIDE SUCH NOTICE, BUT ONLY IF:

1. THE AGENT OF RECORD SENDS A WRITTEN REQUEST TO US TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AND

2. WE RECEIVE SUCH WRITTEN REQUEST FROM THE AGENT OF RECORD, INCLUDING NAME AND ADDRESS, AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF ADVANCE NOTICE DAYS SHOWN ABOVE.

ALL TERMS AND CONDITIONS OF THIS POLICY APPLY UNLESS MODIFIED BY THIS ENDORSEMENT.

THIS POLICY INCLUDES COPYRIGHTED MATERIAL OF INSURANCE SERVICES OFFICE, INC., WITH ITS PERMISSION

**MANUSCRIPT ENDORSEMENT**

**CHANGES**

It is hereby understood and agreed that in the event of cancellation, termination other than normal expiration, or material change in the policy, a 30 day advance written notice will be given to:

SEE BLANKET 30 DAY NOTICE OF CANCELLATION

EXCEPTION: Cancellation by the insured or cancellation for non-payment of premium.

**MANUSCRIPT ENDORSEMENT**

BLANKET 30 DAY NOTICE OF CANCELLATION  
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADVANCE NOTICE OF CANCELLATION, OR COVERAGE REDUCTION OR RESTRICTION  
PROVIDED BY US

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SCHEDULE

NUMBER OF DAYS ADVANCED NOTICE: 30

IF THIS POLICY IS CANCELLED FOR ANY REASON OTHER THAN NONPAYMENT OF PREMIUM, OR WE MAKE A MATERIAL CHANGE THAT REDUCES OR RESTRICTS THE INSURANCE AFFORDED BY A COVERAGE PART OR POLICY (EXCEPT FOR ANY REDUCTION IN THE LIMITS OF INSURANCE DUE TO CLAIMS PAYMENTS), WE WILL MAIL ADVANCED NOTICE TO ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT TO PROVIDE SUCH NOTICE, BUT ONLY IF:

1. THE AGENT OF RECORD SENDS A WRITTEN REQUEST TO US TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AND

2. WE RECEIVE SUCH WRITTEN REQUEST FROM THE AGENT OF RECORD, INCLUDING NAME AND ADDRESS, AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF ADVANCE NOTICE DAYS SHOWN ABOVE.

ALL TERMS AND CONDITIONS OF THIS POLICY APPLY UNLESS MODIFIED BY THIS ENDORSEMENT.

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

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

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

The premium for this endorsement is shown in the Schedule.

Schedule

1. ( ) Specific Waiver  
Name of person or organization

(X) Blanket Waiver  
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:  
ALL TEXAS OPERATIONS

3. Premium: Incl.

The premium charge for this endorsement shall be VRS percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Incl.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective Insured

Policy No. WC3671443

Endorsement No. Premium

Insurance Company

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

## **TWDB SUPPLEMENTAL CONTRACT CONDITIONS**

The supplemental contract conditions, 1 -19 set forth in this document, (TWDB-0552 Rev 11/18) are part and parcel to the contract by and between the City of Spring Valley Village and W.W. Payton for the Spring Valley Village New Production Well, as follows:

### **1. Supersession**

The Owner and the Contractor agree that the TWDB Supplemental Conditions apply to the work eligible for Texas Water Development Board assistance to be performed under this contract and these clauses supersede any conflicting provisions of this contract.

### **2. Privity of Contract**

Funding for this project is expected to be provided in part by a loan or grant from the Texas Water Development Board. Neither the state of Texas, nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to applicable provisions in 31 TAC Chapter 363 in effect on the date of the assistance award for this project.

### **3. Definitions**

- (a) The term "Owner" means the local entity contracting for the construction services.
- (b) The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or other person who may be at the time acting in the capacity or authorized to perform the functions of such Executive Administrator, or the authorized representative thereof.
- (c) The term "Engineer" means the Owner's authorized consulting engineer for the project.

### **4. Laws to be Observed**

In the execution of the contract, the Contractor must comply with all applicable local, state and federal laws, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor shall be familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances and regulations which in any manner affect the conduct of the work, and shall indemnify and save harmless the Owner, Texas Water Development Board, and their representatives against any claim arising from violation of any such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.

### **5. Review by Owner and TWDB**

- (a) The Owner, authorized representatives and agents of the Owner, and the TWDB shall, at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Owner through authorized representatives or agents.
- (b) Any such inspection or review by the TWDB shall not subject the state of Texas, or its

representatives, to any action for damages.

## **6. Performance and Payment Bonds**

Each Contractor awarded a construction contract must furnish performance and payment bonds:

- (a) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices;
- (b) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the Engineer of the political subdivision; and
- (c) the Contractor shall utilize a surety company that is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

## **7. Payments Schedule and Cost Breakdown**

- (a) The Contractor shall submit for approval immediately after execution of the Agreement, a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work, the anticipated monthly payments to become due to the Contractor, and the accumulated percent of progress each month.
- (b) The following paragraph applies only to contracts awarded on a lump sum contract price:

**COST BREAKDOWN** - The Contractor shall submit to the Owner a detailed breakdown of the estimated cost of all work to be accomplished under the contract, so arranged and itemized as to meet the approval of the Owner or funding agencies. This breakdown shall be submitted promptly after execution of the agreement and before any payment is made to the Contractor for the work performed under the contract. After approval by the Owner the unit prices established in the breakdown shall be used in estimating the amount of partial payments to be made to the Contractor.

## **8. Workers' Compensation Insurance Coverage (as applicable, consistent with Texas Labor Code § 406.096)**

- (a) The Contractor shall certify in writing that they provide workers' compensation insurance coverage for each employee of the Contractor employed on the public project.
- (b) Each Subcontractor on the public project shall provide such a certificate relating to coverage of the Subcontractor's employees to the general Contractor, who shall provide the Subcontractor's certificate to the governmental entity.
- (c) A Contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.
- (d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

- (1) "Building or construction" includes:
  - i. erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
  - ii. remodeling, extending, repairing, or demolishing a structure; or
  - iii. otherwise improving real property or an appurtenance to real property through similar activities.
- (2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

**9. U.S. Iron and Steel (Does not apply to SWIFT Projects funded prior to May 1, 2019)**

The following statement must be completed by the Contractor and made a part of the agreement between the Owner and the Contractor.

*The Contractor acknowledges to and for the benefit of the Applicant ("Purchaser") and the Texas Water Development Board ("TWDB") that it understands the goods and services under this Agreement are being funded with monies made available by the Water Development Fund, Rural Water Assistance Fund, Economically Distressed Areas, State Participation Fund and/or Agricultural Water Conservation Fund. That these funds have statutory requirements commonly known as "United States Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("United States Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the TWDB that (a) the Contractor has reviewed and understands the United States Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the United States Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the United States Iron and Steel Requirement, as may be requested by the Purchaser or the TWDB. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser to enforce this Agreement and recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the TWDB by the Purchaser). Neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the TWDB.*

*In the execution of the Contract, the Contractor shall be familiar with and at all times shall observe and comply with all applicable federal, state, and local laws, ordinances and regulations concerned with the use of iron and steel made in the United States which in any manner affect the conduct of the work, and shall indemnify and save harmless the Texas Water Development Board against any claim arising from violation of any such law, ordinance or regulation by the Contractor or by their Subcontractor or their employees.*

**Additional information on the United States Iron and Steel (US I&S) and its applicability to this contract can be found in the TWDB-11005 guidance.**

**It is recommended the Owner receive and maintain files documenting the Contractor's use of US I&S. Compliance with US I&S will be verified by the Owner through the submittal of the TWDB form TWDB-1105-A.**

## **10. Prevailing Wage Rates**

This contract is subject to Government Code Chapter 2258 concerning payment of Prevailing Wage Rates. The Owner will determine what the general prevailing rates are in accordance with the statute. The applicable provisions include, but are not limited to the following:

### **§2258.021. Right to be Paid Prevailing Wage Rates**

- (a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:
  - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
  - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- (b) Subsection (a) does not apply to maintenance work.
- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a Contractor or Subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

### **§2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty**

- (a) The Contractor who is awarded a contract by a public body or a Subcontractor of the Contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
- (b) A Contractor or Subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
- (c) A Contractor or Subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.
- (d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
- (e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

**§2258. 024. Records**

- (a) A Contractor and Subcontractor shall keep a record showing:
- (1) the name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the public work; and
  - (2) the actual per diem wages paid to each worker.
- (b) The record shall be open at all reasonable hours to inspection by the officers and agents of the public body.

**§2258. 025. Payment Greater Than Prevailing Rate Not Prohibited**

This chapter does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wages.

**11. Employment of Local Labor (only applicable to projects funded by EDAP)**

The Contractor shall, to the maximum feasible extent, employ local labor for construction of the project. The Contractor and every Subcontractor undertaking to do work on the project which is, or reasonably may be done as on-site work, shall employ qualified persons who regularly reside within the political subdivision boundary of the Owner and the economically distressed area where the project is located (Texas Water Code, Section 17.183).

**12. Payments**

- (a) Progress Payments:
- (1) The Contractor shall prepare their requisition for progress payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for review. Except as provided in paragraph (3) of this subsection, the amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting: (1) five percent (5%) minimum of the total amount, as a retainage and (2) the amount of all previous payments. The total value of work completed to date shall be based on the actual or estimated quantities of work completed and on the unit prices contained in the agreement (or cost breakdown approved pursuant to section 7b relating to lump sum bids) and adjusted by approved change orders. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection by the Engineer.
  - (2) The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this contract complete and satisfactory to the Owner in all details.



- (3) The retainage and its interest earnings, if any, shall not be paid to the Contractor until the TWDB has authorized a reduction in, or release of, retainage on the contract work.
- (4) Withholding of any amount due to the Owner, under general and/or special conditions regarding "Liquidated Damages" shall be deducted from the final payment due the Contractor.

### **13. Archaeological Discoveries and Cultural Resources**

No activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places or eligible for designation as a State Archeological Landmark is authorized until the Owner has complied with the provisions of the National Historic Preservation Act and the Antiquities Code of Texas. The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.

If archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria in 13 TAC Chapter 26, or that may be eligible for listing on the National Register of Historic Places in accordance with 36 CFR Part 800, are discovered after construction operations are begun, the Contractor shall immediately cease operations in that particular area and notify the Owner, the TWDB, and the Texas Historical Commission, 1511 N. Colorado St. , P. O. Box 12276, Capitol Station, Austin, Texas 78711-2276. The Contractor shall take reasonable steps to protect and preserve the discoveries until they have been inspected by the Owner's representative and the TWDB. The Owner will promptly coordinate with the State Historic Preservation Officer and any other appropriate agencies to obtain any necessary approvals or permits to enable the work to continue. The Contractor shall not resume work in the area of the discovery until authorized to do so by the Owner.

### **14. Endangered Species**

No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species.

If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the Owner, who will immediately implement actions in accordance with the ESA and applicable State statutes. These actions shall include reporting the encounter to the TWDB, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, or implement other mitigation actions. The Contractor shall not resume construction in the area of the encounter until authorized to do so by the Owner.

## 15. Hazardous Materials

Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

If the Contractor encounters existing material on sites owned or controlled by the Owner or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Owner. The Owner will be responsible for the testing and removal or disposal of hazardous materials on sites owned or controlled by the Owner. The Owner may suspend the work, wholly or in part during the testing, removal or disposal of hazardous materials on sites owned or controlled by the Owner.

## 16. Changes

\*Provisions identified with an asterisk below are consistent with Local Government Code 271.60. Counties and Municipalities may modify the identified provisions, when applicable, to conform to Local Government Code 262.031 (Counties) or 252.048 (Municipalities).

- (a) The Owner may at any time, without notice to any surety, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including but not limited to changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the time, method or manner of performance of the work;
  - (3) To decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished;
- (b) \*The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.
- (c) \*A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract, with an original contract price of less than \$1 million, increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.
- (d) \*A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less.
- (e) Changes that involve an increase in price will be supported by documentation of the cost components. For projects funded through the EDAP program, or with grant proceeds, TWDB staff may request this information to be provided in a format equivalent to the Cost and Pricing Information form (No. WRD-277).
- (f) Any change orders involving a change in the project requiring a relocation of project components, sizing, or process may require additional environmental approval. A map and description of the proposed changes should be sent to the TWDB Environmental

Reviewer for coordination and approval as soon as possible to avoid any delay.

## **17. Operation and Maintenance Manuals and Training**

- (a) The Contractor shall obtain installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the contract. The Contractor shall submit three copies of each complete manual to the Engineer within 90 days after approval of shop drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the project site or storage location.
- (b) The Owner shall require the Engineer to promptly review each manual submitted, noting necessary corrections and revisions. If the Engineer rejects the manual, the Contractor shall correct and resubmit the manual until it is acceptable to the Engineer as being in conformance with the design concept of the project and for compliance with information given in the contract documents. Owner may assess Contractor a charge for reviews of same items in excess of three (3) times. Such procedure shall not be considered cause for delay.
- (c) Acceptance of manuals by Engineer does not relieve Contractor of any requirements of terms of Contract.
- (d) The Contractor shall provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.
- (e) Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor to install, test, and start-up the equipment.
- (f) Each manual is to be bound in a folder and labeled to identify the contents and project to which it applies. The manual shall contain the following applicable items:
  - (1) A listing of the manufacturer's identification, including order number, model, serial number, and location of parts and service centers.
  - (2) A list of recommended stock of parts, including part number and quantity.
  - (3) Complete replacement parts list.
  - (4) Performance data and rating tables.
  - (5) Specific instructions for installation, operation, adjustment, and maintenance.
  - (6) Exploded view drawings for major equipment items.
  - (7) Lubrication requirements.
  - (8) Complete equipment wiring diagrams and control schematics with terminal identification.

## **18. As-built Dimensions and Drawings**

- (a) Contractor shall make appropriate daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities.

- (b) Upon completion of each facility, the Contractor shall furnish the Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed. As a minimum, the final drawings shall include the following:
  - (1) Horizontal and vertical locations of work.
  - (2) Changes in equipment and dimensions due to substitutions.
  - (3) "Nameplate" data on all installed equipment.
  - (4) Deletions, additions, and changes to scope of work.
  - (5) Any other changes made.

## 19. Close-Out Procedures

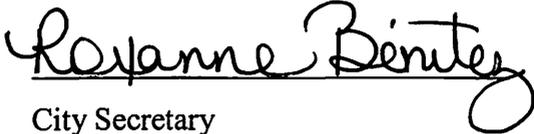
To close-out the contract and release final retainage, the following steps must be completed:

- (a) TWDB Staff must conduct a construction contract final inspection (CCFI).
- (b) The following submittals must be received, reviewed, and accepted by TWDB:
  - (1) The final change order, adjustment of quantities, or a statement that all change orders have previously been submitted and there will be no more change orders;
  - (2) The final pay request from the Contractor;
  - (3) An affidavit by the Contractor that all bills have been paid;
  - (4) Certification by the consulting Engineer that the work has been completed and was constructed in accordance with the approved plans and specifications and sound engineering principles and construction practices;
  - (5) Acceptance of the project by the Owner in the form of a written resolution or other formal action;
  - (6) Notification of the beginning date of the warranty period for the contract; and
  - (7) Confirmation that the Owner has received as-built drawings from the Contractor.
  - (8) Certificate of Compliance with U.S. Iron and Steel Requirements (TWDB- 1105A)
- (c) TWDB will issue a Certificate of Approval allowing the release of retainage.

IN WITNESS WHEREOF, the Mayor of the City of Spring Valley Village, Texas, and City Secretary of the City of Spring Valley Village, Texas, hereunto, has executed this Agreement in the year and date first above written, under the authority granted to them under the provisions of the Charter, duly enacted by the City Council of the City of Spring Valley Village, Texas.



\_\_\_\_\_  
MAYOR, City of Spring Valley Village, Texas

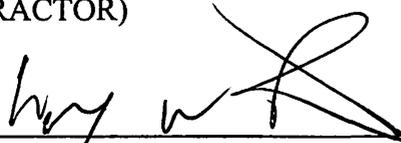


\_\_\_\_\_  
City Secretary

IN WITNESS WHEREOF, the undersigned officers of the corporation, whose names are hereinafter set out, do certify and attest that they have executed this Agreement in their capacities as herein stated, for and on behalf of said corporation, and that they have authority to do so under specific authorization granted to them under the Charter or By-laws of said corporation or, if said Charter and By-laws are silent, then under authority granted to them under a resolution duly adopted by the Board of Directors of said corporation, as set out in the official minute book of said corporation, and an excerpt of said resolution is herein previously set out.

\_\_\_\_\_  
W.W. Payton Corporation

CONTRACTING CORPORATION  
(CONTRACTOR)



\_\_\_\_\_  
Officer Wesley W. Payton

\_\_\_\_\_  
President

Office Held

ATTEST:



\_\_\_\_\_  
Secretary Marilyn R. Payton