

RESOLUTION NO. 09-572

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON ACCEPTING THE BID FROM PIVETTA BROTHERS CONSTRUCTION, INC. AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR EMERGENCY REPAIRS TO ROBERTS DRIVE

WHEREAS, The road bed washed out underneath Roberts Drive on the east side of the Ginder Creek Culvert during the North West Flood event on January 7th and 8th.

WHEREAS, Roberts Drive is a key east west arterial that not only serves Black Diamond but also the surrounding region, and

WHEREAS, The Washington State Department of Transportation has currently routed SR 169 traffic on Roberts Drive, and

WHEREAS, Repairing Roberts Drive and opening the road to traffic is urgent to provide for east west traffic through Black Diamond.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

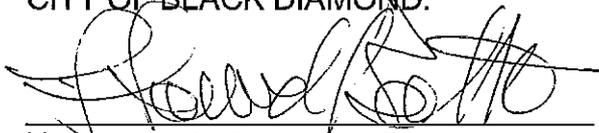
Section 1. Pivetta Brothers Construction, Inc. bid was the low bidder from a small works solicitation for bids on emergency repairs to the Ginder Creek Culvert.

Section 2. The Mayor is hereby authorized to execute a contract with Pivetta Brothers Construction, Inc., to perform the work described on the bid sheet attached as Exhibit A, *provided*, work items numbers 2, 6, and 9 shall not be performed due to budget constraints.

Section 3. The amount of this contract shall not exceed \$25,778.38, including a \$1,000 contingency for change orders and quantity overruns, and applicable sales tax.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF JANUARY, 2009.

CITY OF BLACK DIAMOND:


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

**CITY OF BLACK DIAMOND
SMALL PUBLIC WORKS CONSTRUCTION CONTRACT**

THIS Agreement is dated the 16 day of January, 2008⁹, and is made and entered into by CITY OF BLACK DIAMOND, WASHINGTON (“**CITY**”) and (“**CONTRACTOR**”) for the following project:

Repair of the Ginder Creek culvert under Roberts Drive and filling of erosion voids along side the culvert (“**PROJECT**”).

The City and Contractor agree as follows:

1. Contract Documents. The Contractor shall do all work, furnish all tools, material, and equipment, and complete the construction of the Project in accordance with the Contract Documents. The Contract Documents consist of the following in order of precedence:

- a. City Sketches and description of the work to be completed
- b. Written change orders or orders for changes in the work issued after execution of this Agreement;
- b. This Agreement signed by the City and Contractor;
- c. Bid Proposal Form; and
- d. 2008 WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, except Sections 1-04.1 through 1-04.6, 1-07.18, 1-08, 1-09.5, 1-09.11 and 1-09.13. All references in the Standard Specifications to the terms “State”, “Department of Transportation”, “Washington State Transportation Commission”, “Commission”, “Secretary of Transportation”, “Secretary”, “Headquarters”, and “State Treasurer” shall be revised to read “City of Black Diamond”.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor. These Contract Documents complement each other in describing a complete work. Any requirement in one document binds as if stated in all. The Contractor shall provide any work or materials clearly implied in the Contract even if the Contract does not mention it specifically. If any part of the Contract requires work that does not include a description of how the work will be performed, the work shall be performed in accordance with standard trade practices.

2. Date of Commencement and Substantial Completion Date. The date of commencement shall be immediately after receipt of the notice to proceed. The Contractor shall complete the Project not later than thirty (14) calendar days after the date the Notice to Proceed is issued but also as soon as practicable. The Contractor shall submit any requests for time extensions to the City in writing no later than seven days after the delay occurs. To be considered by the City, the request shall be in sufficient detail (as determined by the Engineer) to enable the City to ascertain the basis and amount of the time requested. The request shall include an updated schedule that supports the request and demonstrates that the change or event: (1) had a specific impact on the critical path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by resequencing of the work or by using other reasonable alternatives. The City will evaluate and respond within seven days of receiving the request. The authorized time for physical completion will be extended for a period equal to the time the Engineer determines the work was delayed because of: (1) Adverse weather causing the time requested to be unworkable; (2) any action, neglect, or default of the City its officers, or employees, or of any other

contractor employed by the City; (3) Fire or other casualty for which the Contractor is not responsible; (4) Strikes; (5) Exceptional causes not specifically identified in items 1 through 4, provided the request letter proves the Contractor had no control over the cause of the delay and could have done nothing to avoid or shorten it.

3. **Contract Sum.** Subject to additions and deductions by change order, the contract sum is the bid amount of 25,778.38 including sales tax. The contract sum shall include all items and services necessary for the proper execution and completion of the Project.

4. **Liquidated Damages.** Timely performance and completion of the Project is essential to the City and time limits are of the essence. In the event Contractor fails to complete the work by the completion date, plus any authorized extensions thereof, the Contractor shall pay the City liquidated damages in the amount of \$300.00 for each calendar day of delay in completion of the Project.. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire contract.

5. **Changes.** After execution of the Contract, changes in the Project may be accomplished by change order. The City, without invalidating the Contract, may order changes in the Project within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract completion date being adjusted accordingly. Change orders shall be in writing signed by the parties.

6. **Payment.** Each month after commencement of the Project, Contractor shall make a request for payment for work done during the preceding month. Failure to perform any of the obligations under the Contract by the Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved. Progress payments for work performed shall not be evidence of acceptable performance or an admission by the City that any work has been satisfactorily completed. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

7. **Retainage.** Pursuant to RCW 60.28, a sum of 5 percent of the monies earned by the Contractor will be retained from progress payments. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to RCW Title 82, and (2) the claims of any person arising under the Contract.

8. **Termination of Contract.** This Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

9. **Warranty.** Contractor warrants that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required and permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract.

10. **Correction of Work.** Contractor shall promptly correct Work rejected by the City as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work. In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after substantial completion, correct work not conforming to the requirements of the Contract Documents. If the Contractor fails to correct nonconforming Work within a reasonable time, the City may correct it and Contractor shall reimburse the City for the cost of the correction.

11. **Indemnification/Hold Harmless.** The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

12. **Insurance.** The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit The City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with

respect to the work performed for The City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

B. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect The City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the Work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

H. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). Upon request the City, the Contractor shall provide evidence of such insurance.

13. Prevailing Wage Requirements. The Contractor agrees to comply with all state and federal laws relating to the employment of labor and wage rates to be paid. The hourly wages to be paid laborers, workers, or mechanics shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in King County. No payment will be made on this contract until the contractor and each and every subcontractor has submitted a "Statement of Intent to Pay Prevailing Wages" (LI 700-29) that has been approved by the industrial statistician of the Department of Labor and Industries. No final payment or release of any retainage will be made until the contractor and each and every subcontractor has submitted an "Affidavit of Wages Paid" (LI 700-7) that has been certified by the industrial statistician of the Department of Labor and Industries.

The contractor shall post the prevailing rate of wage statement in a location readily visible to workers at the job site, or as allowed by RCW 39.12.020. The "Statement of Intent to Pay Prevailing Wages" shall include:

1. The contractor's registration certificate number; and
2. The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Statements of intent to pay prevailing wages and affidavits of wages paid shall be on forms approved by the Department of Labor and Industries.

14. Assigning or Subcontracting. Contractor shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City.

15. Independent Contractor. Contractor is and shall be at all times during the term of this Agreement an independent contractor.

16. **Notice.** Any notices required to be given by the City to Contractor or by Contractor to the City shall be in writing and delivered to the parties at the following addresses:

The City:

Seth Boettcher
Public Works Director
24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

Phone:

Fax:

Contractor:

Fax: 425-432-8854

17. **Disputes.** Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court.

18. **Attorneys Fees.** In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

19. **Extent of Agreement/Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF BLACK DIAMOND

By:



Name:

~~MAYOR~~ HOWARD BOITS

Title:

MAYOR

Date:

1-16-09

CONTRACTOR

By:



Name:

Pivetta Brothers Construction, Inc, Mark Pivetta

Title:

President

Date:

1-21-09

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Mark Pivetta (Corporate Officer (Not Contract Signer)) certify that I am the President (Corporate Title) of the corporation named as Contractor in the Agreement attached hereto; that Mark Pivetta, (Contract Signer) who signed said Agreement on behalf of the Contractor, was then President (Corporate Title) of said corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

[Signature]
Corp. officer signature (not contract signer)
Mark Pivetta
Printed
President
Title

State of Washington
County of King

Mark Pivetta, (corporate officer (not contract signer)) being duly sworn, deposes and says that he/she is President (Corporate Title) of Pivetta Brothers Construction, Inc. (Name of Corporation)

Subscribed and sworn to before me this 21 day of January, 2009



[Signature]
Notary Public (Signature)
Wallace C Clayton
Notary Public (Print)
My commission expires 03-10-09

**DECLARATION OF OPTION FOR MANAGEMENT
OF STATUTORY RETAINED PERCENTAGE**

Note: This form must be submitted at the time the Contractor executes the contract. Contractor shall designate the option desired by checking the appropriate space.

Monies reserved under provisions of RCW 60.28, at the option of the Contractor, shall be:

 X (1) Retained in a fund by the City.

 (2) Deposited by the City in an interest-bearing account in a bank, mutual savings bank or savings and loan association.

 (3) Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and the bonds and securities held in escrow. The Contractor in choosing option (2) or (3) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.



Contractor Signature

1-21-09

Date



HYDRAULIC PROJECT APPROVAL
RCW 77.55.021(8) - Appeal Pursuant to Chapter 34.05 RCW

North Puget Sound
16018 Mill Creek Boulevard
Mill Creek, WA 98012-1296
(425) 775-1311

Issue Date: January 13, 2009
Project Expiration Date: February 10, 2009

Control Number: 115767-1
FPA/Public Notice #: N/A

<u>PERMITTEE</u>	<u>AUTHORIZED AGENT OR CONTRACTOR</u>
Black Diamond City Of ATTENTION: Seth Boettcher PO Box 599 Black Diamond, WA 98010 360-886-2560(202) Fax: 360-886-2901	

Project Name: Ginder Creek Culvert Repair
 Project Description: Repair the metal culvert in Ginder Creek at Roberts Road and add streambed material to protect the water line at the culvert outlet; location is just west of State Route 169.

PROVISIONS

1. The project may begin immediately and shall be completed by February 10, 2009.
2. Work shall be accomplished as discussed with the Washington Department of Fish and Wildlife (WDFW) Area Habitat Biologist (AHB) listed below, which is reflected in the following provisions.
3. A temporary bypass to divert flow around the work area shall be in place prior to initiation of other work in the wetted perimeter.
4. A sandbag revetment or similar device shall be installed at the bypass inlet to divert the entire flow through the bypass.
5. A sandbag revetment or similar device shall be installed at the downstream end of the bypass to prevent backwater from entering the work area.
6. The bypass shall be of sufficient size to pass all flows and debris for the duration of the project.
7. Prior to releasing the water flow to the project area, all instream work shall be completed.
8. Upon completion of the project, all material used in the temporary bypass shall be removed from the site and the site returned to preproject or improved conditions.
9. The permittee shall capture and safely move food fish, game fish, and other fish life from the job site. The permittee shall have fish capture and transportation equipment ready and on the job site. Captured fish shall be immediately and safely transferred to free-flowing water downstream of the project site. The permittee may request WDFW assist in capturing and safely moving fish life from the job site to free-flowing water, and assistance may be granted if personnel are available.



HYDRAULIC PROJECT APPROVAL
 RCW 77.05.021(8) - Appeal Pursuant to Chapter 34.05 RCW

North Puget Sound
 16018 Mill Creek Boulevard
 Mill Creek, WA 98012-1296
 (425) 775-1311

Issue Date: January 13, 2009
 Project Expiration Date: February 10, 2009

Control Number: 115767-1
 FPA/Public Notice #: N/A

10. Any device used for diverting water from a fish-bearing stream shall be equipped with a fish guard to prevent passage of fish into the diversion device pursuant to RCW 77.57.010 and 77.57.070. The pump intake shall be screened with 1/8-inch mesh to prevent fish from entering the system. The screened intake shall consist of a facility with enough surface area to ensure that the velocity through the screen is less than 0.4 feet per second. Screen maintenance shall be adequate to prevent injury or entrapment to juvenile fish and the screen shall remain in place whenever water is withdrawn from the stream through the pump intake.
11. The culvert may be repaired by lining the culvert bottom with portions of metal culvert similar to the existing culvert and by sealing the outside of the culvert with concrete materials.
12. Placement of bank protection material waterward of the ordinary high water line shall be restricted to construction of a headwall on the right bank (facing downstream) at the culvert outlet.
13. The culvert facility shall be maintained by the owner per RCW 77.57.030 to ensure continued, unimpeded fish passage. If the structure becomes a hindrance to fish passage, the owner shall be responsible for obtaining a Hydraulic Project Approval and providing prompt repair. Financial responsibility for maintenance and repairs shall be that of the owner.
14. Large, rounded streambed material may be added at the culvert outfall to protect the water conduit there, provided it does not pose a hindrance to fish passage.
15. If at any time, as a result of project activities, fish are observed in distress, a fish kill occurs, or water quality problems develop (including equipment leaks or spills), immediate notification shall be made to the Washington Emergency Management Division at 1-800-258-5990, and to the AHB.
16. All waste material such as construction debris, silt, excess dirt or overburden resulting from this project shall be deposited above the limits of floodwater in an approved upland disposal site.
17. Extreme care shall be taken to ensure that no petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or deleterious materials are allowed to enter or leach into the stream or into wetlands associated with the stream.

PROJECT LOCATIONS

Location #1 Ginder Creek Culvert

WORK START: January 12, 2009				WORK END: February 10, 2009		
WRIA: 09.0086		Waterbody: Unnamed (Ib)		Tributary to: Lake Sawyer		
1/4 SEC: SE 1/4	Section: 11	Township: 21 N	Range: 06 E	Latitude: N 47.31606	Longitude: W 122.00773	County: King
<u>Location #1 Driving Directions</u>						



Issue Date: January 13, 2009
Project Expiration Date: February 10, 2009

Control Number: 115767-1
FPA/Public Notice #: N/A

APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW (formerly RCW 77.20). Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in a civil penalty of up to one hundred dollars per day and/or a gross misdemeanor charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued pursuant to RCW 77.55.021 (EXCEPT agricultural irrigation, stock watering or bank stabilization projects) or 77.55.141 are subject to additional restrictions, conditions or revocation if the Department of Fish and Wildlife determines that new biological or physical information indicates the need for such action. The person(s) to whom this Hydraulic Project Approval is issued has the right pursuant to Chapter 34.04 RCW to appeal such decisions. All agricultural irrigation, stock watering or bank stabilization Hydraulic Project Approvals issued pursuant to RCW 77.55.021 may be modified by the Department of Fish and Wildlife due to changed conditions after consultation with the person(s) to whom this Hydraulic Project Approval is issued: PROVIDED HOWEVER, that such modifications shall be subject to appeal to the Hydraulic Appeals Board established in RCW 77.55.301.

APPEALS INFORMATION

If you wish to appeal the issuance or denial of, or conditions provided in a Hydraulic Project Approval, there are informal and formal appeal processes available.

A. INFORMAL APPEALS (WAC 220-110-340) OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW 77.55.021, 77.55.141, 77.55.181, and 77.55.291: A person who is aggrieved or adversely affected by the following Department actions may request an informal review of:

(A) The denial or issuance of a Hydraulic Project Approval, or the conditions or provisions made part of a Hydraulic Project Approval; or

(B) An order imposing civil penalties. A request for an INFORMAL REVIEW shall be in WRITING to the Department of Fish and Wildlife HPA Appeals Coordinator, 600 Capitol Way North, Olympia, Washington 98501-1091 and shall be RECEIVED by the Department within 30 days of the denial or issuance of a Hydraulic Project Approval or receipt of an order imposing civil penalties. If agreed to by the aggrieved party, and the aggrieved party is the Hydraulic Project Approval applicant, resolution of the concerns will be facilitated through discussions with the Area Habitat Biologist and his/her supervisor. If resolution is not reached, or the aggrieved party is not the Hydraulic Project Approval applicant, the Habitat Technical Services Division Manager or his/her designee shall conduct a review and recommend a decision to the Director or his/her designee. If you are not satisfied with the results of this informal appeal, a formal appeal may be filed.



HYDRAULIC PROJECT APPROVAL

RCW 77.55.021(8) - Appeal Pursuant to Chapter 34.05 RCW

North Puget Sound
16018 Mill Creek Boulevard
Mill Creek, WA 98012-1296
(425) 775-1311

Issue Date: January 13, 2009

Control Number: 115767-1

Project Expiration Date: February 10, 2009

FPA/Public Notice #: N/A

B. FORMAL APPEALS (WAC 220-110-350) OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW 77.55.021 (EXCEPT agricultural irrigation, stock watering or bank stabilization projects) or 77.55.291:

A person who is aggrieved or adversely affected by the following Department actions may request a formal review of:

(A) The denial or issuance of a Hydraulic Project Approval, or the conditions or provisions made part of a Hydraulic Project Approval;

(B) An order imposing civil penalties; or

(C) Any other 'agency action' for which an adjudicative proceeding is required under the Administrative Procedure Act, Chapter 34.05 RCW.

A request for a FORMAL APPEAL shall be in WRITING to the Department of Fish and Wildlife HPA Appeals Coordinator, shall be plainly labeled as 'REQUEST FOR FORMAL APPEAL' and shall be RECEIVED DURING OFFICE HOURS by the Department at 600 Capitol Way North, Olympia, Washington 98501-1091, within 30-days of the Department action that is being challenged. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal shall be within 30-days of the date of the Department's written decision in response to the informal appeal.

C. FORMAL APPEALS OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW 77.55.021 (agricultural irrigation, stock watering or bank stabilization only), 77.55.141, 77.55.181, or 77.55.241: A person who is aggrieved or adversely affected by the denial or issuance of a Hydraulic Project Approval, or the conditions or provisions made part of a Hydraulic Project Approval may request a formal appeal. The request for FORMAL APPEAL shall be in WRITING to the Hydraulic Appeals Board per WAC 259-04 at Environmental Hearings Office, 4224 Sixth Avenue SE, Building Two - Rowe Six, Lacey, Washington 98504; telephone 360/459-6327.

D. FORMAL APPEALS OF DEPARTMENT ACTIONS TAKEN PURSUANT TO CHAPTER 43.21L RCW: A person who is aggrieved or adversely affected by the denial or issuance of a Hydraulic Project Approval, or the conditions or provisions made part of a Hydraulic Project Approval may request a formal appeal. The FORMAL APPEAL shall be in accordance with the provisions of Chapter 43.21L RCW and Chapter 199-08 WAC. The request for FORMAL APPEAL shall be in WRITING to the Environmental and Land Use Hearings Board at Environmental Hearings Office, Environmental and Land Use Hearings Board, 4224 Sixth Avenue SE, Building Two - Rowe Six, P.O. Box 40903, Lacey, Washington 98504; telephone 360/459-6327.

E. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS results in forfeiture of all appeal rights. If there is no timely request for an appeal, the department action shall be final and unappealable.

ENFORCEMENT: Sergeant Chandler (34) P2

Habitat Biologist
Larry Fisher

425-313-5683

for Director
WDFW

CC:

Bid from Pivetta Brothers Construction, Inc 253-862-7890

GINDER CREEK CULVERT AND ROADBED REPAIRS

Note: Unit prices for all items, all extensions, and the total amount bid must be shown. Show unit prices in both words and figures, and where conflict occurs, the written or typed word shall prevail. Where conflict occurs between the unit price and the total amount specified for any item, the unit price shall prevail, and totals shall be corrected to conform thereto.

Item No.	Item Description	Unit	Quantity	Unit Bid Price	Total Bid Item Amount
1	Mobilization One thousand eight hundred thirty and 00/100 dollar	LS	1		1,839.00
2	Temporary Traffic Control Eight hundred eight two and 00/100 dollar	LS	Nine 1		882.00
3	Install bottom liner in existing culvert Four thousand six hundred ninety eight and 00/100 dollar	LS	1		4,698.00
4	Fill voids in roadway with concrete * Three hundred six & 00/100 and 00/100 dollar	CY	13 cubic yards	306.00	3,978.00
5	Armor the bottom of the discharge pool with round rock One hundred ninety three and 00/100 dollar	CY	15 cubic yards	193.00	2,895.00
6	Excavate and fill quarry rock around the discharge end of culvert One hundred seventy eight And 00/100 dollar	CY	15 cubic yards	178.00	2,670.00
7	Reinforce and back fill angled headwall	LS	1		1,631.00

Deleted 1/16/09
@

Deleted 1/16/09
@

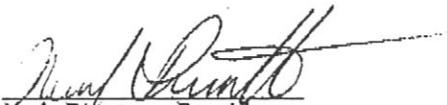
Bid from Pivetta Brothers Construction, Inc 253-862-7890

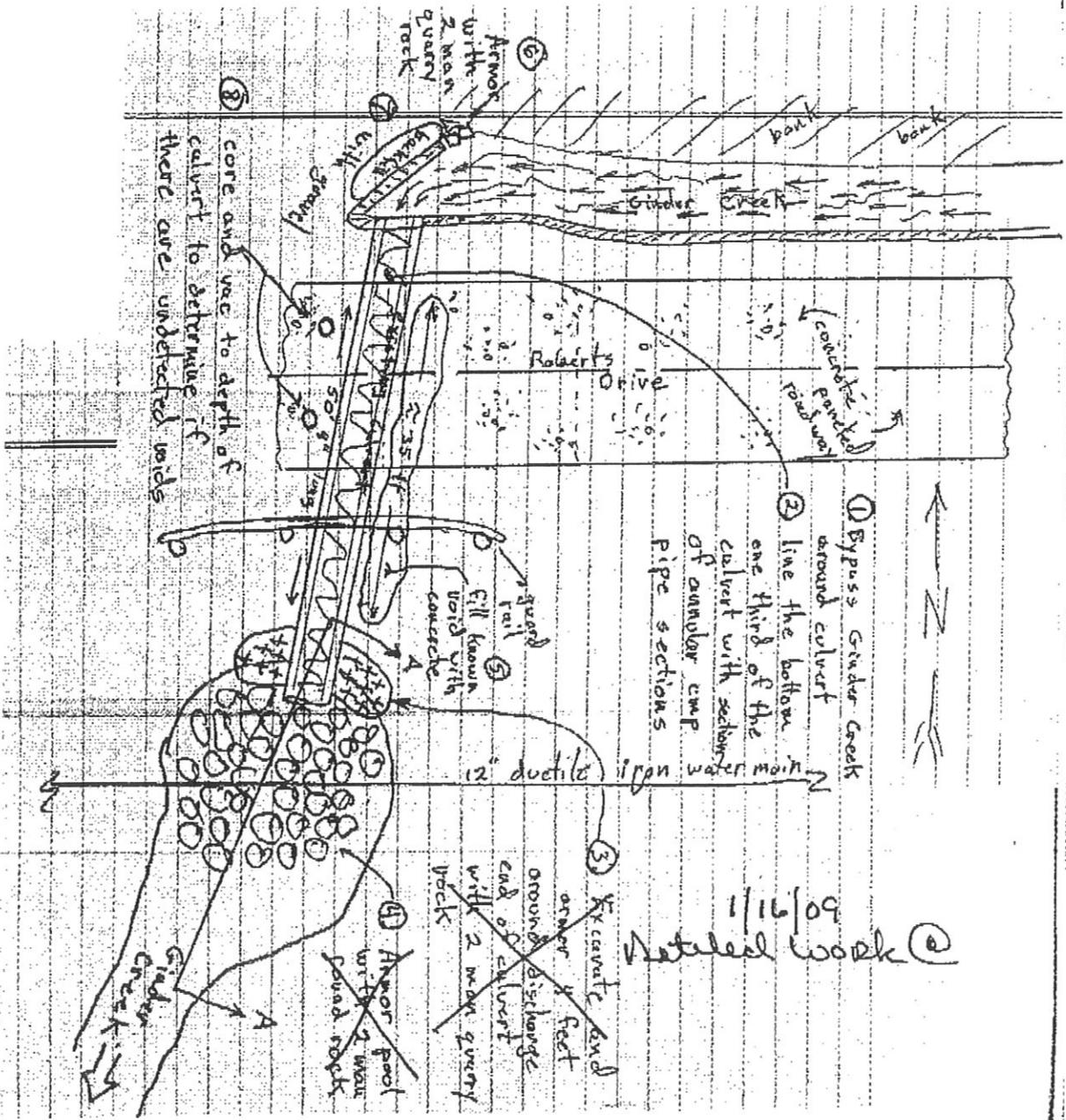
	One thousand six hundred thirty one and 00 /100 dollar				
8	Bypass Creek flow during pipe lining and other activities as needed	LS	1		7,696.00
	Seven thousand six hundred ninety six and 00 /100 dollar				
9	Remove signs, metal and foreign debris from the creek 50 feet downstream of Roberts Drive	LS	1		1,805.00
	One thousand eight hundred five and 00 /100 dollar				
10	Minor Change	LS	1		1000
	Up to One Thousand and 00 /100 dollar				
SUBTOTAL	Subtotal			\$29,094.00	23,737.00 @
8.6% SALES TAX	Tax			\$2,502.08	2,041.38 @
TOTAL COST				\$31,596.08	25,778.38 @
	Twenty five thousand Seven hundred Seventy Eight & 38/100 @ Thirty one thousand five hundred ninety six & 00/100				

Deleted 1/16/09 @

*Concrete must be a 3500 psi mix, with a 6 inch slump and small aggregate of about pea gravel size.

Date: 1-15-09

Bid Submitted by: 
Mark Pivetta, President



③ core and use to depth of culvert to determine if there are undetected voids

① Bypass Ginder Creek around culvert
 ② line the bottom one third of the culvert with sections of annular comp pipe sections

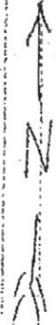
1/16/09
 Natalie work ©

③ Excavate and armor 4 feet around discharge end of culvert with 2 man quarry rock

④ Armor pool with 2 man quarry rock

⑤ fill known void with concrete

12" ductile iron water main



bank

bank

Ginder Creek

Roberts

concrete punched roadway

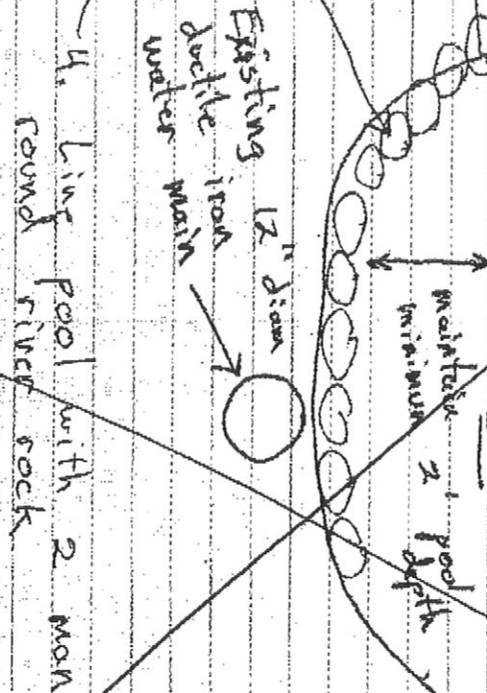
⑥ armor with 2 man quarry rock

armor with quarry rock

armor pool with 2 man quarry rock

Ginder Creek

South bank Discharge Pool



4. Lining pool with 2 man round river rock

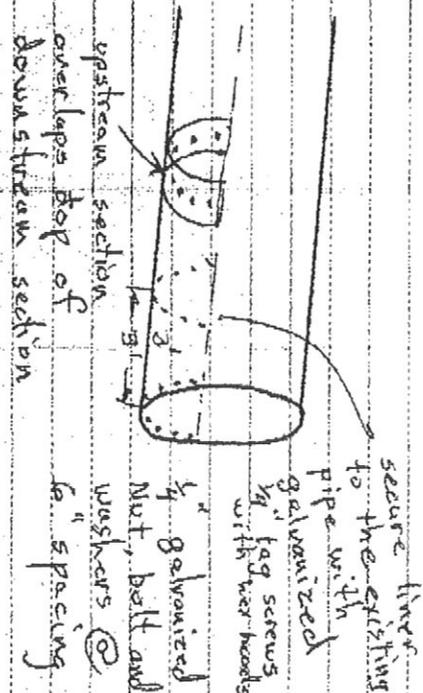
3. Excavate bank material and replace with 2 man quarry rock

~~Deleted @ 1/16/09~~

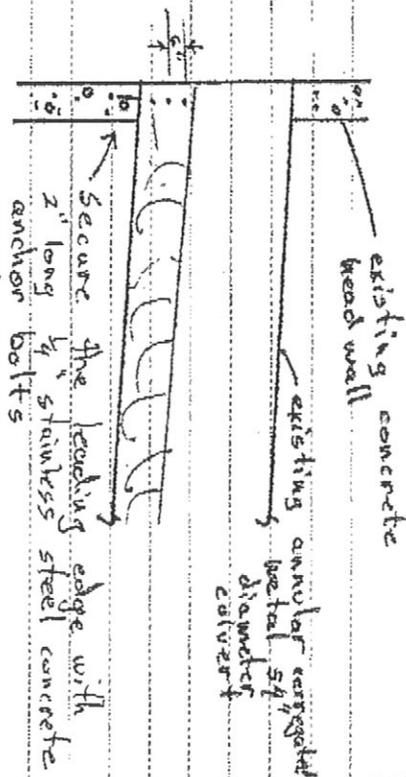
verify depth to water main

Cover the top of the water main with 6 inches of washed drain rock

Down stream End



Up stream End



ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
01/21/2009

PRODUCER Kibble & Prentice, a USI Co. 601 Union Street, Suite 1000 Seattle, WA 98101 206 441-6300	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Pivetta Brothers Construction, Inc. P.O. Box 370 Sumner, WA 98390	INSURER A: Continental Western Insurance Compan	10804
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

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

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded: \$2,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CWP267250822	03/01/08	03/01/09	EACH OCCURRENCE	\$1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
						MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS - COMP/OP AGG	\$2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CWP267250822	03/01/08	03/01/09	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	CU267250921	03/01/08	03/01/09	EACH OCCURRENCE	\$5,000,000
						AGGREGATE	\$5,000,000
							\$
							\$
							\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	CWP267250822 WA Stop Gap Only	03/01/08	03/01/09	<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Repair of Ginder Creek Culvert. Certificate holder is Additional Insured (including Completed Operations) and coverage is primary and non-contributory per attached endorsements.

*10 days notice of cancellation for non-payment of premium

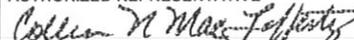
CERTIFICATE HOLDER

City of Black Diamond
Dept of Public Works
P.O. Box 599
Black Diamond, WA 98010

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 45* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



IMPORTANT

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

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

DISCLAIMER

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

Such person or organization is an insured provided:

- (1) The written or oral contract or agreement is:
 - (a) Currently in effect or becomes effective during the policy period; and
 - (b) Executed prior to an "occurrence" or offense to which this insurance would apply.
 - (2) They are not specifically designated as an additional insured under any other provision of, or endorsement added to, this policy.
- f. Only the following persons or organizations are additional insureds under this endorsement, and coverage provided to such additional insureds is limited as provided herein:

- (1) The manager or lessor of a premise leased to you, but only with respect to liability arising from the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant of that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

- (2) Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- (3) Any state or political subdivision, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- (b) The construction, erection, or removal of elevators; or

- (c) Ownership, maintenance, or use of any elevators.

F. ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS

1. **SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this policy ends when your operations for that additional insured are completed.

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

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

- b. "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.

3. The insurance provider this endorsement is primary insurance and we will not seek contribution under any insurance policy under which such additional insured is a named insured, if such policy was procured and paid for by such additional insured, or a parent or related entity of such additional insured.

4. With respect to the insurance afforded to these additional insureds, **SECTION III – LIMITS OF INSURANCE** is amended as follows:

The limits applicable to the additional insured are those specified in the written contract or agreement or the limits stated in the Declarations, whichever is less. If no limits are specified in the written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

G. PROPERTY DAMAGE TO BORROWED EQUIPMENT

1. Paragraph 2.j. of **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is amended as follows:

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

2. **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:

The most we will pay in any one "occurrence" for "property damage" to borrowed equipment is \$15,000. This limit of insurance is the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

3. Deductible

a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of \$250 as applicable to "property damage" as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

b. The terms of this insurance, including those with respect to our right and duty to defend the insured against any "suits" seeking those damages; and your duties in the event of an "occurrence", claim, or "suit" apply irrespective of the application of the deductible amount.

c. 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 we have paid.

H. BROADENED NAMED INSURED

Paragraph 3. of **SECTION II - WHO IS AN INSURED** is deleted and replaced by the following:

Any organization, other than a joint venture, over which you maintain ownership or majority interest of more than 50% will be a Named Insured if there is no other similar insurance available to that organization. However:

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

b. **COVERAGE A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

c. **COVERAGE B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

I. CONSTRUCTION PROJECT GENERAL AGGREGATE LIMIT

1. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which can be attributed only to ongoing operations at a single construction project away from premises owned by or rented to the insured:

a. A Single Construction Project General Aggregate Limit applies to each construction project away from premises owned by or rented to the insured, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

b. The Single 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:

(1) Insureds;

(2) Claims made or "suits" brought; or

(3) Persons or organizations making claims or bringing "suits".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Any person or organization whom you are required to name as an additional insured on this policy under a written contract or agreement. Such a written contract or agreement must be executed prior to the "bodily injury" or "property damage".

No such person or organization is an insured with respect to any occurrence that takes place after expiration of the written contract or agreement between you and such person or organization.

Location And Description Of Completed Operations

Any location or jobsite where this coverage is required of the insured as part of a written contract.

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

Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".