

RESOLUTION NO. R-23-06

A RESOLUTION RATIFYING A TIME AND MATERIALS CONTRACT WITH KISSICK CONSTRUCTION COMPANY IN THE TOTAL AMOUNT NOT TO EXCEED \$500,000 FOR THE EMERGENCY REPAIR AND REPLACEMENT OF THE 20 INCH TRANSMISSION MAIN AT NORTH BROADWAY AND NORTHWEST ENGLEWOOD ROAD, PROJECT WP2391.

WHEREAS, the City of Gladstone discovered a water main leak on the 20 inch transmission main in the vicinity of North Broadway and Northwest Englewood Road; and

WHEREAS, the existing 20 inch water main is approximately 20 feet deep requiring the assistance of Kissick Construction Company; and

WHEREAS, after numerous attempts to repair the existing 20 inch water main, emergency replacement of approximately 250 linear feet of the main is necessary.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:

THAT, the City Manager of the City of Gladstone, Missouri, is hereby authorized to execute a contract with Kissick Construction Company for the emergency repair and replacement of the 20 inch transmission main at North Broadway and Northwest Englewood Road for a total amount not to exceed \$500,000.

FURTHER, THAT, funds for such purpose are available from the Combined Waterworks and Sewerage System Funds.

INTRODUCED, READ, PASSED, AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 27TH DAY OF FEBRUARY 2023.



Bill Garnos, Mayor

ATTEST:



Kris Keller, City Clerk



Request for Council Action

RES ☒ # R-23-06

BILL ☐ # City Clerk Only

ORD # City Clerk Only

Date: 2/27/2023

Department: Public Works

Meeting Date Requested: 2/27/2023

Public Hearing: Yes ☐ Date: [Click here to enter a date.](#)

Subject: Contract Award, Project WP2391, Emergency Repair and Replacement of the 20 inch Transmission Main at North Broadway and Northwest Englewood Road

Background: During the week of February 13, a leak was reported in the vicinity of N. Broadway and NW Englewood Road. The leak was thought to be coming from either the City's 20 inch transmission main or an 8 inch branch line that serves several customers on the northeast corner of the intersection. The 20 inch ductile iron transmission main was installed in 1966 prior to the reconstruction of NW Englewood Road and is now approximately 20 feet deep. Ductile iron pipe continues to be an issue for the City due to corrosive soils. Kissick Construction Company was asked to assist with the repair due to both the size and depth of the main which required extensive shoring for safety reasons.

Kissick began excavating on February 20 and determined that a 20 inch x 8 inch tapping sleeve and valve installed in 1997 had failed. Even though 20 inch pipe is not a readily available size, Kansas City (KCMO) had the necessary tee in stock. Following is the sequence of events that have occurred over the past week:

- When cutting in the new tee, it was discovered that the 20 inch transmission main was slightly "out of round" due to its depth, requiring oversize gaskets which KCMO also had in stock.
- When the pipe was pressurized, a quarter size hole blew about 2 feet away from the new tee. This hole was repaired with a 20 inch clamp that Gladstone had in stock. This clamp immediately started to leak when the pipe was pressurized again.
- Another cutout was performed to replace the section of pipe with the quarter size hole. When the main was pressurized again, it held for approximately 12 hours before it blew somewhere under NW Englewood Road causing extensive damage to the intersection. All vehicles have been detoured around the intersection since February 25.
- A temporary plug was installed in the new tee on February 25 to restore water to all customers and to shut off the main under NW Englewood Road.

Water service has been restored each night; however, extensive shutdowns have been required through the week in attempt to make the repairs. Over 100 customers, including residents of Englewood Vista, have been impacted. These customers are still under a boil advisory.

It is the recommendation of City staff to replace approximately 250 linear feet of 20 inch ductile iron transmission main with new 24 inch PVC water main in this area. The replacement should start on the

south side of NW Englewood Road where the existing transmission main transitions from 24 inch pre-stressed concrete cylinder pipe to 20 inch ductile iron pipe. The replacement will end at the location of the new 20 inch by 8 inch tee. The proposed pipe will be installed at a more manageable depth of approximately 6 feet under NW Englewood Road for long-term maintenance. Additional pipe replacement north of the existing tee is recommended at a future date, however, this work can be programmed and does not need to be completed as an emergency. The estimated cost of the emergency repair and replacement of the 20 inch transmission main, including restoration of the intersection, is \$500,000.

Budget Discussion: Funds for the emergency repair are available from CWSS.

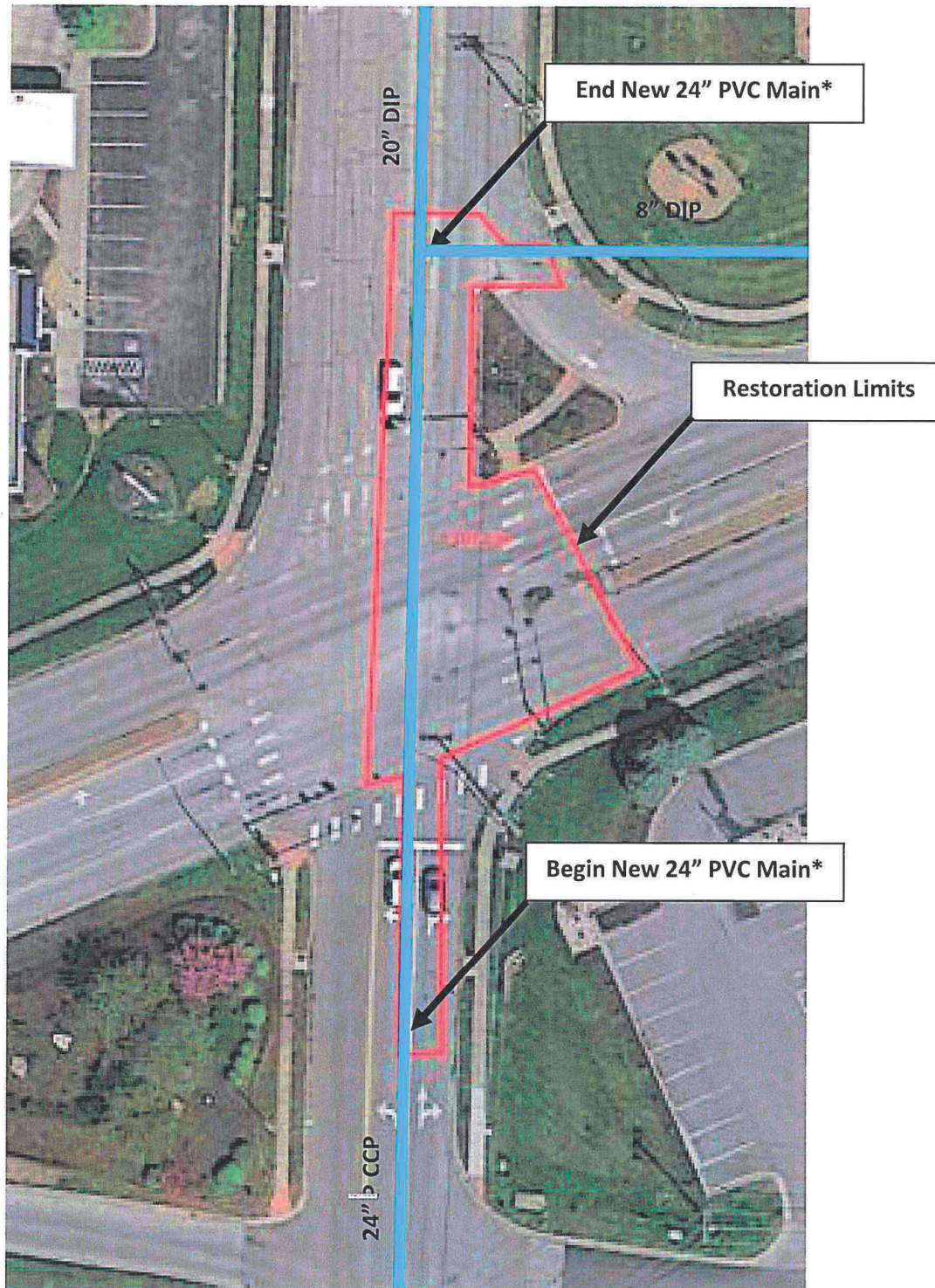
Public/Board/Staff Input: It is the recommendation of City staff to award an emergency time and materials contract to Kissick Construction in an amount not to exceed \$500,000 for the emergency repair and replacement of the 20 inch transmission main at N. Broadway and NW Englewood Road.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Timothy A. Nebergall
Department Director/Administrator

CW
City Attorney

SW
City Manager



20" Transmission Main Emergency Repair & Replacement

*Existing 20" Main to Abandoned In-Place

20" Transmission Main Emergency Repair and Replacement Contract

THIS AGREEMENT, made and entered into this 17th day of February, 2023, (the "Effective Date") by Kissick Construction Company (hereinafter "Contractor") and the City of Gladstone, Missouri (hereinafter "City").

WHEREAS, the City desires to engage the Contractor for the emergency repair and replacement of the 20" transmission main at N. Broadway and NW Englewood Road.

NOW, THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreement herein contained, the parties to these presents have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, or themselves, or its, his or their successors and assigns, or its, his or their executors and administrators, as follows:

SECTION 1. Term of Agreement. This Agreement shall begin on February 20, 2023 which is the date that work started. Time is of the essence of this Contract. The Contractor agrees to commence work immediately upon execution of this Contract.

SECTION 2. Scope of Services. The Contractor shall make the necessary repairs to the existing 20" water main including the replacement of approximately 250 linear feet of 20" ductile iron pipe with 24" PVC including related appurtenances and restoration as summarized in Appendix A. It is acknowledged by both Parties that the exact scope of repairs will be defined in the field as work progresses and that the costs provided are Rough Order of Magnitude (ROM) for budgeting purposes only.

The Contractor will hire, train, supervise, direct the work of, and discharge all personnel engaged by them to perform the Project Services. The Contractor is solely responsible for payment of wages, salaries, fringe benefits and other compensation of, or claimed by, the Contractor's personnel in the performance of the Project Services, including, without limitation, contributions to any employee benefit plans and all payroll taxes.

SECTION 3. Payment. The Owner hereby agrees to pay the Contractor for the work performed on a time and materials basis to a maximum of \$500,000. The Contractor will notify the Owner in advance if the costs may exceed this amount. At that point, the Owner shall provide written direction on how to proceed.

SECTION 4. Prevailing Wages. The Contractor shall comply with all laws regarding the payment of prevailing wages to employees of the Contractor or subcontractor, if applicable. Contractor shall indemnify the City for any damage resulting to the City from failure of either the Contractor or any subcontractor to pay prevailing wages pursuant to applicable laws.

SECTION 5. Construction Safety Training.

- A. The Contractor shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program as required by Section 292.675, RSMo.
- B. If any on-site employees have not previously completed a construction safety program, Contractor shall require those on-site employees to complete a construction safety program within sixty (60) days after the date work on the project commences.
- C. The Contractor acknowledges and agrees that any of Contractor's employees found on the project site without documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days or will be subject to removal from the project.
- D. The Contractor shall require all of its subcontractors to comply with the requirements of this Section and

Section 292.675, RSMo.

SECTION 6. Notice of Penalty Provisions

- A. Pursuant to Section 292.675, RSMo, Contractor shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500), plus one hundred dollars (\$100) for each on-site employee employed by Contractor or its subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Section 5 above.
- B. The penalty described in Subsection A of this Section shall not begin to accrue until the time periods described in Sections 5B and 5C above have elapsed.
- C. Violations of Section 5 above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

SECTION 7. Unauthorized Aliens. Pursuant to 285.530(1), RSMo., by its sworn affidavit in substantially the form attached hereto as Exhibit B and incorporated herein, Contractor hereby affirms its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Furthermore, Contractor affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

SECTION 8. Insurance Requirements.

- A. General Provisions. Contractor shall file (by the Effective Date) with the City evidence of liability insurance that is consistent with the amounts set forth below, and shall maintain such insurance until this contract is terminated.
- B. Limits and Coverage.
 - 1. Commercial General Liability Insurance: \$3,258,368 million CSL for bodily injury and property damage per occurrence or sovereign immunity limits.
 - a. The following endorsements shall attach to the policy:
 - (i) The policy shall cover personal injury as well as bodily injury.
 - (ii) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
 - (iii) Broad form property damage liability shall be afforded.
 - (iv) The City shall be listed as an additional insured.
- C. Workers' Compensation Insurance: The Contractor shall obtain and maintain Workers' Compensation Insurance for a limit of \$500,000 for all of their respective employees, and in case any work is sublet, the Contractor shall require any subcontractors to provide Workers' Compensation insurance for all subcontractors' employees, in compliance with Missouri law. The Contractor hereby indemnifies the City for any damage resulting to it from failure of either the Contractor or any contractor or subcontractor to obtain and maintain such insurance.
- D. Commercial Automobile Liability Insurance: Contractor shall obtain and keep in force commercial automobile liability insurance with a \$3,258,368 million CSL covering scheduled automobiles. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with this Agreement, by the Contractor or subcontractor. The minimum limits for commercial automobile liability

insurance may be satisfied by maintaining excess/umbrella liability coverage in an amount sufficient to meet the minimum limits.

SECTION 9. Labor and Materials Payment Bond

- A. Labor and Materials Payment Bond. The Contractor shall furnish a labor and materials payment bond in a form acceptable to the City Attorney, in an amount equal to 100% of the total cost of completing the Work, as determined by the City, conditioned upon the payment for all labor and materials suppliers. Copies of certifications of such bond shall be delivered to the City prior to the commencement of construction.

SECTION 10. General Conditions

- A. Compliance with Laws and Safety Regulations. Contractor shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the Project Services. Contractor shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement. In the performance of the Project Services, Contractor shall comply with the applicable provisions of the Federal Occupational Safety and Health Act, as well as any other pertinent federal, state and/or local safety or environmental laws or regulations.

Contractor shall obtain and maintain an occupational or business license with the City, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor.

- B. Contractor's responsibility for subcontractors. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City or between any subcontractors.
- C. General Independent Contractor Clause. This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri Revenue and Taxation laws, Missouri Workers' Compensation and Unemployment Insurance laws.
- D. Liquidated Damages. N.A.
- E. Termination. The City shall have the right at anytime by written notice to Contractor to terminate and cancel this contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

The City reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under

the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract.

- F. City's Right to Proceed. In the event this contract is terminated pursuant to Paragraph E above, then the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

G. Liability.

1. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the Contractor under this contract.
2. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.
3. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.
4. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.
5. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.
6. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this agreement.

- H. Conflict of Interest. In accepting this contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Gladstone, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of Section 105.450 et seq., RSMo., shall not be violated.

- I. Assignment. The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of

such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement.

J. Nondiscrimination. The Contractor agrees in the performance of this contract not to discriminate on the grounds or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

K. Nonresident/Foreign Contractors. The Contractor shall procure and maintain during the life of this contract:

1. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570, RSMo.
2. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230, RSMo.

L. Notices. Any notice, approval or other communication between the City and the Contractor pursuant to this Agreement shall be made in writing and shall be deemed to be effective upon receipt or refusal of service and may be given by personal delivery, courier, reliable overnight delivery or deposit in the United States mail, postage prepaid, registered or certified, return receipt requested, to the address specified below or to such other address as may later be designated by written notice of the other party:

The City: City of Gladstone, Missouri
Attn: Timothy A. Nebergall
4000 NE 76th Street
Gladstone, Missouri 64119

Contractor: Kissick Construction Company
Attn: Matt Rothermel
8131 Indiana Avenue
Kansas City, MO 64132

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and the Contractor.

M. Entire Agreement. This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

N. Jurisdiction. This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Clay County, Missouri.

IN WITNESS WHEREOF, the Contractor and the City have executed this Agreement as of the Effective Date.

KISSICK CONSTRUCTION COMPANY:

By: _____

Name: Matt Rothermel

Title: Vice President of Operations

CITY OF GLADSTONE, MISSOURI:

By: _____

Name: Scott Wingerson

Title: City Manager

Tim Nebergall

From: Matt Rothermel <mrothermel@kissickco.com>
Sent: Saturday, February 25, 2023 12:59 PM
To: Tim Nebergall; Steve Querry
Cc: Pete Browne; John Dougherty; Kat Hendricks
Subject: 24" Main at NW Englewood and N Broadway - ROM
Attachments: ROM Pricing.pdf

CAUTION: This email contains hyperlinks. Please be cautious before clicking on links from unknown senders.

Tim/Steve,

Attached is our ROM pricing for the repairs are NW Englewood and N Broadway. I have included a scaled google earth sheet so you can see the area of restoration I have assumed. I have also included a rough sketch of the pipe replacement plan.

The ROM pricing is broken down as follows:

1. ROM for all work performed from the beginning through the end of today 2/25.
2. ROM pricing for the new 24" main install.
3. ROM Pricing for restorations.

Scope/Pricing Assumptions.

- A. Gladstone is providing the new 24" pipe, Kissick will provide all fittings and other accessories. The new line will be installed at a higher elevation across Englewood. Exact depth is to be best fit after we verify the other existing utilities.
- B. Excavated material to be hauled off and all excavations to be backfilled with crushed concrete AB3 full depth.
- C. All paving replaced is assumed to be 12" thick concrete to the surface. Area of replacement is shown on attached pdf.
- D. A new ARV is to be installed in a new 5' diameter precast manhole.
- E. Pavers at the island will be replaced with concrete.
- F. We have included having a sub repair striping
- G. We have included having the traffic loop sensors replaced
- H. Overtime is included and we have assumed an accelerated timeline.

Please feel free to let John or I know if you have any questions.

Thanks,



Matt Rothermel

Vice President of Operations

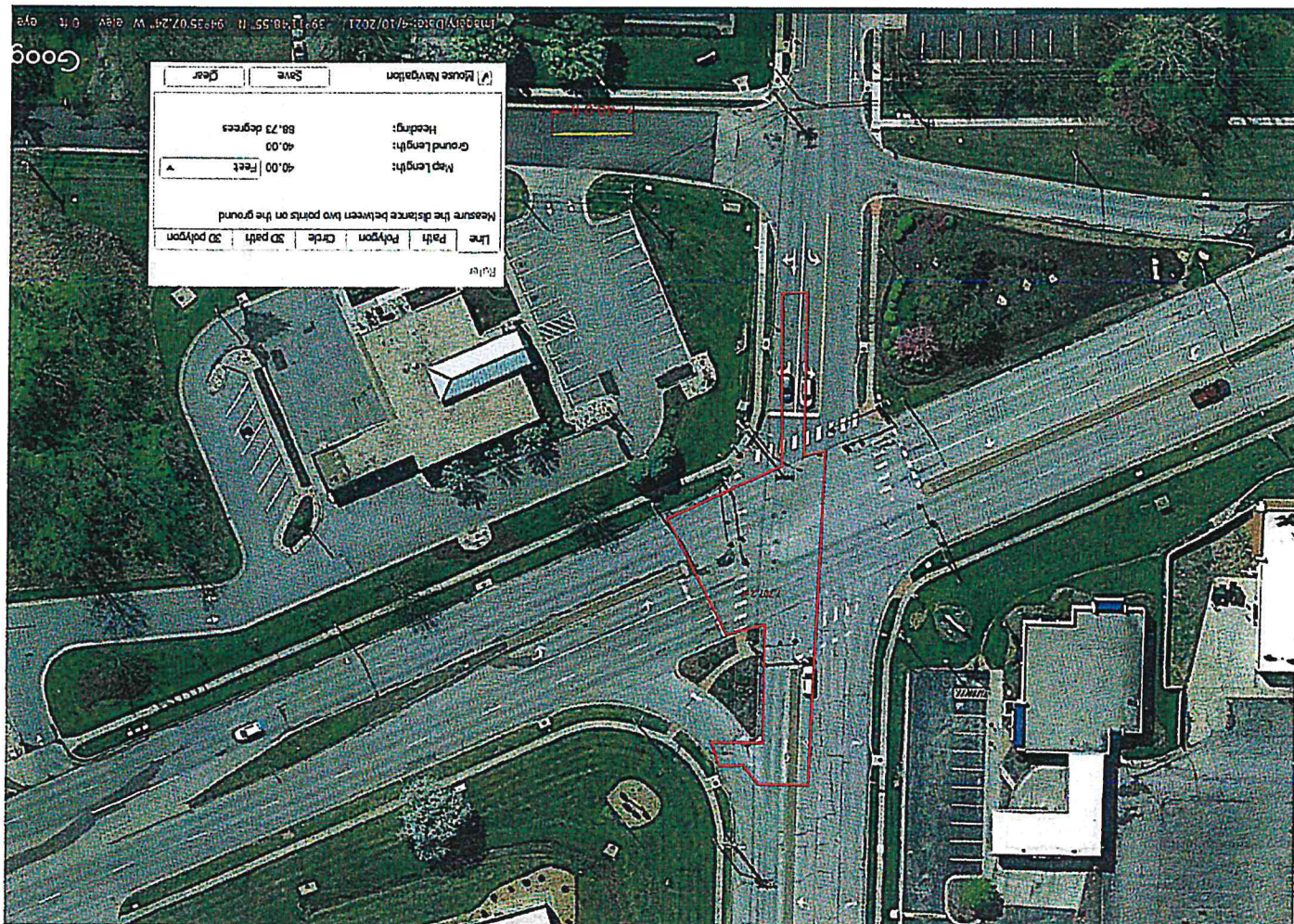
P: (816) 363-5530 | **F:** (816) 523-1557 | **C:** (816) 564-3115

Kissick Construction Company

8131 Indiana Avenue Kansas City, MO 64132

www.kissickco.com

EXHIBIT A



BID PROPOSAL

Biditem	Description	Quantity	Units	Unit Price	Bid Total
1	ROM on 2/20-2/25	1.000	LS		109,948.91
3	Replace Main Across Englewood	250.000	LF		193,077.50
5	Restorations	6,500.000	SF		146,770.00
	Bid Total				\$449,796.41

EXHIBIT B

CITY OF GLADSTONE, MISSOURI
WORK AUTHORIZATION AFFIDAVIT
PURSUANT TO 285.530, RSMo
(FOR ALL CONTRACTS IN EXCESS OF \$5,000.00)

STATE OF MISSOURI)
COUNTY OF JACKSON) ss.

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind or character for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge, (a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or (b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared Pete B. Browne, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is Pete B. Browne and I am currently the President of Kissick Construction Co., Inc. (hereinafter "Contractor"), whose business address is 8131 Indiana Ave., KCMO 64132, and I am authorized to make this Affidavit.

2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the 20" Transmission Main Emergency Repair & Replacement Project contracted between Contractor and the City of Gladstone, Missouri.

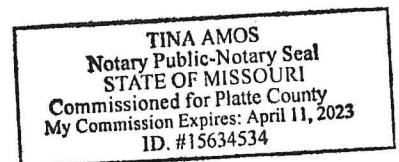
4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.

Pete B. Browne
Affiant

Pete B. Browne, President
Printed Name

Subscribed and sworn to before me this 7th day of March, 2023.

Tina Amos
Notary Public





UNCOMMONLY INDEPENDENT

March 2, 2023

City of Gladstone, Missouri
4000 NE 76th Street
Gladstone, MO 64119

Re: Kissick Construction Co., Inc.
Bond # 674220440
Contract Amount: \$500,000.00
20" Transmission Main Emergency Repair and Replacement Project

To Whom It May Concern:

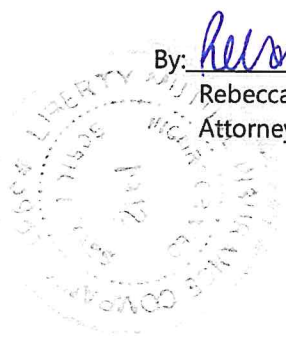
This letter will serve as your authority to date the Bonds and the Powers of Attorney on the above captioned project.

Very truly yours,

LIBERTY MUTUAL INSURANCE COMPANY

By: 

Rebecca S. Leal
Attorney-in-Fact



Bond No. 674220440

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:

(Name, legal status and address)

Kissick Construction Co., Inc.
8131 Indiana
Kansas City, MO 64132

SURETY:

(Name, legal status and principal place of business)

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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

OWNER:

(Name, legal status and address)

City of Gladstone, Missouri
4000 NE 76th Street
Gladstone, MO 64119

CONSTRUCTION CONTRACT

Date:

Amount: \$ 500,000.00 Five Hundred Thousand Dollars and 00/100

Description:

(Name and location)

20" Transmission Main Emergency Repair and Replacement Contract

BOND

Date: 02/17/2023

(Not earlier than Construction Contract Date)

Amount: \$ 500,000.00 Five Hundred Thousand Dollars and 00/100

Modifications to this Bond: ☒ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Kissick Construction Co., Inc.

Signature: 

Name and Title: PETE B. BROWNE
PRESIDENT

SURETY

Company: (Corporate Seal)

Liberty Mutual Insurance Company

Signature: 

Name and Title: Rebecca S. Leal
Attorney-in-Fact

Surety Phone No. 617-357-9500

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Founders Series of Lockton Companies, LLC
444 W. 47th Street, Suite 900
Kansas City, MO 64112-1906
816-960-9000

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

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

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

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

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

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

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 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. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

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

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

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

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: _____
Address _____

Signature: _____
Name and Title: _____
Address _____



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8206414-674009**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, C. Stephens Griggs; Charissa D. Lecuyer; Charles R. Teter, III; Christy M. Braile; Debra J. Scarborough; Erin C. Lavin; Evan D. Sizemore; Hillary D. Shepard; Jeffrey C. Carey; Kellie A. Meyer; Lauren Scott; Mary T. Flanigan; Patrick T. Pribyl; Rebecca S. Leal; Tahitia M. Fry; Veronica Lawver

all of the city of Kansas City state of MO each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 5th day of October, 2021.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By:

David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 5th day of October, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this _____ day of _____, _____.



By:

Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.



CERTIFICATE OF LIABILITY INSURANCE

8/17/2023

DATE (MM/DD/YYYY)

3/2/2023

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

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

PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000 kcasu@lockton.com	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
INSURED 3000 KISSICK CONSTRUCTION CO., INC. KB EQUIPMENT, LLC 8131 INDIANA KANSAS CITY MO 64132	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Travelers Casualty Ins Co of America		19046
	INSURER B: The Travelers Indemnity Company		25658
	INSURER C: Travelers Property Casualty Company of America		25674
	INSURER D: St. Paul Surplus Lines Insurance Company		30481
	INSURER E:		
INSURER F:			

COVERAGES * **CERTIFICATE NUMBER:** 19378263 **REVISION NUMBER:** XXXXXXXX

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
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL LIAB. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N	VTC2K-CO-2791C198-IND-22	8/17/2022	8/17/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
C	<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	N	VTC2J-CAP-2791C205-TIL-22	8/17/2022	8/17/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	N	CUP-2793C420-22-25	8/17/2022	8/17/2023	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000 \$ XXXXXXXX
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 N	N/A	UB-2N155738-22-25-D	8/17/2022	8/17/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	<input checked="" type="checkbox"/> RENTED/LEASED EQUIPMENT;	N	N	QT-630-2L111960-TIL-22	8/17/2022	8/17/2023	L/R: \$2.5M LIMIT, \$5K DED; \$10K THEFT DED. ACV SPECIAL FORM: \$5,000,000 LIMIT
D	<input checked="" type="checkbox"/> POLLUTION LIAB.			ZCE-61N43362	8/17/2021	8/17/2023	

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

RE: KISSICK JOB # 23-002-02. GLADSTONE 20" TRANSMISSION MAIN, EMERGENCY REPAIR AND REPLACEMENT, N BROADWAY & NW ENGLEWOOD RD, GLADSTONE, MO. CERTIFICATE HOLDER IS AN ADDITIONAL INSURED ON GENERAL LIABILITY, AUTO LIABILITY AND UMBRELLA IF REQUIRED BY WRITTEN CONTRACT AND SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY.

CERTIFICATE HOLDER**CANCELLATION** See Attachment**19378263**THE CITY OF GLADSTONE, MISSOURI
4000 NE 76TH STREET
GLADSTONE MO 64119

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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COMMERCIAL GENERAL LIABILITY

this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.

b. The insurance provided to such additional insured does not apply to:

(1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

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

(2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

c. The additional insured must comply with the following duties:

(1) Give us written notice as soon as practicable of an "occurrence" or an offense which may

result in a claim. To the extent possible, such notice should include:

- (a)** How, when and where the "occurrence" for their offense took place;
- (b)** The names and addresses of any injured persons and witnesses; and
- (c)** The nature and location of any injury or damage arising out of the "occurrence" or offense.

(2) If a claim is made or "suit" is brought against the additional insured:

- (a)** Immediately record the specifics of the claim or "suit" and the date received; and
- (b)** Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.

(3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

(4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.