# PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF HELENA, MONTANA, a municipal corporation organized and existing under the laws of the State of Montana, 316 North Park Avenue, Helena, Montana 59623, hereinafter referred to as "City," and KLJ, Inc., 2969 Airport Road Suite 1B, Helena, MT 59601, hereinafter referred to as "Consultant."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

- 1. <u>Purpose</u>: City agrees to hire Consultant as an independent contractor to perform for City services described in the Scope of Services attached hereto as Exhibit "A" and by this reference made a part hereof.
- 2. Effective Date: This Agreement is effective upon execution by both parties, and the work items set forth in the Scope of Services will be completed no later than December 31, 2016. Any extension of the term of this Agreement must be set forth in writing and signed by both parties.
- 3. <u>Scope of Work</u>: Consultant will perform the work and provide the services in accordance with the requirements of the Scope of Services.
- 4. Payment: City agrees to pay Consultant an amount not to exceed Seventy-Four Thousand Eight-Hundred Dollars (\$74,800.00) for services performed pursuant to the Scope of Services. Any alteration or deviation from the described work that involves extra costs will be performed by Consultant after written request by the City, and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.
- 5. <u>Independent Contractor Status</u>: The parties agree that Consultant is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Consultant is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Consultant is not authorized to represent the City or otherwise bind the City in any dealings between Consultant and any third parties.

Consultant shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Consultant shall maintain workers' compensation coverage for all members and employees of Consultant's business, except for those members who are exempted by law.

Consultant shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana or (2) proof of exemption from workers' compensation granted by law for independent contractors.

6. <u>Indemnity and Insurance</u>: For other than professional services rendered, to the fullest extent permitted by law, Consultant agrees to defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Consultant or Consultant's agents or employees.

For the professional services rendered, to the fullest extent permitted by law, Consultant agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or willful misconduct of the Consultant or Consultant's agents or employees.

For this purpose, Consultant shall provide City with proof of Consultant's liability insurance issued by a reliable company or companies for personal injury and property damage in amounts not less than as follows:

- Workers' Compensation statutory
- Commercial General Liability \$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Automobile Liability \$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate
- Professional Liability \$1,000,000 per claim; \$2,000,000 annual aggregate

The City shall be included or named as an additional or named insured on the Commercial General and Automobile Liability policies. The insurance must be in a form suitable to City.

- 7. <u>Professional Service</u>: Consultant agrees that all services and work performed hereunder will be accomplished in a professional manner.
- 8. <u>Compliance with Laws</u>: Consultant agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Consultant agrees to purchase a City business license.
- 9. <u>Nondiscrimination</u>: Consultant agrees that all hiring by Consultant of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, gender identity, sexual orientation, or national origin.
- 10. <u>Default and Termination</u>: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any

other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

- 11. <u>Modification and Assignability</u>: This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Consultant may not subcontract or assign Consultant's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.
- 12. Ownership and Publication of Materials: All reports, information, data, and other materials prepared by the Consultant pursuant to this Agreement are the property of the City. The City has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any re-use without written verification or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Consultant. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the City.
- 13. <u>Liaison</u>: City's designated liaison with Consultant is David Knoepke, P.E. and Consultant's designated liaison with City is Brad Koon.
- 14. <u>Applicability</u>: This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

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By	By Bradly
Ronald J. Alles, City Manager	Date 10/19/
	Print Name
Date	Print Title_H
APPROVED AS TO FORM:	
By Ibonas / / a	

CITY OF HELENA MONTANA

Thomas J. Jodoin, City Attorney

Sy Bradley J. Koon
Date 10/19/12015
rint Name Bradley J. Koon

# Exhibit A

2969 Airport Road Suite 18 PO Box 1567 Helena, MT 59624-1567 406 449 7764 kljeng.com October 5, 2015

David Knoepke City of Helena City-County Building, Room 410 316 N. Park Avenue Helena, MT 59623



RE: Helena Quiet Zone – Phase II Scope of Services
Including Bidding of Wayside Horns at National Avenue and Roberts Street

#### Dear David:

A proposal to provide Phase II design services for the Helena Railroad Quiet Zone Project was submitted to you on July 13, 2015. As requested in your email dated September 30, 2015 and in our phone conversation today, please reference the attached proposed Phase II Scope of Services, modified to include wayside horns at Roberts Street and National Avenue as alternatives in the bid package. Phase I of the project generally included identification of the quiet zone limits, facilitation of a diagnostic review, submittal of the Notice of Intent (NOI), and project coordination/management services. Phase II of the project will generally include facilitation of the remainder of the quiet zone process, and design and construction engineering for installation of the proposed Supplemental Safety Measures (SSM's). Design and construction engineering will also be provided for curb and gutter at the Montana and Benton Avenue Crossings, and pedestrian crossing infrastructure and warning lights at the Benton Avenue Crossing.

Our estimated proposed fee for completion of Phase II services is broken down as follows. Time for construction observation services has been included as 16 hours per week for a period of 2 months:

•	Design and Bidding and Design Review Coordination,	
	Wayside Horn Coordination =	\$42,500
•	Construction Administration, Staking, and Observation =	\$22,000
•	Ouiet Zone Establishment and Communications =	\$10,300
	Total =	\$74,800

Similar to Phase I, the time required for completion of phase II will be somewhat dependent on input and requirements of the agencies involved. We therefore propose a services agreement based on time and materials not to exceed.

We look forward to working with the City to complete this project. Please call me at (406)449-7764 if you have any questions. Thank You.

Sincerely, KLJ, Inc.

Bradley Koon Brad Koon

Encl: Helena Quiet Zone Phase II - Proposed Scope of Services

NATIONAL PERSPECTIVE REGIONAL EXPERTISE TRUSTED ADVISOR



# City of Helena Quiet Zone – Phase II Engineer Scope of Services

# FINAL DESIGN AND BIDDING/NEGOTIATION PHASE:

- 1. Request utility locate and obtain topographic survey of existing infrastructure at Carter Drive, Montana Avenue, Benton Avenue, and Joslyn Street.
- 2. Prepare design plans, technical specifications, and bidding documents for the proposed improvements at Carter Drive, Montana Avenue, Benton Avenue, and Joslyn Street. Montana Department of Transportation (MDT) design standards will be used for the design. The proposed improvements include the following at each crossing:
  - a. Carter Drive:
    - Center Median 4' Wide cast-in-place non mountable curb along with required signage and pavement markings
    - Street Lighting Meeting MDT requirements.
    - Modify the alignment of the existing MRL access road

#### b. Roberts Street

- Wayside Horns
  - o Installation of wayside horns will be included as an alternate bid item in the project documents.
  - Information will be included in the project specifications, generally requiring the contractor to complete the following:
    - a. Schedule and coordinate a Diagnostic Team Review for the potential installation of wayside horns. The purpose of the Diagnostic Team Review will be to discuss placement of the wayside horns, quiet zone indicators, and power service for the wayside horn system with the stakeholders.
    - b. Design the wayside horn installation as identified in the diagnostic review; including placement, quiet zone indicators, and power service for the wayside horn system. Submit design to stakeholders for review and approval.
    - c. Provide and install wayside horn equipment.
  - o Engineer will attend the Diagnostic Team Review.

#### c. Montana Avenue:

- Center Median 4' Wide cast-in-place non mountable curb along with required signage and pavement markings
- Street Lighting Meeting MDT requirements.
- Curb and Gutter extending the length of the proposed center median on both sides of the street and both sides of the crossing.
- Pavement widening as necessary



#### d. National Avenue:

- Wayside Horns
  - Installation of wayside horns will be included as an alternate bid item in the project documents.
  - Information will be included in the project specifications, generally requiring the contractor to complete the following:
    - a. Schedule and coordinate a Diagnostic Team Review for the potential installation of wayside horns. The purpose of the Diagnostic Team Review will be to discuss placement of the wayside horns, quiet zone indicators, and power service for the wayside horn system with the stakeholders.
    - b. Design the wayside horn installation as identified in the diagnostic review; including placement, quiet zone indicators, and power service for the wayside horn system. Submit design to stakeholders for review and approval.
    - c. Provide and install wayside horn equipment.
  - o Engineer will attend the Diagnostic Team Review.

#### e. Benton Avenue:

- Center Median 4' Wide cast-in-place non mountable curb along with required signage and pavement markings
- Street Lighting Meeting MDT requirements.
- Curb and Gutter as shown in the attached Exhibit A.
- Pedestrian Crossing Infrastructure
- Pedestrian Crossing Warning Lights

#### f. Joslyn Street:

- Center Median 4' Wide cast-in-place non mountable curb along with required signage and pavement markings
- Street Lighting Meeting MDT requirements.
- 3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer.
- 4. Prepare and furnish Bidding Documents for construction of the proposed infrastructure at each crossing for review and approval by the City of Helena, Montana Department of Transportation, Montana Rail Link, Federal Railroad Administration, and BNSF.
  - a. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established is 1.



- 5. Administer the bidding process for construction of the improvements including the following:
  - a. Assist Owner in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
  - b. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
  - c. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
  - d. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.



### **CONSTRUCTION PHASE:**

- 1. General Administration of Construction Contract. Consult with Owner and act as Owner's representative for construction of the proposed infrastructure at the Carter Drive, Montana Avenue, Benton Avenue, and Joslyn Street crossings.
- 2. Resident Project Representative (RPR). Provide the services of an RPR at the Site of the Specific Project to assist the Engineer and to provide more extensive observation of Contractor's work. RPR services are described as follows:
  - a. Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. Estimate of fee for RPR services is based on providing representation 16 hours per week for a period of 2 months.
- 3. Pre-Construction Conference. Participate in a pre-construction conference prior to commencement of Work at the Site.
- 4. Baselines and Benchmarks. As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed. Engineer will provide construction staking one time as part of this project.
- 5. Engineer Visits to Site and Observation of Construction. In connection with observations of Work in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work.
- 6. Clarifications and Interpretations; Field Orders. Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work.
- 7. Change Orders and Work Change Directives. Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
- 8. Shop Drawings and Samples. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit.
- 9. Substitutes and "or-equal." Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.



- 10. Inspections and Tests. Require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents.
- 11. Applications for Payment. Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that Engineer recommends Contractor be paid.
- 12. Substantial Completion. After notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of Owner, Engineer considers the Work Substantially Complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
- 13. Final Notice of Acceptability of the Work. Conduct a final payment inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor.
- 14. Together with Owner, visit the Specific Project to observe any apparent defects in the Work, assist the Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
- 15. In company with Owner or Owner's representative, provide an inspection of the Specific Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

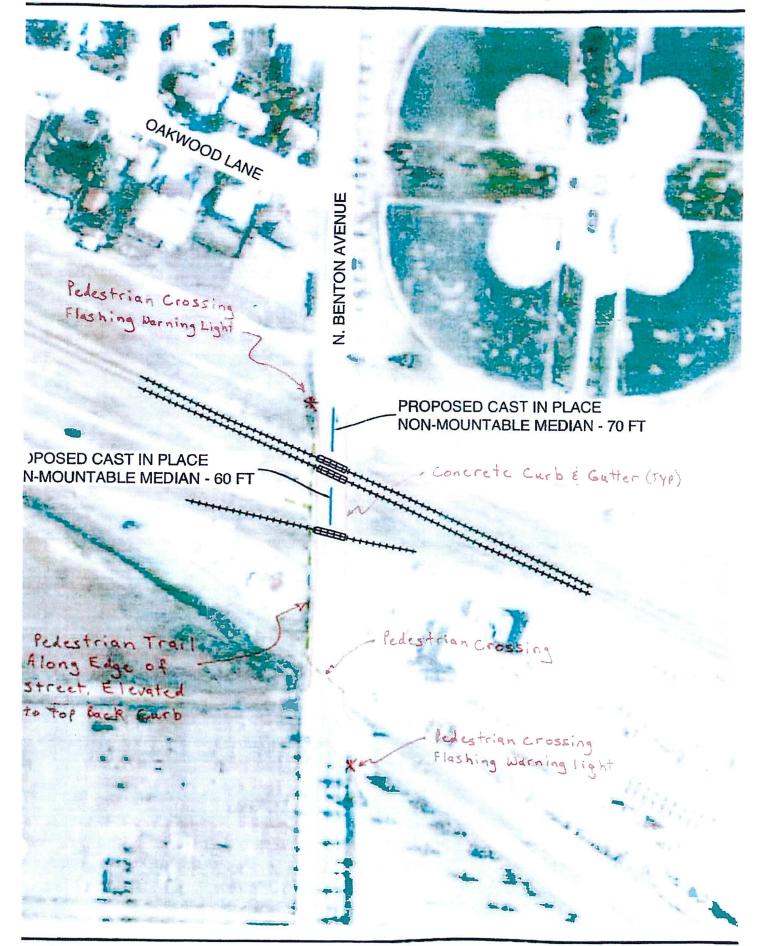


# **QUIET ZONE ESTABLISHMENT:**

- 1. Upon completion of the improvements, update the National Grade Crossing Inventory to reflect the current conditions at each public crossing within the quiet zone.
- 2. Upon completion of construction of the improvements, KLJ will prepare a Notice of Quiet Zone Establishment. The purpose of the Notice of Quiet Zone Establishment is to provide a means for the City to formally advise affected parties that a quiet zone is being established. The Notice will be provided to the following entities:
  - a. Montana Rail Link
  - b. BNSF Railway
  - c. Montana Department of Transportation (MDT)
  - d. Landowners having control over any private crossings within the quiet zone.
  - e. State Agency responsible for grade crossing safety
  - f. The FRA Associate Administrator

The Notice of Quiet Zone Establishment will include the following:

- a. A list of each public highway-rail grade crossing, private highway-rail grade crossing, and pedestrian crossing within the quiet zone.
- b. A specific reference to the regulatory provision that provides the basis for establishment.
- c. A statement affirming the state agency responsible for crossing safety and railroad companies were provided an opportunity to participate in the diagnostic team review.
- d. A list of recommendations made by the diagnostic team.
- e. A statement of the time period within which the restrictions on the routine sounding of the locomotive horn will be imposed.
- f. An accurate and complete grade crossing inventory form for each crossing.
- g. A statement affirming that the Notice of Intent was provided in accordance with the rule.
- h. The name and title of the person responsible for monitoring compliance with the requirements of the rule.
- i. A list of the names and addresses of each party that is receiving a copy of the Notice of Quiet Zone Establishment.
- j. A statement signed by the chief executive officer of the City certifying that the information submitted is accurate and complete.
- 3. Address questions and comments that are presented as part of the Notice of Quiet Zone Establishment.



Client#: 1108320 KADRMLEE

### ACORD.

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/10/2015

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 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 USI Ins Svcs CL Fargo 1020 36th St. S, Suite C	CONTACT Martin Fisher  PHONE (A/C, No, Ext): 701.526.2801  E-Mall ADDRESS:    CONTACT Martin Fisher   FAX (A/C, No): 701.526.2818					
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701 526-2800	INSURER(S) AFFORDING COVERAGE	NAIC#				
INSURED  Kadrmas, Lee and Jackson Inc. PO Box 4130	INSURER A: Phoenix Insurance Company	25623				
	INSURER B: Travelers Indemnity Company	25658				
	INSURER C: Lexington Insurance Company	19437				
Bismarck, ND 58502	INSURER D:					
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	INSURER F:					

**COVERAGES CERTIFICATE NUMBER:** REVISION NUMBER: THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. ADDL SUBR TYPE OF INSURANCE POLICY EFF POLICY EXP (MM/DD/YYYY) POLICY NUMBER LIMITS GENERAL LIABILITY A 6801G791656 09/13/2015 09/13/2016 EACH OCCURRENCE \$1,000,000 X COMMERCIAL GENERAL LIABILITY DAMAGE TO RENTED PREMISES (Ea occurre \$100,000 CLAIMS-MADE X OCCUR MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 \$2,000,000 GENERAL AGGREGATE GEN'L AGGREGATE LIMIT APPLIES PER: PRODUCTS - COMP/OP AGG \$2,000,000 POLICY X PRO-AUTOMOBILE LIABILITY COMBINED SINGLE LIMIT (Ea accident) В 8101G857035 09/13/2015 09/13/2016 s1,000,000 X ANY AUTO BODILY INJURY (Per person) ALL OWNED AUTOS SCHEDULED **BODILY INJURY (Per accident)** AUTOS NON-OWNED PROPERTY DAMAGE (Per accident) HIRED AUTOS AUTOS \$ X UMBRELLA LIAB 09/13/2015 09/13/2016 EACH OCCURRENCE OCCUR CUP3G289637 \$10,000,000 **EXCESS LIAB** CLAIMS-MADE AGGREGATE s10,000,000 DED X RETENTION \$10000 \$ WORKERS COMPENSATION WC STATU-TORY LIMITS AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? E.L. EACH ACCIDENT (Mandatory in NH) E.L. DISEASE - EA EMPLOYEE If yes, describe under DESCRIPTION OF OPERATIONS below E.L. DISEASE - POLICY LIMIT \$

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

City of Helena, Montana is listed as an additional insured under the general liability (includes ongoing operations and products-completed operations) and under the automobile only when required by written contract.

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CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE
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# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY) 10/19/2015

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