

**PERFORMANCE BOND**

Ellsworth Construction OKC, LLC  
**WHEREAS**, Dba A-Tech Paving, hereinafter "Contractor," entered into a Construction Contract with the Trust on the 24th day of February, 2022, for the erection and construction of certain works and improvement described below all in compliance with the plans and specifications contained in the Project Manual for the Project on file in the Office of the City Clerk, and said Construction Contract is hereby made a part and parcel of this Performance Bond as if literally written herein:

Facility Name: MIKE MONRONEY AERONAUTICAL CENTER  
 Facility Location: Oklahoma City, OK  
 Project Name: DUKE AVE. ASPHALT STREET REPAIR & REPLACEMENT  
 Project Number: OCAT WRWA 2209

**WHEREAS**, Contractor, and Mid Continent Casualty Company, as Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns unto the Oklahoma City Airport Trust, hereinafter called "Trust," the City of Oklahoma City, hereinafter called "City", and any other public trust of the City of Oklahoma City that may be participating in the below described project, hereinafter called "Participating Trust", in the full and just sum of <sup>Two Hundred Seventy Thousand</sup> ~~Seven Hundred Fifty One and 75/100~~ Dollars (\$ 270,751.75 ) such sum being equal to 100% of the Construction Contract price for the performance and making of the following Trust owned work and improvement.

**NOW, THEREFORE**, if the Contractor shall fully and faithfully execute the work and perform said Contract according to its terms, conditions, and covenants, and in exact accordance with the Construction Contract and Project Manual for the project referenced above including any applicable written change orders and modifications approved by the Trust, then the Contractor and Surety shall have no obligation under this Performance Bond unless specified herein.

**IT IS FURTHER EXPRESSLY AGREED AND UNDERSTOOD** by the parties hereto in furtherance of the obligations set forth in this bond that:

1. If there is no default by the Trust or the City, the Surety's obligation under this Performance Bond shall arise after:
  - A. The Trust, by and through the Director or Airports, hereinafter "Director", provides notice to the Contractor and the Surety that the Trust is considering declaring a contractor in default. The notice shall indicate whether the Trust is requesting a conference among the Trust through the Director, Contractor and Surety to discuss the Contractor's performance. If the Trust does not request a conference, the Surety may, within five (5) business days after receipt of the Trust's notice, request such a conference. If the Surety timely requests a conference, the Director shall attend. Unless otherwise agreed by the Director, any conference requested on this section shall be held within ten (10) business days of the Surety's receipt of the Trust's notice. If the Trust, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Trust's right, if any, subsequently to declare a Contractor in Default;
  - B. The Trust declares a Contractor in Default, terminates the Construction Contract and notifies the Surety; and
  - C. The Trust agrees to hold in escrow the balance of the Contract amount until Final Acceptance of the work in accordance with the terms of the Construction Contract for payment to the Surety or a contractor selected to perform the Construction Contract.
  - D. Failure of the Trust to comply with the notice requirement of paragraph 1(a) shall not constitute a failure to comply with a condition precedent to the Surety's obligations or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
2. When the Trust has satisfied the conditions of Paragraph 1, the Surety shall promptly and at the Surety's expense take one of the following actions with the written consent of the Trust by and through the Director of Airports:

- A. Arrange for the Contractor to perform and to complete the Construction Contract;
  - B. Undertake to perform and to complete the Construction Contract itself, through its agents or independent contractors for performance and completion of the Construction Contract secured with performance and payment bonds executed by a qualified surety equivalent to the bonds used on the Construction Contract and to pay to the Trust any amount of damages as described in Paragraph 3 in excess of the Balance of the Construction Contract Amount incurred by the Trust as a result of Contractor Default; or
  - C. Waive its right to perform and complete the Construction Contract under paragraph 2(a) and 2(b) and within thirty (30) days:
    - 1) Investigate and determine the amount owed to the Trust due to Contractor Default and make payment of any amounts owed to the Trust; or
    - 2) Deny liability in whole or in part and notify the Trust citing the reasons for the denial.
  - D. If the Surety does not proceed as provided in Paragraph 2(a), (b), or (c), the Surety shall be deemed to be in default on this Performance Bond seven (7) days after receipt of an additional written notice from the Trust by and through the Director to the Surety demanding that the Surety perform its obligations under this Bond, and the Trust shall be entitled to enforce any remedy available to the Trust. If the Surety proceeds under provision 2(c)(i) and the Trust refused the payment or the Surety has denied liability, in whole or in part, under 2(c)(ii) and without further notice the Trust shall be entitled to enforce any remedy available to the Trust.
3. If the Surety elects to proceed under 2(a), (b), or (c), then the responsibilities of the Surety to the Trust shall not be greater than the obligations of the Contractor under the Construction Contract and the responsibilities of the Trust to the Surety shall not be greater than those of the Trust under the Construction Contract. Notwithstanding the previous statement and the Trust's commitment to pay the Balance of the Contract Amount, the Surety is obligated without duplication for:
- A. the responsibilities of the Contractor, its own undertaking or that of its subcontractors for the correction of any defective work and completion of the Construction Contract;
  - B. any additional legal, professional design or engineering and delay costs resulting from the Contractor's Default and resulting from the actions or failure to act of the Surety under Paragraph 2;
  - C. any additional costs incurred by the Trust associated with procuring and securing a new contractor; and
  - D. liquidated damages in the amount set forth in the Construction Contract or any actual damaged caused by delayed performance or non-performance of the Contractor.
4. If the Surety elects to proceed under 2(a), (b), or (c) then Surety's liability is limited to the amount of this Performance Bond plus any item listed in Paragraph 3, but Surety shall not be liable to the Trust or others for obligations that are unrelated to the Construction Contract unless specified herein.
5. The Surety hereby waives notice of any change orders, modifications or amendments, including changes of time, to the Construction Contract or other obligations.
6. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the State of Oklahoma and shall be instituted within two (2) years after a declaration of the Contractor's Default, or within two (2) years after the Contractor ceases working or within two (2) years after the Surety refused or fails to perform its obligations under this Bond, whichever occurs first.

7. Notices shall be at the following addresses:

**Trust:** Director of Airports  
7100 Terminal Drive, Unit 937  
Oklahoma City, OK 73159

**Contractor:** Ellsworth Construction OKC, LLC Dba A-Tech Paving  
500 N Vickie Drive  
Del City, OK 73117

**Surety:** Mid Continent Casualty Company  
P.O. Box 1409  
Tulsa, OK 74101

8. To the extent that this Performance Bond is required to comply with a statutory or other legal requirement for the work being performed and should any provision of this Performance Bond conflict with said statutory or legal requirements, then those conflicting provisions shall be deleted here from and provisions necessary to conform this Performance Bond to the statutory or other legal requirements shall be deemed incorporated herein. It is the intent of the parties that this Performance Bond shall be construed as a statutory bond and not as a common law bond when so required.

9. Definitions:

- A. **Balance of the Construction Contract Amount** means the amount payable by the Trust to the Contractor under the Construction Contract after all proper adjustments have been made reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
- B. **Construction Contract** means the agreement between the Trust and the Contractor identified herein including the Project Manual, drawings, specifications, addendums, change orders or other items that comprise the complete agreement between the Trust and Contractor.
- C. **Contractor Default** means the failure of the Contractor, which has not been remedied or waived, to perform or otherwise comply with a material term of the Construction Contract.
- D. **Trust Default** means the failure of the Trust, 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.

10. The parties agree that the recitals are contractual in nature.

**IT IS FURTHER EXPRESSLY AGREED AND UNDERSTOOD** by the parties hereto that if the project is federally funded; the Surety further agrees that the terms of this Performance Bond shall cover the payment of the prevailing hourly rate of wages as determined by US Secretary of Labor and in force at the date of the Construction Contract. The prevailing wage rates are included in the specifications which are a part of the Contract. Prevailing wage rates included in the specifications will not be altered as long as this Contract is in force.

**IN WITNESS WHEREOF**, the said Contractor has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officer, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

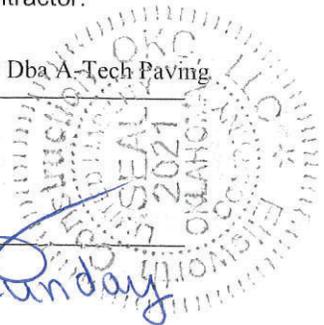
Executed this 31st day of January, 20 22 by the Contractor.

Ellsworth Construction OKC, LLC Dba A-Tech Paving  
Contractor

ATTEST:

Jessica White  
(Witness - Secretary)

Tim Landay  
(Authorized Officer) Tim Landay



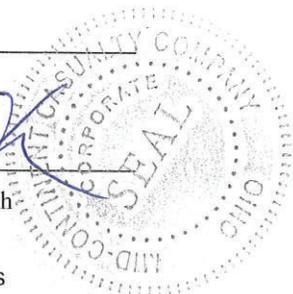
Executed this 28th day of January, 20 22 by the Surety.

Mid Continent Casualty Company  
Surety (Name of company)

ATTEST:

[Signature]  
(Witness - Secretary)

[Signature]  
(Attorney-in-Fact) Cindi L. Smith



APPROVED by the Chairman and Trustees of the Oklahoma City Airport Trust this  
24th day of February 22

ATTEST:

Amy K. Simpson  
Trust Secretary



[Signature]  
Trust Chairman

REVIEWED for form and legality

Amy Douglas  
Assistant Municipal Counselor/  
Attorney for the Trust

Bond No. 1022828

**PAYMENT BOND**  
**(Statutory Bond)**

Ellsworth Construction OKC, LLC

**WHEREAS**, Dba A-Tech Paving, hereinafter "Contractor," entered into a Construction Contract with the Trust on the 24th day of February, 2022, for the erection and construction of certain works and improvement for the project described below all in compliance with the plans and specifications contained in the Project Manual on file in the Office of the City Clerk, and said Construction Contract is hereby made a part and parcel of this Payment Bond as if literally written herein.

Facility Name: MIKE MONRONEY AERONAUTICAL CENTER  
Facility Location: Oklahoma City, OK  
Project Name: DUKE AVE. ASPHALT STREET REPAIR & REPLACEMENT  
Project Number: OCAT WRWA 2209

**WHEREAS**, as Contractor, and Mid Continent Casualty Company, as Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns unto the Oklahoma City Airport Trust, hereinafter called "Trust," the City of Oklahoma City, hereinafter called "City", and any other public trust of the City of Oklahoma City that may be participating in the below described project, hereinafter called "Participating Trust", in the full and just sum of Two Hundred Seventy Thousand Seven Hundred Fifty One and 75/100 Dollars (\$ 270,751.75), such sum being equal to 100% of the Construction Contract price for the payment of labor, materials and equipment furnished for use in the performance of the Construction Contract.

**NOW, THEREFORE**, if the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnified and hold harmless the Trust and City from claims, demands, liens or suits by any person or entity seeking payment for labor, materials, or equipment furnished or taxes owed for use in the performance of the Construction Contract, including all indebtedness the Contractor incurs for the Contractor's subcontractors and all suppliers of labor, material, rental of machinery or equipment, and repair of and parts for equipment the contract requires the Contractor to furnish then the Surety and the Contractor shall have no obligation under this Bond, but if the Contractor shall fail or neglect to pay all indebtedness incurred by said Contractor or subcontractor for labor, materials, equipment or taxes for the construction of the project described above, then the Claimant may sue and recover on this bond the amount so due and unpaid provided that no action shall be brought on the bond after one (1) year from the day on which the last of the labor was performed or material or parts furnished for which the claim is made.

**IT IS FURTHER EXPRESSLY AGREED AND UNDERSTOOD** by the parties hereto in furtherance of the obligations set forth in this bond that:

1. If there is no Trust Default under the Construction Contract, the Surety's obligation to the Trust under this Payment Bond shall arise:
  - A. after the Trust has notified the Contractor and the Surety at the addresses set forth below of any Claim, demand, lien or suit against the Trust or the Trust's property by any person or entity seeking payment for labor, materials or equipment furnished or taxes owed for use in the performance of the Construction Contract and to provide defense of such claims, demands, liens or suits to the Contractor and the Trust;
  - B. Once notice is provided pursuant to paragraph 1(a), the Surety, at its own expense, shall promptly defend, indemnify and hold harmless the Trust and City against a duly tendered Claim, demand, lien or suit.
2. Surety's obligation to a Claimant having direct contractual relationship with a subcontractor, regardless of tier, performing work on the contract, but no contractual relationship express or implied with the Contractor furnishing the Payment Bond, shall have a right of action upon the Payment Bond only upon giving written notice to the Contractor and Surety on the Payment Bond within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or parts for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material or parts were furnished or supplied or for whom the labor was done or performed. The notice shall be served

by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the Contractor maintains an office or conducts business, together with a copy thereof to the Surety or Sureties on the Payment Bond.

3. It is further expressly agreed and understood by the parties hereto that no changes or alterations in said contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, for the obligations of this bond.
4. If the project is federally funded, the surety further agrees that the terms of this Bond shall cover the payment of the prevailing hourly rate of wages as determined by US Secretary of Labor and in force at the date of the Contract. The prevailing wage rates are included in the specifications which are a part of the Contract. Prevailing wage rates included in the specifications will not be altered as long as this Contract is in force.
5. This bond shall remain in full force and effect until the Contractor has fully paid all indebtedness for labor and materials to other entities arising as a direct result to this contract including but not limited to any and all employees, material suppliers, sub-contractors, equipment rental agencies, laborers, tradesmen, consultants, surveyors and testing facilities. Final Payment to these entities of any retained or withheld funds shall be made in accordance with Title 61 of the Oklahoma Statutes, Section 226 or as otherwise required by law. Proof of payment may be required by the Trust.
6. Notices shall be at the following addresses:

**Trust:** Director of Airports  
7100 Terminal Drive, Unit 937  
Oklahoma City, OK 73159

**Contractor:** Ellsworth Construction OKC, LLC DbA A-Tech Paving  
500 N Vickie Drive  
Del City, OK 73117

**Surety:** Mid Continent Casualty Company  
P.O. Box 1409  
Tulsa, OK 74101

7. To the extent that this Performance Bond is required to comply with a statutory or other legal requirement for the work being performed and should any provision of this Performance Bond conflict with said statutory or legal requirements, then those conflicting provisions shall be deleted here from and provisions necessary to conform this Performance Bond to the statutory or other legal requirements shall be deemed incorporated herein. It is the intent of the parties that this Performance Bond shall be construed as a statutory bond and not as a common law bond when so required.
8. Definitions:
  - A. **Claim** means a written statement by the Claimant including at a minimum the name of the claimant, the name of the person for whom the labor was done or materials or equipment furnished, 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, the total amount earned by the Claimant for labor, materials and equipment and any deductions or payments previously received and the total amount due and unpaid with a brief statement describing what is owed by the Contractor.
  - B. **Claimant** means any individual or entity have a direct contract with the Contractor or with a subcontractor to furnish labor, materials or equipment for use in the performance of the Construction Contract.
  - C. **Construction Contract** means the agreement between the Trust and the Contractor identified herein including the Project Manual, drawings, specifications, addendums, change orders or

other items that comprise the complete agreement between the Trust and Contractor.  
D. **Trust Default** means the failure of the Trust, 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.

9. The parties agree that the recitals are contractual in nature.

**IN WITNESS WHEREOF**, the said Contractor has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers; and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

Executed this 31st day of January, 2022 by the Contractor.

Ellsworth Construction OKC, LLC Dba A Tech Paving  
Contractor

ATTEST:

Jessica White  
(Witness - Secretary)

Tim Lunday  
(Authorized Officer) Tim Lunday



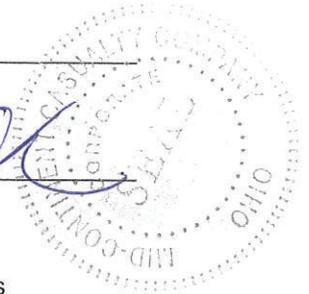
Executed this 28th day of January, 2022 by the Surety.

Mid Continent Casualty Company  
Surety (Name of company)

ATTEST:

Sarah L...  
(Witness - Secretary)

Cindi L. Smith  
(Attorney-in-Fact) Cindi L. Smith



**APPROVED** by the Chairman and Trustees of the Oklahoma City Airport Trust this

24th day of February, 2022

ATTEST:

Amy K. Simpson  
Trust Secretary



Jerry Salmon  
Trust Chairman

**REVIEWED** for form and legality.

Amy Douglas  
Assistant Municipal Counselor/  
Attorney for the Trust

Bond No. 1022828

**MAINTENANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That We, <sup>Ellsworth Construction OKC, LLC</sup> ~~Ellsworth Construction OKC, LLC~~, as Contractor, and Mid Continent Casualty Company, as Surety, are held and firmly bound unto the Oklahoma City Airport Trust, hereinafter called "Trust," and the City of Oklahoma City, hereinafter called the "City," in the full and just sum of <sup>Two Hundred Seventy Thousand Seven</sup> ~~Two Hundred Seventy Thousand Seven~~ <sup>Hundred Fifty One and 75/100</sup> ~~Hundred Fifty One and 75/100~~ Dollars (\$ 270,751.75), such sum being equal to the contract price for a period of **two (2) year(s)** from final acceptance of the project by the Trust for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, and assigns, themselves, and its successors and assigns, joint and severally, firmly by these presents.

The conditions of this obligation are such that whereas, said Contractor has by a certain contract between [NAME OF CONTRACTOR] and the Trust, dated this 24<sup>th</sup> day of February, 2022, agreed to construct the following Trust work and improvement:

Facility Name: MIKE MONRONEY AERONAUTICAL CENTER  
Facility Location: Oklahoma City, OK  
Project Name: DUKE AVE. ASPHALT STREET REPAIR & REPLACEMENT  
Project Number: OCAT WRWA 2209

all in compliance with the plans and specifications therefore, made a part of said contract and on file in the Office of the City Clerk of the CITY OF OKLAHOMA CITY; and to maintain the said improvement in the amounts set forth above against any failure due to workmanship or material for a period of **two (2) year(s) from final acceptance of the project by the Trust.**

**NOW, THEREFORE**, if said Contractor shall pay or cause to be paid to the Trust, all damage, loss, and expense which may result by reason of defective materials and/or workmanship in connection with said work occurring within a period of **two (2) year(s)** from and after acceptance of said project by the Trust, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further agreed that if the said Contractor or Surety herein shall fail to maintain said improvements against any failure due to defective workmanship and/or material for a period of **two (2) year(s) from final acceptance of the project by the Trust** and at any time repairs shall be necessary that the cost of making said repairs shall be determined by the Trust, or some person or persons designated by them to ascertain the same, and if, upon thirty (30) days notice, the said amount ascertained shall not be paid by the Contractor or Surety herein, or if the necessary repairs are not made, the said amount shall become due upon the expiration of thirty (30) days and suit may be maintained to recover the amount so determined in any Court of competent jurisdiction. And that the amount so determined shall be conclusive upon the parties as to the amount due on this bond for the repair or repairs included therein, and that the cost of all repairs shall be so determined from time to time during the life of this bond as the condition of the improvements may require.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this bond.

**IN WITNESS WHEREOF**, the said Contractor has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers; and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

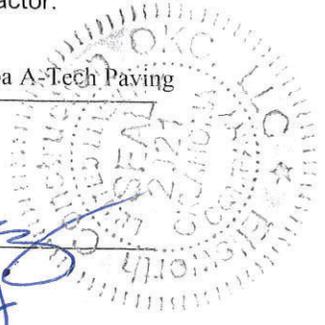
Executed this 31st day of January, 20 22 by the Contractor.

Ellsworth Construction OKC, LLC Dba A-Tech Paving  
Contractor

ATTEST:

Jessica White  
(Witness - Secretary)

Tim Lunday  
(Authorized Officer) *Tim Lunday*



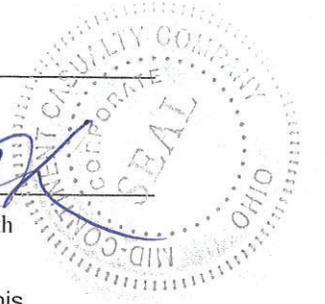
Executed this 28th day of January, 20 22 by the Surety.

Mid Continent Casualty Company  
Surety, (Name of company)

ATTEST:

[Signature]  
(Witness - Secretary)

[Signature]  
(Attorney-in-Fact) Cindi L. Smith



APPROVED by the Chairman and Trustees of the Oklahoma City Airport Trust this

24th day of February, 20 22

ATTEST:

Amy K Simpson  
Trust Secretary



[Signature]  
Trust Chairman

REVIEWED for form and legality.

Amy Douglas  
Assistant Municipal Counselor/  
Attorney for the Trust

# MID-CONTINENT CASUALTY COMPANY

1437 SOUTH BOULDER, SUITE 200 · TULSA, OKLAHOMA 74119 · 918-587-7221 · FAX 918-588-1253

## POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS:** That the **MID-CONTINENT CASUALTY COMPANY**, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof. Sandra L. Crain, Dayna Harjo, Cindi L. Smith and William C. Taylor, all of TULSA, OK

IN WITNESS WHEREOF, the **MID-CONTINENT CASUALTY COMPANY** has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 05 day of August, 2020



ATTEST:

*Sharon Hackl*

SHARON HACKL

Secretary

**MID-CONTINENT CASUALTY COMPANY**

*Todd Bazata*

TODD BAZATA

VICE PRESIDENT

On this 05 day of August, 2020 before me personally appeared TODD BAZATA, to me known, being duly sworn, deposes and says that s/he resides in Broken Arrow, Oklahoma, that s/he is a Vice President of **Mid-Continent Casualty Company**, the company described in and which executed the above instrument; that s/he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of her/his office under the By-Laws of said Company, and that s/he signed his name thereto by like authority.

STATE OF OKLAHOMA }  
COUNTY OF TULSA } SS



Commission # 11008253

My Commission Expires: 09-08-23

*Julie Callahan*

JULIE CALLAHAN

Notary Public

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of **Mid-Continent Casualty Company** by unanimous written consent dated September 25, 2009.

**RESOLVED:** That the President, the Executive Vice President, the several Senior Vice Presidents and Vice Presidents or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

**RESOLVED FURTHER:** That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

## CERTIFICATION

I, SHARON HACKL, Secretary of **Mid-Continent Casualty Company**, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of September 25, 2009 have not been revoked and are now in full force and effect.

Signed and sealed this 25<sup>th</sup> day of January, 2022

*Sharon Hackl*

SHARON HACKL

Secretary



VOID IF BOX IS EMPTY

