

CHANGE ORDER
FOR
CRWTP RAW WATER SUPPLY PIPELINE CIP #3038C
#19-0714; #20-0250

To: TLC Company, Inc.
5000 Edith Blvd. NE
Albuquerque, NM 87107

Contract No.: 19-0714
Change Order No.: 02
Date: August 10, 2020

You are hereby directed to make the following changes to this Contract:

Contract Time Extension, Article 5 Term: Increase term from 337 calendar days to 433 calendar days (96 calendar day extension) from Notice to Proceed (completion date of December 7, 2020).

The work covered by this order shall be performed under the same terms and conditions as that which is included in the original Contract. Not valid until approved by City of Santa Fe.

ORIGINAL CONTRACT SUM	\$2,935,706.75
NET CHANGE BY PREVIOUS CHANGE ORDERS	\$191,268.04
CONTRACT SUM PRIOR TO THIS CHANGE ORDER	\$3,126,974.79
CONTRACT SUM WILL BE (INCREASED) (DECREASED) BY THIS CHANGE ORDER	\$0.00
NEW CONTRACT SUM INCLUDING THIS CHANGE ORDER	\$3,126,974.79

CHANGES APPROVED:

Eddie C Padilla
TLC Company, Inc.

8/12/20
Date

Mayor / City Manager Date

CRS #02-0226090-000

Registration # 222153

Finance Director Date

Marcos Martinez
Marcos Martinez (Aug 11, 2020 08:58 MDT) Aug 11, 2020

Senior Assistant City Attorney Date
Shannon Jones
Shannon Jones (Aug 12, 2020 11:45 MDT)

Public Utilities Director Date
JB

Water Division Director Date
Robert Jorgensen
Robert Jorgensen (Aug 12, 2020 11:25 MDT)

Project Manager Date

Munis # 3200259

PL # WTR18505ND

City of Santa Fe, New Mexico

MEMO

Date: August 10, 2020

To: Public Works and Utilities Committee and Finance Committee

Via: Shannon Jones, Public Utilities Department Director 
Jesse Roach, Water Division Director 

From: Robert Jorgensen, Engineer (rnjorgensen@santafenm.gov -- 505-955-4265) 

Item and Issue

Approval of Change Order No. 2 extending the contract term by 96 calendar days under contract Item #19-0714 with TLC Company, Inc. for the CRWTP Raw Water Supply Pipeline CIP #3038C project is requested. Munis # 3200259; PL # WTR18505ND.

Background and Summary

The TLC construction contract is for the installation of a 24 inch diameter pipeline between Nichols Dam and the Canyon Road Water Treatment Plant (CRWTP). The pipeline is located along the Nichols Dam service road and along upper Canyon Road (also known as Forest Road 386). This pipeline will replace the existing raw water supply pipeline which runs in the Santa Fe River Channel.

The City suspended work on May 27, 2020 after the Forest Service issued Stage 2 fire restrictions. Fire restriction were lifted by the Forest Service on July 29, 2020. TLC was unable to work for a 63 calendar period due to fire restrictions. TLC is scheduled to resume work on August 31, 2020.

Change Order 2

Change Order No. 2 extends the contract term by 96 calendar days.

Recommended Action

Staff requests the following:

- Approval of Change Order No. 2 extending the contract term by 96 calendar days



City of Santa Fe Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☒ or CONTRACT AMENDMENT ☐

2 Name of Contractor TLC Company Inc.

3 Complete information requested ☒ Plus GRT
☐ Inclusive of GRT

Original Contract Amount: \$2,935,706.75

Termination Date: 240 NTP

☒ Approved by Council Date: Pending

☐ or by City Manager Date: _____

Contract is for: RFB 19/18B CRWTP Raw Water Supply Pipeline

Amendment # CO#2 to the Original Contract# 19-0714

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: December 7, 2020

☒ Approved by Council or Pending

☐ by City Manager Date: _____

Amendment is for: Extend Term

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☒ Plus GRT
☐ Inclusive of GRT

Amount \$ 2,935,706.75 of original Contract# pending Termination Date: 240NTP

Reason: RAW Water Pipeline

Amount \$ 191,268.04 amendment # CO #1 Termination Date: 9/2/2020

Reason: term

Amount \$ 0 amendment # CO #2 Termination Date: 12/7/20

Reason: Extend Term

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ \$3,126,974.79



City of Santa Fe Summary of Contracts, Agreements, & Amendments

5 Procurement Method of Original Contract: (complete one of the lines)

RFP# RFB # 9/18/B Date: June 18, 2019

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other _____

6 Procurement History: 4 years
example: (First year of 4 year contract)

Fran Dunaway, CFO
Fran Dunaway (Sep 11, 2020 11:20 MDT)

Purchasing Officer Review

Comments or Exceptions: _____

7 Funding Source: Water **BU/Line Item:** 5050395.572970

Alexis Lotero
Alexis Lotero (Sep 9, 2020 15:40 MDT)

Budget Officer Approval

Comments or Exceptions: _____

8 Any out-of-the ordinary or unusual issues or concerns:

(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Maya Martinez

Phone # #

10 Certificate of Insurance attached. (if original Contract) ☐

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:



City of Santa Fe

Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: TLC PLUMBING AND UTILITY
DBA: TLC PLUMBING AND UTILITY

Business Location: SF COUNTY
SANTA FE, NM 87501

Owner: DALE ARMSTRONG

License Number: 222153

Issued Date: March 10, 2020

Expiration Date: December 31, 2020

CRS Number: 02226090000

License Type: Business License - Renewable

Classification: Out of Jurisdiction Contractor -
Plumbing

Fees Paid: \$10.00

TLC PLUMBING AND UTILITY
5000 EDITH BLVD NE
ALBUQUERQUE, NM 87107

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE

<p align="center">ACTION SHEET</p> <p align="center">ITEM FROM FINANCE COMMITTEE MEETING OF 09/21/20</p> <p align="center">FOR CITY COUNCIL MEETING OF 09/30/20</p>
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- a) Request for Approval of Change Order No. 2 to the Original Contract No. 19-0714 with TLC Company, Inc. for the Canyon Road Water Treatment Plant Raw Water Supply Pipeline CIP No.3038C to Extend the Contract Term by 96 Calendar Days. (Robert Jorgenson, Water Division Engineer, rjorgenson@santafenm.gov, 955-4265)

COMMITTEE REVIEW

Finance Committee (Scheduled)

09/21/2020

Governing Body (Scheduled)

09/30/2020

FINANCE COMMITTEE ACTION:

Approved as consent item.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR ROMERO-WIRTH	X		
COUNCILOR CASSUTT-SANCHEZ	X		
COUNCILOR LINDELL	X		
COUNCILOR VILLARREAL	X		
CHAIRPERSON ABEYTA	X		

ACTION SHEET	
PUBLIC WORKS AND UTILITIES COMMITTEE MEETING OF 08/24/2020	
ISSUE NO. 8D	
Request for Approval of Change Order No. 2 to the Original Contract No. 19-0714 with TLC Company, Inc. for the Canyon Road Water Treatment Plant Raw Water Supply Pipeline CIP No.3038C to Extend the Contract Term by 96 Calendar Days. (Robert Jorgenson, Water Division Engineer, rnjorgenson@santafenm.gov , 955-4265)	
COMMITTEE REVIEW	
Finance Committee (Scheduled)	08/31/2020
Governing Body (Scheduled)	09/09/2020
PUBLIC WORKS AND UTILITIES COMMITTEE ACTION: Approved on Consent Agenda to forward to the 8/31/2020 Finance Committee	
SPECIAL CONDITIONS OR AMENDMENTS:	
STAFF FOLLOW UP:	

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	X		
COUNCILOR GARCIA	X		
COUNCILOR ABEYTA	X		
COUNCILOR LINDELL	X		
COUNCILOR VIGIL COPPLER	X		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY -
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



TLCPLUM-01

CEDISON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/26/2020

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 License # 0757776 HUB International Insurance Services (NMX) 7770 Jefferson Street NE Suite 101 Albuquerque, NM 87109	CONTACT NAME: Becky Moya PHONE (A/C, No, Ext): (505) 262-9405 FAX (A/C, No): E-MAIL ADDRESS: Becky.Moya@hubinternational.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Westfield Insurance Company	
	INSURER B: Westfield National Insurance Company	
	INSURER C: Associated Builders & Contractors of NM Merit Shop Workers Com	
	INSURER D: INSURER E: 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.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: BI/PD Ded \$5,000	X	X	CMM 1466277	7/1/2020	7/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	CMM 1466277	7/1/2020	7/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	X	X	CMM 1466277	7/1/2020	7/1/2021	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000
C	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	EWC008469	12/31/2019	12/31/2020	<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
A	Installation Floater			CMM 1466277	7/1/2020	7/1/2021	Builders Risk 12,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 When required by contract, the following forms apply: Blanket Additional Insured/Designated Insured for ongoing and completed operations and primary/non-contributory wording; Contractors Extension includes Aggregate Limits per project and Blanket Waiver of Subrogation. 30 Day Notice of Cancellation or Material Coverage change.

RE: CRWTP Raw Water Supply Pipeline Construction RFB #19/18/B

CERTIFICATE HOLDER Public Utilities Department City of Santa Fe 801 W San Mateo Santa Fe, NM 87504-0000	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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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WHISTLEBLOW
Signature
SERVICES

COMMERCIAL GENERAL LIABILITY CONTRACTORS ENDORSEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Coverage afforded under this expanded coverage endorsement does not apply to any person or organization covered as an additional insured on any other endorsement now or hereafter attached to this Coverage Form.

SCHEDULE

The coverage provided by this endorsement is summarized below and is intended to provide a general coverage description only. For the details affecting each coverage please refer to the terms and conditions in this endorsement.

- A. Expected or Intended Injury**
• Reasonable force
- B. Liquor Liability Coverage Extension**
- C. Non-Owned Watercraft**
• Increased to 80 feet
- D. Non-Owned Aircraft**
- E. Damage To Property - Borrowed Equipment**
- F. Damage To Premises Rented To You**
- G. Personal And Advertising Injury**
• Contractual Personal and Advertising Injury
• Exclusions
- H. Supplementary Payments**
• Bail Bonds - \$2,500
• Loss of Earnings - \$1,000
- I. Additional Insureds - Automatic Status**
• State or Governmental Agency or Subdivision or Political Subdivision Controlling Interest
• Managers or Lessors of Premises
• Mortgagees, Assignees or Receivers
• Owners or Other Interests From Whom Land Has Been Leased
• Co-Owners of Insured Premises
• Lessor of Leased Equipment
- J. Who Is An Insured Broadened**
• Joint Ventures / Partnership / Limited Liability Company
• Health Care Professionals (Incidental Medical Malpractice)
• Individual Owners of Building are Insured's
• Newly Formed or Acquired Entities
- K. Knowledge and Notice of Occurrence**
- L. Other Insurance Condition Amended**
- M. Unintentional Failure To Disclose Hazards**
- N. Waiver of Transfer of Rights Of Recovery Against Others To Us - Automatic Status**
- O. Liberalization**
- P. Definitions**
• Bodily Injury redefined
• Insured Contract redefined
• Expanded Personal and Advertising Injury definition

A. EXPECTED OR INTENDED INJURY

Under SECTION 1, COVERAGES, COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE, exclusion a, is replaced with the following:

- a. Expected Or Intended Injury

"Bodily Injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force for the purpose of protecting persons or property.

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Q. PERSONAL AND ADVERTISING INJURY

Under SECTION 1, COVERAGES, COVERAGE B, PERSONAL AND ADVERTISING INJURY LIABILITY, item 2, Exclusions e, Contractual Liability is deleted.

Under SECTION 1 - COVERAGES, COVERAGE B, PERSONAL AND ADVERTISING INJURY LIABILITY, the following are added to item 2, Exclusions:

- q. Discrimination Relating To Room, Dwelling or Premises
Caused by discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured.
- r. Fines or Penalties
Fines or penalties levied or imposed by a governmental entity because of discrimination.

H. SUPPLEMENTARY PAYMENTS

Under SECTION 1 - SUPPLEMENTARY PAYMENTS COVERAGES A AND B, item 1.b, is replaced with the following:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the "Bodily Injury" Liability Coverage applies. We do not have to furnish these bonds.

Under SECTION 1 - SUPPLEMENTARY PAYMENTS COVERAGES A AND B, item 1.d, is replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

I. ADDITIONAL INSUREDS - AUTOMATIC STATUS

SECTION II - WHO IS AN INSURED, is amended to include as an insured any person or organization (called "additional insured") described in paragraphs a. through g. below whom you are required to add as an additional insured on this policy under a written contract or written agreement. However the written contract or written agreement must be:

- Currently in effect or becoming effective during the term of the policy; and
- Executed prior to the "bodily injury", "property damage" or "personal injury and advertising injury", but

Only the following persons or organizations are additional insureds under this endorsement and coverage provided to such additional insureds is limited as provided herein:

- a. State or Governmental Agency or Subdivision or Political Subdivisions
A state or governmental agency or subdivision or political subdivision subject to the following provisions:

- (1) This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies;

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

- (b) The construction, erection, or removal of elevators.
- (2) This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality.

- b. Managers or Lessors of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the premises leased to you and subject to the following additional exclusions:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

B. LIQUOR LIABILITY COVERAGE EXTENSION

SECTION 1, COVERAGES, COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY, item 2, Exclusions c, Liquor Liability is deleted.

C. NON-OWNED WATERCRAFT

Under SECTION 1, COVERAGES, COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY, item 2, Exclusions g.2(a) is replaced with the following:

- (a) Less than 60 feet long; and

D. NON-OWNED AIRCRAFT

Under SECTION 1, COVERAGES, COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY, item 2, Exclusions g.2(a), is deleted and replaced by the following:

- (a) An aircraft you do not own provided that:

- (a) The pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;

- (b) It is rented with a trained, paid crew; and

- (c) It does not transport persons or cargo for a charge.

E. DAMAGE TO PROPERTY - BORROWED EQUIPMENT

Under SECTION 1, COVERAGES, COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY, item 2, Exclusions i, is deleted and replaced by the following:

Damage To Property:

- Property you own, rent or occupy;
- Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- Property loaned to you;
- Personal property in the care, custody or control of the insured;
- That particular part of any real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

- (b) That particular part of any real property that must be restored, replaced, or repaired because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to:

- (i) "property damage" to tools or equipment loaned to you if the tools or equipment are not being used to perform operations at the time of loss; or

- (ii) "property damage" (other than damage by fire) to premises rented to you or temporarily occupied to you with the permission of the owner or to the contents of premises rented to you for a period of seven (7) or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you beyond one year from the date "your work" was completed.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

F. DAMAGE TO PREMISES RENTED TO YOU

Under SECTION 1 - COVERAGES, COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY, item 2, Exclusions, the last paragraph of item 2, Exclusions is replaced with the following:

Exclusion c, through n, do not apply to damage by fire or explosion to premises which are rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - LIMITS OF INSURANCE.

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- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

c. Mortgagees, Assignees or Receivers

A mortgagee, assignee or receiver but only with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

d. Owners Or Other Interests From Whom Land Has Been Leased

An owner or other interest from whom land has been leased by you but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to lease that land; or

- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

e. Co-owner of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

f. Lessor of Equipment

Any person or organization from whom you lease equipment. Such person or organization are insureds only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization.

A person's or organization's status as an insured under this endorsement ends when their written contract or written agreement with you for such leased equipment ends.

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

This insurance does not apply:

- (1) To any "occurrence" which takes place after the equipment is leased; or

- (2) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of such additional insured.

Any insurance provided to an additional insured designated under paragraphs a, through f, above does not apply to bodily injury or "property damage" included within the "products-completed operations hazard".

As respects the coverage provided under this provision, Paragraph 4.b.(1) of Section IV - Commercial General Liability Conditions is deleted and replaced with the following:

4. Other Insurance

b. Excess Insurance

- (1) This insurance is excess over: Any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and non-contributing. Where required by written contract or written agreement, we will consider any other insurance maintained by the additional insured for injury or damage covered by this endorsement to be excess and non-contributing with this insurance.

J. WHO IS AN INSURED BROADENED

Under SECTION II - WHO IS AN INSURED the following is added to item 1:

f. Joint Ventures / Partnership / Limited Liability Company Coverage

You are an insured when you had an interest in a joint venture, partnership or limited liability company which is terminated, ended prior to or during this policy period but only to the extent of your interest in such joint venture, partnership or limited liability company. This coverage does not apply:

- (1) Prior to the termination date of any joint venture, limited liability company or partnership; or

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(2) If there is other valid and collectible insurance purchased specifically to insure the joint venture, legal liability company or partnership.

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

(d) Arising out of his or her providing or failing to provide professional health care services.

This does not apply to nurses, emergency medical technicians or paramedics employed by you to provide health care services, but only if you are not in the business or occupation of providing such professional services.

Under SECTION II - WHO IS AN INSURED the following is added:

4. For **COVERAGE A** and **COVERAGE B** only, the owner of any building leased to you, but only if the building owner is a shareholder in your corporation or a partner in your partnership insured by this policy, and only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you. However, this insurance does not apply:

- To any "occurrence" or offense which takes place after you cease to be a tenant in the premises; or
- To structural alterations, new construction or demolition operations performed by or on behalf of the building owner.

Under SECTION II - WHO IS AN INSURED, 3a. is deleted and replaced with the following:

- Coverage under this provision is afforded only until the end of the policy period or the next anniversary of this policy's effective date after you acquire or form the organization whichever is earlier.

Under SECTION II - WHO IS AN INSURED the last paragraph in this section is deleted and replaced with the following:

Except as provided in 3. above, no person or organization is an insured with respect to the conduct of any current or past joint venture, limited liability company or partnership that is not shown as a named insured in the Declarations.

K. KNOWLEDGE AND NOTICE OF OCCURRENCE

Under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 2. Duties in the Event of Occurrence, Offense, Claim Or Suit, the following is added:

- The requirement in Condition 2.a. applies only when the "occurrence" or offense is known to:
 - You, if you are an individual;
 - A partner, if you are a partnership;
 - An "executive officer" or insurance manager, if you are a corporation; or
 - A manager, if you are a limited liability company.
- The requirement in Condition 2.b. will not be breached unless the breach occurs after such claim or "suit" is known to:
 - You, if you are an individual;
 - A partner, if you are a partnership;
 - An "executive officer" or insurance manager, if you are a corporation; or
 - A manager, if you are a limited liability company.

6. Your rights under this Coverage Part will not be prejudiced if you fail to give us notice of an "occurrence," offense, claim, or "suit" and that failure is solely due to your reasonable belief that the "bodily injury" or "property damage" is not covered under this Coverage Part. However, you shall give written notice of this "occurrence," offense, claim, or "suit" to us as soon as you are aware this insurance may apply to such "occurrence," offense, claim or "suit."

L. OTHER INSURANCE CONDITION AMENDED

When required by written contract with any additional insured owner, lessee, or contractor to provide insurance on a primary and noncontributory basis, Condition 4 of Section IV - Commercial General Liability Conditions is deleted and replaced by the following:

4. Other Insurance

If other valid and collectible insurance is available for a loss we cover under Coverage A or B of this Coverage Part, our obligations are limited as follows:

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Page 5 of 7

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization.

Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

- That indemnifies an architect, engineer, or survey or for injury or damage arising out of:
 - Preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - Giving directions or instructions, or failing to give

then, if that is the primary cause of the injury or damage; or

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

Under SECTION V - DEFINITIONS, Item 14. the following is added to the definition of "Personal and Advertising Injury":

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:
 - Not done intentionally by or at the direction of:
 - The insured; or
 - Any "executive officer," director, stockholder, partner, member or manager (if you are a limited liability company) of the insured;
 - Not directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person or persons by any insured.

a. Primary Insurance

This insurance is primary and non-contributory except when b. below applies.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent, or on any other basis:

- That is Fire, Extended Coverage, Builders Risk, Installation Risk, or similar coverage for your work;
- That is Fire Insurance for premises rented to you or temporarily occupied by you with permission of the owner; or
- If the loss arises out of the maintenance or use of aircraft, "auto," or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A.
- If the loss is caused by the sole negligence of any additional insured, owner, lessee, or contractor.

When this insurance is excess, we will have no duty under Coverage A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other defenses, we will undertake to do so, but we will be entitled to the other insurer's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of:

- The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- The total of all deductibles and self-insured amounts under all that other insurance.

We will share the remaining loss, if any with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the limits of insurance shown in the declarations of this Coverage Part.

M. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, Item 6. Representations, the following is added:

d. Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of this policy shall not prejudice the coverage afforded by this policy, provided such failure to disclose all hazards or prior "occurrences" is not intentional.

N. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - AUTOMATIC STATUS

Under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, Item 4. Transfer Of Rights Of Recovery Against Others To Us is deleted and replaced by the following:

We waive any right of recovery we may have against any person or organization with respect to which the insured has waived its right of recovery.

It is further agreed that work commenced under letter of intent or work order, subject to subsequent reduction to writing, with customers whose customary written contracts would require a waiver of recovery rights against them also falls within this blanket waiver of recovery rights.

O. LIBERALIZATION

If we adopt a change in our forms or rules which would broaden coverage for contractors under this coverage form without an additional premium charge, your policy will automatically provide the additional coverage's as of the date the broadened coverage is effective in your state.

P. DEFINITIONS

Under SECTION V - DEFINITIONS, Item 3. is deleted and replaced with the following:

3. "Bodily injury" means bodily injury, disability, sickness, or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish and other mental injury resulting from "bodily injury".

Under SECTION V - DEFINITIONS, Item 9. is deleted and replaced with the following:

9. "Insured Contract" means:

- A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- A sidetrack agreement;
- Any easement or license agreement;

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POLICY NUMBER: 1466277 COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE	
Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
All persons or organizations when you have agreed in writing in a contract or agreement that such persons or organizations be added as an additional insured.	All Locations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

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

In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

- The insurance afforded to such additional insured only applies to the extent permitted by law; and
- If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

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

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

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- Required by the contract or agreement; or
- Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS**

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) And Description Of Covered Operations
All persons or organizations when you have agreed in writing in a contract or agreement that such persons or organizations be added as an additional insured.	All Locations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".
- However:
- The Insurance afforded to such additional insured only applies to the extent permitted by law; and
 - If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- B. With respect to the Insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:
- If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
- Required by the contract or agreement; or
 - Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.
- This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**PRIMARY AND NONCONTRIBUTORY INSURANCE**

This endorsement modifies Insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

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

SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance, Item c. is replaced by the following:

- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary and we will not seek contribution from any other insurance for any liability assumed under an "insured contract" that requires liability to be assumed on a primary noncontributory basis.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**EARLIER NOTICE OF CANCELLATION
PROVIDED BY US**

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART**SCHEDULE**Number of Days' Notice 030

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
PER CERTIFICATE HOLDER LIST WHERE REQUIRED BY CONTRACT (LIST ON FILE WITH COMPANY)	ALL PROJECTS WHERE REQUIRED BY CONTRACT

(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this endorsement.)

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in paragraph 2, of either the CANCELLATION Common Policy Condition or as amended by an applicable state cancellation endorsement, is increased to the number of days shown in the Schedule above.

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

This endorsement modifies Insurance provided under the following:

BUSINESS AUTO COVERAGE FORM**SCHEDULE**

The coverage provided by this endorsement is summarized below and is intended to provide a general coverage description only. For the details affecting each coverage, please refer to the terms and conditions in this endorsement.

- A. Who Is An Insured broadened:
- Additional Insured by Contract, Agreement or Permit
 - Legally Incorporated Subsidiaries
 - Newly Acquired Organizations
- B. Supplementary Payments
- Bail Bonds - \$5000
 - Loss of Earnings - \$500
- C. Coverage Extensions
- Transportation Expenses
 - Personal Effects (Excess Basis)
- D. Additional Coverages
- Expenses paid for returning a stolen covered auto
 - Fire Department Service Charge
- E. Airbag Coverage - Accidental Discharge
- F. Knowledge and Notice of an Accident, Claim or Suit
- G. Unintentional Failure To Disclose Hazards
- H. Worldwide Coverage
- I. Definitions
- Bodily Injury Redefined

In addition to the policy amendments contained in A. through I. listed above, the endorsements listed below will automatically be attached to your policy to complete the coverage provided by the Signature Series Business Auto Endorsement:

- Audio, Visual and Data Electronic Equipment Coverage Added Limits - CA 69 80
- Auto Loan/Lease Gap Coverage - CA 20 74
- Drive Other Car Coverage - Broadened Coverage For Named Individuals - (Executive Officers/Spouses) - CA 69 10
- Employee Hired Autos - CA 20 54
- Employees As Insureds - CA 69 33
- Hired Auto Physical Damage (Refer to Auto Declarations page)
- Rental Reimbursement Coverage - CA 69 23
- Waiver of Transfer of Rights of Recovery (Waiver of Subrogation)

A. WHO IS AN INSURED BROADENED**SECTION II - LIABILITY COVERAGE, Item A. Coverage, 1. Who Is An Insured** is amended to include the following additional paragraph:

- d. Any legally incorporated subsidiary of yours in which you own more than

50% of the voting stock on the effective date of this endorsement.

However, "insured" does not include any subsidiary that is an "insurer" under any other liability policy or would be an "insured" under such a policy but for its termination or the exhaustion of its limit of insurance.

Coverage under this provision is afforded only for the first 180 days after you acquire or form the organization or until the end of the policy period, whichever comes first.

e. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or a majority interest. However, coverage under this provision:

(1) Does not apply if the organization you acquire or form is an "insured" under another auto liability policy or would be "insured" under such a policy but for its termination or the exhaustion of its limits of insurance;

(2) Does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

(3) Is afforded only for the first 180 days after you acquire or form the organization or until the end of the policy period, whichever comes first.

f. Any person or organization with whom you agreed in a contract, agreement or permit, to provide insurance, such as is afforded under this policy.

This provision only applies if the written contract or agreement has been executed or permit has been issued, prior to the "bodily injury" or "property damage".

B. SUPPLEMENTAL PAYMENTS

SECTION II - LIABILITY COVERAGE, Item A. Coverage, 2. Coverage Extensions, a. Supplementary Payments, subparagraphs (2) and (4) are deleted and replaced with the following:

(2) Up to \$5,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 per day because of time off from work.

C. COVERAGE EXTENSIONS

SECTION III - PHYSICAL DAMAGE COVERAGE, Item A. Coverage, 4. Coverage Extensions, a. Transportation Expenses is replaced with the following:

a. **Transportation Expenses**

We will pay up to \$400 per day to a maximum of \$1,600 for transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

The following is added to Item 4. Coverage Extensions:

c. **Personal Effects**

We will pay up to \$500 for the "loss" of your personal effects that are contained in a covered "auto" due to the total theft of the covered "auto." We will pay only for those personal effects that are contained in covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

Our payment for "loss" of or damage to personal effects will apply only on an excess basis over other collectible insurance.

D. ADDITIONAL COVERAGES

SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, is amended to include the following additional coverage items:

5. We will pay the expense of returning a stolen covered "auto" to you.

6. **Fire Department Service Charge**

When a fire department is called to save or protect a covered "auto", its equipment, its contents or occupants from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for Fire Department Service Charges:

(a) Assumed by contract or agreement prior to loss; or

(b) Required by local ordinance.

No deductible applies to this additional coverage.

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Page 2 of 3

E. AIRBAG COVERAGE - ACCIDENTAL DISCHARGE

SECTION III - PHYSICAL DAMAGE COVERAGE, Item B. Exclusions, subparagraph 3.a. is deleted and replaced with the following:

a. Wear and tear, freezing, mechanical or electrical breakdown.

Mechanical breakdown does not apply to the accidental discharge of an airbag.

F. KNOWLEDGE AND NOTICE OF AN ACCIDENT, CLAIM OR SUIT

SECTION IV - BUSINESS AUTO CONDITIONS, Item A. Loss Conditions is amended as follows:

Subparagraph a. under Item 2. Duties In The Event Of Accident, Claim, Suit Or Loss, is amended to include the following paragraphs:

This requirement applies when the "accident," claim, "suit" or "loss" is first known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership; or

(3) An executive officer or insurance manager, if you are a corporation.

Subparagraph b.(2) under 2. Duties In The Event Of Accident, Claim, Suit Or Loss, is amended as follows:

(2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit."

Your employees may know of documents received concerning a claim or "suit". This will not mean that you have such knowledge, unless receipt of such documents is known to you, any of your executive officers or partners or your insurance manager.

G. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Under **SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 2. Concealment, Misrepresentation Or Fraud** is amended to include the following additional paragraph:

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure.

H. WORLDWIDE COVERAGE

Under **SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 7. Policy Period, Coverage Territory, subparagraph (5)** is deleted and replaced with the following:

(5) Anywhere in the world, if:

(a) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 45 days or less; and

(b) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, Puerto Rico or Canada or in a settlement we agree to.

(c) If, for each "autos" a "suit" is brought outside the territory described in 7.(1) through 7.(4) above, we will reimburse the insured for defense expenses incurred with our written consent, but we will make no payment, nor will we reimburse the insured for damages.

I. DEFINITIONS

Under **SECTION V - DEFINITIONS, Item C. is replaced by the following:**

C. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

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Page 3 of 3

POLICY NUMBER: 1466277 COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

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

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

Named Insured:

Endorsement Effective Date:

SCHEDULE

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

Automatic Status When required by Contract

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

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



Endorsement

Policy No.: EWC008469
Named Insured: Associated Builders & Contractors, Inc., New Mexico Chapter

Waiver of Subrogation by Written Contract Endorsement

In the event that your Member has waived its right to subrogation against a third party under the terms of a written contract entered into by your Member prior to the date of injury to your Member's Employee for whom you have paid Loss, we will also waive any right of subrogation we have against that third party, but only with respect to said Loss, and only if our waiver is required by the written contract.

All other parts of Section K. Recovery, of Part Four – Claims of this Policy remain in effect and are unchanged by this endorsement.

Countersigned

MIDWEST EMPLOYERS CASUALTY COMPANY

Monna L. Cavaldi

Authorized Representative

Secretary

President

This endorsement forms part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein. All other terms and conditions of the Policy remain unchanged.

ITEM # 20-0250

CHANGE ORDER #1
FOR
CRWTP RAW WATER SUPPLY PIPELINE CIP #3038C
#19-0714

To: TLC Company, Inc.
5000 Edith Blvd. NE
Albuquerque, NM 87107

Contract No.: 19-0714
Change Order No.: 01
Date: April 14, 2020

You are hereby directed to make the following changes to this Contract:

- | | |
|---|--------------------|
| 1. Perform the modifications and/or changes of scope as described in the attached Change Order No. 1 Schedule of Items, page 2. | \$176,385.51 |
| 2. New Mexico GRT @ 8.4375% | <u>\$14,882.53</u> |
| TOTAL CHANGE ORDER AMOUNT | \$191,268.04 |

Contract Time Extension, Article 5 Term: Increase term from 240 to 337 calendar days (97 calendar day extension) from Notice to Proceed (completion date of September 2, 2020).

The work covered by this order shall be performed under the same terms and conditions as that which is included in the original Contract. Not valid until approved by City of Santa Fe.

ORIGINAL CONTRACT SUM	\$2,935,706.75
NET CHANGE BY PREVIOUS CHANGE ORDERS	\$0.00
CONTRACT SUM PRIOR TO THIS CHANGE ORDER	\$2,935,706.75
CONTRACT SUM WILL BE (INCREASED) (DECREASED) BY THIS CHANGE ORDER	\$191,268.04
NEW CONTRACT SUM INCLUDING THIS CHANGE ORDER	\$3,126,974.79

CHANGES APPROVED:

See Attached

TLC Company, Inc.
CRS #02-0226090-000
Registration # 19-00123458

Date

<u>[Signature]</u>	<u>6/1/2020</u>
Alan Webber, Mayor	Date
<u>[Signature]</u>	<u>6-15-20</u>
Yolanda Y. Vigil, City Clerk	Date
<u>[Signature]</u>	<u>5/31/20</u>
Mary McCoy, Finance Director	Date
<u>[Signature]</u>	<u>4/16/20</u>
Senior Assistant City Attorney	Date
<u>See Attached</u>	Date
Public Utilities Director	Date
<u>See Attached</u>	Date
Water Division Director	Date

ITEM # 20-0250

CHANGE ORDER #1
FOR
CRWTP RAW WATER SUPPLY PIPELINE CIP #3038C
#19-0714

To: TLC Company, Inc.
5000 Edith Blvd. NE
Albuquerque, NM 87107

Contract No.: 19-0714
Change Order No.: 01
Date: April 14, 2020

You are hereby directed to make the following changes to this Contract:

1. Perform the modifications and/or changes of scope as described in the attached Change Order No. 1 Schedule of Items, page 2. \$176,385.51
 2. New Mexico GRT @ 8.4375% \$14,882.53
- TOTAL CHANGE ORDER AMOUNT \$191,268.04

Contract Time Extension, Article 5 Term: Increase term from 240 to 337 calendar days (97 calendar day extension) from Notice to Proceed (completion date of September 2, 2020).

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NET CHANGE BY PREVIOUS CHANGE ORDERS	\$0.00
CONTRACT SUM PRIOR TO THIS CHANGE ORDER	\$2,935,706.75
CONTRACT SUM WILL BE (INCREASED) (DECREASED) BY THIS CHANGE ORDER	\$191,268.04
NEW CONTRACT SUM INCLUDING THIS CHANGE ORDER	\$3,126,974.79

CHANGES APPROVED:

Eddie C. Padilla 6/2/2020
TLC Company, Inc. Date
CRS #02-0226090-000
Registration # 19-00123458

<u>Alan Webber</u>	<u>6/1/2020</u>
Alan Webber, Mayor	Date
<u>Yolanda Y. Vigil</u>	<u>5/21/20</u>
Yolanda Y. Vigil, City Clerk	Date
<u>Mary McCoy</u>	<u>4/16/20</u>
Mary McCoy, Finance Director	Date
<u>Senior Assistant City Attorney</u>	<u>6/12/2020</u>
Public Utilities Director	Date
<u>Water Division Director</u>	Date

Project Manager

Date

CRWTP RAW WATER SUPPLY PIPELINE CIP #3038C

TLC COMPANY, INC.

CHANGE ORDER NO. 1

SCHEDULE OF ITEMS

Bid Item	Description	Amount
-	AECOM plans as sealed by John Sikora P.E. shall be incorporated into contract documents.	0.00
12	<u>12" Drain Line</u> : Credit for changing 12" tricentric butterfly valve with a 12" RW gate valve	(7,116.60)
13	<u>Rock Excavation</u> : Increase quantity by 400 cubic yards based on subsurface utility and potholing work performed under Bid Item 3. Bid price of \$261.00 per cubic yard unchanged	68,121.00
14	<u>Imported Embedment Material</u> : Increase quantity by 350 cubic yards based on subsurface utility and potholing work performed under Bid Item 3. Bid price of \$66.50 per cubic yard unchanged.	23,275.00
23	<u>Utility Relocation</u> : Increase allowance amount based on subsurface utility locates and potholing work performed under Bid Item 3. Utility relocation to be on a time and material basis.	15,000.00
24	<u>Geotechnical Testing</u> : Increase allowance amount to include additional vibration monitors to monitor Audubon structures as negotiated between City, TLC, and Audubon.	20,000.00
25 New Item	<u>6" Drain Line</u> with gate valve, valve box, DIP and fittings, joint restraint, PE encasement, bond and locate wire, marking tape, concrete manhole, complete in place per detail on AECOM Sht. 3-5. Unit price of \$16,195.48 per each.	16,195.48
26 New Item	<u>Electric Conduit Bank</u> with (2) 4" and (2) 2" Sch. 40 PVC conduits with pull tape and warning tape. Unit price of \$11.69 per LF for quantity of 3500 LF. Conduit for future PNM electric line looping / 3 phase power per City and PNM negotiations. See detail 'Electric Conduit Trench Detail' dated April 2, 2020.	40,910.63
Construction Cost		176,385.51
NMGR @ 8.4375 %		14,882.53
Total		191,268.04

**City of Santa Fe Contract
CRWTP Raw Water Supply Pipeline Construction**

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **TLC Company, Inc.**, herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1.

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers to **TLC Company, Inc.** "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall construct approximately 3,200 linear feet of 24 inch raw water supply pipeline between Nichols Dam and the Canyon Road Water Treatment Plant in Santa Fe County, New Mexico. Pipeline construction consists of, but not limited to trench excavation, furnishing and installing 24 inch (nominal inside diameter) pipe with fittings, valves, locate wire, warning tape, fiber optic conduit with pull boxes, backfill with compaction, pressure testing, combination air and vacuum valve stations, and roadway restoration in accordance with plans, specifications, and all other contract documents attached hereto.

B. Contractor shall provide and keep at the work site, a complete "as-built" record set of drawings that shall be corrected daily and shall show every change from the original approved drawings and specifications. These changes shall be forwarded to City periodically. The drawings shall reflect exact and actual "as-built" conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show "as-built" conditions, Contractor shall prepare sketches which delineate the necessary "as-built" information. City shall furnish two (2) sets of all paper "blue-line" print "approved" drawings for use in accomplishing specified mark-up. Final "as-built" drawings shall be delivered to City by Contractor upon completion of the work.

C. The Contractor shall be responsible for maintaining traffic control at the site in conformance with the Manual on Uniform Traffic Control Devices.

D. Contractor shall be responsible for all permits, fees, and State and City inspections associated with the construction.

3. **Compensation**

The City shall pay to the Contractor based upon fixed prices for each Deliverable item.

The total compensation under this Agreement shall not exceed two million nine hundred thirty five thousand seven hundred and six dollars and seventy five cents. (\$2,935,706.75.) including New Mexico gross receipts tax.

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end 240 calendar days from the Notice to Proceed. The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four (4) years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this contract without cost to the City, if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the City due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

A. **Grounds.** The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

B. **Notice; City Opportunity to Cure.**

1. Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL**

RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

8. Amendment

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. Assignment

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

11. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

12. Non-Collusion

In signing this Agreement, the Vendor/Contractor certifies the Vendor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

13. Inspection of Plant

The City may inspect, at any reasonable time during Contractor's regular business hours

and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Vendor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in *Contractor representative(s)* if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et.seq.NMSA 1978, as amended. The City and its "public employees" as defined in the new Mexico Tor Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

28. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the

purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

(1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or

(2) terminate the contract for default.

33. **Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.

b. Property damage or combined single limit coverage: \$1,000,000.

c. Automobile liability (including non-owned automobile coverage): \$1,000,000.

d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any

and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

36. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

38. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this

Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

39. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

40. **Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or

interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

41. **Construction Contract Performance and Payment Bond.**

A. When a construction contract is awarded in excess of twenty-five thousand dollars (\$25,000), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract. If the contractor fails to deliver the required performance and payment bonds, the contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code in the following manner:

(1) a performance bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and

(2) a payment bond satisfactory to the City, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

B. A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more.

42. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

Water Division Director
Public Utilities Department
City of Santa Fe
801 W. San Mateo

Santa Fe, NM 87504

To Contractor:
Dale Armstrong, President
TLC Company Inc
5000 Edith Blvd NE
Albuquerque, NM 87107

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

To Contractor:
Dale Armstrong, President
TLC Company Inc
5000 Edith Blvd NE
Albuquerque, NM 87107

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

43. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:



ALAN WEBBER, MAYOR

DATE: 9/5/19

CONTRACTOR:

TLC Company Inc

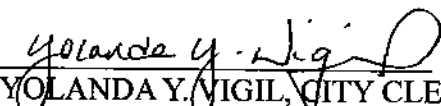


NAME AND TITLE

DATE: 7/25/19
CRS# 02-0226090-000

Registration # 19-00123458

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 8-28-19

APPROVED AS TO FORM:

 17/2/19
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:


MARY MCCOY, FINANCE DIRECTOR

52376.572970

Business Unit Line Item