



**The Purchasing Memo**

**Date:** June 23, 2025

**To:** Governing Body, Finance Committee, and Public Works & Utilities Committee

**From:** P. Fred Heerbrandt, P.E., Engineer Supervisor *P. Fred Heerbrandt, P.E.*

**Via:** Jesse Roach, Interim Public Utilities Director *JR*

**Subject:** On Call Telecommunications and Network Engineering Services Contract **FY26**

**Vendor Name:** HEI, Inc.

**Munis Vendor Number:** 2385

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**ITEM AND ISSUE:**

The Public Utilities Department, Wastewater Management Division respectfully requests your review and approval of a Professional Services Contract in the total amount of \$162,281.25 per year, including NMGRT, for On Call Telecommunications and Network Engineering Services for a term of four (4) years with HEI, Inc., for a total of \$649,125.00 over the contract term, including NMGRT.

1. Request for approval of a Budget Amendment Resolution (BAR) in the Total Amount of \$649,125.00 From the Wastewater Enterprise Fund for the Contract Four-Year Term.

**CONTRACT NUMBER:**

The FY26 Munis contract number is 3250628

**BACKGROUND AND SUMMARY:**

The contractor will assist the Division as we expand our command-and-control system at the Paseo Real Water Reclamation Facility by providing professional and licensed Telecommunication and Network Engineering, Fiber Optic and Ethernet Cable Installation, Troubleshooting, Fiber Optic Testing and Certification, Ethernet Testing and Certification, and General Network Troubleshooting.

**PRIOR APPROVALS AND SUPPORTING INFORMATION:**

**FUNDING SOURCE:**

**Fund Name/Number:** Wastewater Enterprise Fund/Fund 500

**Munis Org Name/Number:** Wastewater Capital Projects 5000375

**Munis Object Name/Number:** WIP Construction 572970

**Budget Officer / Designee:** *Andy Hopkins*

**Date:** 06/25/2025

**Budget Officer Comment/Exceptions:** \_\_\_\_\_

**PROCUREMENT METHOD:**

The procurement method used was NMSA 1978, Section 13-1-111, RFP

RFP 25094 was released on April 2, 2025, and closed on April 30, 2025. Three proposals were received, and two contracts will be awarded.

**Chief Procurement Officer (CPO)/Designee:**  \_\_\_\_\_ **Date:** 06/25/2025

**CPO Comment/Exceptions:** \_\_\_\_\_

**ASSOCIATED APPROVALS:**

**IT Components included?**  Yes |  No

**Approval:**  \_\_\_\_\_ **Title:** \_\_\_\_\_ **Date:** 07/07/2025  
Eric Candelaria (Jul 7, 2025 09:50 MDT)

**Comment/Exceptions:** \_\_\_\_\_

**Treasury/Point of Sale Components included?**  Yes |  No

**Approval:** \_\_\_\_\_ **Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Comment/Exceptions:** \_\_\_\_\_

**Vehicles included?**  Yes |  No

**Approval:** \_\_\_\_\_ **Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Comment/Exceptions:** \_\_\_\_\_

**Construction to City Facilities, Furniture, and/or Fixtures included?**  Yes |  No

**Approval:** \_\_\_\_\_ **Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Comment/Exceptions:** \_\_\_\_\_

**Is this an externally funded purchase?**  Yes |  No

**If yes, what is the issuing agency:** \_\_\_\_\_

**Approval:** \_\_\_\_\_ **Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Comment/Exceptions:** \_\_\_\_\_

**Is this a Capital Asset or Project?**  Yes |  No

**Project Ledger Number:** \_\_\_\_\_

**Approval:** \_\_\_\_\_ **Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Comment/Exceptions:** \_\_\_\_\_

**ATTACHMENTS:**

CPO Service Determination Email

Certificate of Liability Insurance (COI)

Professional Services Contract from RFP

BAR

## ATTACHMENT F - PROJECT COST PROPOSAL FORM

Each offeror should provide a Fixed Overhead Rate that will be evaluated. Offerors should also fill out the hourly rates below. The Fixed Overhead Rate and the hourly rates will be used in the final On-call Price Agreements for each offeror.

Fixed Overhead Rate Percentage: 5%

#	Description	Hourly Rate
1	Superintendent - Regular Hourly Rate – Task Order < \$60,000	\$ 115.00
2	Superintendent - Overtime Hourly Rate–Task Order < \$60,000	\$ 172.50
3	Journeyman - Regular Hourly Rate – Task Order < \$60,000	\$ 115.00
4	Journeyman - Overtime Hourly Rate – Task Order < \$60,000	\$ 172.50
5	Laborer - Regular Hourly Rate – Task Order < \$60,000	\$ 95.00
6	Laborer - Overtime Hourly Rate – Task Order < \$60,000	\$ 142.50
7	Superintendent - Regular Hourly Rate – Task Order > \$60,000	\$ 115.00
8	Superintendent - Overtime Hourly Rate–Task Order > \$60,000	\$ 172.50
9	Journeyman - Regular Hourly Rate – Task Order > \$60,000	\$ 115.00
10	Journeyman - Overtime Hourly Rate – Task Order > \$60,000	\$ 172.50
11	Laborer - Regular Hourly Rate – Task Order > \$60,000	\$ 95.00
12	Laborer - Overtime Hourly Rate – Task Order > \$60,000	\$ 142.50
13	Superintendent - Regular Hourly Rate – Emergency Response	\$ 115.00
14	Superintendent - Overtime Hourly Rate– Emergency Response	\$ 172.50
15	Journeyman - Regular Hourly Rate – Emergency Response	\$ 115.00
16	Journeyman - Overtime Hourly Rate – Emergency Response	\$ 172.50
17	Laborer - Regular Hourly Rate – Emergency Response	\$ 95.00
18	Laborer - Overtime Hourly Rate – Emergency Response	\$ 142.50

#	Description – Other Rates	Rates
1	Sanitary/Toilet facilities, rental rate	\$ 130.00/month
2	Travel Rate from the Contractors facility to the work site, pursuant to the New Mexico Per Diem and Mileage Act.	\$ .67/mile
3	Discount off Parts/Materials	% -5% off list

CITY OF SANTA FE  
PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the “City,” and **HEI, Inc.**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the Parties.

**RECITALS**

**WHEREAS**, the Chief Procurement Officer of the City has made the determination that this Agreement is in accordance with the provisions of the New Mexico Procurement Code (NMSA 1978, 13-1-28 et seq.) pursuant to NMSA 1978, section 13-1-111; and

**WHEREAS**, the Contractor is one of such requisite and qualifications and is willing to engage with the City for professional services, in accordance with the terms and conditions hereinafter set out, and the Contractor understanding and consenting to the foregoing is willing to render such professional services as outlined in the Agreement; and

The City and the Contractor hereby agree as follows:

**1. Scope of Work**

The Contractor shall provide the following services-for the City:

The contractor will provide professional and licensed Telecommunication and Network Engineering, Fiber Optic and Ethernet Cable Installation, Troubleshooting, Fiber Optic Testing and Certification, Ethernet Testing and Certification, and General Network Troubleshooting for the City's Wastewater Management Division, Public Utilities Department.

1. The location of these services shall include but is not limited to:
  - a. Paseo Real Wastewater Reclamation Facility and Remote Sites (remote pumping stations in the collection system)
2. The Contractor shall provide but not limited to following services as needed:
  - a. Emergency and Non-Emergency IT and Field Support Services:
    - i. Provide qualified and competent technical support within 2 hours for Emergency and 12 hours for non-Emergency.
  - b. Telecommunications and Network Engineering Service:
    - i.. Provide telecommunication solutions to better expand the existing backbone cabling.
    - ii. Provide design review and recommendations for projects involving all aspects of telecommunication, telemetry, and network cabling.
  - c. Cabling Support and installation:
    - i. Provide cabling troubleshooting and testing to verify fiber optic and ethernet cabling is up to industry standards.
    - ii. Troubleshoot existing cables as needed and recommend fixes to problematic cables.

- iii. Install new fiber optic and ethernet cabling as needed to incorporate new system and equipment.
- iv. Provide new equipment and installation to network related equipment that is outdated or broken as the city needs.
- d. Documentation:
  - i. Provide Documentation in AutoCAD and PDF format for any and all changes to the Network and all of the cabling included.
  - ii. Any work done shall be done under direct supervision of a Building Industry Consulting Services International (BICSI) certified technician.

## 2. Standard of Performance; Licenses

A. The Contractor does hereby accept its designation as a professional service, rendering services related to Telecommunications and Network Engineering for the City, as set forth in this Agreement. The Contractor represents that Contractor possesses the personnel, experience, and knowledge necessary to perform the services described under this Contract.

B. The Contractor agrees to obtain and maintain throughout the term of this Contract, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives, and subcontractors.

## 3. Compensation

A. The City shall pay to the Contractor in full payment for services satisfactorily performed for \$600,000 excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling \$49,125 shall be paid by the City to the Contractor at the rate of 8.1875%. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \$649,125

B. Payment. The total compensation under this Agreement shall not exceed \$649,125.00 for the term of this Agreement, including New Mexico gross receipts tax,

**This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.**

C. Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

## Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Contract shall terminate **four (4) years from date of final signature** unless terminated pursuant to paragraph 5 (Termination) and paragraph 6 (Appropriations). The City reserves the right to renew this contract on an annual basis by mutual agreement not to exceed a total of four (4) years in accordance with NMSA 1978, Sections 13-1-150 through 152.

## 5. Termination

- A. Grounds. The City may terminate this Agreement for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. 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) 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 6, "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.*

## 6. Appropriations

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Governing Body, this Contract shall terminate immediately 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 Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

## **7. Status of Contractor**

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its 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 Contract. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. 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.

## **8. Assignment**

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

## **9. Subcontracting**

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

## **10. Release**

Final payment of the amounts due under this Contract shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

## **11. Confidentiality**

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

## **12. Product of Service -- Copyright**

All materials developed or acquired by the Contractor under this Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

## **13. Conflict of Interest; Governmental Conduct Act**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract 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 Article are material representations of fact upon which the City relied when this Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article were erroneous on the effective date of this Contract 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 Article were erroneous on the effective date of this Contract 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 Contract to the contrary, the City may immediately terminate the Contract.

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

#### **14. 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 Contract 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 Contract, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

#### **15. Entire Agreement.**

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits and Schedules constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related Exhibits and Schedules, the statements in the body of this Agreement shall control.

#### **16. Merger**

This Contract 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 contract.

All terms and conditions of the RFP#25094 Telecommunications and Network Engineering Services and the Contractor's response to such document(s) are incorporated herein by reference and is included in the order of precedence.

No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

#### **17. Penalties for violation of law**

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

#### **18. Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures 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 Contract. If

Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

### **19. Applicable Law**

The laws of the State of New Mexico shall govern this Contract, 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, section 38-3-2. By execution of this Contract, 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 Contract.

### **20. 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 Contract may be terminated by the City.

### **21. Professional Liability Insurance**

Contractor shall maintain professional liability insurance throughout the term of this Contract providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Contract.

### **22. Other Insurance**

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

A. **Commercial General Liability** insurance shall be written on an occurrence basis and be a broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. **Broader Coverage and Limits.** The insurance requirements under this Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of Contractor hereunder.

C. Contractor shall maintain the above insurance for the term of this Contract 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.

### **23. Records and Financial Audit**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the City to recover excessive or illegal payments.

**24. Indemnification**

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Contract, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Contract. If any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Contract is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

**25. New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this Contract 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 Tort 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 Contract modifies or waives any provision of the New Mexico Tort Claims Act.

**26. Invalid Term or Condition**

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

**B. Enforcement of Contract**

A party's failure to require strict performance of any provision of this Contract 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 Contract 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.

**C. Notices**

Any notice required to be given to either party by this Contract shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:  
Andrew Hardinge  
73 Paseo Real  
Santa Fe, NM, 87507  
aphardinge@santafenm.gov  
505-955-4619

To the Contractor:

Will Humbard  
3800 Vassar Dr. NE  
Albuquerque, NM 87107  
whumbard@heinm.com  
505-880-1819

**D. Authority**

If Contractor is other than a natural person, the individual(s) signing this Contract on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter a binding contract.

**E. Non-Collusion**

In signing this Agreement, the Contractor certifies the 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's Chief Procurement Officer.

**F. Default/Breach**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the City may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages, and the City may also seek all other remedies under the terms of this Agreement and under law or equity.

**G. Equitable Remedies**

The Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City, and the Contractor consents to the City's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. The City's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the City may have under applicable law, including, but not limited to, monetary damages.

**H. Default and Force Majeure**

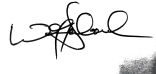
The City reserves the right to cancel all, or any part of any orders placed under this Agreement without cost to the City, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor 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 Contractor; 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 subcontractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

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

CITY OF SANTA FE:

CONTRACTOR:

\_\_\_\_\_  
Alan Webber, MAYOR

  
\_\_\_\_\_  
Will Humbard, President

DATE: 06/23/2025

NMBTIN#: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez  
Marcos Martinez (Jun 23, 2025 08:17 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

*Emily K. Oster*

\_\_\_\_\_  
FINANCE DIRECTOR

Log # <i>{Finance use only}</i> :	
Journal # <i>{Finance use only}</i> :	

## City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME Public Utilities/Wastewater				DATE 6/23/2025	
ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<b>EXPENDITURES</b>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>
WW Capital Projects/WIP Construction	5000375	572970		\$ 649,125	
<b>REVENUES</b>				<i>{enter as negative #}</i>	<i>{enter as positive #}</i>
<b>JUSTIFICATION:</b> <i>{use additional page if needed}</i> <i>--Attach supporting documentation/memo</i>				\$ 649,125	\$ -
To increase account 572970 for HEI. Please see memo for detail and please add HEI for posting of BAR (FY26)				<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
				Fund Balance	
				Fund(s) Affected	Increase/(Decrease)
				500	(649,125)
				<b>TOTAL:</b>	<b>(649,125)</b>
Linda MacAllister <i>Prepared By {print name}</i>	6/23/2025 <i>Date</i>	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>		<i>Andy Hopkins</i>	
		<b>CITY COUNCIL APPROVAL</b>		Budget Officer	<i>Date</i>
		<i>City Council</i>	<input type="text"/>		
		<i>Approval Date</i>	<input type="text"/>	Finance Director <i>{≤ \$5,000}</i>	<i>Date</i>
		<i>Agenda Item #:</i>	<input type="text"/>		
		Department Director Signature	<i>Date</i>	City Manager <i>{≤ \$60,000}</i>	<i>Date</i>

**From:** [DUTTON-LEYDA, TRAVIS K.](#)  
**To:** [MACALLISTER, LINDA M.](#); [Purchasing DET](#)  
**Cc:** [HEERBRANDT, PAUL E.](#); [DOZIER, MICHAEL L.](#); [ALVARADO, LEROY M.](#)  
**Subject:** RE: FOLLOW UP/// DETERMINATION REQUEST //RFP 25094 On--call telecommunications and Network engineering Services  
**Date:** Thursday, March 20, 2025 5:21:06 PM  
**Attachments:** [image002.png](#)  
[image004.png](#)

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Greetings,

The scope of work as written would be Professional Services. This determination relates only to that question and is no comment on whether the scope of work or procurement method meet all legal standards. I reserve the right to change this determination if the scope of work differs from the scope of work submitted for the original determination. This procurement must be conducted using the processes and procedures set forth by the City of Santa Fe, Central Purchasing, the Procurement Manual, and state statutes.

Please note:

- Save this email as a PDF and upload it into the corresponding Munis records.
- Check with WorkQuest dba Horizons of New Mexico ([mloehman@horizonsofnewmexico.org](mailto:mloehman@horizonsofnewmexico.org)) if this service appears on their approved list.
- If your request includes anything that needs to be reviewed and preapproved by another City Department/Division, please send the same SOW to the corresponding email address and include their response in your packet/Munis.
  - IT components (anything IT) - [ereview@santafenm.gov](mailto:ereview@santafenm.gov)
  - Vehicles – [dmjaramillo@santafenm.gov](mailto:dmjaramillo@santafenm.gov)
  - Grants - [grants@santafenm.gov](mailto:grants@santafenm.gov)
  - Construction, Facilities, Furniture, Fixtures, Equipment, etc. - [jsburnett@santafenm.gov](mailto:jsburnett@santafenm.gov)
  - Emergency Related Purchases - [bgwilliams@santafenm.gov](mailto:bgwilliams@santafenm.gov)
  - Asset over \$5k - [jxbolden@santafenm.gov](mailto:jxbolden@santafenm.gov)
- Ensure that the appropriate templates and forms are used [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1) and documented [procedures/laws/rules](#) are followed. \_
- > \$20k per year, when processing this procurement, please ensure the procurement number issued by Munis and the procurement name are used in the appropriate documents and the subject of emails.
- If you are processing a procurement where the forecasted amount is => \$60k, per NMSA 1978, Section 13-1-102, if you aren't using a cooperative or existing contract, you must process an RFP.
- < \$20k per year, one quote is acceptable.
- From \$20k to \$60k per year, if you aren't using a cooperative or existing contract, you'll need to provide 3 quotes in your req. Must use the Munis Bid Module after 12/21/2023.

Figure out your funding source and **inform Purchasing**. To ensure that the proper documents and language are used, it is important to identify the funding source for the subsequent contract. For instance, if federal funds are involved, the procurement request and subsequent contract must include the necessary federal language. Therefore, it is crucial to determine the funding source beforehand.

- Review the pages linked below to determine whether any of the existing price agreements/contracts or cooperative agreements are applicable to this request. You might be able to use an existing price agreement/contract to save time and money.
  - <https://www.generalservices.state.nm.us/state-purchasing/statewide-price-agreements/> (if you choose to use a Statewide, you do not need to ask Horizons if they can do the work. State Purchasing must offer the SOW to Horizons prior to placing the award on their website.)
  - <https://naspo.valuepoint.org/categories/>
  - <https://www.omniapartners.com/publicsector/contracts>
  - <https://www.buyboard.com/home.aspx>
  - <https://www.h-gac.com/Home>
  - <https://www.gsaelibrary.gsa.gov/>
  - <https://www.sourcewell-mn.gov/contract-search>
  
- Submit or send your request to the appropriate MS Teams channel or email address:
  - RFPs requests to <https://teams.microsoft.com/l/channel/19%3ad63b9c8b586d424fa5eed34177146ac5%40thread.tacv2/RFP%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f>
  - ITBs requests to <https://teams.microsoft.com/l/channel/19%3a48e1e4588c0440a09cfbd9b907ed42d4%40thread.tacv2/ITB%2520Requests?groupId=a367d8c2-992f-4c74-8e7d-0ccb6950c9a1&tenantId=77b69f5a-55ed-4363-8616-4867b0bc707f>
  - Determination requests to [purchasing\\_det@santafenm.gov](mailto:purchasing_det@santafenm.gov)
  - And all other requests to [purchasing@santafenm.gov](mailto:purchasing@santafenm.gov)

Thank you for submitting this scope of work for my review.

 [Book time to meet with me](#)

Regards,

Travis Dutton-Leyda  
Chief Procurement Officer  
City of Santa Fe  
200 Lincoln Avenue  
Santa Fe, NM 87501  
505-629-8351

[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)

<https://santafenm.gov/finance-2/purchasing-1>

Internal Link: [https://intranet.santafenm.gov/finance\\_1](https://intranet.santafenm.gov/finance_1)



*"The future belongs to those who believe in the beauty of their dreams."* — Eleanor Roosevelt

---

**From:** MACALLISTER, LINDA M. <Immacallister@santafenm.gov>  
**Sent:** Wednesday, March 19, 2025 9:26 AM  
**To:** Purchasing DET <purchasing\_det@santafenm.gov>  
**Cc:** HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>; DOZIER, MICHAEL L. <mldozier@santafenm.gov>; ALVARADO, LEROY M. <Imalvarado@santafenm.gov>  
**Subject:** FOLLOW UP/// DETERMINATION REQUEST //RFP 25094 On--call telecommunications and Network engineering Services

Hi Travis,

Just a friendly follow up on the below determination.

*Linda MacAllister*

Contract Specialist  
City of Santa Fe Waste Water/Purchasing  
Cell: 505-577-6731



---

**From:** MACALLISTER, LINDA M.  
**Sent:** Friday, March 14, 2025 8:08 AM  
**To:** Purchasing DET <purchasing\_det@santafenm.gov>  
**Cc:** HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>; DOZIER, MICHAEL L. <mldozier@santafenm.gov>; ALVARADO, LEROY M. <Imalvarado@santafenm.gov>  
**Subject:** DETERMINATION REQUEST //RFP 25094 On--call telecommunications and Network engineering Services

Hi Travis,

You have already told us this is professional services, but we are needing the determination. Below is the SOW. This RFP is already in process...

On-Call Network and Communication Services. The contractor will provide professional and licensed Telecommunication and Network Engineering, Fiber Optic and Ethernet Cable Installation, Troubleshooting, Fiber Optic Testing and Certification, Ethernet Testing and Certification, and General Network Troubleshooting for the City's Wastewater Management Division, Public Utilities Department. Provide design review and recommendations for projects involving all aspects of telecommunication, telemetry, and network cabling.

*Linda MacAllister*

Contract Specialist

City of Santa Fe Waste Water/Purchasing

Cell: 505-577-6731







## ADDITIONAL REMARKS SCHEDULE

<b>AGENCY</b> RSC Insurance Brokerage, Inc.		<b>NAMED INSURED</b> Hei INC Blue Mountain Enterprises	
<b>POLICY NUMBER</b> _____		<b>EFFECTIVE DATE:</b> _____	
<b>CARRIER</b> _____	<b>NAIC CODE</b> _____		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** 25      **FORM TITLE:** Certificate of Liability Insurance

City of Santa Fe and Owner are named as Additional Insured per Additional Insured Endorsement for ongoing and completed operation for General Liability as required by written contract. City of Santa Fe and Owner are named as Additional Insured on all policies except Worker's Compensation per written contract. A waiver of subrogation exists in favor of City of Santa Fe and Owner as to the general liability, auto, umbrella and workers compensation policies per written contract. The general liability, auto and umbrella policies are primary and non-contributory.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Endorsement - Table of Contents:

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(a) Managers Or Lessors Of Premises	
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(d) State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises	
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#### B. Limits Of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

##### 1. Employee Benefit Liability Coverage

Each Employee Limit: \$1,000,000  
Aggregate Limit: \$3,000,000  
Deductible Amount: \$ 1,000

##### 3. Damage To Premises Rented To You

The lesser of:

- The Each Occurrence Limit shown in the Declarations; or
- \$500,000 unless otherwise stated \$ \_\_\_\_\_

##### 4. Supplementary Payments

- Bail Bonds: \$ 2,500
- Loss Of Earnings: \$ 500

**5. Medical Payments**

Medical Expense Limit: \$10,000

**9. Property Damage To Borrowed Equipment**

Each Occurrence Limit: \$10,000  
 Deductible Amount: \$ 250

**16. Voluntary Property Damage Coverage (Coverage D) and Care, Custody Or Control Liability Coverage**

**Limits Of Insurance**

Voluntary Property Damage Coverage:  
 \$1,000 Each Occurrence  
 \$5,000 Aggregate  
 Care, Custody Or Control Liability Coverage:  
 \$5,000 Each Occurrence unless otherwise stated \$ \_\_\_\_\_

**Deductible Amount (Each Occurrence)**

Voluntary Property Damage Coverage: \$250  
 Care, Custody Or Control Liability Coverage: \$250 unless otherwise stated \$ \_\_\_\_\_

COVERAGE	PREMIUM BASIS (a) Area (b) Payroll (c) Gross Sales (d) Units (e) Other	RATE  (For Limits in Excess of \$5,000)	ADVANCE PREMIUM  (For Limits in Excess of \$5,000)
Care, Custody Or Control Liability			\$
<b>TOTAL ANNUAL PREMIUM</b>			<b>\$</b>

**C. Coverages**

**1. Employee Benefit Liability Coverage**

a. The following is added to **Section I - Coverages**:

**EMPLOYEE BENEFIT LIABILITY COVERAGE**

**(1) Insuring Agreement**

(a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

1) The amount we will pay for damages is limited as described in **C. Coverages, 1. Employee Benefit Liability Coverage, c. Limits Of Insurance** of this endorsement; and

2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

(b) This insurance applies to damages only if the act, error or omission is negligently committed in the "administration" of your "employee benefit program"; and

1) Occurs during the policy period; or

2) Occurred prior to the "first effective date" of this endorsement provided:

a) You did not have knowledge of a claim or "suit" on or before the "first effective date" of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any insured listed under C. Coverages, 1. Employee Benefit Liability Coverage, b. Who Is An Insured, (1) of this endorsement or any "employee" authorized by you to give or receive notice of a claim or "suit":

i) Reports all, or any part, of the act, error or omission to us or any other insurer;

ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

b) There is no other applicable insurance.

## (2) Exclusions

This insurance does not apply to:

### (a) Bodily Injury, Property Damage Or Personal And Advertising Injury

"Bodily injury", "property damage" or "personal and advertising injury".

### (b) Dishonest, Fraudulent, Criminal Or Malicious Act

Damages arising out of any intentional, dishonest,

fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

### (c) Failure To Perform A Contract

Damages arising out of failure of performance of contract by any insurer.

### (d) Insufficiency Of Funds

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

### (e) Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation

Any claim based upon:

1) Failure of any investment to perform;

2) Errors in providing information on past performance of investment vehicles; or

3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

### (f) Workers' Compensation And Similar Laws

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

### (g) ERISA

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines Or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- 1) Refusal to employ;
- 2) Termination of employment;
- 3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or
- 4) Consequential liability as a result of 1), 2) or 3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(k) Cyber**

Any liability, costs, expenses or damages arising, directly or indirectly, out of or as a consequence of any:

- 1) "Computer attack";
- 2) "Network security incident";
- 3) "Privacy violation"; or
- 4) Fraudulent communication that impersonates

any person or organization that results in the transfer of funds or other property regardless of the medium or technique used.

**(3) Supplementary Payments**

Section I - Supplementary Payments - Coverages A and B also apply to this Coverage, however 1.b. and 2. of the Supplementary Payments provision do not apply.

**b. Who Is An Insured**

As respects Employee Benefit Liability Coverage, Section II - Who Is An Insured is replaced by the following:

**(1) If you are designated in the Declarations as:**

- (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
- (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

- (2) Each of the following is also an insured:
  - (a) Each of your "employees" who is or was authorized to administer your "employee benefit program";
  - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed; or
  - (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:
  - (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

**c. Limits Of Insurance**

As respects Employee Benefit Liability Coverage, **Section III - Limits Of Insurance** is replaced by the following:

- (1) The Limits of Insurance shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement and the rules below fix the most we will pay regardless of the number of:
  - (a) Insureds;
  - (b) Claims made or "suits" brought;

- (c) Persons or organizations making claims or bringing "suits";
- (d) Acts, errors or omissions; or
- (e) Benefits included in your "employee benefit program".

- (2) The Aggregate Limit shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
  - (a) An act, error or omission; or
  - (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions;

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program."

**(4) Deductible Amount**

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the Deductible Amount shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement as applicable to Each Employee. The limits of insurance shall not be reduced

by the amount of this deductible.

- (b) The Deductible Amount shown in Section B, Limits Of Insurance, 1. Employee Benefit Liability Coverage of this endorsement applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- (c) The terms of this insurance, including those with respect to:
  - 1) Our right and duty to defend the insured against any "suits" seeking those damages; and
  - 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim;

apply irrespective of the application of the Deductible Amount.

- (d) We may pay any part or all of the Deductible Amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the Deductible Amount as we have paid.

#### d. Additional Conditions

As respects Employee Benefit Liability Coverage, **Section IV - Commercial General Liability Conditions** is amended as follows:

- (1) Item 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit is replaced by the following:
  - 2. **Duties In The Event Of An Act, Error, Omission, Claim Or Suit**
    - a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim.

To the extent possible, notice should include:

- (1) What the act, error or omission was and when it occurred; and
  - (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
- b. If a claim is made or "suit" is brought against any insured, you must:
- (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:
- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which

this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

- (2) Item 4. Other Insurance is replaced by the following:

#### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Employee Benefit Liability Coverage, our obligations are limited as follows:

##### a. Primary Insurance

This insurance is primary except when c. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph b. below.

##### b. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

##### c. No Coverage

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Employee Benefit Liability Coverage.

##### e. Additional Definitions

As respects Employee Benefit Liability Coverage, **Section V - Definitions** is amended as follows:

- (1) The following definitions are added:

- 1. "Administration" means:
  - a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
  - b. Interpreting the "employee benefit programs";
  - c. Handling records in connection with the "employee benefit programs"; or
  - d. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
  - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
- 2. "Biometric information" means any:

- a. Biological measurement or physical characteristic of an individual, including but not limited to a retina or iris scan, fingerprint, palmprint, voiceprint, hand or face geometry, vein pattern, genetic data, movement, or any other information that can be used as a form of identification or authentication; or
  - b. Information, regardless of how it is captured, converted, stored or shared, based on an individual's biological measurement or physical characteristic.
3. "Cafeteria plans" means plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
4. "Computer attack" means:
- a. Unauthorized access or authorized access for an unauthorized purpose;
  - b. A "malware attack"; or
  - c. A "denial of service attack";
- against any computer, computer system or network of computers or computer systems, including any other machinery or equipment, including their control systems, which are accessed by or integrated into a computer, computer system or network of computers or computer systems.
5. "Denial of service attack" means an attack against a target computer or network of computers designed to overwhelm the capacity of the target computer or network in order to deny or impede users from gaining access to the target computer or network through the internet.
6. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
  - c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and
  - d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.
7. "First effective date" means the date upon which coverage was first effected in a series of uninterrupted renewals of insurance coverage.
8. "Malware attack" means an attack that damages a computer, computer system or

network of computers or computer systems, including any other machinery or equipment, including their control systems, which are accessed by or integrated into a computer, computer system or network of computers or computer systems, or data contained therein arising from malicious code, including, but not limited to, viruses, worms, Trojans, spyware, keyloggers and ransomware.

9. "Network security incident" means a security failure or weakness with respect to a computer, computer system or network of computers or computer systems which allowed one or more of the following to happen:
  - a. The propagation or forwarding of malware, including, but not limited to, viruses, worms, Trojans, spyware, keyloggers and ransomware;
  - b. The abetting of a "denial of service attack" against one or more other systems;
  - c. The loss, release or disclosure of data;
  - d. The inability to access a computer system;
  - e. The unauthorized access to a computer system.
10. "Privacy law" means any law, statute or regulation enacted or promulgated by or on behalf of any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity that creates legally enforceable responsibilities with respect to:
  - a. The collection, use, storage, disclosure, disposal, sharing or disseminating as well as correction or supplementation of personally identifying information, including, but not limited

to, "biometric information"; or

- b. The adoption and communication of, as well as compliance with, a "privacy policy".

"Privacy laws" include, but are not limited to, the European Union General Data Protection Regulation, the California, Consumer Privacy Act and the Illinois Biometric Information Privacy Act.

11. "Privacy policy" means an entity's policy for collection, use, storage, disclosure, disposal, sharing, disseminating and correction or supplementation of personally identifying information, including, but not limited to, "biometric information".
12. "Privacy violation" means failure to comply for any reason with a "privacy law" or "privacy policy".

(2) The following definitions are deleted in their entirety and replaced by the following:

5. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
18. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

- c. An appeal of a civil proceeding.

**2. Unintentional Failure To Disclose Hazards**

**Section IV - Commercial General Liability Conditions, 6. Representations** is amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

**3. Damage To Premises Rented To You**

- a. The last paragraph of **2. Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the Damage To Premises Rented To You Limit as described in **Section III - Limits Of Insurance.**

- b. The insurance provided under **Section I - Coverage A - Bodily Injury And Property Damage Liability** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

As respects Water Damage Legal Liability, as provided in Paragraph **3.b.** above:

The exclusions under **Section I - Coverage A - Bodily Injury And Property Damage Liability, 2. Exclusions,** other than **i.** War and the Nuclear Energy Liability Exclusion (Broad Form), are deleted and the following are added:

This insurance does not apply to:

- (a) "Property damage":
  - (i) Assumed in any contract or agreement; or
  - (ii) Caused by or resulting from any of the following:
    - 1) Wear and tear;
    - 2) Rust or other corrosion, decay, deterioration, hidden or

latent defect or any quality in property that causes it to damage or destroy itself;

- 3) Smog;
- 4) Mechanical breakdown, including rupture or bursting caused by centrifugal force;
- 5) Settling, cracking, shrinking or expansion;
- 6) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals; or
- 7) Presence, growth, proliferation, spread or any activity of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi.

- (b) "Property damage" caused directly or indirectly by any of the following:

- (i) Earthquake, volcanic eruption, landslide or any other earth movement;
- (ii) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;
- (iii) Water under the ground surface pressing on, or flowing or seeping through:

- 1) Foundations, walls, floors or paved surfaces;
- 2) Basements, whether paved or not; or
- 3) Doors, windows or other openings.

- (c) "Property damage" caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, fire protection systems, or other equipment, caused by or resulting from freezing, unless:

- (i) You did your best to maintain heat in the building or structure; or

- (ii) You drained the equipment and shut off the water supply if the heat was not maintained.

(d) "Property damage" to:

- (i) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or
- (ii) The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

**c. Limit Of Insurance**

With respect to the insurance afforded in Paragraphs **3.a.** and **3.b.** above, the Damage To Premises Rented To You Limit as shown in the Declarations is amended as follows:

- (1) Paragraph **6.** of Section **III** - Limits Of Insurance is replaced by the following:

**6.** Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** - Bodily Injury And Property Damage Liability for damages because of "property damage" to any one premises:

- a. While rented to you, or temporarily occupied by you with permission of the owner;
- b. In the case of damage by fire, explosion, lightning, smoke or soot, while rented to you; or
- c. In the case of damage by water, while rented to and occupied by you.

- (2) The most we will pay is limited as described in Section **B.** Limits Of Insurance, **3.** Damage To Premises Rented To You of this endorsement.

**4. Supplementary Payments**

Under **Section I - Supplementary Payments - Coverages A and B:**

- a. Paragraph **1.b.** is replaced by the following:

Up to the limit shown in Section **B.** Limits Of Insurance, **4.a.** Bail Bonds of this endorsement 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.

- b. Paragraph **1.d.** is replaced by the following:

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 the limit shown in Section **B.** Limits Of Insurance, **4.b.** Loss Of Earnings of this endorsement per day because of time off from work.

**5. Medical Payments**

The Medical Expense Limit of Any One Person as shown in the Declarations is amended to the limit shown in Section **B.** Limits Of Insurance, **5.** Medical Payments of this endorsement.

**6. 180 Day Coverage For Newly Formed Or Acquired Organizations**

**Section II - Who Is An Insured** is amended as follows:

Subparagraph **a.** of Paragraph **3.** is replaced by the following:

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

**7. Waiver Of Subrogation**

**Section IV - Commercial General Liability Conditions, 8. Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

We waive any right of recovery against any additional insured under this endorsement, because of any payment we make under this endorsement, to whom the insured has waived its right of recovery in a written contract, written agreement, written permit or written authorization. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such additional insured prior to loss.

**8. Automatic Additional Insured - Specified Relationships**

**a. The following is added to Section II - Who Is An Insured:**

(1) Any person(s) or organization(s) described in Paragraph **8.a.(2)** of this endorsement (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of a written contract, written agreement, written permit or written authorization.

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

**(a) Managers Or Lessors Of Premises**

The manager or lessor of a premises leased to you are required per Paragraph **8.a.(1)** of this endorsement to provide insurance, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- (i) Any "occurrence" which takes place after you cease to be a tenant in that premises;
- (ii) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(b) Lessor Of Leased Equipment**

Any person(s) or organization(s) from whom you lease equipment you are required

per Paragraph **8.a.(1)** of this endorsement to provide insurance. Such person(s) or organization(s) are insureds only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s). A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends. However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

**(c) Vendors**

Any person or organization (referred to below as vendor) you are required per Paragraph **8.a.(1)** of this endorsement to provide insurance, but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

(i) The insurance afforded the vendor does not apply to:

- 1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- 2) Any express warranty unauthorized by you;

- 3) Any physical or chemical change in the product made intentionally by the vendor;
  - 4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - 5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
  - 6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
  - 7) Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
  - 8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
    - a) The exceptions contained in Paragraphs (c)(i)4) or 6) of this endorsement; or
    - b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (ii) This insurance does not apply to any insured person or organization:
- 1) From whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products; or
  - 2) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.
- (d) **State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises**
- Any state or governmental agency or subdivision or political subdivision you are required per Paragraph 8.a.(1) of this endorsement to provide insurance, subject to the following additional provision:

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:

- (i) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
- (ii) The construction, erection or removal of elevators; or
- (iii) The ownership, maintenance or use of any elevators covered by this insurance.

**(e) Mortgagee, Assignee Or Receiver**

Any person or organization you are required per Paragraph **8.a.(1)** of this endorsement to provide insurance, but only with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance or use of the premises by you. However, this insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- (3) The insurance afforded to additional insureds described in Paragraph **8.a.(1)** of this endorsement:
  - (a) Only applies to the extent permitted by law;
  - (b) Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to pro-

vide for such additional insured; and

- (c) Does not apply to any person, organization, vendor, state, governmental agency or subdivision or political subdivision, specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part, provided such other provision or endorsement covers the injury or damage for which this insurance applies.

- b. With respect to the insurance afforded to the additional insureds described in Paragraph **8.a.(1)** of this endorsement, the following is added to **Section III - Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- (1) Required by the written contract, written agreement, written permit or written authorization described in Paragraph **8.a.(1)** of this endorsement. For the purpose of determining the required amount of insurance only, we will include the minimum amount of any Umbrella liability or Excess Liability coverage required for that additional insured in that written contract, written agreement, written permit or written authorization; or
- (2) Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

- c. **Section IV - Commercial General Liability Conditions** is amended to include the following:

**Automatic Additional Insured Provision**

This insurance applies only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:

- (1) During the policy period; and
- (2) Subsequent to your execution of the written contract or written agreement, or the issuance of a

written permit or written authorization, described in Paragraph **8.a.(1)**.

**d. Section IV - Commercial General Liability Conditions** is amended as follows:

Condition **4. Other Insurance** is amended to include:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured per Paragraph **8.a.(1)** of this endorsement provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract, agreement, permit or authorization described in **8.a.(2)** of this endorsement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**9. Property Damage To Borrowed Equipment**

**a.** The following is added to Exclusion **2.j. Damage To Property** under Section **I - Coverage A - Bodily Injury And Property Damage Liability**:

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

**b.** With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

- (1) The Limits of Insurance shown in the Declarations are replaced by the limits shown in Section **B. Limits Of Insurance, 9. Property Damage To Borrowed Equipment** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section **B. Limits Of Insurance, 9. Property Damage To Borrowed Equipment** of this endorsement fix the most we will

pay in any one "occurrence" regardless of the number of:

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

**(2) Deductible Clause**

- (a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible Amount shown in Section **B. Limits Of Insurance, 9. Property Damage To Borrowed Equipment** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.
- (b) Section **IV - Commercial General Liability Conditions, 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**, applies to each claim or "suit" irrespective of the amount.
- (c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**10. Employees As Insureds - Specified Health Care Services And Good Samaritan Services**

Paragraph **2.a.(1)(d)** under Section **II - Who Is An Insured** does not apply to:

- 1) Your "employees" who provide professional health care services on your behalf as a duly licensed nurse, emergency medical technician or paramedic in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place; or
- 2) Your "employees" or "volunteer workers", other than an employed or volunteer doctor, providing first aid or good samaritan services during their work hours for you will be deemed to be acting within the scope of their

employment by you or performing duties related to the conduct of your business.

#### 11. Broadened Notice Of Occurrence

Paragraph **a.** of Condition **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** under **Section IV - Commercial General Liability Conditions** is replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to any insured listed under Paragraph **1.** of **Section II - Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or offense.

#### 12. Nonowned Aircraft

The following is added to Exclusion **2.g. Aircraft, Auto Or Watercraft** under **Section I - Coverage A - Bodily Injury And Property Damage Liability**:

This exclusion does not apply to an aircraft you do not own, provided that:

- a. The pilot in command holds a current effective certificate, issued by a duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
- b. The aircraft is rented with a trained, paid crew; and
- c. The aircraft does not transport persons or cargo for a charge.

#### 13. Bodily Injury Redefined

**Section V - Definitions, 3.** "Bodily injury" is replaced by the following:

3. "Bodily injury" means bodily harm or injury, sickness, disease, disability, humiliation, shock, fright, mental an-

guish or mental injury, including care, loss of services or death resulting from any of these at any time.

#### 14. Expected Or Intended Injury Redefined

The last sentence of Exclusion **2.a. Expected Or Intended Injury** under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

#### 15. Former Employees As Insureds

The following is added to Paragraph **2.** under **Section II - Who Is An Insured**:

2. Each of the following is also an insured:

Any of your former "employees", directors, managers, members, partners or "executive officers", including but not limited to retired, disabled or those on leave of absence, but only for acts within the scope of their employment by you or for duties related to the conduct of your business.

#### 16. Voluntary Property Damage Coverage

- a. **Section I - Coverages** is amended to include the following:

##### **COVERAGE D - VOLUNTARY PROPERTY DAMAGE COVERAGE**

##### **(1) Insuring Agreement**

- (a) We will pay the cost to repair or replace "property damage" to property of others arising out of operations incidental to your business when:

- 1) Damage is caused by you; or
- 2) Damage occurs while in your possession.

At your written request, we will make this payment regardless of whether you are at fault for the "property damage".

If you, at our request, replace, or make any repairs to, damaged property of others, the amount we will pay under Voluntary Proper-

ty Damage Coverage will be determined by your actual cost to replace or repair the damaged property, excluding any profit or overhead.

Any payment we make under Voluntary Property Damage Coverage shall not be interpreted as an admission of liability by you or by us.

It shall be your duty, not our duty, to defend any claim or "suit" to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered.

(b) This insurance applies to "property damage" only if:

- 1) The "property damage" takes place in the "coverage territory"; and
- 2) The "property damage" occurs during the policy period.

**(2) Exclusions**

This insurance does not apply to "property damage" that would be excluded by Coverage **A** - Bodily Injury And Property Damage Liability, **2. Exclusions**, except for **j. Damage To Property**, Paragraphs **(3), (4), (5)** and **(6)**, **k. Damage To Your Product**, and **l. Damage To Your Work**.

**(3) Definitions**

For purposes of Voluntary Property Damage Coverage only, the following definitions under **Section V - Definitions** are replaced by the following:

13. "Occurrence" means an incident, including continuous or repeated exposure to substantially the same general harmful conditions that result in "property damage".
17. "Property damage" means physical injury to tangible property. Electronic data is not tangible property, and "property damage" does not include disappearance, abstraction or theft.

As used in this definition, electronic data means information, facts or programs, stored as or on, created or used on, transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**b. Care, Custody Or Control Liability Coverage**

For purposes of the coverage provided by Care, Custody Or Control Liability Coverage in this endorsement only:

- (1) Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability, **2. Exclusions**, **j. Damage To Property**, Paragraphs **(3), (4)** and **(5)** do not apply to "property damage" to the property of others described therein.
- (2) It shall be your duty, not our duty, to defend any claim or "suit" to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered.

This Paragraph **(2)** supersedes any provision in the Coverage Part to the contrary.

- (3) "Property damage" for which Care, Custody Or Control Liability Coverage provides coverage shall be deemed to be caused by an "occurrence" but shall not serve to limit or restrict the applicability of any exclusion for "property damage" under this Coverage Part.

**c. Limits Of Insurance And Deductibles**

For purposes of the coverage provided by Voluntary Property Damage Coverage and Care, Custody Or Control Liability Coverage, **Section III - Limits Of Insurance** is amended to include the following:

- (1) The Limits of Insurance shown in the Declarations are replaced by the limits shown in Section **B**.

Limits Of Insurance, **16.** Voluntary Property Damage Coverage and Care, Custody Or Control Liability Coverage in this endorsement. These limits are inclusive of, and not in addition to, the limits being replaced. The Limits of Insurance shown in the Schedule fix the most we will pay regardless of the number of:

- (a) Insureds;
  - (b) Claims made or "suits" brought; or
  - (c) Persons or organizations making claims or bringing "suits".
- (2) (a) Subject to (3) below, the Voluntary Property Damage Coverage Each Occurrence Limit Of Insurance is the most we will pay for the sum of damages under Voluntary Property Damage Coverage;
- (b) The Care, Custody Or Control Liability Coverage Each Occurrence Limit Of Insurance is the most we will pay for the sum of damages under Care, Custody Or Control Liability Coverage;
- because of all "property damage" arising out of any one "occurrence".
- (3) The Voluntary Property Damage Coverage, Aggregate Limit Of Insurance is the most we will pay for the sum of all damages under Voluntary Property Damage Coverage. This limit applies separately to each "coverage term".
- (4) **Deductible Clause**
- (a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence"

which are in excess of the Deductible Amount shown in Section **B.** Limits Of Insurance, **16.** Voluntary Property Damage Coverage and Care, Custody Or Control Liability Coverage. The limits of insurance will not be reduced by the application of such Deductible Amount.

- (b) Section **IV** - Commercial General Liability Conditions, **2.** Duties In The Event Of Occurrence, Offense, Claim Or Suit, applies to each claim or "suit" irrespective of the amount.
- (c) We may pay any part or all of the Deductible Amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the Deductible Amount as has been paid by us.

#### **17. Broadened Contractual Liability - Work Within 50' Of Railroad Property**

**Section V - Definitions, 9.** "Insured contract" is amended as follows:

- a. Paragraph **c.** is replaced by the following:
  - c. Any easement or license agreement;
- b. Paragraph **f.(1)** is deleted in its entirety.

#### **18. Alienated Premises**

Exclusion **2.j.** Damage To Property, Paragraph (2) under Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability does not apply if the premises are "your work".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS ADDITIONAL INSURED - AUTOMATIC STATUS AND AUTOMATIC WAIVER OF SUBROGATION WHEN REQUIRED IN WRITTEN CONTRACT, AGREEMENT, PERMIT OR AUTHORIZATION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Additional Insured - Owners, Lessees Or Contractors - Automatic Status For Other Parties When Required In Written Contract Or Agreement With You

1. **Section II - Who Is An Insured** is amended to include as an additional insured any person or organization you have agreed in writing in a contract or agreement to add as an additional insured on this Coverage Part. Such person(s) or organization(s) is an additional insured only with respect to liability for:

a. "Bodily injury", "property damage" or "personal and advertising injury" *caused, in whole or in part, by* the performance of your ongoing operations by you or on your behalf, under that written contract or written agreement. Ongoing operations does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project; and

b. "Bodily injury" or "property damage" *caused, in whole or in part, by* "your work" performed under that written contract or written agreement and in-

cluded in the "products-completed operations hazard", but only if:

(1) The Coverage Part to which this endorsement is attached provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard"; and

(2) The written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for that person or organization.

If the written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for a specified length of time for that person or organization, the "bodily injury" or "property damage" must occur prior to the expiration of that period of time in order for this insurance to apply.

If the written contract or written agreement requires you to provide additional insured coverage for a person or organization per only ISO additional insured endorsement form number **CG 20 10**, without specifying an edition date, and without specifically requiring additional insured coverage included within the "products-completed operations hazard", this Paragraph **b.** does not apply to that person or organization.

2. If the written contract or written agreement described in Paragraph **1.** above specifically requires you to provide additional insured coverage to that person or organization:

a. *Arising out of* your ongoing operations or *arising out of* "your work"; or

- b. By way of an edition of an ISO additional insured endorsement that includes *arising out of* your ongoing operations or *arising out of* "your work";

then the phrase *caused, in whole or in part, by* in Paragraph **A.1.a.** and/or Paragraph **A.1.b.** above, whichever applies, is replaced by the phrase *arising out of*.

- 3. With respect to the insurance afforded to the additional insureds described in Paragraph **A.1.**, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- 4. This Paragraph **A.** does not apply to additional insureds described in Paragraph **B.**

**B. Additional Insured - State Or Governmental Agency Or Subdivision Or Political Subdivision - Automatic Status When Required In Written Permits Or Authorizations**

- 1. **Section II - Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision you have agreed in writing in a permit or authorization to add as an additional insured on this Coverage Part. Such state or governmental agency or subdivision or political subdivision is an additional insured 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, in writing, a permit or authorization.

- 2. With respect to the insurance afforded to the additional insureds described in Paragraph **B.1.**, the following additional exclusions apply:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard."

- C. The insurance afforded to additional insureds described in Paragraphs **A.** and **B.**:

- 1. Only applies to the extent permitted by law; and
- 2. Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to provide for such additional insured; and
- 3. Does not apply to any person, organization, state, governmental agency or subdivision or political subdivision specifically named as an additional insured for the same project in the schedule of an endorsement added to this Coverage Part.

- D. With respect to the insurance afforded to the additional insureds described in Paragraphs **A.** and **B.**, the following is added to **Section III - Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the written contract, written agreement, written permit or written authorization described in Paragraphs **A.** and **B.** For the purpose of determining the required amount of insurance only, we will include the minimum amount of any Umbrella Liability or Excess Liability coverage required for that additional insured in that written contract, written agreement, written permit or written authorization; or
- 2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

- E. **Section IV - Commercial General Liability Conditions** is amended to add the following:

**Automatic Additional Insured Provision**

This insurance applies only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:

1. During the policy period; and
  2. Subsequent to your execution of the written contract or written agreement, or the issuance of a written permit or written authorization, described in Paragraphs **A.** and **B.**
- F. Except when **G.** below applies, the following is added to **Section IV - Commercial General Liability Conditions, Other Insurance,** and supersedes any provision to the contrary:

**When Other Additional Insured Coverage Applies On An Excess Basis**

This insurance is primary to other insurance available to the additional insured described in Paragraphs **A.** and **B.** except:

1. As otherwise provided in **Section IV - Commercial General Liability Conditions, Other Insurance, b. Excess Insurance;** or
  2. For any other valid and collectible insurance available to the additional insured as an additional insured on another insurance policy that is written on an excess basis. In such case, this insurance is also excess.
- G. The following is added to **Section IV - Commercial General Liability Conditions, Other Insurance,** and supersedes any provision to the contrary:

**Primary Insurance When Required By Written Contract, Agreement, Permit Or Authorization**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to any other insurance available to the additional insured described in Paragraphs **A.** and **B.** provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization de-

scribed in Paragraph **A.** or **B.** that this insurance would be primary to any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

**Primary And Noncontributory Insurance When Required By Written Contract, Agreement, Permit Or Authorization**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to and will not seek contribution from any other insurance available to the additional insured described in Paragraphs **A.** and **B.** provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization described in Paragraph **A.** or **B.** that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

- H. **Section IV - Commercial General Liability Conditions, Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

**Waiver of Subrogation**

We waive any right of recovery against any additional insured under this endorsement, because of any payment we make under this endorsement, to whom the insured has waived its right of recovery in a written contract, written agreement, written permit or written authorization. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such additional insured prior to loss.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CinciPlus®**  
**BUSINESS AUTO XC+®**  
**(EXPANDED COVERAGE PLUS)**  
**ENDORSEMENT**

This endorsement modifies insurance provided by the following:

**BUSINESS AUTO COVERAGE FORM**

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

**A. Blanket Waiver of Subrogation**

**SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for “bodily injury” or “property damage” arising out of the operation of a covered “auto” when you have assumed liability for such “bodily injury” or “property damage” under an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution or the “insured contract”.

**B. Noncontributory Insurance**

**SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance c.** is deleted in its entirety and 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.

**C. Additional Insured by Contract**

**SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured** is amended to include as an insured any person or organization for whom you have agreed in a valid written contract to provide insurance as afforded by this policy.

This provision is limited to the scope of the valid written contract.

This provision does not apply unless the valid written contract has been:

1. Executed prior to the accident causing “bodily injury” or “property damage”; and
2. Is still in force at the time of the “accident” causing “bodily injury” or “property damage”.

**D. Employee Hired Auto**

**1. Changes in Liability Coverage**

The following is added to the **SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured**:

An “employee” of yours is an “insured” while operating an “auto” hired or rented under a contract or agreement in that “employee's” name, with your permission, while performing duties related to the conduct of your business.

**2. Changes in General Conditions**

**SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance** is deleted in its entirety and replaced by the following:

b. For Hired Auto Physical Damage Coverage the following are deemed to be covered “autos” you own:

- (1) Any covered “auto” you lease, hire, rent or borrow; and
- (2) Any covered “auto” hired or rented by your “employee” under a contract in that individual “employee's” name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**E. Audio, Visual and Data Electronic Equipment**

**SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limits of Insurance, 1.b.** is deleted in its entirety and replaced by the following:

b. The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:

- (1) The actual cash value of the damaged or stolen property as of the time of the "accident";
- (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
- (3) \$2,500.

Provided the equipment, at the time of the "loss" is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph (1) above; or
- (3) An integral part of such equipment.

**F. Who is an Insured - Amended**

**SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured** is amended by adding the following:

The following are "insureds":

1. Any subsidiary which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this coverage form.

However, the insurance afforded by this provision does not apply to any subsidiary that is an "insured" under any other automobile liability policy or would be an "insured" under such policy but for termination of such policy or the exhaustion of such policy's limits of insurance.

2. Any organization that is newly acquired or formed by you and over which you maintain majority ownership. The insurance provided by this provision:

- a. Is effective on the date of acquisition or formation, and is afforded for 180 days after such date;
  - b. Does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization;
  - c. Does not apply to any newly acquired or formed organization that is a joint venture or partnership; and
  - d. Does not apply to an insured under any other automobile liability policy or would be an insured under such a policy but for the termination of such policy or the exhaustion of such policy's limits of insurance.
3. Any of your "employees" while using a covered "auto" in your business or your personal affairs, provided you do not own, hire or borrow that "auto".

**G. Liability Coverage Extensions - Supplementary Payments - Higher Limits**

**SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 2. Coverage Extensions, a. Supplementary Payments** is amended by:

1. Replacing the \$2,000 Limit of Insurance for bail bonds with \$4,000 in (2); and
2. Replacing the \$250 Limit of Insurance for reasonable expenses with \$500 in (4).

**H. Amended Fellow Employee Exclusion**

**SECTION II - COVERED AUTOS LIABILITY COVERAGE, B. Exclusions, 5. Fellow Employee** is modified as follows:

Exclusion 5. **Fellow Employee** is deleted.

**I. Hired Auto - Physical Damage**

If hired "autos" are covered "autos" for Liability Coverage, then Comprehensive and Collision Physical Damage Coverages as provided under **SECTION III - PHYSICAL DAMAGE COVERAGE** of this Coverage Part are extended to "autos" you hire, subject to the following:

1. The most we will pay for "loss" to any hired "auto" is \$50,000 or the actual cash value or cost to repair or replace, whichever is the least, minus a deductible.
2. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage, or \$1,000, whichever is less.

3. Hired Auto - Physical Damage coverage is excess over any other collectible insurance.
4. Subject to the above limit, deductible, and excess provisions we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own insured under this policy.

Coverage includes loss of use of that hired auto, provided it results from an "accident" for which you are legally liable and as a result of which a monetary loss is sustained by the leasing or rental concern. The most we will pay for any one "accident" is \$3,000.

If a limit for Hired Auto - Physical Damage is shown in the Schedule, then that limit replaces, and is not added to, the \$50,000 limit indicated above and the deductibles shown in the Schedule are applicable.

#### J. Rental Reimbursement

**SECTION III - PHYSICAL DAMAGE COVERAGE** is amended by adding the following:

1. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of a "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductible applies to this coverage.
2. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
  - a. The number of days reasonably required to repair the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or
  - b. 30 days.
3. Our payment is limited to the lesser of the following amounts:
  - a. Necessary and actual expenses incurred; or
  - b. \$50 per day.
4. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

5. We will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under **SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions**.

#### K. Transportation Expense - Higher Limits

**SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions** is amended by replacing \$30 per day with \$50 per day, and \$900 maximum with \$1,500 maximum in **Extension a. Transportation Expenses**.

#### L. Airbag Coverage

**SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, 3.a.** is amended by adding the following:

However, the mechanical and electrical breakdown portion of this exclusion does not apply to the accidental discharge of an airbag. This coverage for airbags is excess over any other collectible insurance or warranty.

#### M. Loan or Lease Gap Coverage

1. **SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limits of Insurance** is deleted in its entirety and replaced by the following, but only for private passenger type "autos" with an original loan or lease, and only in the event of a "total loss" to such a private passenger type "auto":
  - a. The most we will pay for "loss" in any one "accident" is the greater of:
    - (1) The amount due under the terms of the lease or loan to which your covered private passenger type "auto" is subject, but will not include:
      - (a) Overdue lease or loan payments;
      - (b) Financial penalties imposed under the lease due to high mileage, excessive use or abnormal wear and tear;
      - (c) Security deposits not refunded by the lessor;
      - (d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
      - (e) Carry-over balances from previous loans or leases, or

(2) Actual cash value of the stolen or damaged property.

b. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of "loss".

2. **SECTION V - DEFINITIONS** is amended by adding the following, but only for the purposes of this **Loan or Lease Gap Coverage**:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

**N. Glass Repair - Waiver of Deductible**

**SECTION III - PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended by adding the following:

No deductible applies to glass damage if the glass is repaired in a manner acceptable to us rather than replaced.

**O. Duties in the Event of an Accident, Claim, Suit or Loss - Amended**

**SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 2. Duties in the Event of Accident, Claim, Suit or Loss, a.** is amended by adding the following:

This condition applies only when the "accident" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An executive officer or insurance manager, if you are a corporation; or

4. A member or manager, if you are a limited liability company.

**P. Unintentional Failure to Disclose Hazards**

**SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 2. Concealment, Misrepresentation or Fraud** is amended by adding the following:

However, if you unintentionally fail to disclose any hazards existing on the effective date of this Coverage Form, we will not deny coverage under this Coverage Form because of such failure.

**Q. Mental Anguish Resulting from Bodily Injury**

**SECTION V - DEFINITIONS, C. "Bodily injury"** is deleted in its entirety and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish and death sustained by the same person that results from such bodily injury, sickness or disease. "Bodily injury" does not include mental anguish or death that does not result from bodily injury, sickness or disease.

**R. Coverage for Certain Operations in Connection with Railroads**

With respect to the use of a covered "auto" in operations for or affecting a railroad:

1. **SECTION V - DEFINITIONS, H. "Insured contract", 3.** is deleted in its entirety and replaced by the following:

3. An easement or license agreement;

2. **SECTION V - DEFINITIONS, H. "Insured contract", 6.a.** is deleted.



WAIVER OF SUBROGATION

Insured Name: HEI INC  
Insured Policy Number: WC100-0005961-2025A

Builders Trust of New Mexico waives any right of recovery of subrogation against the certificate holder named on this certificate of insurance, but only to the extent that the employers to whom we provide coverage performs work under a written contract with the certificate holder that requires this waiver.

Name of Person	Name of Organization
	Blanket Waiver of Subrogation

Date: 12/11/2024

Countersigned by Randy L. Alkin

Agency Number: 6 – 8  
Agency Name: Burke Insurance Group LLC