

AGREEMENT FOR LOCKER CONSTRUCTION WORK
AT THE CITY OF REDLANDS' CORPORATION YARD

This agreement for locker construction work in support of the Temporary Fire Station Modular Unit, in accordance with the contract documents and specifications for City Of Redlands' Safety Hall Relocation Interim Facilities Locker Construction Contract, Project No. JL-41102 ("Agreement") is made and entered into this 15 day of January, 2010 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and Bristol Omega, Inc. ("Contractor"). City and Contractor are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

In consideration of the mutual promises contained herein, City and Contractor agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONTRACTOR

- 1.1 City hereby retains Contractor to perform locker construction work at City's Corporation Yard, 1270 W. Park Avenue, Redlands, California 92373. The specific construction Work which Contractor shall perform shall be in accordance with City's contract documents and specifications prepared for such Work, and the Work is more particularly described in Exhibit "A," which is attached hereto and incorporated herein by this reference ("Work").
- 1.2 Contractor and its subcontractors shall possess all appropriate State contractors' licenses required for the Work to be performed, and shall not be debarred pursuant to Labor Code sections 1777.1 and 1777.7.

ARTICLE 2 - RESPONSIBILITIES OF CONTRACTOR

- 2.1 Contractor shall comply with all applicable federal, state and local laws and regulations in the performance of the Work including, but not limited, to all applicable Labor Code and prevailing wage laws and non-discrimination laws, including the Americans with Disabilities Act. Pursuant to Labor Code section 1773.2, copies of the prevailing rates of per diem wages as determined by the Director of the California Department of Industrial Relations for each craft, classification or type of Worker needed to undertake the Work are on file at City's Municipal Utilities and Engineering Department, located at the Civic Center, 35 Cajon Street, Suite 15A (Mailing: P.O. Box 3005), Redlands, California 92373.
- 2.2 Contractor acknowledges that if it violates the Labor Code provisions relating to prevailing wages that City may enforce such provisions by withholding payments to Contractor or its subcontractors pursuant to Labor Code section 1771.6.
- 2.3 If Contractor executes an agreement with a subcontractor to perform any portion of the Work, Contractor shall comply with Labor Code sections 1775 and 1777.7, and shall provide the subcontractor with copies of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Contractor acknowledges that the statutory provisions establishing penalties for failure to comply with state wage and hour laws and to pay prevailing wages may be enforced by City pursuant to Labor Code sections 1775 and 1813.

- 2.4 Contractor and its subcontractors shall comply with the provisions of Labor Code section 1776 regarding payroll records maintenance, certifications, retention and inspection.
- 2.5 Contractor acknowledges that eight (8) hours constitutes a legal day's Work pursuant to Labor Code section 1810.
- 2.6 Contractor shall comply with the provisions of Labor Code section 1777.5 as to apprenticeships, and Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815.
- 2.7 Prior to and during any excavation, Contractor shall comply with Government Code section 4216 et seq.
- 2.8 Because this Agreement was exempt from competitive bidding, prior to commencement of any Work, Contractor shall provide City with the information otherwise found in Public Contract Code section 4104.
- 2.9 Pursuant to Public Contract Code section 7103.5(b), Contractor offers and agrees to assign to City all rights, title and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Agreement

ARTICLE 3 - PERIOD OF SERVICE

- 3.1 Contractor shall commence the Work upon City's delivery to Contractor of a written "Notice to Proceed."
- 3.2 Contractor shall complete the Work within sixty (60) calendar days from and after the date of the City's issuance to Contractor of the Notice to Proceed.

ARTICLE 4 - PAYMENT AND NOTICE

- 4.1 City shall pay Contractor the sum of Eight Thousand Four Hundred Twenty Four Dollars (\$8,424.00) as compensation for the Work. Payments should be made on a monthly basis as on-site Work progresses, within thirty (30) days after City's receipt and approval of Contractor's invoice, by warrant payable to Contractor.
- 4.2 All notices shall be made in writing and shall be given by personal delivery or by mail. Notices sent by mail shall be addressed as follows:

City: Timothy R. Wilson, Senior Civil Engineer
Municipal Utilities and Engineering Department
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Contractor: Ralf G. Zacky, President
Bristol Omega Inc.
9441 Opal Avenue
Mentone, Ca 92359

When so addressed, such notices shall be deemed given upon deposit in the United States mail; in all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this section 4.2.

- 4.3 Pursuant to Public Contract Code section 22300, Contractor has the option to deposit securities with an Escrow Agent as a substitute for any monies withheld by City to ensure Contractor's performance pursuant to Public Contract Code section 22300.
- 4.4 Pursuant to Government Code section 4215, City assumes the responsibility for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the site of the Work, if such utilities are not identified by City in the plans and specifications for the Work. City shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment on the Work necessarily idled during such Work. Contractor shall not be assessed liquidated damages for delay in completion of the Work, when such delay was caused by the failure of City or the owner of the utility to provide for removal or relocation of such utility facilities. However, City is not required to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Work site, provided that City must identify main or trunklines in the plans and specifications.

ARTICLE 5 - INSURANCE AND INDEMNIFICATION

- 5.1 Contractor's Insurance to be Primary. All insurance required by this Agreement shall be maintained by Contractor throughout Contractor's performance of the Work, and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City.
- 5.2 Workers' Compensation and Employer's Liability
- A. Contractor shall secure and maintain Workers' Compensation and Employer's Liability insurance for its employees throughout the performance of the Work pursuant to Labor Code sections 3700 and 1860, in an amount which meets statutory requirements, with an insurance carrier acceptable to City. The insurance policy shall include a provision prohibiting the policy's cancellation except upon thirty (30) days prior written notice to City. Contractor shall execute and deliver to City a Worker's Compensation Insurance Certification in the form attached hereto as Exhibit "B" prior to commencement of the Project.

- B. Contractor expressly waives all rights to subrogation against City and its elected officials, officers and employees for losses arising from Work performed by Contractor by expressly waiving Contractor's immunity for injuries to Contractor's employees. Contractor agrees that the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by, or on behalf of, any employee of Contractor.

- 5.3 **Hold Harmless and Indemnification.** Contractor shall indemnify, hold harmless and defend City and its elected officials, employees and agents from and against any and all claims, losses and liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent or intentionally wrongful act or omission of Contractor, and its officers, employees and agents, in performing the Project.
- 5.4 **Comprehensive General Liability Insurance.** Contractor shall secure and maintain in force throughout the duration of the Work comprehensive general liability insurance, with carriers acceptable to City, with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Work.
- 5.5 **Business Auto Liability Insurance.** Contractor shall secure and maintain in force throughout the duration of the Project business automobile liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Contractor owned vehicles used on the Project, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Work.
- 5.6 **Liquidated Damages.** The failure of Contractor to complete the Work within the time allowed will result in damages being sustained by City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor shall pay to City, or have withheld from monies due it, the sum of Two Hundred Fifty Dollars (\$250.00) for each consecutive calendar day in excess of the specified time for completion of the Work. Execution of this Agreement shall constitute agreement by City and Contractor that Two Hundred Fifty Dollars (\$250.00) per day is the estimated damage to City caused by the failure of Contractor to complete the Work within the allowed time. Such sum represents liquidated damages and shall not be construed as a penalty, and may be deducted from payments due the Contractor if such delay occurs.

ARTICLE 6 - GENERAL CONSIDERATIONS

- 6.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to

recover its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.

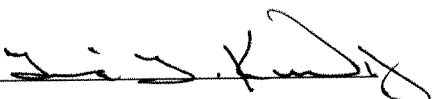
- 6.2 All documents, records, drawings, electronic data files and data base, photographic prints and negatives, designs and specifications, cost estimates, and other documents developed by Contractor for the Work shall become the property of City and shall be delivered to City upon completion of the Work.
- 6.3 Contractor is, for all purposes under this Agreement, an independent contractor with respect to the performance of the Work and not an employee of City. All personnel employed by Contractor to perform the Work are for its account only, and in no event shall Contractor or any personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of, City. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties.
- 6.4 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Work by City.
- 6.5 City may terminate this Agreement for any reason, at any time at its sole discretion, upon five (5) calendar days prior written notice to Contractor.
- 6.6 Upon receipt of a termination notice, Contractor shall (1) promptly discontinue all Work and (2) deliver or otherwise make available to City, copies of any data, design calculations, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing the Work. Contractor shall be compensated on a pro-rata basis for any Work completed up until notice of termination.
- 6.7 This Agreement, including the exhibits incorporated by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein and any prior negotiations, proposals and agreements relating to the subject matter hereof are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by City and Contractor.
- 6.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 6.9 Claims by Contractor in the amount of Three Hundred Seventy-Five Thousand Dollars (\$375,000) or less shall be made by Contractor and processed by City pursuant to the provisions of Part 3, Chapter 1, Article 1.5 of the Public Contract Code (commencing with section 20104). All claims shall be in writing and include the documents necessary to substantiate the claim.
- 6.10 If any provision or of this Agreement is held to be void or unenforceable under any law or regulation, it shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor.

IN WITNESS WHEREOF, duly authorized representatives of the Parties have signed in confirmation of this Agreement.

CITY OF REDLANDS

ATTEST:

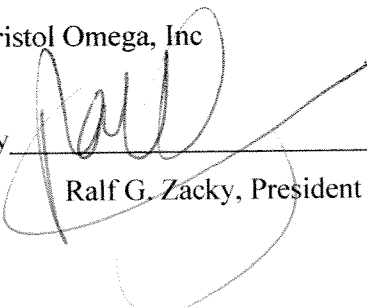
By


Tina Kundig,
Finance Director / City Treasurer

City Clerk

Bristol Omega, Inc

By


Ralf G. Zacky, President

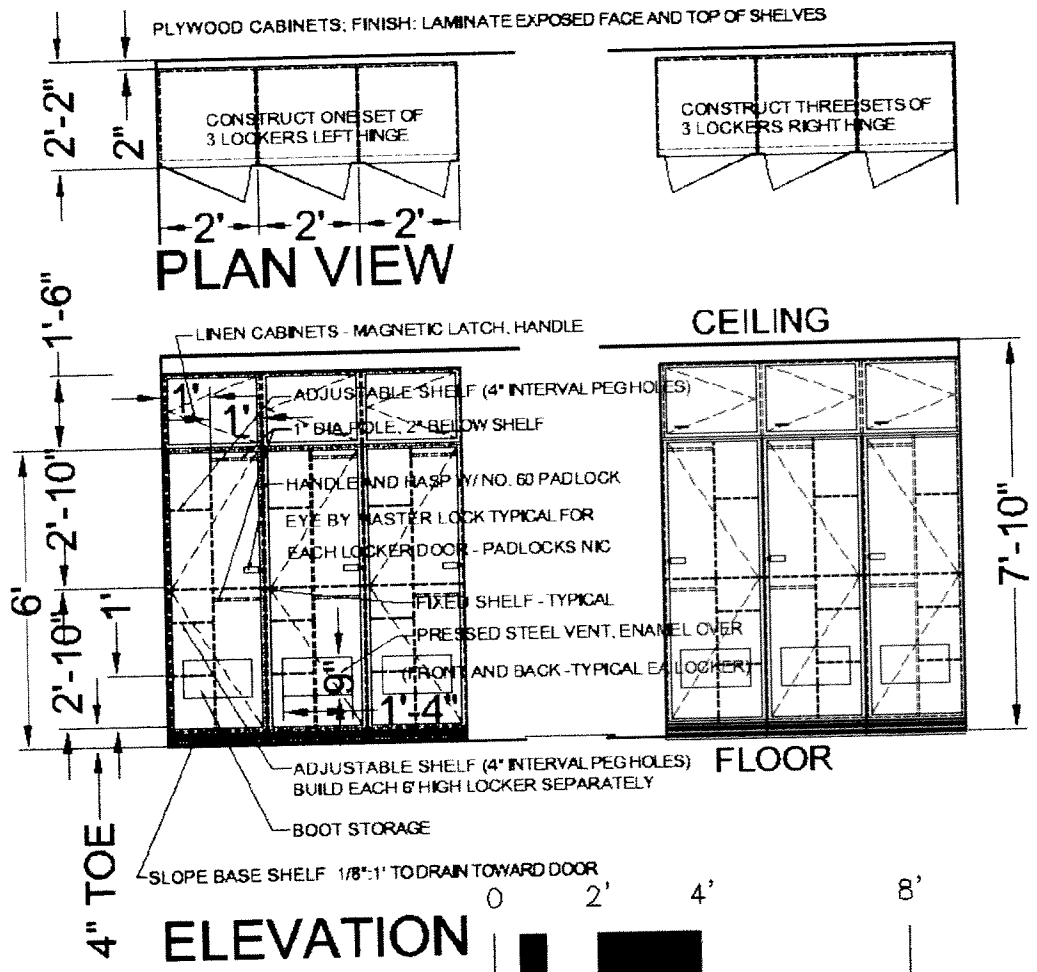
Date

Jan. 15. 2010.

Jan. 15. 2010

EXHIBIT "A"

1. PROVIDE ONE 14X9 VENT AT BOTTOM AT FRONT AND ONE 14X9 VENT AT TOP AT REAR AS NOTED BELOW
2. OFFSET LOCKERS 2" FROM WALL WITH STEEL ANGLE BRACE FOR ANCHOR TO WALL TOP AND BOTTOM
3. PROVIDE A HEAVY DUTY CLOTHES HOOK ON THE FACE OF EACH LOCKER AT THE TOP OF MAIN DOOR AND PROVIDE A STANDARD IDENTIFICATION PLATE ON THE BOTTOM OF THE SMALL DOOR ABOVE
4. PROVIDE A TOWEL RACK MOUNTED ON INTERIOR OF THE MAIN LOCKER DOOR. TAKE 3" OFF DEPTH OF INTERIOR SHELVING TO ACCOMMODATE.
5. ADD HEAVY DUTY HOOK TO FREE END OF A SET OF 3 LOCKERS AT 6'-4".
6. A TOTAL OF 12 LOCKERS ARE REQUIRED: 6 RH AND 6 L.
7. ALL 6'H X 2'W X 2'D LINEN CABINET W/ 1 DOOR ARE TO BE BUILT AS A SINGLE UNIT. INSTALLED WITH PEG INSERTS ABOVE EACH GROUP OF 3 LOCKERS. 12 REQUIRED. SUCH THAT IT SITS ATOP EACH 6' HIGH LOCKER.
- 8.



TEMP FIRE STATION TEN. IMP.
LOCKERS, F.E. AND EQ. RACKS
12/30/09 TRW REDLANDS MUED

Jan. 15, 2010

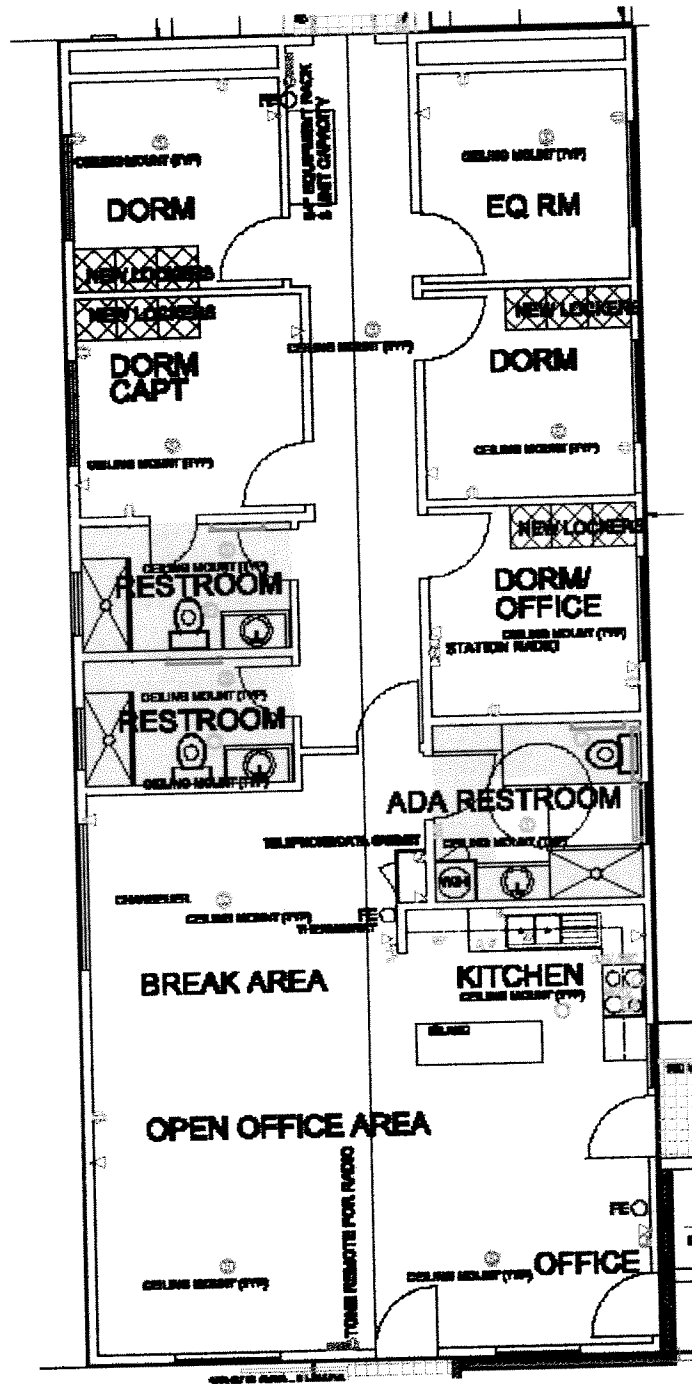


EXHIBIT "B"

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Project: **Locker Construction Contract Work** in support of the Temporary Fire Station Modular Unit, (Provided by others) complete, as required by the Contract Documents and Specifications for: **City Of Redlands Safety Hall Relocation Interim Facilities Locker Construction Contract, Project No. JL-41102** at the City of Redlands' 1270 W. Park Ave.

Every employer except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Agreement. (Labor Code §1861).

Bristol Omega, Inc

By: _____

Ralf G. Zacky, President

Date: _____

Jan 15, 2010

667339

Contractor's License No.

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE
01-06-2010

PRODUCER

AUTO CLUB INSURANCE AGENCY LLC/PHS
253682 P: (866) 467-8730 F: (877) 905-0457
PO BOX 33015
SAN ANTONIO TX 78265

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER A: Property & Casualty Co of Hartford
INSURER B:
INSURER C:
INSURER D:
INSURER E:

INSURED

BRISTOL OMEGA INC
9441 OPAL AVE.
MENTONE CA 92359

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC				EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☒ ALL OWNED AUTOS ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	72 UEC TR3591	12/28/09	12/28/10	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$ WC STATU-TORY LIMITS ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	GARAGE LIABILITY ☐ ANY AUTO				
	EXCESS LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION \$				
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Those usual to the Insured's Operations. project # N0JL41102 / City of

CERTIFICATE HOLDER

☒ ADDITIONAL INSURED; INSURER LETTER:

City of Redlands Muncipal Utilities &
Engineering Dept
attn : Tim Wilson
PO BOX 3005
REDLANDS, CA 92373

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE (10 DAYS FOR NON-PAYMENT) TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES

AUTHORIZED REPRESENTATIVE

for Tim Wilson

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II - Who Is An Insured is amended to include as an additional Insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional Insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional Insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional Insured are completed.

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

This insurance does not apply to:

1. "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.
2. "Bodily injury" or "property damage" occurring after:
 - a. 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
 - b. 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.