



Roll Call Number

Agenda Item Number

7 B

Date August 3, 2020

APPROVING PROFESSIONAL SERVICES AGREEMENT WITH BOLTON & MENK, INC. FOR DESIGN SERVICES FOR MACRAE PARK ROADWAY (PHASE 3) PARK AND TRAIL IMPROVEMENTS, NOT TO EXCEED \$151,084

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That Professional Services Agreement between the City of Des Moines and Bolton & Menk, Inc., Brad DeWolf, President, 1960 Premier Drive, Mankato, Minnesota, 56001, for a total cost not to exceed \$151,084, to provide design services for MacRae Park Roadway (Phase 3) Park and Trail Improvements, a copy of which is on file in the office of the City Clerk, is hereby approved as to form and content.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, said Professional Services Agreement for and on behalf of the City of Des Moines, Iowa.

(Council Letter Number 20-340 attached) Activity ID 01-2020-021

Moved by \_\_\_\_\_ to adopt.

FORM APPROVED: s/Kathleen Vanderpool Kathleen Vanderpool Deputy City Attorney

SLN Funding Source: 2020-2021 CIP, Page Park-14, MacRae Park Improvements, PK179, G.O. Bonds

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

Mayor

City Clerk

**CITY OF DES MOINES**  
**AGREEMENT FOR PROFESSIONAL SERVICES: HOURLY**  
**MACRAE PARK ROADWAY (PHASE 3), PARK AND TRAIL IMPROVEMENTS**  
**Activity ID 01-2020-021**

**THIS AGREEMENT** for Professional Services (hereinafter "Agreement") is made by and between the City of Des Moines, Iowa, a municipal corporation organized and existing pursuant to the laws of the State of Iowa, hereinafter referred to as the "City" and Bolton & Menk, Inc., Brad DeWolf, President, 1960 Premier Drive, Mankato, MN, 56001, hereinafter referred to as the "Consultant", being a corporation organized and existing under the laws of the State of Minnesota and being duly authorized to do business in the State of Iowa. This Agreement is not valid until signed by the City representative set out below.

WHEREAS, the City is desirous of obtaining professional services in connection with the MacRae Park Roadway (Phase 3), Park and Trail Improvements (hereinafter the "Project"); and

WHEREAS, the Consultant is desirous of performing the professional services for the City in connection with the MacRae Park Roadway (Phase 3), Park and Trail Improvements.

**NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

**SECTION 1 - GENERAL**

- A. PERFORMANCE:** The performance of the Consultant is limited to the scope of services outlined as hereinafter set forth.
- B. CONSULTANT'S REPRESENTATIONS:** The Consultant represents and agrees that:
1. Consultant is an experienced licensed architectural and/or engineering firm having the ability and skill necessary to perform all the services required of it under this Agreement in connection with the design of the Project having the scope and complexity of the Project contemplated herein; and
  2. Consultant has the capabilities and resources necessary to perform its obligations hereunder; and
  3. Consultant is familiar with all current local, state and federal laws, rules and regulations which are applicable to the design and construction of the Project (including but not limited to city ordinances and building codes of city, state and federal authorities that are applicable to the Project) and that all drawings, plans, specifications and other documents prepared by the Consultant must be prepared in accordance with, and comply with all applicable laws, rules and regulations; and
  4. All plans, drawings, specifications and other documents prepared pursuant to this Agreement must be complete and functional for the purposes intended, and that the Project will be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended; and
  5. That all services provided by the Consultant shall be performed in a timely manner and shall be performed with that degree of care, skill, and diligence ordinarily exercised under similar conditions and in the performance of projects of a similar nature to the services contemplated by this Agreement by competent members of the architectural and engineering professions. Consultant represents that it has the experience and expertise necessary to provide design and engineering services to result in a functional, operating Project. Consultant shall be responsible for all services provided under this Agreement regardless of whether such services are provided by Consultant or by any subconsultant hired by Consultant.
  6. The Consultant is responsible for the professional quality, technical accuracy, timely completion and the coordination of all plans, studies, designs, drawings, specifications, reports, and other services furnished by Consultant for the City under this Agreement regardless of whether such drawings and documents are prepared by the Consultant or by the Consultant's subconsultant's. The Consultant is responsible for coordination and internal checking of all design documents and for the accuracy of all information contained therein, as fully as if each document were prepared by the Consultant. The Consultant shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its plans, studies, designs, drawings, specifications, reports, or other services.

- C. CITY'S' AUTHORIZED REPRESENTATIVE:** The Des Moines City Manager is the liaison officer between the Des Moines City Council and the Consultant. The City Manager has delegated the administration, general supervision, and approval authority under this agreement to the City Engineer, hereinafter City Engineer. The City Engineer is the City's representative for administration of the services to be performed under this Agreement, and shall receive all communications and information, arrange such conferences as deemed necessary, secure, and obtain all comments, approvals, and notices to proceed from the City, and transmit such comments, approvals, and notices to proceed to the Consultant. The services to be performed by the Consultant under this Agreement shall at all times be subject to the general oversight and administrative approval of the City Engineer.
- D. CONFERENCES:** As the performance of this Agreement progresses, conferences shall be held from time to time at a mutually convenient location at the request of the City Engineer. The Consultant shall prepare and present such information as may be pertinent or necessary to enable the City Engineer to pass critical judgment on the features and progress of services under this Agreement. The Consultant shall make such changes, amendments, or revisions in the detail of any phase of services under this Agreement as may be required by the City Engineer. If alternates or alternatives are to be considered, the City Engineer shall have the right of selection. The Consultant shall, at the request of the City Engineer, appear personally, prepare and present such documents and explanations to the Des Moines City Council as may be requested.
- E. INSURANCE AND INDEMNIFICATION:** The Consultant shall purchase and maintain insurance in accordance with the insurance requirements set forth in Attachment 1 to protect the Consultant and City throughout the duration of this Agreement. The Consultant shall not commit any act which shall invalidate any policy of insurance. The Consultant shall defend, indemnify and hold harmless the City in accordance with the indemnification requirements set forth in Attachment 1. The Consultant shall be subject to all terms and provisions set forth in Attachment 1 and the exhibits thereto.
- F. PROGRESS REPORTS:** The Consultant shall furnish the City with written monthly progress reports, which shall indicate the percentage of work completed, together with a description of the work in progress under this Agreement. The Consultant shall also, upon request of the City Engineer, furnish the necessary documentation to verify the reported progress.
- G. ACCESS TO CONSULTANT'S RECORDS:** The Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred in performing work covered by this contract. The City Engineer shall have access to said documents and evidence for the purpose of inspection, audit and copying during normal business hours. All said documents shall be retained for three years from the date of final payment under the contract.
- H. OWNERSHIP OF DOCUMENTS:** Consultant agrees that the City shall become the sole and exclusive owner of all designs, design plans, images, drawings, models, survey notes, reports, specifications, studies, records and other data and documents, in whatever form and whatever stage of design, prepared under this Agreement ("the Design Documents"). Consultant hereby irrevocably assigns, transfers and conveys to the City all right, title and interest in and to the Design Documents and all intellectual property rights and proprietary rights arising out of the Design Documents, including copyrights, patents, trademarks, and derivative works and interests therein or related thereto. Consultant warrants to the City that the Design Documents will be free from any claims or encumbrance of intellectual property or proprietary rights of Consultant or any third party, including any employee, agent, contractor, sub-consultant, subcontractor, subsidiary or affiliate of Consultant and Consultant will indemnify the City for any such claims or encumbrances pursuant to Attachment 1. Upon completion or termination of this Agreement, Consultant will immediately turn over to City all Design Documents not previously delivered to City.

To the extent any of Consultant's rights in the Design Documents are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Consultant hereby irrevocably and unconditionally waives such rights and enforcement thereof and agrees not to challenge the City's right in and to the Design Documents.

The City owns the Design Documents, but the City agrees not to re-use the Design Documents developed and provided by the Consultant for this Project, in the construction of another project, without the prior approval of the Consultant, except that the City may re-use such Design Documents, without the prior approval of the Consultant, as long as the City shall indemnify the Consultant against any claim for negligent design relating to its re-use of said Design Documents.

**I. TERMINATION:** If the City, in its sole discretion, should desire to suspend or terminate the services of the Consultant under this Agreement, such suspension or termination may be effected by the City giving the Consultant written notice. Payment shall be made by the City for services rendered by the Consultant to date of termination as provided in Section 3, B.

**J. CHANGES IN SCOPE OF SERVICES:**

1. Extra Work: Authorization for extra work shall be evidenced by the City and Consultant in writing, in the form of a Supplemental Agreement. At the discretion of the City, work not called out in the Agreement or which is considered to be beyond the extent of a reasonable exploration of alternates and/or "trial and error" solutions in design procedure may be classed as extra work. Extra work will usually be of limited extent and may consist of, but is not necessarily limited to:
  - a. The introduction of new items of work beyond the stated or implied scope of the Agreement.
  - b. Redesign and/or detailing based on change of concept after prior approval and authorization to proceed and causing appreciable loss of work accomplished. This item consists of work required to revise plans and/or documents to the state of completion obtained prior to the order for change.

At the option of the City, payment for extra work may be made on a fixed price; a cost plus a fixed fee; time and materials; or other mutually-agreed basis. If the Consultant is of the opinion that any work the Consultant has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant shall promptly notify the City in writing of that fact. In the event the City determines that such work does constitute extra work, the City shall provide extra compensation to the Consultant as provided for above. No extra work shall be performed by the Consultant without receiving a written agreement from the City in advance.

2. Deletion of Work: Authorization for deletion of work shall be evidenced by the City in writing. At the discretion of the City, work items listed in Section 2 - Scope of Services, or parts thereof, may be deleted from the Project. Reduction to the Consultant's compensation as a result of deletion of work shall be based on the cost estimate of the work deleted. In the event that the Consultant had performed authorized work on the items deleted prior to deletion, the cost of such work shall be retained in the Consultant's compensation.

**K. NONDISCRIMINATION:** The Consultant hereby acknowledges and agrees:

1. To comply with the Equal Employment Opportunity Program included in the City of Des Moines Contract Compliance Program, which is available at <http://www.dmgov.org/Departments/Engineering/Pages/Documents.aspx> or from the City Engineer's Office.
2. To comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62 of the Des Moines Municipal Code.
3. Not to discriminate against any employees or applicants for employment on the basis of age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry, gender identify, familial status, or disability.
4. To include this provision in all subcontracts for this Project.
5. Consultants shall comply with all terms and provisions set forth in Attachment 1A.

**L. DISADVANTAGED BUSINESS ENTERPRISE/TARGETED SMALL BUSINESS (DBE/TSB) PROGRAM:** It is the policy of the City of Des Moines that Disadvantaged Business Enterprises (DBEs) or Targeted Small Businesses (TSBs), as defined in the City Contract Compliance Program, shall have the maximum opportunity to participate in the performance of City funded contracts and procurements. This Professional Services Agreement does not include any DBE or TSB goal; however, the Consultant is encouraged to solicit DBE or TSB participation, and whenever possible, include DBE or TSB Subconsultants for a portion of the work.

- M. SUBLETTING OR ASSIGNMENT TO SUBCONSULTANT:** The Consultant shall not sublet, assign, or otherwise dispose of any portion of the services to be provided by this Agreement without a written permission to sublet signed by the City Engineer. Requests for permission to sublet, assign or otherwise dispose of any portion of the services shall be in writing, and shall name the individual or organization to serve as the subconsultant (the "Subconsultant"), which will perform the work, the work to be performed, and the dollar amount of the work to be performed. When requested by the City Engineer, the Consultant shall provide a written report showing that the Subconsultant is particularly experienced and equipped for such work. Consent by the City for the Consultant to sublet, assign or otherwise dispose of any portion of this Agreement, shall not relieve the Consultant of any responsibility for fulfillment of this Agreement, nor shall it in any way create a contractual relationship between the City and the Subconsultant. The Consultant agrees to include in and make a part of all subagreements all portions of this Agreement which relate to the Subconsultants' work including the Nondiscrimination portions of this Agreement. Consultant agrees to include in all subagreements that the City is an intended beneficiary of the subagreement. The following listed Subconsultants shall be deemed to be approved when this Agreement is executed: Construction Materials Testing and Bluestone Engineering.
- N. CLOSE-OUT OF AGREEMENT:** Upon completion or termination of Services under this Agreement, the Consultant shall provide the City the following documents:
1. Documents as stated in Section 1.G of the Agreement.
  2. Statement of Final Invoice.
  3. Written report showing the actual amounts paid by the Consultant for services under this Contract to DBE/TSB if a goal is established.
- O. LAWS, REGULATIONS AND CODES:** The Consultant hereby agrees that:
1. All work done as part of this Agreement is subject to current Federal, State, or Local Laws, Regulations and/or Codes and shall comply with such applicable Laws, Regulations and/or Codes.
  2. All design and survey work under this Agreement shall be performed under the direction and control of an engineer, surveyor, or architect licensed in Iowa. Engineering, architectural, and land surveying documents, including plans, specifications, and reports, shall be sealed by an engineer, surveyor, or architect licensed in Iowa.
  3. Consultant shall design all Project elements to comply with all applicable Federal, State and local laws, regulations and building codes, including but not limited to the Americans with Disabilities Act (ADA) as amended.
- P. ATTORNEYS' FEES:** In the event the City is required to enforce the provisions of this Agreement due to a dispute between the Consultant and the City or to collect damages for the breach of this Agreement and if the dispute results in the filing of a legal action and/or demand for arbitration, mediation, or other form of alternative dispute resolution, or if the City is required to protect or defend itself, and the City prevails in whole or in part, the City shall be entitled to reasonable attorney's fees, costs and expenses, including but not limited to out-of-pocket expenses, expert witness fees and costs, depositions, and other expenses of the proceedings, including expenses of collection of any judgments or awards rendered there under.
- Q. DEFENSE COOPERATION:** In the event that the City has to defend any claim or legal action relating to or resulting from goods or services pursuant to this Agreement, including but not limited to the Design Documents, or any other service provided under this Agreement, the Consultant shall cooperate fully with the City in defending such claim or action, including but not limited to, timely response to all requests by the City.

- R. CITY POLICY AND PROCEDURES:** The Consultant hereby agrees to conform to City policy and procedures as they relate to this Agreement. Such policy and procedure shall include but is not limited to the following:
1. Invoice and billings for service.
  2. City adopted Design Standards and specifications.
  3. The Des Moines Engineering Department standard format for reports, plans, and/or specifications includes:
    - a. Plan Sheets: 11"x 17" preferred and 24"x36" maximum size in Bentley Microstation digital format preferred or alternate AutoCad format.
    - b. Reports and/or specifications: 8.5"x11" in Microsoft Word digital format.
    - c. Other formats only upon special approval of the City Engineer.
  4. Plan-review process including site-plan and review by Boards and Commissions.
  5. Include City Activity ID on all documents related to this Agreement.
- S. NOTICE TO PROCEED:** The Consultant shall not begin work until a written notice to proceed is issued by the City Engineering Department. If Section 2 of this Agreement provides for the work to be completed in phases, a notice to proceed shall be issued for each phase.
- T. INDEPENDENT CONTRACTOR STATUS:** It is expressly understood that Consultant is an independent contractor and not the agent or employee of the City. Consultant is not entitled to tax withholding, workers' compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Consultant shall not have the authority to enter into any contract to bind the City and shall not represent to anyone that Consultant has such authority.
- U. USE OF CITY NAME AND INTELLECTUAL PROPERTY:** Consultant agrees it will not use the City name, logos, trademarks or any intellectual property of the City in any manner, including commercial advertising, portfolio or other business reference, without the express prior written consent of the City.
- V. CONFIDENTIALITY:** Consultant agrees to hold in trust and confidence any confidential and proprietary information, record, documents or data relating to City business that is identified by the City as confidential and proprietary ("Confidential Information"). If Consultant receives a request for disclosure of Confidential Information, Consultant shall immediately notify the City and cooperate with the City on a response to the requestor of such information.
- W. LAWS OF IOWA:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa. Consultant, on behalf of itself and insurers, agrees and consents that any causes of action arising out of this Agreement shall be brought in the appropriate court of jurisdiction in Polk County, Iowa and consents, on behalf of itself and insurers, to the jurisdiction of either the United States District Court, Southern District of Iowa or the Iowa District Court in and for Polk County, Iowa.

## **SECTION 2 - SCOPE OF SERVICES**

- A. SERVICES PROVIDED BY CONSULTANT:** Detailed Scope of Services shall be as stipulated in Attachment No. 2, "Scope of Services," to Agreement.
- B. OBLIGATION OF CITY TO CONSULTANT:** The City shall:
1. Provide available information, such as topography, site plans, building plans, mapping, and other information that mutually is agreed upon as pertinent to the Project.
  2. Designate a liaison officer from the City who will work directly with the Consultant to coordinate the collection of City-supplied data, arrange for meetings, and be responsible for the general coordination between the City and the Consultant.

**SECTION 3 - COMPENSATION:** The Consultant shall be compensated by the City as follows:

- A. HOURLY:** Compensation to the Consultant for all services under this Agreement shall be on the basis of hourly labor rates, and reimbursable costs as shown in the current Consultant's Standard Fee Schedule as shown in Attachment No. 3. The total compensation for the Project services shall not exceed \$151,084.00 without prior approval of the City.

The Consultant shall bill services based on the Consultant's current standard fee schedule at the time services are rendered, subject to the fee schedule being approved by the City Engineer in writing. Any adjustment or change in the standard fee schedule will not affect the maximum fee set forth above.

- B. TERMINATION:** In the event of termination under Section 1.I of this Agreement, compensation to the Consultant shall be as follows:
1. Salary costs and reimbursable expenses incurred for completed portion of work to date of termination.
  2. For incomplete portions of work, compensation for Consultant's services rendered to date of termination based upon the Consultant's standard hourly rates
  3. Compensation due subconsultants for services rendered to the date of termination, plus reimbursable expenses incurred for services.

- C. DEFINITIONS:** The following definitions shall be used:
1. Salary costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all Consultant's personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, technicians, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.
  2. Reimbursable expenses mean the direct non-salary expenses incurred by the Consultant which are directly attributable and properly allocable to the Project. Such costs are not included in the overhead expense pool and may include: travel and subsistence, reproductions, computer charges, materials and supplies.

- D. TAX LIABILITY:** Consultant agrees that Consultant is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and that the City will not deduct such taxes from payment to Consultant.

**SECTION 4 - COMPLETION OF WORK:** The Consultant shall complete all services outlined in this Agreement on or before April 1, 2021 providing no unforeseen delays are experienced beyond the control and without the fault or negligence of the Consultant.

**SECTION 5 – PRIMARY CONTACTS FOR THIS AGREEMENT:** The City Engineer has designated the primary contact person for the City of Des Moines as Zach Erickson, 515-283-4023, zlerickson@dmgov.org. All communications directed to the City must be in writing to Zach Erickson.

The primary contact person for Bolton & Menk, shall be Matt Ferrier, Project Manager, 515-259-9190 x2890, matt.ferrier@bolton-menk.com. All communications directed to the Consultant must be in writing, such as payments, contracts, etc., directed to Matt Ferrier.

Any notice required by this Agreement shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereafter provided. Mailed notices shall be deemed to be received by the party to whom directed when they are postmarked. Such notices and invoices shall be delivered or mailed to the following persons at the addresses listed below:

To City: Zach Erickson  
400 Robert D. Ray Drive  
Des Moines, IA 50309


To Consultant: Matt Ferrier  
309 E. 5<sup>th</sup> Street, Suite 202  
Des Moines, IA 50309

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, in triplicate, as of this 3rd day of August, 2020.

**CITY OF DES MOINES, IOWA**

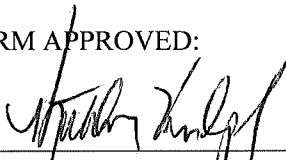
**BOLTON & MENK, INC.**

\_\_\_\_\_  
T.M. Franklin Cownie, Mayor

  
\_\_\_\_\_  
Matthew Ferrier, Principal

FORM APPROVED:

ATTEST:

  
\_\_\_\_\_  
Kathleen Vanderpool, Deputy City Attorney

\_\_\_\_\_  
P. Kay Cemelik, City Clerk



## ATTACHMENT 1

### CITY OF DES MOINES, IOWA PROFESSIONAL SERVICES – CONSTRUCTION DESIGN

#### INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term “CITY” shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

#### 1. GENERAL

The CONSULTANT shall purchase and maintain insurance to protect the CONSULTANT and CITY throughout the duration of the Agreement. Said insurance shall be provided by insurance companies “admitted” or “non-admitted” to do business in the State of Iowa having no less than an A. M. Best Rating of “B+.” All policies, except professional liability, shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of work and/or services.

#### 2. INSURANCE REQUIREMENTS

- A. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.***

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form. ***The CITY shall not be included as an Additional Insured.***

- B. **CONTRACTUAL LIABILITY:** The Contractual Liability coverage required above shall include the cost of defense and settlement. CONSULTANT agrees to submit to its insurance carrier, on behalf of the CITY, any claim or demand against the CITY for which the CONSULTANT has agreed to defend, indemnify and hold the CITY harmless in Section 3 Indemnification below, and to do so in a timely manner so required in its insurance policies.

- C. **WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE:** As required by State of Iowa Workers' Compensation Law, the CONSULTANT shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the CONSULTANT is not required to purchase Workers' Compensation Insurance, the CONSULTANT shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.***

- D. **PROFESSIONAL LIABILITY INSURANCE:** Professional Errors and Omissions Insurance with limits not less than \$1,000,000 per claim and in the aggregate.
- E. **CANCELLATION & NONRENEWAL NOTIFICATION:** The CONSULTANT shall provide the CITY with no less than ten (10) days notification of cancellation or nonrenewal of the General Liability Insurance and Professional Liability Insurance policies required above.  
**Written notifications shall be sent to: City of Des Moines, Engineering Department, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.**
- F. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, CONSULTANT hereby releases the CITY from and against any and all liability or responsibility to the CONSULTANT or anyone claiming through or under the CONSULTANT by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The CONSULTANT'S Workers Compensation Insurance and General Liability Insurance policies shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY, including its elected and appointed officials, agents, employees and volunteers and other working on its behalf.
- G. **PROOF OF INSURANCE:** The CONSULTANT shall provide the following proof of insurance to the CITY:
- Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through F above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.  
**Mail to: City of Des Moines, Engineering Department, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.**
- H. **AGENTS, SUBCONSULTANTS AND SUBCONTRACTORS:** The CONSULTANT shall require all its agents, subconsultants and subcontractors who perform work and/or services on behalf of the CONSULTANT to purchase and maintain the types of insurance customary to the industry or trade related to the services being provided.

### 3. INDEMNIFICATION REQUIREMENTS

For other than professional services rendered, to the fullest extent permitted by law, CONSULTANT agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT, except to the extent caused by or resulting from the negligent act or omission of the CITY or the CITY'S employees, consultant's, agents or others for whom the CITY is responsible.

For professional services rendered, to the fullest extent permitted by law, CONSULTANT agrees to pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits,

damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs and economic damages that may be recovered from or suffered by the CITY that arise out of any negligent act, error or omission of the CONSULTANT , including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT, except to the extent caused by or resulting from the negligent act or omission of the CITY or the CITY'S employees, consultants, agents or others for whom the CITY is responsible.

CONSULTANT'S obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONSULTANT arising out of or in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT, except to the extent caused by or resulting from the negligent act or omission of the CITY or the CITY'S employees, consultants, agents or others for whom the CITY is responsible.

CONSULTANT expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT.

CONSULTANT shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel and CONSULTANT will observe all applicable safety rules.

**PROFESSIONAL SERVICES AGREEMENT - ATTACHMENT 1A  
TRANSPORTATION PROJECT**

During the performance of this contract, the consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

1. Compliance with Regulations: The consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Non-Discrimination: The consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the consultant of the consultant's obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Des Moines, the IDOT or Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information the consultant shall so certify to the City of Des Moines, the IDOT, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Non-Compliance: In the event of the consultant's noncompliance with the non-discrimination provisions of this contract, the City of Des Moines shall impose such contract sanctions as it, the IDOT or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the consultant under the contract until the consultant complies, and/or
- b. cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The consultant shall take such action with respect to any subcontract or procurement as the City of Des Moines, the IDOT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the consultant may request the City of Des Moines or the IDOT to enter into such litigation to protect the interests of the City of Des Moines or the IDOT; and, in addition, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

## ATTACHMENT 2

### SCOPE OF SERVICES

MacRae Park Roadway (Phase 3), Park and Trail Improvements  
Activity ID No. 01-2020-021  
DES MOINES, IOWA

### SCOPE OF SERVICES

The CONSULTANT shall provide professional services required for the design of MacRae Park Road Reconstruction Phase 3, Park and Trail Improvements including design of the following:

- Approximately 2,000 linear feet (LF) of street pavement
  - Curbing and storm drainage improvements
  - Related pond bank shaping
  - Pull off/parking areas
- Approximately 2,400 LF of PCC trail
- Pedestrian boardwalk and bridge for trail
- Natural playscape with associated open-air shelter and pathway connections

The scope of work shall include design phase and bidding phase services including as detailed below.

### DESIGN PHASE SERVICES

Consultant shall provide all Design Phase Services to design the MacRae Park Road Reconstruction Phase 3, Park and Trail Improvements including:

#### TASK 1: DESIGN SURVEY AND MAPPING

**Subtask 1.1 Topographic Survey** – Not Applicable

#### TASK 2: PROJECT COORDINATION

**Subtask 2.1 Public Informational Meeting** – The CONSULTANT shall provide content for City staff to use during public information meetings. CONSULTANT shall not attend any public informational meetings.

#### **Subtask 2.2 Design Utility Coordination Meetings**

**Description:** The CONSULTANT shall conduct meetings with individual utility companies to address specific conflicts. For budgeting purposes, it is anticipated that there will be two (2) meetings with representatives of the various utility companies. The first meeting shall be to advise of the nature and extent of the improvements and any potential conflicts with existing or proposed utility systems (at approximately 60% design completion) and the second meeting shall be for final design review and coordination meeting (at approximately 90% design completion).

#### **Subtask 2.3 Project Management**

**Description:** The project manager for the CONSULTANT shall be responsible for monthly progress reporting, minutes of meetings, interoffice memoranda, and invoicing. This task shall also include scheduling of staff, coordinating with Sub-Consultants, review of progress, and senior review of deliverables.

### **TASK 3: PRELIMINARY DESIGN**

The CONSULTANT shall perform preliminary design services in the preparation of design plans and specifications depicting the proposed grading, drainage, paving, signing, utility relocation, and other features of the project. The preliminary plans shall include but not limited to the following tasks:

#### **Subtask 3.1 Preliminary Natural Playscape Concepts**

**Description:** The CONSULTANT shall provide the City with the following deliverables:

##### Two (2) Preliminary Natural Playscape Conceptual Plan Options

This task consists of developing two unique, preliminary Natural Playscape concept plans for review and comment from city staff. The CONSULTANT shall produce one rendered plan and accompanying section drawing to demonstrate each concept. City staff will review both plans and provide commentary in a timely manner. The CONSULTANT shall be able to demonstrate how commentary was responded to or included in the subsequent preliminary plans.

#### **Subtask 3.2 Preliminary Plans**

**Description:** The CONSULTANT shall provide the City with the following deliverables:

##### Title and General Information Sheets (A Sheets)

This task consists of assembling the preliminary title and general information sheets. The preliminary title sheets will include the following: index of sheets, revisions, legend, location map, project number, design traffic data.

##### Preliminary Typical Cross Sections (B Sheets)

This task consists of assembling the Typical Cross Sections to be used for the proposed improvements as well as a preliminary determination of the limits that each Typical Section will apply. The typical Cross Sections will include but not be limited to typical sections for the proposed grading, drainage and paving improvements.

##### Preliminary Estimate of Quantities (C Sheets)

This task consists of a preliminary determination of the bid items to be included in the project, along with an estimate of quantities for each item.

##### Preliminary Plan and Profiles (D and E Sheets)

This task consists of the development of preliminary plan and profile sheets that will show the existing topography along with the proposed improvements based on the survey or the centerline. Proposed Right-of-Way and Construction Easement limits based on the catch point lines will be shown. Included will be the necessary CAD work to show the preliminary design features for the proposed improvements.

##### Preliminary Traffic Control and Staging (J Sheets)

Develop suitable plan for construction scheduling and staging of the Project and for traffic control measures to be implemented during construction. Staging plan shall include provisions for maintaining access to adjacent properties during construction. For estimating purposes, it is assumed that the roadway will be closed during construction and a single detour plan will be implemented. The traffic control devices, procedures, and layouts shall be as per the Manual of Uniform Traffic Control Devices (MUTCD).

Preliminary Intersection Geometrics (L Sheets)

Develop and refine geometric layouts and provide additional horizontal and vertical survey information needed to construct the intersections. The scale of these plans sheets will be 1"=20'.

Preliminary Storm Drainage Design (M Sheets)

Develop preliminary storm sewer layout and sizing based on proposed improvements and existing drainage patterns utilizing Chapter 2 of the SUDAS Design Manual. Resolve potential conflicts with underground utilities and other design elements. Vertical profiles are not developed as part of this task.

Preliminary Pavement Markings Plan (N Sheets)

Develop preliminary pavement markings based on proposed.

Preliminary Lighting and Electrical Plan (P Sheets)

Develop preliminary electrical plans for lighting of the bridge.

Preliminary Shelter Plans (Q Sheets)

Develop preliminary open-air park shelter plans based on manufactured park shelters.

Preliminary Removal Plans (R Sheets)

This item consists of preliminary design and drafting of proposed improvements and removals.

Preliminary Curb Ramp Design (S Sheets)

Develop preliminary curb ramp layout in accordance with Chapter 12 of Iowa SUDAS Design Manual. Design ramp geometric configurations alternatives, identify surface requirements, review general horizontal curb opening, cross slopes, running slope, and identify sidewalk width and passing space within the corridor.

Preliminary Natural Playscape Layout, Grading, and Landscape Sheets (T Sheets)

Develop preliminary layout and grading sheets for the natural playscape areas of the project. This will include geometric layout of the playscape elements including but not limited to the list of elements below, detailed plan view of the individual elements as needed, and layout of pathways to connect into the existing system. A preliminary landscape plan will also be required within this section.

List of elements:

- Small water feature and rain garden
- Natural playground elements such as large harvested tree climber, log playground elements, stone climbing elements, stone cave, dirt dig play area, and playground slide and swing.

Preliminary Natural Playscape Details (U Sheets)

Develop detailed drawings for the various natural playscape elements including detailed layout plans, sections, and elevations.

#### Preliminary Boardwalk & Bridge Plans (V Sheets)

This task shall include the preliminary boardwalk plans and preliminary bridge plans for the trail crossings at the creek and over the pond. Consultant shall include all structural design of the boardwalk with footings and bridge with abutments provided by the manufacturer of each system. Consultant shall advise City if the necessary structural design is not provided by the manufacturer. It shall include general criteria for the boardwalk and bridge designs to be included in the bid documents.

#### Detailed Cross Sections (W & X Sheets)

This task consists of design and drafting associated with the assembly of detailed cross sections (25' increments) to illustrate typical conditions, drainage designs, and non-typical conditions as needed for guidance during design, review, and quantity estimating purposes.

### **Subtask 3.3 Soil Borings (Subconsultant Construction Materials Testing)**

**Description:** The task consists of securing a subsurface exploration based on existing alignment. This task includes mobilization of truck and all terrain drilling equipment, traffic control, utility locations (Iowa One Call), drill and sample 5 borings 5-10 feet deep of the existing roadway, bridge location, natural playscape area, and proposed trail alignment, laboratory testing, engineering analysis and written report. Engineering analysis shall include subsurface drainage, subgrade preparation, and pavement design.

### **Subtask 3.4 Preliminary Field Review**

**Description:** The task consists of preparation of materials for a field exam, participation in the field exam, and reviewing results of the field exam with the City.

### **Subtask 3.5 Opinion of Probable Construction Cost**

**Description:** The CONSULTANT shall prepare a preliminary Opinion of Probable Construction Cost for the Project. An updated Opinion of Probable Construction Cost shall be prepared at the time of completion of the plans and specifications. The Opinion of Probable Construction Cost is intended for the use of the City in financing the Project.

### **Subtask 3.6 Preliminary Design Review Meetings**

**Description:** It is estimated that the CONSULTANT's staff shall attend two (2) meetings with the City, and others to review progress, assist in decision-making, and receive direction from the City during the preliminary design phase.

## **TASK 4: BRIDGE SCHEMATIC DESIGN**

### **Subtask 4.1 Product research concepts**

**Description:** The design team shall evaluate three (3) possible prefabricated bridge product solutions for consideration to achieve the desired water crossing at MacRae Pond. CONSULTANT shall hold one (1) design review meeting with City staff to discuss product options developed with specific attention given to:

- Cost magnitude
- Installation methods sensitive to the existing aquatic life/water level.
- Consider design influence from MacRae Overlook
- Inclusion of fishing opportunities from boardwalk and shoreline.
- Maintenance consideration for passage of a Jon boat (4-6' clearance).
- Seasonal use of pond for fishing and ice skating.



- Use of the bridge for hiking and biking – not intended for vehicular use.
- Identify opportunities for aesthetic enhancements with lighting, materials, and layout.

#### **Subtask 4.2 Bridge/Boardwalk Schematic Layout**

**Description:** CONSULTANT shall produce two (2) layout plan options based on the product review and comments provided by City staff. Each concept will demonstrate how the boardwalk/bridge will function as well as installation considerations for aquatic life sensitivity in MacRae Pond. The ultimate goal is to develop concepts that address the needs of both the Parks and Engineering departments as well as the Iowa Department of Natural Resources (IDNR) without draining the pond for installation. We anticipate three (3) design coordination meetings during the schematic design process will be needed to narrow options to one final concept.

#### **Subtask 4.3 Bridge/Boardwalk Final Layout**

**Description:** CONSULTANT shall produce one (1) final layout plan using a premanufactured bridge/boardwalk product over MacRae Pond. Final layout to include the following concept level design elements:

- Product material/manufacturer for boardwalk/bridge crossing.
- Installation methods.
- Fishing opportunities.
- Shore connection locations and route across MacRae Pond.
- Aesthetic enhancement options for iconic feature.
- Seasonal use accommodation.
- Updated preliminary construction cost estimate.

For budgeting purposes, CONSULTANT has included two (2) design coordination meetings in the scope of services to finalize the boardwalk/bridge concept. One meeting shall be used as a design process review meeting with City Staff and the other meeting shall be conducted for final presentation of the design concept.

### **TASK 5: FINAL DESIGN**

Based upon preliminary design and field exam, and after authorization by the CITY, the CONSULTANT shall proceed with final design, contract drawings, specifications and opinion of probable construction cost for the award of a single Contract for the construction of the proposed improvements. Final plans shall be provided to the City in pdf format and MicroStation CAD format. The work tasks to be performed shall include the following:

#### **Subtask 5.1 Final Plans**

**Description:** The CONSULTANT shall provide the City with the following deliverables:

##### Title and General Information Sheets (A Sheets)

This task consists of assembling the preliminary title and general information sheets. The preliminary title sheets will include the following: index of sheets, revisions, legend, location map, project number, and design traffic data.

##### Final Typical Cross Sections (B Sheets)

This task consists of final design and drafting of typical cross sections and standard details to be utilized for the improvements.

Final Estimate of Quantities (C Sheets)

This task consists of final bid items to be included in the Project, as well as final quantity tabulations, and the development of the general notes and estimate reference information.

Final Plan and Profiles (D and E Sheets)

This item consists of the final design and drafting of roadway plan and profile sheets, including the detail information required for plan approvals, permitting, and construction of the proposed improvements. This task also consists of the final design and drafting for the installation of new utilities and utility adjustments that can be determined from coordination with the utility companies at the time of design.

Final Erosion Control and Surface Restoration (EC Sheets)

This item includes the final design and drafting of erosion control measures and surface restoration to be provided on the Project.

Final Reference Plans (G Sheets)

This item consists of assembling reference ties to the plan control points and the benchmark data used to develop the plans and to be preserved throughout construction of the project.

Final Traffic Control, Staging and Pavement Markings (J Sheets)

This item consists of final design and drafting of the traffic control, staging and permanent pavement marking plans. The traffic control devices, procedures, and layouts shall be as per the Manual of Uniform Traffic Control Devices (MUTCD).

Final Intersection Geometrics (L Sheets)

This item consists of the final design and drafting of jointing details, spot elevations, and geometric layouts for all non-typical pavements areas.

Final Storm Drainage Design (M Sheets)

This item consists of final design and drafting of storm sewers, storm sewer inlets, manholes and other storm drainage related facilities for the Project.

Final pavement marking plans (N Sheets)

This item consists of final design and drafting of pavement markings for the Project.

Final Lighting and Electrical plan (P Sheets)

This item consists of final electrical plans for lighting of the bridge and identification of products to be used.

Final Shelter Plans (Q Sheets)

This item consists of final open air park shelter plans including structural drawings and calculations from the manufacturer including City building code information, footing details and slab reinforcement plans necessary to fulfill City building code required for a building permit.

Final Removal Plans (R Sheets)

This item consists of final design and drafting of proposed improvements and removals.

#### Final Curb Ramp Design (S Sheets)

Develop final curb ramp layout in accordance with Chapter 12 of Iowa SUDAS Design Manual. Final ramp geometric configurations alternatives, identify surface requirements, review general horizontal curb opening, cross slopes, running slope, and identify sidewalk width and passing space within the corridor.

#### Final Natural Playscape Layout, Grading, and Landscape Sheets (T Sheets)

Develop final layout, grading, and landscape sheets for the natural playscape areas of the project. This will include geometric layout of the playscape elements, detailed plan view of the individual elements as needed, landscape plan and plant schedule, and layout of pathways to connect into the existing system.

- Small water feature and rain garden including final plumbing and drainage plan adherent to City plumbing code
- Natural playground elements:
  - large harvested tree climber
  - log playground elements
  - stone climbing elements
  - stone cave
  - dirt dig play area
  - playground slide and swing

#### Final Natural Playscape Details (U Sheets)

Develop detailed drawings for the various natural playscape elements including detailed layout plans, landscape details, sections, and elevations. This includes retaining wall details as needed. It is assumed that retaining wall materials shall concrete modular units to meet the aesthetic of the playscape. Wall sections shall be shown and structural design shall be completed by the wall manufacturer. If additional types of walls are requested or required by the owner, CONSULTANT can provide structural engineering of custom wall structures as an additional service.

Water feature and raingarden plumbing design and engineering shall be completed by the water feature manufacturer. All plumbing details are to be in compliance with City plumbing code and included within the final plan set sheets.

#### Final Boardwalk & Bridge Plans (V Sheets)

Develop final designs for a boardwalk system and standard pre-fabricated bridge. Consultant shall include all structural design of the boardwalk with footings and bridge with abutments provided by the manufacturer of each system. Consultant shall advise City if the necessary structural design is not provided by the manufacturer.

#### Final Design Cross Sections (W & X Sheets)

This task consists of final design and drafting individual cross sections for the project. Cross sections will be designed and drawn at 25-foot maximum intervals, with additional cross-sections included as necessary.

### **Subtask 5.2 Opinion of Probable Construction Cost**

**Description:** The CONSULTANT shall prepare a final Opinion of Probable Construction Cost for the Project. An updated Opinion of Probable Construction Cost shall be prepared at the time of completion of the plans and specifications. The Opinion of Probable Construction Cost is intended for the use of the City in financing the Project. The Opinion of Probable Construction Cost shall be provided in excel format.

### **Subtask 5.3 Final Design Meeting**

**Description:** It is estimated that the CONSULTANT's staff shall attend one (1) meeting with the City, and others to review progress, assist in decision-making, and receive direction from the City.

## **BIDDING PHASE SERVICES**

### **TASK 6: BIDDING ASSISTANCE**

The work tasks to be performed or coordinated by the **CONSULTANT** shall include the following:

#### **Subtask 6.1 Plan Clarification and Addenda**

**Description:** The bid letting shall be administered by the **CITY**. The **CONSULTANT** shall assist the **CITY** during the bid periods in answering questions regarding the design intent. The **CONSULTANT** shall address questions presented by the **CITY** and prepare addendum for distribution by the **CITY**, if required.

## **PROPOSED SCHEDULE**

The proposed anticipated schedule as follows:

City Notice to Proceed	August 2020
Design	August 2020 – December 2020
Bid Letting	February 2021

## ATTACHMENT 3

### 2020 SCHEDULE OF FEES

The following fee schedule is based upon competent, responsible professional services and is the minimum, below which adequate professional standards cannot be maintained.

It is, therefore, to the advantage of both the professional and the client that fees be commensurate with the service rendered.

Charges are based on hours spent at hourly rates in effect for the individuals performing the work. The hourly rates for principals and members of the staff vary according to skill and experience. The current specific billing rate for any individual can be provided upon request.

These rates include labor, general business, and other normal and customary expenses associated with operating a professional business. Unless otherwise agreed, the above rates include vehicle and personal expenses, mileage, telephone, survey stakes, and routine expendable supplies; no separate charges will be made for these activities and materials. Expenses beyond the agreed scope of services and non-routine expenses,

such as large quantities of prints, extra report, copies, outsourced graphics and photographic reproductions, document recording fees, outside professional and technical assistance, and other items of this general nature will be invoiced separately. Rates and charges do not include sales tax, if applicable.

*<sup>1</sup> No separate charges will be made for GPS or robotic total stations on Bolton & Menk, Inc. survey assignments: the cost of this equipment is included in the rates for Survey Technician*

Employee Classification	Hourly Billing Rates
Senior Principal	\$195- 280/Hour
Principal Engineer/Surveyor/Planner/GIS/Landscape Architect	\$145- 225
Senior Engineer/Surveyor/Planner/GIS/Landscape Architect	\$120- 210
Project Manager (Inc. Survey, GIS, Landscape Architect)	\$115- 200
Project Engineer/Surveyor/Planner/Landscape Architect	\$90- 175
Design Engineer/Landscape Designer/Graduate Engineer/Surveyor	\$90- 190
Specialist (Nat. Resources; GIS; Traffic; Graphics; Other)	\$70- 175
Senior Technician (Inc. Construction, GIS, Survey <sup>1</sup> )	\$90- 180
Technician (Inc. Construction, GIS, Survey <sup>1</sup> )	\$60- 155
Administrative/Corporate Specialists	\$55- 135
Structural/Electrical/Mechanical/Architect	\$120- 150
GPS/Robotic Survey Equipment	NO CHARGE
CAD/Computer Usage	NO CHARGE
Routine Office Supplies	NO CHARGE
Routine Photo Copying/Reproduction	NO CHARGE
Field Supplies/Survey Stakes & Equipment	NO CHARGE
Mileage	NO CHARGE



**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.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such 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.

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.

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 part of the same project.

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

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

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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



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

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

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

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

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

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(s) at the location(s) designated above.

However:

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

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

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

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.

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

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

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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

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

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

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 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 caused, in whole or in part, by "your work" performed for that insured and included in the "products-completed operations" hazard.

The coverage afforded to the Additional Insured is solely limited to liability specifically resulting from the conduct of the Named Insured, which may be imputed to the Additional Insured.

- B. This endorsement provides no coverage to the Additional Insured for liability caused, in whole or in part, out of the claimed negligence of the Additional Insured, other than which may be imputed to the Additional Insured by virtue of the conduct of the Named Insured.
- C. With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

**This insurance does not apply to:**

1. "Bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part by 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 drawing and specifications; and
  - b. Supervisory, inspection, architectural, or engineering activities.
2. Willful misconduct of, or for defects in design furnished by, the additional insured or its "employees".

As a condition of coverage, the additional insured shall be obligated to tender the defense and indemnity of every claim or suit to all other insurers that may provide coverage to the additional insured, whether contingent, excess or primary.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

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

**ADDITIONAL INSURED -  
STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION  
OR POLITICAL SUBDIVISION - PERMITS OR AUTHORIZATIONS**

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

State Or Governmental Agency Or Subdivision Or Political Subdivision:

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

A. **Section II - Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

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

2. 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".

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

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

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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

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

## **COMMERCIAL GENERAL LIABILITY EXPANDED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

### SCHEDULE

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

- A. Expected or Intended Injury**
  - Reasonable force
- B. Non-owned Watercraft**
  - Increased to 60 feet
- C. Non-owned Aircraft**
- D. Property Damage - Elevators**
- E. Damage To Premises Rented To You**
  - Limit increased to \$500,000
- F. Personal and Advertising Injury**
  - Exclusions
- G. Medical Payments - Volunteer Workers**
- H. Voluntary Property Damage**
- I. Care, Custody and Control**
- J. Supplementary Payments**
  - Bail Bonds - \$2500
  - Loss of Earnings - \$1000
- K. Who Is An Insured broadened:**
  - Limited Liability Partnership
  - Joint Ventures / Partnership / Limited Liability Company
  - Health Care Professionals (Incidental Medical Malpractice)
  - Newly Formed or Acquired Entities (up to 365 days)
  - Individual Owners of Buildings
- L. Knowledge and Notice Of Occurrence**
- M. Unintentional Failure To Disclose Hazards**
- N. Liberalization**
- O. Definitions**
  - Bodily Injury redefined
  - Expanded Personal and Advertising Injury definition
  - Unintentional Damage or Destruction added

In addition to the policy amendments contained in A through O listed above, the endorsements listed below will automatically be attached to your policy to complete the coverage provided by the Commercial General Liability Endorsement:

- Additional Insured - Co-Owners of Insured Premises - CG 20 27
- Additional Insured - Concessionaire - CG 20 03
- Additional Insured - Controlling Interest - CG 20 05
- Additional Insured - Grantor of Franchise - CG 20 29
- Additional Insured - Lessor of Leased Equipment - CG 20 34
- Additional Insured - Managers or Lessors of Premises - CG 20 11
- Additional Insured - Mortgagee, Assignee or Receiver - CG 20 18
- Additional Insured - Owners or Other Interests From Whom Land Has Been Leased - CG 20 24
- Additional Insured - State or Governmental Agency or Subdivision or Political Subdivision - Permits or Authorizations - CG 20 12
- Additional Insured - Vendors - CG 20 15
- Waiver of Transfer of Rights of Recovery - CG 24 04

**A. EXPECTED OR INTENDED INJURY**

Under **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Item 2. Exclusions a. is replaced with the following:

**a. Expected Or Intended Injury**

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

**B. NON-OWNED WATERCRAFT**

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

- (a) Less than 80 feet long; and

**C. NON-OWNED AIRCRAFT**

Under **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Item 2. Exclusions, g. Aircraft, Auto or Watercraft, the following is added:

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

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

**D. PROPERTY DAMAGE - ELEVATORS**

With respect to Exclusions of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Item 2. Exclusions, paragraphs (3), (4) and (6) of Exclusion j. **Damage to Property** and Exclusion k. **Damage To Your Product** do not apply to the use of elevators. The insurance afforded by this provision is excess over any valid and collectible property insurance (including any deductible) available to the insured, and the Other Insurance Condition is changed accordingly.

**E. DAMAGE TO PREMISES RENTED TO YOU**

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

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

**F. PERSONAL AND ADVERTISING INJURY**

Under **SECTION I - COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**, the following are added to Item 2. Exclusions:

**q. Discrimination Relating To Room, Dwelling or Premises**

Caused by discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured.

**r. Fines or Penalties**

Fines or penalties levied or imposed by a governmental entity because of discrimination.

**G. MEDICAL PAYMENTS - VOLUNTEER WORKERS**

Under **SECTION I - COVERAGES, COVERAGE C MEDICAL PAYMENTS**, Item 2. Exclusions b. **Hired Person** is replaced with the following:

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or tenant of any insured; however this exclusion does not apply to "volunteer workers" while engaged in maintenance or repair of your premises.

Under **SECTION I - COVERAGES**, the following are added:

**H. VOLUNTARY PROPERTY DAMAGE**

**1. Insuring Agreement**

We will pay, at your request, for "property damage" to property of others caused by you, or while in your possession arising out of your business operations.

**2. Exclusions**

Coverage for Voluntary Property Damage does not apply to:

- a. "Loss" of property at premises owned, rented, leased, operated or used by you.
- b. "Loss" of property while in transit;
- c. "Loss" of property owned by, rented to, leased to, borrowed by or used by you;

- d. The cost of repairing or replacing:
  - (1) "Your work" defectively or incorrectly done by you;
  - (2) "Your product" manufactured, sold or supplied by you; or

unless the "property damage" is caused directly by you after delivery of "your product" or completion of "your work" and resulting from a subsequent undertaking.

- e. "Loss" of property caused by or arising out of the "products-completed operations hazard."

**3. Deductible**

We will not pay for "loss" in any one "occurrence" until the amount of "loss" exceeds \$250. We will then pay the amount of "loss" in excess of \$250, up to the applicable limit of insurance.

**4. Actual Cost**

In the event of covered "loss", you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The most we will pay under Voluntary Property Damage for "loss" arising out of any one "occurrence" is \$250. The most we will pay for the sum of all "losses" under this coverage is \$1,000.

**I. CARE, CUSTODY OR CONTROL**

**1. Insuring Agreement**

We will pay those sums the Insured becomes legally obligated to pay as damages because of "property damage" to property of others while in your care, custody or control or property as to which you are exercising physical control if the "property damage" arises out of your business operations.

**2. Exclusions**

Coverage for Care, Custody or Control does not apply to:

- a. "Property damage" to property at any premises owned, rented, leased, operated or used by you;
- b. "Property damage" to property while in transit;
- c. The cost of repairing or replacing:
  - (1) "Your work" defectively or incorrectly done by you; or
  - (2) "Your product" manufactured, sold or supplied by you;

unless the "property damage" is caused directly by you after delivery of "your product" or completion of "your work" and resulting from a subsequent undertaking.

- d. "Property damage" to property caused by or arising out of the "products-completed operations hazard".

**3. Deductible**

We will not pay for "property damage" in any one "occurrence" until the amount of "property damage" exceeds \$250. We will then pay the amount of "property damage" in excess of \$250, up to the applicable limit of insurance.

**4. Actual Cost**

In the event of covered "property damage", you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The most we will pay under Care, Custody or Control for "property damage" is \$1,000 for each "occurrence". The most we will pay for the sum of all damages because of "property damage" under this coverage is \$5,000.

**J. SUPPLEMENTARY PAYMENTS**

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

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

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

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

**K. WHO IS AN INSURED BROADENED**

Under SECTION II - WHO IS AN INSURED Item 1.b. is replaced with the following:

- b. A partnership (including a limited liability 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.

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

**f. Joint Ventures / Partnership / Limited Liability Company Coverage**

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

- (1) Prior to the termination date of any joint venture, partnership or limited liability company; or
- (2) If there is other valid and collectible insurance purchased specifically to insure the partnership, joint venture or legal liability company.

Under **SECTION II - WHO IS AN INSURED**, item 2.a. is replaced with the following:

- a. Your "employees" or volunteer workers, other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or volunteer workers are an insured for:

- (1) "Bodily Injury" or "personal and advertising injury":
  - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are limited liability company), or to a co-"employee" or co-volunteer worker while that is either in the course of his or her employment or performing duties related to the conduct of your business;
  - (b) To the spouse, child, parent, brother or sister of that co-"employee" or co-volunteer worker as a consequence of paragraph (1)(a) above;
  - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b) above; or
  - (d) Arising out of his or her providing or failing to provide professional health care services.

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

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees" or volunteer workers, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

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

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

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

4. For **COVERAGE A** and **COVERAGE B** only, the owner of any building leased to you, but only if the building owner is a shareholder in your corporation or a partner in your partnership insured in this policy, and only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you. However, this insurance does not apply:
- a. To any "occurrence" or offense which takes place after you cease to be a tenant in the premises; or
  - b. To structural alterations, new construction or demolition operations performed by or on behalf of the building owner.

Under **SECTION II - WHO IS AN INSURED** the last paragraph of this section is replaced with the following:

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

**L. KNOWLEDGE AND NOTICE OF OCCURRENCE**

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

- e. The requirement in Condition 2.a. applies only when the "occurrence" or offense 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 manager, if you are a limited liability company.
- f. The requirement in Condition 2. b. will not be breached unless the breach occurs after such claim or "suit" 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 manager, if you are a limited liability company.
- g. Your rights under this Coverage Part will not be prejudiced if you fail to give us notice of an "occurrence," offense, claim, or "suit" and that failure is solely due to your reasonable belief that the "bodily injury" or "property damage" is not covered under this Coverage Part. However, you shall give written notice of this "occurrence," offense, claim, or "suit" to us as soon as you are aware this insurance may apply to such "occurrence", offense, claim, or "suit".

**M. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

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

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

all hazards or prior "occurrences" is not intentional.

**N. LIBERALIZATION**

Under **SECTION I - COVERAGES, SECTION II - WHO IS AN INSURED, SECTION III - LIMITS OF INSURANCE, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS AND SECTION V - DEFINITIONS**, the following is added:

**Liberalization**

If we adopt any revision that would broaden the coverage under this endorsement without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this endorsement.

**O. DEFINITIONS**

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

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

Under **SECTION V - DEFINITIONS**, item 14. the following is added to the definition of "Personal and advertising injury":

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

Under **SECTION V - DEFINITIONS**, the following definition is added:

23. "Loss" means unintentional damage or destruction but does not include disappearance, theft, or loss of use.



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

**WAIVER OF GOVERNMENTAL IMMUNITY**

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

We will waive, both in the adjustment of claims and in the defense of "suits" against the insured, any governmental immunity of the insured, unless the insured requests in writing that we do not do so.

Waiver of immunity as a defense will not subject us to liability for any portion of a claim or judgment in excess of the applicable limit of insurance.

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

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

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

**SCHEDULE**

**Name Of Person Or Organization:**

Any person or organization for whom you are required in a written contract or agreement to include a waiver of transfer of rights of recovery against others to us, provided the "bodily injury" or "property damage" occurs subsequent to the execution of the written agreement.

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

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV - Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

**WAIVER OF OUR RIGHT TO RECOVER FROM  
OTHERS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

POLICY NUMBER: WCP 5080987  
EFFECTIVE DATE: 07/01/15  
INSURER: WESTFIELD INSURANCE CO.  
CARRIER CODE: 14451  
NAMED INSURED: BOLTON & MENK INC  
AGENCY NUMBER: 22-6319

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**Schedule**

PRINCIPAL:  
BLANKET WAIVER

DESCRIBED OPERATIONS:  
ANY OPERATIONS OF THE INSURED

MINIMUM PREM/FLAT CHARGE: 1500

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective  
Insured

Policy No.

Endorsement No.  
Premium

Insurance Company

Countersigned by \_\_\_\_\_

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

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**SCHEDULE**

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

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

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

- Audio, Visual and Data Electronic Equipment Coverage Added Limits - CA 99 60
- Auto Loan/Lease Gap Coverage - CA 20 71
- Drive Other Car Coverage - Broadened Coverage For Named Individuals - (Executive Officers/Spouses) - CA 99 10
- Employee Hired Autos - CA 20 54
- Employees As Insureds - CA 99 33
- Hired Auto Physical Damage (Refer to Auto Declarations page)
- Rental Reimbursement Coverage - CA 99 23
- Waiver of Transfer of Rights of Recovery (Waiver of Subrogation) - CA 04 44

**A. WHO IS AN INSURED BROADENED**

**SECTION II - LIABILITY COVERAGE, Item A. Coverage, 1. Who Is An Insured** is amended to include the following additional paragraphs:

- d. Any legally incorporated subsidiary of yours in which you own more than 50% of the voting stock on the effective date of this endorsement.

However, "Insured" does not include any subsidiary that is an "Insured" under any other liability policy or would be an "Insured" under such a

policy but for its termination or the exhaustion of its limit of insurance.

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

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

- (1) Does not apply if the organization you acquire or form is an "insured" under another auto liability policy or would be "insured" under such a policy but for its termination or the exhaustion of its limits of insurance;
- (2) Does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- (3) Is afforded only for the first 180 days after you acquire or form the organization or until the end of the policy period, whichever comes first.

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

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

**B. SUPPLEMENTAL PAYMENTS**

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

- (2) Up to \$5,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 per day because of time off from work.

**C. FELLOW EMPLOYEE EXCLUSION AMENDMENT**

**SECTION II - LIABILITY COVERAGE, Item B. Exclusions, 5. Fellow Employee** does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

**D. COVERAGE EXTENSIONS**

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

- a. **Transportation Expenses**

We will pay up to \$100 per day to a maximum of \$1,800 for transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

The following is added to Item 4. **Coverage Extensions:**

**c. Personal Effects**

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

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

**E. ADDITIONAL COVERAGES**

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

- 5. We will pay the expense of returning a stolen covered "auto" to you.
- 6. **Fire Department Service Charge**

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

- (a) Assumed by contract or agreement prior to loss; or
- (b) Required by local ordinance.

No deductible applies to this additional coverage.

**F. AIRBAG COVERAGE - ACCIDENTAL DISCHARGE**

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

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

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

**G. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

**SECTION III - PHYSICAL DAMAGE COVERAGE**, item D. Deductible the following paragraph is added:

No deductible shall apply to glass damage if the glass is repaired rather than replaced.

**H. KNOWLEDGE AND NOTICE OF AN ACCIDENT, CLAIM OR SUIT**

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

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

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

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

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

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

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

**I. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

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

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

**J. WORLDWIDE COVERAGE**

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

(5) Anywhere in the world, if:

- (a) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 45 days or less; and
- (b) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.
- (c) If, for such "autos" a "suit" is brought outside the territory described in 7.(1) through 7.(4) above, we will reimburse the insured for defense expenses incurred with our written consent, but we will make no payment, nor will we reimburse the insured for damages.

**K. DEFINITIONS**

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

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

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

## **MINNESOTA CHANGES - CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 COMMERCIAL INLAND MARINE COVERAGE PART  
 COMMERCIAL PROPERTY COVERAGE PART  
 CRIME AND FIDELITY COVERAGE PART  
 EMPLOYMENT - RELATED PRACTICES LIABILITY COVERAGE PART  
 EQUIPMENT BREAKDOWN COVERAGE PART  
 FARM COVERAGE PART  
 MEDICAL PROFESSIONAL LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**A.** When this endorsement is attached to the Standard Property Policy **CP 00 99** the term Coverage Part in this endorsement is replaced by the term Policy.

**B.** The following provisions apply except when Paragraph **C.** of this endorsement applies:

The **Cancellation** Common Policy Condition is replaced by the following:

### **CANCELLATION**

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

2. We may cancel this policy, subject to the provisions of Paragraph **B.3.** below, by first class mailing, or by delivery, of a written notice of cancellation to the first Named Insured and any agent, to their last mailing addresses known to us. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

### **3. Policies In Effect**

#### **a. Less Than 90 Days**

If this policy is a new policy and has been in effect for fewer than 90 days, we may cancel for any reason by giving notice at least:

- (1) 10 days before the effective date of cancellation, if we cancel for nonpayment of premium; or
- (2) 30 days before the effective date of cancellation, if we cancel for any other reason.

#### **b. 90 Days Or More**

If this policy has been in effect for 90 days or more, or if it is a renewal of a policy we issued, we may cancel only for one or more of the following reasons:

- (1) Nonpayment of premium;
- (2) Misrepresentation or fraud made by you or with your knowledge in obtaining the policy or in pursuing a claim under the policy;
- (3) An act or omission by you that substantially increases or changes the risk insured;
- (4) Refusal by you to eliminate known conditions that increase the potential for loss after notification by us that the condition must be removed;
- (5) Substantial change in the risk assumed, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing the contract;
- (6) Loss of reinsurance by us which provided coverage to us for a significant amount of the underlying risk insured. Any notice of cancellation pursuant to this item shall advise the policyholder that he or she has 10 days from the date of receipt of the notice to appeal the cancellation to the commissioner of commerce and that the commissioner will render a decision as to whether the cancellation is justified because of the loss of reinsurance within 30 business days after receipt of the appeal;

- (7) A determination by the commissioner that the continuation of the policy could place us in violation of the Minnesota insurance laws; or
- (8) Nonpayment of dues to an association or organization, other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing such insurance. This provision for cancellation for failure to pay dues shall not be applicable to persons who are retired at 62 years of age or older or who are disabled according to social security standards.

Under this item **B.3.b.**, we will give notice at least:

- (1) 10 days before the effective date of cancellation, if we cancel for nonpayment of premium. The cancellation notice shall contain the information regarding the amount of premium due and the due date, and shall state the effect of nonpayment by the due date. Cancellation shall not be effective if payment of the amount due is made prior to the effective date of cancellation; or
- (2) 60 days before the effective date, if we cancel for a reason described in Paragraphs **B.3.b.(2)** through **(8)** above. The notice of cancellation will state the reason for cancellation.

4. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

5. Proof of mailing of any notice shall be sufficient proof of notice.

C. The following applies with respect to coverage provided under the following:

**FARM COVERAGE PART**

**1. Policies In Effect 60 Days Or More**

- a. If this Coverage Part covers buildings used for residential purposes and has been:

- (1) In effect for at least 60 days, or
- (2) Renewed by us,  
Paragraphs **A.2.** and **A.6.** of the **Cancellation** Common Policy Condition do not apply, and the following is added to the **Cancellation** Common Policy Condition:

b. We may not cancel this policy, except for:

- (1) Nonpayment of premium;
- (2) Misrepresentation or fraud made by you or with your knowledge:
  - (a) In obtaining this policy; or
  - (b) In connection with a claim under this policy;
- (3) An act or omission by you that materially increases the risk we originally accepted; or
- (4) A physical change in the Covered Property which:
  - (a) Is not corrected or restored within a reasonable time after it occurs; and
  - (b) Results in the property becoming uninsurable.

c. We may cancel this policy by giving the first Named Insured written notice of cancellation at least:

- (1) 20 days before the effective date of cancellation, if we cancel for nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for a reason described in Paragraphs **C.1.b.(2)** through **(4)**

Such notice will be mailed or delivered to the first Named Insured and will contain the reason for cancellation. Proof of mailing of any notice shall be sufficient proof of notice.

**2. Policies In Effect Less Than 60 Days**

When this Coverage Part covers buildings used for residential purposes and is a new policy which has been in effect fewer than 60 days, cancellation is subject to the terms of the **Cancellation** Common Policy Condition except for Paragraphs **A.2.** and **A.6.**, and is not subject to Paragraph **B.** or Paragraph **C.1.** of this endorsement. Under this item, **C.2.**, Paragraphs **A.2.** and **A.6.** of the **Cancellation** Common Policy Condition are replaced by the following:



We may cancel this policy by giving the first Named Insured written notice of cancellation at least 20 days before the effective date of cancellation. Such notice will be mailed or delivered to the first Named Insured. Proof of mailing of any notice shall be sufficient proof of notice.

If we cancel this policy for underwriting considerations, we will inform you of the source from which the Information was received.

- D. The following is added and supersedes any provisions to the contrary: **NONRENEWAL**

If we decide not to renew this policy, we may do so by giving the first Named Insured and

any agent written notice of our intent not to renew at least 60 days before the expiration date of this policy. Such notice will be delivered or mailed by first class mail to their last mailing addresses known to us.

Proof of mailing of any notice shall be sufficient proof of notice.

We need not mail or deliver this notice if you have:

1. Insured elsewhere;
2. Accepted replacement coverage; or
3. Agreed not to renew this policy.