



Roll Call Number

Agenda Item Number

7 C

Date August 3, 2020

**APPROVING PROFESSIONAL SERVICES AGREEMENT WITH OPN, INC. D/B/A
OPN ARCHITECTS, INC., FOR THE SKYWALK BRIDGES EXTERIOR CONDITION
ANALYSIS, NOT TO EXCEED \$178,000**

BE IT FURTHER RESOLVED: That Professional Services Agreement between the City of Des Moines and OPN, INC, d/b/a OPN Architects, Inc., for a total cost not to exceed \$178,000, to provide professional services for the Skywalk Bridges Exterior Condition Analysis, 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 20-344 attached)
Activity ID 01-2020-010

Moved by _____ to adopt.

FORM APPROVED: s/Kathleen Vanderpool

Kathleen Vanderpool
Deputy City Attorney

SLN

Funding Source: 2020-2021 CIP, Page Street Improvements – 42, Skywalk System, SW094, TIF-Backed G.O. Bonds to be issued

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
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
SKYWALK BRIDGES EXTERIOR CONDITION ANALYSIS
Activity ID 01-2020-010

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 OPN, Inc. d/b/a OPN Architects, Inc., Daniel J. Thies, President, 200 5th Ave. SE, Ste. 201, Cedar Rapids, IA 52401, hereinafter referred to as the "Consultant", being a corporation organized and existing under the laws of the State of Iowa 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 Skywalk Bridges Exterior Condition Analysis (hereinafter the "Project"); and

WHEREAS, the Consultant is desirous of performing the professional services for the City in connection with Skywalk Bridges Exterior Condition Analysis.

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.

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: None.
- 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 \$178,000 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 March 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 Calvin Miller, 515-283-4748, cbmiller@dmgov.org. All communications directed to the City must be in writing to Calvin Miller.

The primary contact person for OPN Architects, Inc., shall be Curt Engelhardt, AIA, 100 Court Ave., Suite 100, Des Moines, IA 50309, 515-309-0722, cengelhardt@opnarchitects.com. All communications directed to the Consultant must be in writing, such as payments, contracts, etc., directed to Curt Engelhardt.

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: Calvin Miller
400 Robert D. Ray Drive
Des Moines, IA 50309


To Consultant: OPN Architects, Inc. c/o Danielle Hermann, AIA
100 Court Ave., Suite 100
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

OPN, INC. d/b/a OPN ARCHITECTS, Inc.

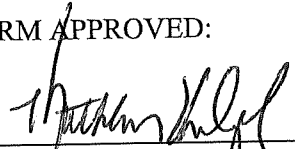
T.M. Franklin Cownie, Mayor



Daniel J. Thies, President

FORM APPROVED:

ATTEST:



Kathleen Vanderpool, Deputy City Attorney

P. Kay Cemelik, City Clerk

ATTACHMENT 1

CITY OF DES MOINES, IOWA PROFESSIONAL SERVICES - GENERAL

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 others 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 Certificates of Insurance 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.

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.

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.

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.

**ATTACHMENT #2
SCOPE OF WORK
FOR
CITY OF DES MOINES
SKYWALK BRIDGES EXTERIOR CONDITION ANALYSIS
Activity ID 01-2020-010**

The **CONSULTANT** shall provide all detailed work, services, equipment and supplies to analyze and assess the exterior condition of the 53 City-owned skywalk bridges as listed in Exhibit 1 and provide a detailed report summarizing the condition of each bridge, including the following anticipated tasks:

The **CONSULTANT** shall conduct an on-site inspection for each skywalk to assess the exterior condition of each of the skywalk bridges. All report information shall include the project Activity ID. The **CONSULTANT** shall utilize the evaluation development process as follows to complete the exterior condition analysis:

1. Investigation

The **CONSULTANT** shall schedule a project kick-off meeting with **CITY** to collaborate existing skywalk information and coordinate access to each skywalk. This task shall include obtaining **CITY** preferences and any planning/long-term goals regarding the maintenance and improvements to the skywalk system exterior. Key items include:

- Collect and review existing data/documents/known issues
- Rating system to establish a baseline for future reference
- Prepare an inspection and evaluation methodology
- Coordinate access to skywalks

2. Assessment

Once the **CONSULTANT** has collected and synthesized existing information, the physical assessment and evaluation of the skywalks shall begin. **CONSULTANT** will use necessary equipment to access each skywalk bridge. The scope of assessment work includes, but is not limited to the following:

- Observations of exterior glazing and framing conditions
- Observations of exterior opaque wall systems and make-ups
- Soffit and trim conditions
- Roof, parapet, coping, and flashing conditions
- Joint and sealant conditions
- Any other pertinent observations noted during the on-site inspection

3. Draft Report

CONSULTANT shall submit a draft report to the **CITY** and appropriate stakeholders for comment and discussion. **CONSULTANT** shall further investigate, as needed, and work to refine recommendations and report information for further review with the City before

finalizing the report and deliverables. **CONSULTANT** shall also create a database tool for the **CITY** that incorporates the findings and report information for future use in planning and tracking improvement projects.

4. Final Report

CONSULTANT shall prepare a written final report summarizing the findings, methodology, deficiencies and recommendations, strategies, estimated costs and a prioritized five-year capital improvement plan for the overall skywalk bridge system, including each of the 53 skywalk bridges. The report shall also include annotated drawings and/or photos documenting assessment notes. This report will serve as a record of existing conditions as well as a planning tool for programming future capital improvements and maintenance. Specifically, the report shall include:

- Summary of skywalk bridge systems in place with comments on maintenance and useful life where possible
- Summary of damage, deterioration, or deficiencies for each skywalk bridge
- Summary of remedial, repair, or rehabilitation recommendations for each skywalk bridge
- Preliminary repair cost information for each bridge with estimated escalation as pertinent
- Priority listing of recommended immediate improvement needs
- Extended repair schedules for recommended skywalk bridge maintenance and improvements for time periods of 1-2 years, 2-5 years, 5-10 years, and 10+ years out.

**EXHIBIT #1
FOR
CITY OF DES MOINES
SKYWALK BRIDGES EXTERIOR CONDITION ANALYSIS
Activity ID 01-2020-010**

	Bridge Number	Plan File		Bridge Number	Plan File
1	1C-2C	340-050	28	6DaE	277-131
2	2C-2D	337-040	29	6DaW	321-003
3	2C-3C	337-040	30	6E-7E	253-001
4	2Ca (Parking)	337-040	31	6E-6F	n/a
5	3C-4C	277-106	32	6F-7F	564-003
6	3CaS	562-125	33	7B-7C	362-066
7	4C-4D	264-001	34	7C-7D	362-061
8	4C-5C	286-041	35	7C-8C	408-062
9	4D-4E	264-001	36	7D-8D	293-047
10	4D-5D	266-156	37	7DE-7EE	253-001
11	4E-4F	259-118	38	7DW-7EW	262-027
12	4E-5E	290-023	39	7E-8E	313-002
13	4Ea	258-001	40	7F-8F	498-097
14	4F-4J	278-176	41	8B-8C	408-062
15	4F-5F	270-077	42	8C-8D	454-018
16	4Fa	271-116	43	8C-9C	405-138
17	4J-4K	563-210	44	8Da	454-018
18	5C-5D	277-131	45	8E-8F	498-097
19	5D-5E	348-028	46	8E-9E	347-001
20	5D-6D	584-189	47	8F-9F	498-097
21	5Da	277-131	48	9C-9D	406-001
22	5E-5F	n/a	49	9D-10D	567-018
23	5E-6E	348-005	50	10C-10D	n/a
24	6C-6D	277-131	51	11C-11D	466-065
25	6C-7C	362-064	52	11C-12B	474-058
26	6D-6E	348-005	53	11D-12D	474-058
27	6D-7D	277-131			

**ATTACHMENT #3
CONSULTANT FEE SCHEDULE
FOR
CITY OF DES MOINES
SKYWALK BRIDGES EXTERIOR CONDITION
ANALYSIS
Activity ID 01-2020-010**



Cedar Rapids
200 Fifth Avenue SE Ste. 201
Cedar Rapids, Iowa 52401
(319) 363-6018

Des Moines
100 Court Avenue Ste. 100
Des Moines, Iowa 50309
(515) 309-0722

Iowa City
24 1/2 S. Clinton Street
Iowa City, Iowa 52240
(319) 363-6018

Madison
301 N. Broom Street Ste. 100
Madison, Wisconsin 53703
(608) 819-0260

opnarchitects.com

OPN ARCHITECTS
Hourly Rates - 2020

Principal	\$260
Associate Principal	\$180
Associate	\$155
Senior Project Manager/Senior Project Architect	\$140
Project Manager/Project Architect	\$120
Architect	\$105
Intern Architect 3	\$90
Intern Architect 1-2	\$75
Landscape Architect	\$85
Senior Interior Designer	\$95
Interior Designer	\$80
Construction Administrator	\$100
Architectural Technician	\$75
Directors of Business Support	\$115
Business Support Specialist	\$85
Marketing Specialist	\$70
Administrative Support	\$60
College Interns	\$35



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/25/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER TrueNorth PO Box 1863 500 First Street SE Cedar Rapids IA 52406-1863	CONTACT NAME: TrueNorth Risk Management PHONE (A/C No. Ext): 319-366-2723 E-MAIL ADDRESS: certs@truenorthcompanies.com FAX (A/C No.):													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : Cincinnati Casualty Company</td> <td>28665</td> </tr> <tr> <td>INSURER B : The Cincinnati Insurance Company</td> <td>10677</td> </tr> <tr> <td>INSURER C : Admiral Insurance Company</td> <td>24856</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Cincinnati Casualty Company	28665	INSURER B : The Cincinnati Insurance Company	10677	INSURER C : Admiral Insurance Company	24856	INSURER D :		INSURER E :		INSURER F :
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INSURER E :														
INSURER F :														
INSURED OPN Architects, Inc. 200 Fifth Ave SE, Suite 201 Cedar Rapids IA 52401	OPNARCH-01													

COVERAGES

CERTIFICATE NUMBER: 683493181

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	N	Y	EPP0502684	9/1/2018	9/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	EPP0502684	9/1/2018	9/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			EPP0502684	9/1/2018	9/1/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	EWC 0502688	9/1/2019	9/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability	N		EO00004740202	10/1/2019	9/1/2020	Aggregate Each Occurrence Deductible \$ 5,000,000 \$ 5,000,000 \$ 100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
If there is an "Y" in the box for additional insured under General Liability form GA472 applies on a primary basis. Also, form GA210 applies with regards to additional insured on a primary basis and waiver of subrogation is provided, if required by written contract. If there is a "Y" in the box for Additional Insured & Waiver of Subrogation under Auto Liability, form AA 288 applies. If there is a "Y" in the box for Additional insured under Umbrella/ Excess Liability following form applies on a primary basis and and waiver of subrogation is provided, if required by written contract. If there is an "Y" in the box for waiver of subrogation under the Workers Compensation then form WC000313 applies, if required by written contract.

Umbrella is excess of general liability, automobile liability and employers liability
RE: Skywalk Bridges Exterior Condition Analysis Activity ID: 01-2020-010

CERTIFICATE HOLDER

JUL 29 2020
 CITY OF DES MOINES
 ENGINEERING DEPARTMENT

City of Des Moines Iowa
 Attn: Engineering Dept
 City Hall
 400 Robert D Ray Drive
 Des Moines IA 50309

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided by the following:

BUSINESS AUTO COVERAGE FORM

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

A. Blanket Waiver of Subrogation

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

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

B. Noncontributory Insurance

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

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

C. Additional Insured by Contract

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

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

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

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

D. Employee Hired Auto

1. Changes in Liability Coverage

The following is added to the **Section II - Liability Coverage, A. Coverage, 1. Who is an Insured**:

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

2. Changes in General Conditions

SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance is amended by replacing Paragraph 5.b. with the following:

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

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

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

E. Audio, Visual and Data Electronic Equipment

SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limit of Insurance is amended by adding the following:

4. The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:
 - a. The actual cash value of the damaged or stolen property as of the time of the "accident";
 - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
 - c. \$2,500.

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

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

F. Who is an Insured - Amended

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

The following are "insureds":

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

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

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

- a. Is effective on the date of acquisition or formation, and is afforded for 180 days after such date;
- b. Does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization;
- c. Does not apply to any newly acquired or formed organization that is a joint venture or partnership; and
- d. Does not apply to an insured under any other automobile liability policy, or would be an insured under such a policy but for the termination of such policy or the exhaustion of such policy's limits of insurance.

3. Any of your "employees" while using a covered "auto" in your business or your personal affairs, provided you do not own, hire or borrow that "auto".

G. Liability Coverage Extensions - Supplementary Payments - Higher Limits

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

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

H. Amended Fellow Employee Exclusion

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

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

I. Hired Auto - Physical Damage

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

1. The most we will pay for "loss" to any hired "auto" is \$50,000 or the actual cash value or cost to repair or replace, whichever is the least, minus a deductible.
2. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage, or \$1,000, whichever is less.
3. Hired Auto - Physical Damage coverage is excess over any other collectible insurance.

4. Subject to the above limit, deductible, and excess provisions we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own insured under this policy.

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

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

J. Rental Reimbursement

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

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

K. Transportation Expense - Higher Limits

SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions is amended by replacing \$20 per day with \$50 per day, and \$600 maximum with \$1,500 maximum in **Extension a. Transportation Expenses**.

L. Airbag Coverage

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

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

M. Loan or Lease Gap Coverage

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

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

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

N. Glass Repair - Waiver of Deductible

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

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

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

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

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

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

P. Unintentional Failure to Disclose Hazards

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

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

Q. Mental Anguish Resulting from Bodily Injury

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

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

R. Coverage for Certain Operations in Connection with Railroads

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

1. **Section V - Definitions, H. "Insured contract", 1.c.** is amended to read:
 - c. An easement or license agreement;
2. **Section V - Definitions, H. "Insured contract", 2.a.** is deleted.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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 shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Blanket Waiver of Subrogation

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery.

This waiver of rights applies to any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver, but shall not be construed to be a waiver with respect to any other operations in which the Insured has no contractual interest.

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 09-01-2018 Policy No. EWC 050 26 88-00 Endorsement No.

Insured OPN INC, OPN ARCHITECTS INC DB

Insurance Company THE CINCINNATI INSURANCE COMPANY

Premium \$INCL

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CITY OF DES MOINES, IOWA

ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM

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

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

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

The City of Des Moines, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as "insureds" for Liability Coverage, but only to the extent that such person(s) or organization(s) qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

CITY OF DES MOINES, IOWA

GOVERNMENTAL IMMUNITIES ENDORSEMENT

(For use when including the City as an Additional Insured)

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670 as it now exists and as it may be amended from time to time.
3. Assertion of Government Immunity. The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.

4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
5. No Other Change in Policy. The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

CITY OF DES MOINES, IOWA

CANCELLATION AND MATERIAL CHANGES ENDORSEMENT

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in Insurance coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to Engineering Department, City of Des Moines, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, 50309. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

Note: Endorsements per 'Urban Standard Specifications For Public Improvements', Addendum No. 2 effective July 24, 2001. Revised 4/6/2004.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTOMATIC ADDITIONAL INSURED - WHEN REQUIRED IN CONTRACT OR AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. SECTION II - WHO IS AN INSURED, 2. is amended to include:

e. Any person or organization, hereinafter referred to as **ADDITIONAL INSURED**:

(1) Who or which is not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part; and

(2) For whom you are required to add as an additional insured on this Coverage Part

under:

(1) A written contract or agreement; or

(2) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued;

but only with respect to liability arising out of "your work" performed for that additional insured by you or on your behalf. A person or organization's status as an insured under this endorsement continues for only the period of time required by the written contract or agreement, but in no event beyond the expiration date of this Coverage Part. If there is no written contract or agreement, or if no period of time is required by the written contract or agreement, a person or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

2. SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended to include:

1. Automatic Additional Insured Provision

The written or oral contract or agreement must be currently in effect or become effective during the term of this Coverage Part. The contract or agreement also must be executed prior to the "bodily injury", "property damage" or "personal and advertising injury" to which this endorsement pertains.

2. Conformance to Specific Written Contract or Agreement

If a written contract or agreement between you and the additional insured specifies that coverage for the additional insured:

a. Be provided by the Insurance Services Office additional insured form number **CG 20 10** or **CG 20 37** (where edition specified); or

b. Include coverage for completed operations; or

c. Include coverage for "your work";

and where the limits or coverage provided to the additional insured is more restrictive than was specifically required in that written contract or agreement, the terms of Paragraphs **3.**, **4.a.(2)** and / or **4.b.**, or any combination thereof, of this endorsement shall be interpreted as providing the limits or coverage required by the terms of the written contract or agreement, but only to the extent that such limits or coverage is included within the terms of the Coverage Part to which this endorsement is attached. If, however, the written contract or agreement specifies the Insurance Services Office additional insured form number **CG 20 10** but does not specify which edition, or specifies an edition that does not exist, Paragraphs **3.** and **4.a.(2)** of this endorsement shall not apply and Paragraph **4.b.** of this endorsement shall apply.

3. SECTION III - LIMITS OF INSURANCE is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever are less. If no limits are specified in the written contract or agreement, or if there is no written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

4. The following are added to **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** and **SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions**:

The insurance provided to the additional insured does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the:
 - (1) Rendering of, or 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; and
 - (b) Supervisory, inspection, architectural or engineering activities;
 - (2) Sole negligence or willful misconduct of, or for defects in design furnished by, the additional insured or its "employees".
- b. "Bodily injury" or "property damage" arising out of "your work" included in the "products-completed operations hazard".

- c. "Bodily injury" or "property damage" arising out of "your work" for which a consolidated (wrap-up) insurance program has been provided by the prime contractor / project manager or owner of the construction project in which you are involved.

5. **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance** is amended to include:

- a. Where required by a written contract or agreement, this insurance is primary and / or noncontributory as respects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies, with this insurance.
- b. Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:
 - (1) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or
 - (2) For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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B. Limits Of Insurance:

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

1. Employee Benefit Liability Coverage

Each Employee Limit: \$1,000,000

Aggregate Limit: \$3,000,000

Deductible Amount: \$ 1,000

3. Damage To Premises Rented To You

The lesser of:

a. The Each Occurrence Limit shown in the Declarations; or

b. \$500,000 unless otherwise stated \$ _____

4. Supplementary Payments

a. Bail Bonds: \$2,500

b. Loss Of Earnings: \$ 500

5. Medical Payments

Medical Expense Limit: \$ 10,000

9. Property Damage To Borrowed Equipment

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

C. Coverages

1. Employee Benefit Liability Coverage

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

Employee Benefit Liability Coverage

(1) Insuring Agreement

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

- 1) The amount we will pay for damages is limited as described in **Section III - Limits Of Insurance**; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

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

- 1) Occurs during the policy period; or

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

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

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
- ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

- b) There is no other applicable insurance.

(2) Exclusions

This insurance does not apply to:

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

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

(b) Dishonest, Fraudulent, Criminal Or Malicious Act

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

(c) **Failure To Perform A Contract**

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

(d) **Insufficiency Of Funds**

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

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

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past performance of investment vehicles; or
- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

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

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

(g) **ERISA**

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

(h) **Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable

effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

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

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

(j) **Employment-Related Practices**

Any liability arising out of any:

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

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

(3) **Supplementary Payments**

Section I - Coverages, Supplementary Payments - Coverages A And B also apply to this Coverage.

b. **Who Is An Insured**

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

- (1) If you are designated in the Declarations as:
 - (a) An individual, you and your spouse are insureds, but only with respect to the con-

duct of a business of which you are the sole owner.

- (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
 - (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- (2) Each of the following is also an insured:
- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program";
 - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed; or
 - (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited

liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:

- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

c. Limits Of Insurance

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

- (1) The Limits of Insurance shown in Section B. **Limits Of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:
- (a) Insureds;
 - (b) Claims made or "suits" brought;
 - (c) Persons or organizations making claims or bringing "suits";
 - (d) Acts, errors or omissions; or
 - (e) Benefits included in your "employee benefit program".
- (2) The Aggregate Limit shown in Section B. **Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section B. **Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by

such "employee's" dependents and beneficiaries, as a result of:

- (a) An act, error or omission; or
- (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions;

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

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

(4) Deductible Amount

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the Deductible Amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
- (b) The Deductible Amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- (c) The terms of this insurance, including those with respect to:
 - 1) Our right and duty to defend the insured against any "suits" seeking those damages; and
 - 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim;

apply irrespective of the application of the Deductible Amount.

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

d. Additional Conditions

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

- (1) Item 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** is replaced by the following:

2. Duties In The Event Of An Act, Error Or Omission, Or Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

- (1) What the act, error or omission was and when it occurred; and
- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

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

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.
- (2) Item 5. **Other Insurance** is replaced by the following:

5. Other Insurance

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

a. Primary Insurance

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

b. Method Of Sharing

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

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

c. No Coverage

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

e. Additional Definitions

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

(1) The following definitions are added:

1. "Administration" means:

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or

- d. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
 - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
2. "Cafeteria plans" means plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
3. "Employee benefit programs" means a program providing some of all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
 - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employ-

ees" who are eligible under the plan for such benefits;

- c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and

- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

4. "First effective date" means the date upon which coverage was first effected in a series of uninterrupted renewals of insurance coverage.

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

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
- c. An appeal of a civil proceeding.

2. **Unintentional Failure To Disclose Hazards**

Section IV - Commercial General Liability Conditions, 7. Representations is amended by the addition of the following:

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

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

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

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

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

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

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

This insurance does not apply to:

(a) "Property damage":

- (i) Assumed in any contract or agreement; or
- (ii) Caused by or resulting from any of the following:

1) Wear and tear;

2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

3) Smog;

4) Mechanical breakdown, including rupture or bursting caused by centrifugal force;

5) Settling, cracking, shrinking or expansion;

6) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals; or

7) Presence, growth, proliferation, spread or any activity of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi.

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

(i) Earthquake, volcanic eruption, landslide or any other earth movement;

(ii) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

(iii) Water under the ground surface pressing on, or flowing or seeping through:

1) Foundations, walls, floors or paved surfaces;

- 2) Basements, whether paved or not; or
- 3) Doors, windows or other openings.

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

- (i) You did your best to maintain heat in the building or structure; or
- (ii) You drained the equipment and shut off the water supply if the heat was not maintained.

(d) "Property damage" to:

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

c. Limit Of Insurance

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

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

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

- a. While rented to you, or temporarily occupied by

you with permission of the owner;

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

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

4. Supplementary Payments

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

- a. Paragraph 2. is replaced by the following:

Up to the limit shown in **Section B. Limits Of Insurance, 4.a.** Ball Bonds of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in **Section B. Limits Of Insurance, 4.b.** Loss Of Earnings of this endorsement per day because of time off from work.

5. Medical Payments

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

6. 180 Day Coverage For Newly Formed Or Acquired Organizations

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

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

- a. Insurance under this provision is afforded only until the 180th day after

you acquire or form the organization or the end of the policy period, whichever is earlier;

7. Waiver Of Subrogation

Section IV - Commercial General Liability Conditions, 9. Transfer Of Rights Of Recovery Against Others To Us is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract or agreement with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

8. Automatic Additional Insured - Specified Relationships

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

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

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

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

The manager or lessor of a premises leased to you with whom you have agreed per Paragraph **8.a.(1)** of this endorsement to provide insurance, but only with respect to liability arising out of the ownership, maintenance or

use of that part of the premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

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

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

(b) **Lessor Of Leased Equipment**

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

(c) **Vendors**

Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph **8.a.(1)** of this endorsement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the

vendor's business, subject to the following additional exclusions:

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

- 1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- 2) Any express warranty unauthorized by you;
- 3) Any physical or chemical change in the product made intentionally by the vendor;
- 4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- 5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- 6) Demonstration, installation, servicing

or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

7) Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

a) The exceptions contained in Paragraphs (c) (i) 4) or 6) of this endorsement; or

b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(ii) This insurance does not apply to any insured person or organization:

1) From whom you have acquired such products, or any ingredient, part

or container, entering into, accompanying or containing such products; or

- 2) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.

(d) State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises

Any state or governmental agency or subdivision or political subdivision with which you have agreed per Paragraph 8.a.(1) of this endorsement to provide insurance, subject to the following additional provision:

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

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

(e) Mortgagee, Assignee Or Receiver

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

- (3) The insurance afforded to additional insureds described in Paragraph 8.a.(1) of this endorsement:

- (a) Only applies to the extent permitted by law; and

- (b) Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to provide for such additional insured; and

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

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

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

- (1) Required by the written contract, written agreement, written permit or written authorization described

in Paragraph 8.a.(1) of this endorsement; 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.

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

Automatic Additional Insured Provision

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

- (1) During the policy period; and
- (2) Subsequent to your execution of the written contract or written agreement, or the issuance of a written permit or written authorization, described in Paragraph 8.a.(1).

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

Condition 5. **Other Insurance** is amended to include:

Primary And Noncontributory Insurance

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

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

9. Property Damage To Borrowed Equipment

- a. The following is added to **Exclusion 2.j. Damage To Property** under **Sec-**

tion I - Coverage A - Bodily Injury And Property Damage Liability:

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

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

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

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

(2) Deductible Clause

- (a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible Amount stated in **Section B. Limits Of Insurance, 9. Property Damage To Borrowed Equipment** of this endorsement. The limits of insurance will not be reduced by the application of such Deductible Amount.
- (b) **Section IV - Commercial General Liability Conditions, 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**, applies to each claim or "suit" irrespective of the amount.

- (c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

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

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

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

11. Broadened Notice Of Occurrence

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

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

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

12. Nonowned Aircraft

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

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

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

13. Bodily Injury Redefined

Section V - Definitions, 4. "Bodily injury" is replaced by the following:

- 4. "Bodily injury" means bodily harm or injury, sickness, disease, disability, humiliation, shock, fright, mental anguish or mental injury, including care, loss of services or death resulting from any of these at any time.

14. Expected Or Intended Injury Redefined

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

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

15. Former Employees As Insureds

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

- 2. Each of the following is also an insured:

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