



Roll Call Number

22-0220

Agenda Item Number

8

Date February 21, 2022

**APPROVING PROFESSIONAL SERVICES AGREEMENT (PSA) WITH
SUBSTANCE, LLC, FOR PROFESSIONAL SERVICES FOR THE PRINCIPAL PARK
MASTER PLAN – PHASE 1 IMPROVEMENTS,
NOT TO EXCEED \$728,500**

BE IT FURTHER RESOLVED: That Professional Services Agreement between the City of Des Moines and Substance, LLC, for a total cost not to exceed \$728,500, based on lump sum amount of \$698,500 and reimbursable costs not to exceed \$30,000, to provide professional services for the Principal Park Master Plan – Phase 1 Improvements, a copy of which is on file in the office of the City Clerk, is hereby approved as to form and content.

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

(City Council Communication Number 22-062 attached)
Activity ID 01-2022-007

Moved by Gatto to adopt. Second by Boesen

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

SLN_{pw} Funding Source: 2021-2022 CIP, Page 65, Principal Park, PK132, GO Bonds \$300,000 Issued and \$428,500 GO Bonds to be issued

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
MANDELBAUM	✓			
SHEUMAKER	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

J. M. Franklin Cownie Mayor

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.

P. Kay Cmelik

City Clerk

CITY OF DES MOINES
AGREEMENT FOR PROFESSIONAL SERVICES: LUMP SUM
PRINCIPAL PARK MASTER PLAN - PHASE 1 IMPROVEMENTS DESIGN
Activity ID 01-2022-007

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 Substance, LLC, Paul Mankins, FAIA LEED AP, Principal, 1300 Walnut St, Suite 201, Des Moines, IA 50309, hereinafter referred to as the "Consultant", being a limited liability company 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 Principal Park Master Plan - Phase 1 Improvements Design (hereinafter the "Project"); and

WHEREAS, the Consultant is desirous of performing the professional services for the City in connection with Principal Park Master Plan - Phase 1 Improvements Design

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, documents and other services furnished by Consultant for the City under this Agreement regardless of whether prepared by the Consultant or by the Consultant's subconsultant's. The Consultant is responsible for coordination and internal checking of all 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 completed 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 <https://dsm.city/ContractComplianceProgram> 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 written permission of the City Engineer or the City Council. 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: Ballpark Design Associates, IMEG Inc., Shuck-Britson, Inc., Snyder + Associates, Stecker-Harmsen.
- 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.H 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: (1) hold in trust and confidence any confidential and proprietary information, records, documents or data relating to City business that is identified by the City as confidential and proprietary; and (2) to hold in trust and confidence all confidential and proprietary information, records, documents or data received from or permitted to be viewed by the Iowa Cubs, Minor League Baseball and/or Major League Baseball, to comply with all terms imposed on receipt or viewing of such, and not to make or retain any copies of such without permission from, as appropriate, the Iowa Cubs, Minor League Baseball and/or Major League Baseball. Aforementioned (1) and (2) are collectively referred to as confidential information ("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 follow

- A. LUMP SUM:** The total not-to-exceed amount for this Agreement is \$728,500.00, which includes the following:

1. Compensation to the Consultant for all services under this Agreement shall be a lump sum of \$698,500.00; and
2. Reimbursable costs as determined appropriate and acceptable by the City Engineer, not to exceed the amount of \$30,000.00.

Compensation for services shall be paid on a lump sum basis per phase as stipulated in Attachment No. 3, "Fee Summary". Invoicing for services shall be on a monthly basis based on percentage of work complete and reimbursable expenses incurred. Reimbursable expenses shall be paid on an "at cost" basis with no markup. Invoices for reimbursable expenses shall include the supporting invoice for the reimbursable expense.

B. TERMINATION: In the event of termination under Section 1.I of this Agreement, compensation to the Consultant shall be as follows:

1. Sum of fees 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 percentage of services completed.
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 November 1, 2023 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 Ann Sobiech-Munson, City Architect, 515-248-6319, ASMunson@dmgov.org. All communications directed to the City must be in writing to Ann Sobiech Munson.

The primary contact person for Substance, LLC shall be Paul Mankins, FAIA LEED AP, Principal, 1300 Walnut St, Suite 201, Des Moines, IA 50309, 515-669-1650, pmankins@substancearchitecture.com. All communications directed to the Consultant must be in writing, such as payments, contracts, etc., directed to Paul Mankins.

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: Ann Sobiech Munson
 1551 E. Martin Luther King Jr. Parkway
 Des Moines, Iowa 50317


To Consultant: Paul Mankins

1300 Walnut St, Suite 201
Des Moines, IA 50309

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in triplicate, as of this 21st day of February, 2022.

CITY OF DES MOINES, IOWA

SUBSTANCE, LLC



T.M. Franklin Cownie, Mayor



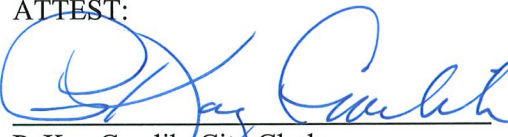
Paul Mankins FAIA LEED AP, Principal

FORM APPROVED:

ATTEST:



Kathleen Vanderpool, Deputy City Attorney



P. Kay Cmelik, City Clerk

ATTACHMENT 1

CITY OF DES MOINES, IOWA PROFESSIONAL SERVICES – CONSTRUCTION DESIGN

INSURANCE & INDEMNIFICATION REQUIREMENTS

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

1. GENERAL

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

2. INSURANCE REQUIREMENTS

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

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

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

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

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

3. **INDEMNIFICATION REQUIREMENTS**

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

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

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

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

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

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

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

ATTACHMENT 2

SCOPE OF SERVICES

PROFESSIONAL SERVICES FOR Principal Park Master Plan - Phase 1 Improvements Activity ID 01-2022-007

The scope of this project includes the design of Principal Park Master Plan – Phase 1 Improvements. Consultant shall provide all architectural and engineering services necessary for design of the renovation of the existing facility to meet Minor League Baseball (MiLB) facility standards. All designs for alterations shall comply with these standards and be performed to accomplish meeting April 2023 and April 2024 compliance deadlines established by Major League Baseball (MLB). Consultant’s services shall be performed to bring the existing facility into full compliance with MLB standards by April 1, 2024.

For purposes of this Agreement, it is understood the CITY is contracting separately for geotechnical services, geothermal test wells, special inspection, materials testing, and commissioning. Additionally, it is understood that the City will conduct a traffic study if required for project.

SCOPE OF SERVICES - SUMMARY

The Scope of Services to be performed by the CONSULTANT shall include detailed work, services, material, equipment and supplies to complete the following:

Basic Services:

1. Architectural Design and Construction Contract Administration.
2. Structural Engineering.
3. Mechanical and Electrical Engineering.
4. Telecom Engineering.
5. Fire Detection and Suppression Design.
6. Civil Engineering, including utility service to the sites and storm water management that meets requirements in accordance with City of Des Moines ordinances and policies and the Iowa Statewide Urban Design and Specifications (SUDAS) Design Manual and Standard Specifications while staying within existing system constraints (existing storm water pump station capacity, etc.).

Other services included as part of this Agreement and included in the total design fees are as follows:

1. The development of an Opinion of Probable Cost at Schematic Design, Design Development, and upon completion of 65% and 95% Construction Documents.
2. Site survey and hydrologic studies associated with floodplain development permitting.
3. Storm Water Pollution and Prevention Plan (SWPPP).
4. Landscape design services.
5. Security system design services.
6. Signage design.
7. Fixtures, Furnishings and Equipment (FFE) design services.
8. Record drawings.

DESIGN PHASE SERVICES

The CONSULTANT shall provide the following design phase services including, but not necessarily limited to, the following:

1. Schematic Design

- A. Program Validation

1. Verify and confirm program, as outlined in the Principal Park Master Plan for Phase 1.
- B. Site Design
 1. Incorporate survey and other pertinent site information.
 2. Prepare final schematic site design for submission to CITY's representatives for review and approval.
- C. Building Design
 1. Quantify interior areas, size, and scope of proposed design.
 2. Meet with Permit and Development officials for Pre-Application Conference.
 3. Develop preliminary exterior and interior aesthetic considerations based upon City's design criteria and impact on adjacent development and site features.
 4. Prepare no more than three final schematic design options for review and approval by CITY, including floor plans, building elevations, and preliminary design sections.
- D. Schedule: Advise CITY on optimal bid and construction schedule to achieve project goals and meet April 1, 2023 and April 1, 2024 compliance deadlines established by Major League Baseball (MLB). This may include: recommended design and review schedule; recommendations regarding single or multiple bid packages; and recommendations regarding construction schedule and phasing to minimize disruption to ongoing activity during the regular baseball season.
- E. Deliverables:
 1. One final schematic design presentation to CITY.
 2. Cost estimate.
 3. Provide drawings that include site plan, floor plans, and exterior elevations. A rendered, computer generated 3-D model is optional in lieu of the 2-D drawings.
 4. Area summary and executive summary including architectural, structural, and mechanical concept narratives.
 5. Final design review, bid, and construction schedule.
 6. Submission of the design for review by the Urban Design Review Board and attend UDRB meeting.
 7. Submission of site plan for review by the CITY.
 8. Submit deliverables in digital file formats.

2. Design Development

- A. After review of the schematic design and upon authorization from the CITY, the CONSULTANT shall proceed with the development of design development drawings and outline specifications which will consider the following:
 1. Landscaping and site development details
 2. Building materials and systems selection based on:
 - a. Maintenance Considerations
 - b. Environmental Impact
 - c. Performance
 - d. Durability
 - e. Reliability
 - f. Aesthetics
 - g. Cost
 3. Power and lighting systems
 4. HVAC systems
 5. Plumbing systems
 6. Fire protection
 7. Communications and data
- B. Review preliminary opinion of probable construction cost at the conclusion of Design Development and make necessary updates.
- C. Review design development documents with CITY for feedback and approvals.
- D. Deliverables:

1. Provide drawings that include site plan, floor plans, exterior elevations, building and typical wall sections select interior elevations and finish schedule. Select comparable views of a Building Information Model [computer generated 3-D model] are acceptable in lieu of the 2-D drawings.
2. Outline specifications and cut sheets for equipment.
3. Cost estimate.
4. Update the area summary and executive summary including architectural, structural, and mechanical concept narratives.
5. Meet with the Urban Design Review Board for final approval of design.
6. Submit design and meet with Access Advisory Board.
7. Submit design to Iowa Cubs for review by team ownership and Major League Baseball to confirm compliance with facility standards by Iowa Cubs and Major League Baseball.
8. Submit deliverables in digital file formats.

3. Construction Documents

- A. After review of the design development documentation and upon authorization from the **CITY**, the **CONSULTANT** shall proceed with the development of the following:
 1. Construction drawings, including:
 - a. Title Sheet
 - b. Site plan, landscaping plan, and site details
 - c. Floor plan(s), including reflected ceiling plan(s)
 - d. Building elevations
 - e. Building sections (if required)
 - f. Typical wall sections (as required)
 - g. Typical exterior/interior details
 - h. Project Phasing Plans (if required)
 - i. Mechanical plans
 - j. HVAC
 - k. Plumbing
 - l. Electrical plans
 - m. Power
 - n. Lighting
 - o. Communications/Data pathways
 - p. Technical specification sections
- B. Formal Quality Control reviews shall be conducted at 60% and 90% by **CONSULTANT**.
- C. At the 65% and 95% completion of the construction documents phases, prepare an opinion of probable construction costs.
- D. Schedule periodic progress reviews of construction documents by **CITY**'s representatives and coordinate with the **CITY** for compliance with all applicable regulations.
- E. Present final construction documents to **CITY**'s representatives for review and approval.
- F. Assist in submission of documents to governmental authorities having jurisdiction over the project, for their review and approval.
- G. Provide estimate of probable construction time required.
- H. Deliverables:
 1. Provide construction drawings for review at each milestone (65%, 95%).
 2. Technical specifications for review at each milestone (65%, 95%).
 3. Update the area summary and executive summary including architectural, structural, and mechanical concept narratives.
 4. Submit deliverables in digital file formats.

4. Bid Phase Services

- A. Advise **CITY** on qualifications of prospective bidders.
- B. Lead Pre-Bid meeting with **CITY**'s representatives and prospective bidders.

- C. Receive questions from bidders and respond through addenda.
- D. Prepare addendum for distribution by the **CITY**.
- E. Deliverables:
 - 1. Provide one copy of the Final Bid Documents for printing and distribution by the **CITY**.
 - 2. Submit deliverables in digital file format, along with the following hard copy prints:
 - a. One full-size print of the final bid set, with wet signatures.
 - b. Seals pages only from the technical specifications document, with wet signatures. (We do not need printed copy of the full technical specifications.)

5. Construction Phase Services

A. Construction Administration

- 1. Pre-Construction Conference - The **CONSULTANT** shall conduct a pre-construction conference for the project with the Contractor and **CITY** and all interested parties to review the contract requirements, details of construction, utility conflicts and work schedule. The **CONSULTANT** shall prepare and distribute minutes of the conference.
- 2. Construction Progress Meetings – The **CONSULTANT** shall attend bi-weekly Contractor/Architect/Owner meetings conducted by the Contractor.
- 3. Shop Drawings - The **CONSULTANT** shall review the Contractor's shop drawings and other required submittals for conformance with the contract documents.
- 4. The **CONSULTANT** shall answer design interpretation questions from the City Engineer, Contractor, and review agencies.
- 5. Contractor Payment Requests - The **CONSULTANT** shall review and process progress payment applications submitted by the Contractor and, based upon its review of construction progress by on-site observation, shall make a recommendation to the **CITY** for payment of the appropriate amount for work completed since the last payment application.
- 6. Change Requests and Requests for Proposal - The **CONSULTANT** shall review and recommend proposed costs for approval of the **CITY** prior to Contractor's start of work under the change request. The **CITY** will write the change order.
- 7. During the Construction Services Phase, the **CONSULTANT** shall confer with the **CITY** to report project status.
- 8. Final Inspection and Punch List; Final Acceptance - The **CONSULTANT** shall coordinate final inspection and prepare a punch list of items to be completed. On the basis of such inspection, the **CONSULTANT** shall determine if the project is substantially complete according to the plans and specifications and shall make a recommendation to the **CITY** regarding final payment. It is understood that the **CITY** will accept the project only after recommendation by the **CONSULTANT**.
- 9. Post Construction Services - The **CONSULTANT** shall assist the **CITY** in determining solutions to any problems that arise with the construction and the one-year warranty inspection.
- 10. Record drawings are to be provided by the **CONSULTANT**.

B. Construction Observation

- 1. The **CONSULTANT** shall cause its design personnel to make periodic visits to the site at intervals appropriate to the stage of construction and submit field reports, or as otherwise agreed by the **CITY** and **CONSULTANT** in writing, to provide field observation to ascertain the progress and quality of the work completed and to determine if the work is being performed in accordance with the Contract Documents. However, the **CONSULTANT** shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the work. Construction Observation services do not include responsibility for construction means, controls, techniques, sequences, procedures or safety.
- 2. If the Contractor requests a waiver of any provisions of the plans and specifications, the **CONSULTANT** shall make a recommendation on the request to the **CITY** for its determination. No waiver shall be granted if such waiver would serve to reduce the quality of the final product. The **CITY** shall never be deemed to have authorized the **CONSULTANT** to consent to the use of defective workmanship or materials.

3. Notification of Nonconformance - On the basis of on-site observations as a design professional, the **CONSULTANT** shall keep the **CITY** informed of the progress and quality of the Work and shall guard the **CITY** against defects and deficiencies in the Work. The **CONSULTANT** shall notify the **CITY** of any work which is unsatisfactory, faulty, defective, incomplete or which the **CONSULTANT** knows does not conform to the Contract Documents, advise and recommend action required to correct or complete such unsatisfactory, faulty, defective or incomplete work and, at the request of the **CITY**, take action to reasonably verify that these recommendations are implemented by the Contractor. However, the **CONSULTANT** shall not be required to make exhaustive or continuous on-site observations to check for unsatisfactory, faulty, defective, or incomplete work which the **CONSULTANT** knows does not conform to the Contract Documents.

6. Schedule

A. Project Schedule

- 1) Notice to Proceed: February 2022; estimated February 23, 2022, following 2/21/2022 Council date.
- 2) Schematic Design: April 1, 2022 (2 weeks analysis + 4 weeks schematic design)
- 3) Design Development: May 6, 2022 (5 weeks)
- 4) Construction Documents: (9 weeks)
 - 65% Construction Documents: May 27, 2022
 - 95% Construction Documents: June 24, 2022
 - 100% Construction Documents: no later than July 11, 2022
- 5) Bid letting: August – September 2022. Plan for:
 - August 8, 2022 Council meeting
 - August 9, 2022 issue bid documents
 - 5-week bid period
 - Sept 13, 2022 bid opening
- 6) Contract Award: plan for October 3, 2022 Council meeting
- 7) Commence Construction: October 2022
- 8) Completion and Occupancy: first deadline April 1, 2023; final deadline April 1, 2024.
 - Construction activity likely split into two seasons, October 2022-March 2023 and October 2023-March 2024.
 - Construction activity may continue during regular season if it does not disrupt ongoing operations.
 - Final completion deadline: April 1, 2024.

ATTACHMENT 3

**FEE SUMMARY
 PRINCIPAL PARK MASTER PLAN – PHASE 1 IMPROVEMENTS DESIGN
 Activity ID 01-2022-007**

Principal Park Phase 1 Implementation

Fee Summary

January 20, 2022	Firm	substance	BDA	IMEG	Snyder	Shuck Britson	Stecker Harmsen	Total	Phase % of Total
Phase									
1. Schematic Design		\$ 52,400.00	\$ 10,000.00	\$ 20,000.00	\$ 12,800.00	\$ 4,600.00	\$ 3,200.00	\$ 103,000.00	14.7%
Feb 15 - April 1					*				
2. Design Development		\$ 66,400.00	\$ 20,000.00	\$ 20,000.00	\$ 11,000.00	\$ 9,200.00	\$ 4,000.00	\$ 130,600.00	18.7%
April 1 - May 1									
3. Construction Documents		\$ 118,000.00	\$ 18,000.00	\$ 43,000.00	\$ 10,600.00	\$ 20,700.00	\$ 15,000.00	\$ 225,300.00	32.3%
May 1 - July 1									
4. Bid Phase Services		\$ 12,500.00	\$ 2,000.00	\$ 5,700.00	\$ 900.00	\$ 920.00	\$ 1,000.00	\$ 23,020.00	3.3%
July 1 - October 1									
5. Construction Phase Services		\$ 150,000.00	\$ 9,000.00	\$ 21,000.00	\$ 8,000.00	\$ 9,200.00		\$ 197,200.00	28.2%
Close-out		\$ 15,000.00	\$ 1,000.00	\$ 2,000.00	\$ -	\$ 1,380.00		\$ 19,380.00	2.8%
Total		\$ 414,300.00	\$ 60,000.00	\$ 111,700.00	\$ 43,300.00	\$ 46,000.00	\$ 23,200.00	\$ 698,500.00	100.0%

Reimbursable Expenses NTE \$ 30,000.00

*includes \$8,000 for topographic survey



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/9/2021

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 LMC Insurance & Risk Management, Inc. 4200 University Ave., Suite 200 West Des Moines IA 50266-5945	CONTACT NAME: Jodi Messer PHONE (A/C, No, Ext): 515-237-0149 E-MAIL ADDRESS: jodi.messer@lmcins.com	FAX (A/C, No): 515-244-9535													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Accident Fund Ins Co of America</td> <td>10166</td> </tr> <tr> <td>INSURER B: Hiscox Insurance Co</td> <td>10200</td> </tr> <tr> <td>INSURER C: Donegal Mutual Insurance Company</td> <td>13692</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> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Accident Fund Ins Co of America	10166	INSURER B: Hiscox Insurance Co	10200	INSURER C: Donegal Mutual Insurance Company	13692	INSURER D:		INSURER E:		INSURER F:
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Accident Fund Ins Co of America	10166														
INSURER B: Hiscox Insurance Co	10200														
INSURER C: Donegal Mutual Insurance Company	13692														
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES	CERTIFICATE NUMBER: 70603095	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
C	<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 type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	BSA 9228247	8/3/2021	8/3/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 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 \$
C	<input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BSA 9228247	8/3/2021	8/3/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y		CWA 9228247	8/3/2021	8/3/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	WCV6115069	8/3/2021	8/3/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
B	Professional Liability			ANE421571621	8/3/2021	8/3/2022	Limit: \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Covers all operations for certificate holder during policy year. City of Des Moines Additional Insured - when required in a written contract or agreement on a primary and non-contributory basis with respects to the General Liability policy per form BPD303 (07/16) Waiver of Subrogation applies to the General Liability Policy per form BP0497 (07/16) in favor of City of Des Moines. Waiver of subrogation applies to the Workers Compensation policy per form WC000313 (04/84) in favor of City of Des Moines. Cancellation Notice - 30 Days with respects to the General Liability, Auto Liability, and Umbrella policy per form ILD9007 (03/11) Cancellation Notice - 30 days with respects to the Design Professionals Liability policy per form P0001 CW (06/19) Umbrella follow form Governmental Immunity applies in favor of City of Des Moines, Iowa - as respects the General Liability policy per form BP Manuscript (2002-1)

APPROVED

CERTIFICATE HOLDER City of Des Moines Engineering Department 400 Robert D. Ray Drive Des Moines IA 50309-4112	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 <i>Anne MacFarland</i>
--	--

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FORM NAME: Governmental Immunities Endorsement

FOR PURPOSES OF THIS ENDORSEMENT, JURISDICTION REFERS TO
CITY OF DES MOINES
ENGINEERING DEPARTMENT
400 ROBERT D. RAY DRIVE
DES MOINES, IA 50309

UNDER THE TERMS OF THIS ENDORSEMENT, JURISDICTION SHALL MEAN ANY MUNICIPAL CORPORATION, AS DEFINED IN CHAPTER 670 OF THE IOWA CODE, WITH RESPECT TO ALL WORK AND SERVICES PERFORMED BY THE NAMED INSURED FOR ANY SUCH JURISDICTION AS IDENTIFIED ON ANY CERTIFICATE OF INSURANCE ISSUED AS PROOF OF INSURANCE AS REQUIRED BY THE URBANVSTANDARD SPECIFICATIONS FOR PUBLIC IMPROVEMENTS,

1. CANCELLATION AND MATERIAL CHANGE 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 PREMIUMS SHALL BE SENT TO THE JURISDICTION AT THE OFFICE AND ATTENTION OF THE CERTIFICATE HOLDER. THIS ENDORSEMENT SUPERSEDES THE STANDARD CANCELLATION STATEMENT ON CERTIFICATIONS OF INSURANCE TO WHICH THIS ENDORSEMENT IS ATTACHED.

2. ADDITIONAL INSURED ENDORSEMENT

THE JURISDICTION, 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, AND ALL ITS OFFICERS, AGENTS, AND CONSULTANTS, ARE NAMED AS ADDITIONAL INSUREDS WITH RESPECT TO LIABILITY ARISING OUT OF THE CONTRACTOR'S WORK AND SERVICES PERFORMED FOR THE JURISDICTION. THIS COVERAGE SHALL BE PRIMARY TO THE ADDITIONAL INSUREDS, WHETHER OTHER AVAILABLE COVERAGE BE PRIMARY, CONTRIBUTING OR EXCESS.

3. GOVERNMENTAL IMMUNITIES ENDORSEMENT

A. NONWAIVER OF GOVERNMENT IMMUNITY. THE INSURANCE CARRIER EXPRESSLY AGREES AND STATES THAT THE PURCHASE OF THIS POLICY AND INCLUDING THE JURISDICTION AS AN ADDITIONAL INSURED DOES NOT WAIVE ANY OF THE DEFENSES OF GOVERNMENTAL IMMUNITY AVAILABLE TO THE JURISDICTION UNDER CODE OF IOWA SECTION 670.4 AS IT NOW EXISTS AND AS IT MAY BE AMENDED FROM TIME TO TIME.

B. 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 670.4 AS IT NOW EXISTS AND AS IT MAY BE AMENDED FROM TIME TO TIME.

C. ASSERTION OF GOVERNMENT IMMUNITY. THE JURISDICTION 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 JURISDICTION.

D. NON-DENIAL OF COVERAGE. THE INSURANCE CARRIER SHALL NOT DENY COVERAGE OR DENY ANY OF THE RIGHTS AND BENEFITS ACCRUING TO THE JURISDICTION 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 JURISDICTION.

E. NO OTHER CHANGE IN POLICY. THE INSURANCE CARRIER AND THE JURISDICTION AGREE THAT THE ABOVE PRESERVATION OF GOVERNMENTAL IMMUNITIES SHALL NOT OTHERWISE CHANGE OR ALTER THE COVERAGE AVAILABLE UNDER THE POLICY.

Authorized Representative Signature

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 applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

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

Schedule

City of Des Moines
Engineering Department
400 Robert D. Ray Drive
Des Moines, IA 50309 4112

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

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

Endorsement Effective
Insured Substance LLC

Policy No. CWC1055620

Endorsement No.
Premium \$

Insurance Company

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO THIRD PARTY

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY
COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
TRADEMAN'S ADVANTAGE CONTRACTORS' POLICY

SCHEDULE

Name of Person or Organization and Mailing Address	Number of Days Notice

The following is added:

If we cancel this policy, we will endeavor to mail written notice of cancellation:

1. At least 10 days before the effective date of cancellation for nonpayment of premium; or
2. The number of days shown in the Schedule before the effective date of cancellation for any other reason;

to the person or organization shown in the Schedule above, but failure to do so shall impose no obligation or liability of any kind upon us.

We will mail the notice of cancellation to the mailing address shown in the Schedule above by regular mail.

The following provisions apply with respect to the insurance provided by the Businessowners Liability Coverage Form.

A. Supplementary Payments - Bail Bonds

Subparagraph 1.f.(1)(b) Coverage Extension - Supplementary Payments under Section A. Coverages is replaced by the following:

- (b) Up to the Limit of Insurance shown in the Schedule above for Supplementary Payments - Bail Bonds for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

B. Supplementary Payments - Loss of Earnings

Subparagraph 1.f.(1)(d) Coverage Extension - Supplementary Payments under Section A. Coverages is replaced by the following:

- (d) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the Limit of Insurance shown in the Schedule above for Supplementary Payments - Loss of Earnings because of time off from work.

C. Non-Owned Watercraft

Subparagraph 1.g.(2) under Section B. Exclusions is replaced by the following:

- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons or property for a charge;

D. Who Is An Insured

Paragraph 2. Under Section C. Who Is An Insured is replaced by the following:

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

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

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
- d. 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 policy.

e. An organization other than a partnership, joint venture or limited liability company and you newly acquire or form another organization or subsidiary thereof other than a partnership, joint venture or limited liability company over which you maintain ownership or majority interest, you will qualify as an insured, provided:

- (1) There is no other similar insurance available to that organization; and
- (2) Coverage under this provision is then only afforded until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- (3) Coverage under this provision does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" that occurred before you acquired or formed the organization.

E. Who Is An Insured

The following is added to Section C. Who Is An Insured:

3. The following is an additional insured:

a. (1) Any person or organization whom you are required under a written contract or agreement to provide insurance such as is afforded under this policy, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part:

- (a) Your acts or omissions; or
- (b) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations at the site or location designated in the written contract or agreement or in connection with your premises owned by or rented to you.

(2) Any person or organization (referred to below as vendor) with whom you agree in a written contract or agreement to provide insurance such as is afforded under this policy, but only with respect to "bodily injury" or "property damage" caused, in whole or in part, by "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

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

- (i) "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;
- (ii) Any express warranty unauthorized by you;
- (iii) Any physical or chemical change in the product made intentionally by the vendor;
- (iv) Repackaging, unless 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;
- (v) 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;
- (vi) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (vii) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- (viii) "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:

- i. The exceptions contained in Subparagraphs (iv) or (vi) above; or
 - ii. 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.
- (b) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- b. The insurance afforded to such person or organization described in paragraph a. above only applies to the extent permitted by law.
 - c. The insurance afforded to such person or organization described in paragraph a. above will not be broader than:
 - (1) The coverage you have agreed to provide in the written contract or agreement; or
 - (2) The coverage provided by this endorsement.
 - d. A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you ends.
 - e. The insurance provided to such person or organization described in paragraph a. above does not apply to "bodily injury" or "property damage" occurring:
 - (1) Prior to the date the written contract or agreement was executed and in effect;
 - (2) After your contract or agreement with such additional insured ends; or
 - (3) After the requirement in the written contract or agreement to add such person or organization as an additional insured on your policy ends.
 - f. The insurance afforded to any additional insured is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis, unless you have agreed in a written contract or agreement for this insurance to apply on either a:
 - (1) Primary and non-contributory basis; or
 - (2) Contributory basis.
- F. Medical Expenses**
- In addition to the Medical Expenses Limit shown in the Declarations and as referenced in Section **D. Liability and Medical Expenses Limits of Insurance**, the additional limit of insurance shown in the Schedule above as applicable to Medical Expenses applies.
- G. Damage To Premises Rented To You Coverage**
- In addition to the Damage To Premises Rented To You Coverage Limit shown in the Declarations and as referenced in Section **D.3. Liability and Medical Expenses Limits of Insurance**, the additional limit of insurance shown in the Schedule above as applicable to Damage To Premises Rented To You Coverage applies.
- H. Amendment of Aggregate Limits**
- Paragraph 4. **Aggregate Limits** as found in Section **D. Liability And Medical Expenses Limits Of Insurance** is replaced by the following:
- 4. Aggregate Limits**
- The most we will pay for:
- a. Injury or damage under the "products-completed operations hazard" arising from all "occurrences" during the policy period is twice the Liability and Medical Expenses limit; and
 - b. All "bodily injury" (including medical expenses) and "property damage", other than "bodily injury" or "property damage" included in the "products-completed operations hazard", arising from all "occurrences" during the policy period is twice the Liability and Medical Expenses limit. This aggregate limit applies separately to each of your premises described in the Declarations.
 - c. All other injury or damage arising from all "occurrences" during the policy period is twice the Liability and Medical Expenses limit.

The limitations in Paragraphs **b.** and **c.** above do not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire or explosion.

I. Unintentional Failure To Disclose Hazards

The following Condition is added to Section **E. Liability And Medical Expenses General Conditions**:

6. Unintentional Failure To Disclose Hazards

Any unintentional error or omission in the description of, or failure to completely describe, any premises or operations intended to be covered by this Policy will not invalidate or affect coverage for those premises or operations. Such unintentional error or omission must be reported to us as soon as practicable after its discovery.

This Condition does not affect our right to collect any additional premium associated with such unintentional error or omission or our right to cancel or non-renew this policy.

J. The following definition is added to Section F. Liability And Medical Expenses Definitions:

"Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

K. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

The following provision is added to Condition **K.2. Transfer Of Rights Of Recovery Against Others To Us** as found in the Businessowners Common Policy Conditions form and supersedes any provisions to the contrary.

With respect to the insurance provided by the Businessowners Liability Coverage Form only, including any forms and/or endorsements modifying the insurance provided by the Businessowners Liability Coverage Form, we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of "your work" included in the "products-completed operations hazard" or your ongoing operations, subject to the following:

1. You are required under a written contract to waive your rights to recover from that person or organization; and
2. The written contract or agreement was executed and in effect before any "occurrence", offense, injury, damage, accident, wrongful act ("wrongful act"), negligent act error or omission, loss, or demand, that would give rise to a claim under this Policy;

The waiver of your rights of recovery does not apply with respect to any person who is an engineer or architect, or any organization regarding any engineer or architect employed by such organization, except as agreed to in writing by us.



Administered by Hiscox Inc.
520 Madison Avenue 32nd Floor, New York, NY 10022
(646) 452-2353

Endorsement 11

NAMED INSURED: Substance, LLC

E6047.1 Notice of Cancellation to Third Party Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the General Terms and Conditions are amended as follows:

The following is added to the end of Section V. Other provisions affecting coverage, subsection C. Cancellation:

7. In the event this policy is cancelled or non-renewed, we will use our best, commercially reasonable efforts to notify the party listed below within 30 days at the below address:

City of Des Moines
Engineering Department
400 Robert D. Ray Dr.
Des Moines, IA 50309-4112

The failure to notify the party listed above will not negate or otherwise delay the effectiveness of the cancellation or non-renewal of this policy.

Endorsement effective:	08/03/2021	Certificate No.:	ANE4215716.21
Endorsement No:	11	Processed Date:	08/30/2021
Hiscox Inc.			

Authorized Representative
Kevin Kerridge