



Roll Call Number

22-0297

Agenda Item Number

8

Date March 7, 2022

APPROVING PROFESSIONAL SERVICES AGREEMENT (PSA) WITH BOLTON & MENK, INC. FOR PROFESSIONAL SERVICES FOR THE MERLE HAY ROAD – HICKMAN ROAD TO AURORA AVENUE CORRIDOR STUDY, FOR AN AMOUNT NOT TO EXCEED \$124,825.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the Professional Services Agreement between the City of Des Moines and Bolton & Menk, Inc., for a total cost not to exceed \$124,825, based on hourly rates, to provide professional services for the Merle Hay Road – Hickman Road to Aurora Avenue Corridor Study, 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 22-072 attached) Activity ID 01-2022-009

Moved by Gatto to adopt. Second by Boesen

FORM APPROVED: s/Kathleen Vanderpool

Kathleen Vanderpool Deputy City Attorney



Funding Source: 2021-2022 Capital Improvement Program, Page Street Improvements-156, Merle Hay Corridor Plan, ST306.

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, MANDELBAUM, SHEUMAKER, VOSS, WESTERGAARD, and TOTAL (7 yeas).

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 J. M. Franklin Cownie Mayor

P. Kay. Cmelik City Clerk

**CITY OF DES MOINES**  
**AGREEMENT FOR PROFESSIONAL SERVICES: HOURLY**  
**MERLE HAY ROAD - HICKMAN ROAD TO AURORA AVENUE CORRIDOR STUDY**  
**Activity ID 01-2022-009**

**THIS AGREEMENT** for Professional Services (hereinafter "Agreement") is made by and between the City of Des Moines, Iowa, a municipal corporation organized and existing pursuant to the laws of the State of Iowa, hereinafter referred to as the "City" and Bolton & Menk, Inc., Bradley C. DeWolf, P.E., President/CEO, 1960 Premier Drive, Mankato, MN 56001-5900, hereinafter referred to as the "Consultant", being a corporation organized and existing under the laws of the State of Minnesota and being duly authorized to do business in the State of Iowa. This Agreement is not valid until signed by the City representative set out below.

WHEREAS, the City is desirous of obtaining professional services in connection with Merle Hay Road - Hickman Road to Aurora Avenue Corridor Study (hereinafter the "Project"); and

WHEREAS, the Consultant is desirous of performing the professional services for the City in connection with Merle Hay Road - Hickman Road to Aurora Avenue Corridor Study;

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

**SECTION 1 - GENERAL**

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



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

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



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

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

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

1. Extra Work: Authorization for extra work shall be evidenced by the City and Consultant in writing, in the form of a Supplemental Agreement. At the discretion of the City, work not called out in the Agreement or which is considered to be beyond the extent of a reasonable exploration of alternates and/or "trial and error" solutions in design procedure may be classed as extra work. Extra work will usually be of limited extent and may consist of, but is not necessarily limited to:

- a. The introduction of new items of work beyond the stated or implied scope of the Agreement.
- b. Redesign and/or detailing based on change of concept after prior approval and authorization to proceed and causing appreciable loss of work accomplished. This item consists of work required to revise plans and/or documents to the state of completion obtained prior to the order for change.

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

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

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

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

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



- M. SUBLETTING OR ASSIGNMENT TO SUBCONSULTANT:** The Consultant shall not sublet, assign, or otherwise dispose of or transfer any portion of the services to be provided by this Agreement without prior written approval of the City Engineer or City Council. Requests for approval to sublet, assign or otherwise dispose of or transfer any portion of the services shall be in writing, and shall name the individual or organization Consultant is requesting approval to perform the work, the work to be performed, and the dollar amount of the services to be performed. When requested by the City Engineer, the Consultant shall provide a written report showing that the individual or entity is particularly experienced and equipped to perform such services. Consent by the City for the Consultant to sublet, assign or otherwise dispose of or transfer 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 individual or entity performing the services. The Consultant agrees to include in and make a part of all subagreements all portions of this Agreement which relate to the services to be performed by the individual or entity 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: Felsburg, Holt, and Ulliveg, Inc. (FHU).
- 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.
  4. Consultant Expected Standards of Conduct – COVID-19 Precautions
    - a. The City requires all individuals inside City facilities to wear a face mask covering their nose and mouth while in communal areas. This includes the Consultant and anyone whom will be performing work on behalf of the Consultant.
    - b. If Consultant or their agent(s) is unable to adhere to this requirement, Consultant shall notify the City and provide an explanation as to why they are not able to comply with the PPE requirement.
    - c. The City strongly encourages all its partners to adhere to CDC guidelines related to wearing masks, social distancing and other methods of slowing the spread of COVID-19 while conducting work on the City's behalf.
- 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, as shown in the current Consultant's Standard Fee Schedule as shown in Attachment No. 3. Customary expenses, as listed in Attachment 3, are already included in the Consultant's hourly labor rates and shall not be charged separately. The total compensation for the Project services and customary expenses and non-routine expenses shall not exceed \$124,825 without prior approval of the City. Non-routine expenses as described in Attachment 3, are subject to 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 December 31, 2022 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 Corey Bogenreif, PE, Principal Traffic Engineer, City of Des Moines, 400 Robert D Ray Drive, Des Moines, Iowa 50309, (515) 283-4014, CDBogenreif@dmgov.org. All communications directed to the City must be in writing to Corey Bogenreif.

The primary contact person for Bolton & Menk, Inc., shall be Chris Albrecht, Sr. Transportation Project Manager, Bolton & Menk Inc, 430 E. Grand Avenue, Suite 101, Des Moines, Iowa 50309, 515-259-9190 Ext 3805, chris.albrecht@bolton-menk.com. All communications directed to the Consultant must be in writing, such as payments, contracts, etc., directed to Chris Albrecht.

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: Corey Bogenreif  
400 Robert D. Ray Drive  
Des Moines, Iowa 50309

To Consultant: Chris Albrecht  
430 E. Grand Avenue, Suite 101  
Des Moines, Iowa 50309

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, in triplicate, as of this 7th day of March, 2022.


**CITY OF DES MOINES, IOWA**

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


**BOLTON & MENK, INC.**

  
\_\_\_\_\_  
Matthew W. Ferrier, PE, Principal in Charge

**FORM APPROVED:**

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

**ATTEST:**

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



## ATTACHMENT 1

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

#### INSURANCE & INDEMNIFICATION REQUIREMENTS

For purposes of this Attachment and all provisions included herein, the term "Consultant" means and includes the Consultant, its officers, agents, employees, subcontractors, subconsultants and others under the control of Consultant. The term "CITY" means the City of Des Moines, Iowa and its elected and appointed officials, agents, employees and volunteers.

#### 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 "nonadmitted" 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. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: The Consultant shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage, both written with State of Iowa statutory limits. ***Waiver of Subrogation in favor of the CITY is required.***

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The Consultant shall procure and maintain 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.***

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.

C. PROFESSIONAL LIABILITY INSURANCE: The Consultant shall procure and maintain Professional Errors and Omissions Insurance with limits not less than \$1,000,000 per claim and in the aggregate.

D. CONTRACTUAL LIABILITY: The General Liability Insurance policy shall include Contractual Liability coverage equivalent to that included in ISO standard form CG 0001. To the extent available, the Professional Liability Insurance policy shall also include Contractual Liability coverage. The CITY shall not be included as an Additional Insured on either policy.



- E. CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT: The General Liability Insurance and Professional Liability Insurance policies shall be endorsed to provide the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. ***Written notifications shall be sent to: 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, including its appointed officials, agents, employees and volunteers and others working on its behalf, 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 policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY.
- G. PROOF OF INSURANCE: The Consultant shall provide 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". A Copy of the Cancellation and Nonrenewal Notification Endorsement shall be submitted with the Certificates of Insurance. ***Mail Certificates of Insurance to: Engineering Department, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***
- H. AGENTS, SUBCONSULTANTS AND SUBCONTRACTORS: The Consultant shall require that any of its agents, subconsultants and subcontractors who perform work and/or services on behalf of the Consultant purchase and maintain the types of insurance customary for 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; including bodily injury or 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, 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.

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, 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, 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

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.

For professional service agreements with a total estimated cost to the CITY of \$500,000 or more, delete the second paragraph of Section 3 above and replace it with the following:

For 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 and economic damages that may be asserted or claimed against, recovered from or suffered by the CITY that arise out of any negligent act, error or omission of the 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.



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

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

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

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

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

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

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

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

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



**ATTACHMENT 2  
SCOPE OF SERVICES  
FOR  
CITY OF DES MOINES  
AGREEMENT FOR PROFESSIONAL SERVICES  
MERLE HAY ROAD - HICKMAN ROAD TO AURORA AVENUE CORRIDOR STUDY  
Activity ID 01-2022-009**

**DESCRIPTION OF PROJECT**

Merle Hay Road is an important commercial and retail corridor on the northwest side of the City of Des Moines. Merle Hay Mall, which occupies the west parcels of Merle Hay Road from Aurora Avenue to Douglas Avenue, is in the midst of a major redevelopment project which includes plans for a hockey arena, housing for senior citizens, a new Kohl's department store, added retail space, and additional upgrades to the mall. South of Douglas Avenue, Merle Hay Road transitions to a four-lane undivided street and a mix of commercial and residential development.

The **CONSULTANT** shall provide professional services required to prepare a traffic engineering study to identify long-term and short-term roadway improvements to address safety concerns, multi-modal traffic operations and flow, access control, and anticipated traffic changes based on the existing and future adjacent land development. Recommendations from the data collection and analysis shall include street cross-section improvements, intersection improvements, multi-modal improvements, prioritized infrastructure improvement projects, right-of-way impacts, access control opportunities, and estimated probable costs.

The Scope of Services to be performed by the **CONSULTANT** under this agreement shall encompass and include detailed work, services, materials, testing, equipment and supplies to complete the design of the aforementioned improvements including: Project/Contract Management, Project Coordination, Data Collection, Corridor Study Analysis, and Technical Report and Deliverables, as described below:

**1.0 PROJECT/CONTRACT MANAGEMENT**

**A. Monitoring Project Schedule**

The **CONSULTANT** shall prepare and submit monthly project status that include schedule updates (1-page) via email, outlining the following activities during the reporting period: activities completed during the prior month, activities planned for the following month, problems encountered and recommended solutions, and overall project status. If design work is not progressing in a manner to comply with the anticipated completion date, the **CONSULTANT** shall provide a brief summary of the actions to be taken to reduce or eliminate any delays in completing the design in accordance with the agreed upon schedule. The monthly update shall include a list of requested information from the **CITY** with a desired response date noted to avoid delay of the **CONSULTANT**'s services.

**B. Monitoring Project Scope**

The **CONSULTANT** shall identify, schedule and assign all project tasks, being cognizant of each task's relation to one another, and coordinate them with all entities associated with the project. The **CONSULTANT** shall inform the **CITY** of any additional services requested by the **CITY** that were not included in the scope of services contract approved by the **CITY** for this project. It shall be the responsibility of the **CONSULTANT** to inform the **CITY** of any potential amendments to the contract before the services are rendered. This notice shall occur prior to any extra services being performed. Only those services included in the Agreement or added by written amendment, executed by both parties, are eligible for compensation.

**C. Quality Assurance/Quality Control Plan**

The **CONSULTANT** shall develop a Quality Assurance/Quality Control Plan, and designate staff responsibility for implementation of the Plan, and perform ongoing review of the design plan



preparation process for completeness and quality to minimize design errors/omissions and construction conflicts.

#### **D. Invoice Processing and Review**

The **CONSULTANT** shall create, review and process invoices, not more than on a monthly basis, verifying they meet **CITY** payment requirements and verifying all necessary information required for payment is included. The **CONSULTANT** shall coordinate with **CITY** staff, as necessary, and answer any questions regarding invoices and verify the percentage of work complete on the project is consistent with the percentage of work invoiced. Services provided as part of this task shall include all other general project administration necessary to complete the project.

### **PROJECT COORDINATION**

#### **A. Project Review Meetings**

The **CONSULTANT** shall meet with the **CITY** or its designated representative to review progress and to discuss specific elements of the project design. The meetings shall also serve to establish schedules, develop project goals, establish design parameters, promote a dialog between the various entities, improve the decision-making process, and expedite design development. The **CONSULTANT** shall document and distribute minutes for all meetings.

The following meetings are included with the scope of work:

- 1) Project Kickoff Meeting
- 2) Draft Technical Report Progress Meeting
- 3) Final Technical Report Progress Meeting

#### **B. Iowa Department of Transportation (IDOT) Coordination**

Merle Hay Road is designated as State Highway 28/US Highway 6. The **CONSULTANT** shall coordinate up to (two) meetings with Iowa DOT staff. The Iowa DOT shall be provided an opportunity to provide feedback on the draft and final study report.

#### **C. Des Moines Area Rapid Transit (DART) Coordination**

The **CONSULTANT** shall coordinate one meeting with DART staff. **CONSULTANT** shall coordinate and consider existing DART routes and bus stops as well as any future changes as part of the corridor study.

#### **D. Public Participation and Involvement**

**CONSULTANT** shall prepare and administer one (1) online input ID web-based public engagement platform to gather public input about existing conditions allowing stakeholders and the public to provide comments and interact in a visual, user-friendly mapping interface. Results shall be collected and provided to the **CITY** for review and consideration.

**CONSULTANT** shall plan and prepare documents for one (1) public open house. The **CONSULTANT** shall provide the following services as part of the public open house:

- 1) One (1) pre-planning meeting with **CITY** staff approximately one week prior to the public meeting.
- 2) Preparation of necessary maps, graphics, and exhibits showing the proposed improvements.
- 3) Preparation of a Project Fact Sheet (for attendees to take)
- 4) Attendance at and participation in open house.

**CONSULTANT** shall prepare and administer one (1) public survey to be open at the open house and up online for up to 30 days after the open house to survey local businesses and residents. Results shall be collected and provided to the **CITY** for review and consideration.

**CONSULTANT** shall provide website content and information for social media outreach up to three (3) times from March 2022 to August 2022 for **CITY** staff use on their online platforms.

## **2.0 DATA COLLECTION**

The **CONSULTANT** shall collect all necessary data to complete required traffic analysis including:

- A. Speed/Daily Traffic Count Data at the following locations:
  - 1) Between Hickman Road and Urbandale Avenue
  - 2) Between Urbandale Avenue and Douglas Avenue
  - 3) Between Douglas Avenue and Aurora Avenue
  
- B. 12-hour Turning Movement Count Data at the following locations:
  - 1) Hickman Road (*provided by the City*)
  - 2) Holcomb Avenue
  - 3) New York Avenue
  - 4) Urbandale Avenue (*provided by the City*)
  - 5) Ovid Avenue
  - 6) Douglas Avenue (*provided by the City*)
  - 7) Merle Hay Mall Signalized Entrance (*provided by the City*)
  - 8) Madison Avenue/Merle Hay Mall Entrance (*provided by the City*)
  - 9) Aurora Avenue (*provided by the City*)
  
- C. Field Observations
  - 1) Existing street traffic operations
  - 2) Observation and video data collection of up to 10 key driveway access points
  
- D. Adjacent land usage and zoning (*provided by the City*)
  
- E. Street information
  - 1) Functional Classification
  - 2) Width, number of lanes, intersection configurations
  - 3) Posted speed limits
  - 4) On-street parking
  - 5) Existing accesses
  
- F. Intersection information
  - 1) Existing lane configuration and control
  - 2) Existing traffic signal timings (*provided by the City*)
  
- G. Crash Review
  - 1) Review / Analyze Iowa DOT ICAT crashes in past five (5) years for the corridor
  - 2) Review / Analyze Iowa DOT ICAT crashes in past five (5) years for intersections along the corridor
  - 3) Describe details of factors, circumstances, or conditions that resulted in injury crashes
  - 4) Areas of high crash occurrences shall be further evaluated to determine potential geometric and safety related improvements



- H. Review of existing pedestrian and bicycle accommodations
  - 1) Existing sidewalk gaps
  - 2) Potential right-of-way needs to fill sidewalk gaps
  - 3) Existing and future bicycle infrastructure connectivity
- I. Review of existing DART routes, stops, and operations on the corridor
- J. Review existing area studies and City plans including:
  - 1) Past studies in area and master plans (*provided by the City*)
  - 2) City of Des Moines Comprehensive Plan ([PlanDSM](#))
  - 3) City of Des Moines Transportation Master Plan ([MoveDSM](#))
  - 4) City of Des Moines Parks and Recreation Comprehensive Plan ([LiveDSM](#))
  - 5) [DART Forward 2035](#)

### **3.0 CORRIDOR STUDY ANALYSIS**

#### **A. Speed Study**

The **CONSULTANT** shall evaluate results of the speed data collected to determine the appropriate speed limit on the corridor. The **CONSULTANT** shall utilize methodology provided in NCHRP 17-76: Guidance for Setting of Speed Limits, FHWA USLIMITS2, and ITE Publication “A Model for Setting Credible Speed Limits in Urban Areas” to determine the recommended speed limit along the corridor. The **CONSULTANT** shall examine and make recommendations on measures that could be deployed to manage speed at a lower speed limit. Recommendations shall include short-term or immediate changes, if needed, as well as future changes to speed limits based on the recommended corridor concept.

#### **B. Operational Analysis**

The **CONSULTANT** shall develop a traffic operations model using Synchro/SimTraffic, traffic modeling software. SIDRA software shall be used to evaluate proposed roundabout locations. The **CONSULTANT** shall compare existing ADT volumes with forecast ADT from the MPO’s travel demand model. The **CONSULTANT** shall develop peak hour traffic projections for forecast year 2040 based on the MPO’s travel demand model. Operational analysis should consider intersection alternative evaluation as appropriate. The **CONSULTANT** shall develop a traffic operations model using Synchro/SimTraffic, traffic modeling software. SIDRA software shall be used to evaluate proposed roundabout locations.

The **CONSULTANT** shall analyze the following scenarios:

- 1) Existing
- 2) Interim year, No-Build (2030 traffic volumes)
- 3) Interim year with proposed corridor geometric improvements (2030 traffic volumes)
- 4) Future year, No-Build (2045 traffic volumes)
- 5) Future year with proposed corridor geometric improvements (2045 traffic volumes)

The measures of effectiveness used to evaluate the operational effectiveness shall include delay, Level-of-Service and queue length at individual intersections. Existing traffic signal timing plans will be provided by the **CITY** for the existing conditions. Traffic signal timing plans shall be optimized within Synchro for the scenarios listed above.

The **CONSULTANT** shall evaluate the existing roadway section and make recommendations based upon the intersection evaluations and projected future daily traffic.

### **C. Safety Analysis**

The **CONSULTANT** shall use the Highway Safety Manual methodologies to evaluate and assess safety countermeasures to inform recommendations for intersection and roadway configurations and treatments to address safety issues. The **CONSULTANT** shall review the Iowa DOT's Potential Crash Reduction (PCR) database to compare the study intersections to other similar intersections in the state of Iowa. The **CONSULTANT** shall provide recommendations based on the data collected and findings to further inform and confirm the recommendations for intersection and roadway configurations/treatments.

### **D. Access Control Review**

The **CONSULTANT** shall review the existing access points along the corridor to determine opportunities to consolidate and reduce access points along the corridor. The **CONSULTANT** shall consider potential right-of-way and future private property impacts as part of the access control review. The access control review shall also consider access control improvements within the right-of-way such as medians, right-in right-out restrictions, etc. The access control review shall include conceptual access consolidation exhibits incorporated into the overall corridor plan. An access control plan shall be developed that identifies access control restrictions for future potential redevelopment.

### **E. Multi-Modal Review**

The **CONSULTANT** shall review existing sidewalk connectivity, bicycle facilities, and DART routes/stops. The **CONSULTANT** shall make recommendations to fill existing sidewalk gaps, connect existing and proposed bicycle routes, and improve transit operations as part of the conceptual plan.

### **F. Concept Design**

The **CONSULTANT** shall develop a concept plan based on the speed study, operational analysis, safety analysis, access control review, and multi-modal review. The **CONSULTANT** shall develop a working concept design for the corridor. The concept design shall consider different intersection alternatives, as needed. For planning purposes the **CONSULTANT** shall anticipate two (2) full concept alternatives. The Technical Report shall include alternative analysis to determine a preferred concept plan. The concept design shall include a prioritized project/phasing plan and estimated probable costs to help guide the **CITY**'s future Capital Improvement Program (CIP).

## **4.0 TECHNICAL REPORT AND DELIVERABLES**

### **A. Technical Report**

The **CONSULTANT** shall provide a technical report documenting the results of the data collection, field observation, crash analysis, speed study, operational analysis, and safety analysis for the project corridor. The technical report shall include geometric improvement recommendations, multi-modal recommendations, intersection alternative analysis, preferred conceptual layout, prioritized project/phasing plan, access management recommendations, and estimated probable costs of the proposed improvements.

### **B. Deliverables**

The **CONSULTANT** shall provide the following deliverables:



- 1) Public Involvement Summary with Results
- 2) Draft and Final Technical Report (to be provided electronically in PDF format)
- 3) Preliminary construction cost/project cost estimate for phased corridor improvements
- 4) Preferred concept design (to be provided electronically in PDF format and CAD linework)
- 5) Turning Movement Count and Speed/Volume Data Collected
- 6) Synchro Traffic Model Files

## **SCHEDULE**

The **CONSULTANT** shall meet the deadlines as listed below. This schedule was prepared to include reasonable allowances for review and approval times required by the **CITY**. This schedule shall be equitably adjusted as the project progresses, allowing for changes in the scope of the project or delays beyond the control of the **CONSULTANT**:

Notice to Proceed – March 2022

Project Kick-Off Meeting – March 2022

Data Collection and Site Observation – March 2022 to May 2022

Input ID platform Open to Public (30 days) – April 2022

Existing Conditions Review and Modeling – May 2022 to June 2022

Safety Analysis – March 2022 to June 2022

PMT and IDOT meetings – June 2022 TBD

Alternatives Development and Analysis – June 2022 to July 2022

PMT and IDOT meetings – July 2022 TBD

Draft Technical Memorandum – July 2022

Public Open House – July 2022

Survey Open to Public (30 days) – July 2022 to August 2022

Final Technical Memorandum – September 2022

**ATTACHMENT 3  
SCHEDULE OF FEES  
FOR  
CITY OF DES MOINES  
AGREEMENT FOR PROFESSIONAL SERVICES  
MERLE HAY ROAD - HICKMAN ROAD TO AURORA AVENUE CORRIDOR STUDY  
Activity ID 01-2022-009**

# 2022 SCHEDULE OF FEES

The following fee schedule is based upon competent, responsible professional services and is the minimum, below which adequate professional standards cannot be maintained. It is, therefore, to the advantage of both the professional and the client that fees be commensurate with the service rendered. Charges are based on hours spent at hourly rates in effect for the individuals performing the work. The hourly rates for principals and members of the staff vary according to skill and experience. The current specific billing rate for any individual can be provided upon request.

These rates include labor, general business, and other normal and customary expenses associated with operating a professional business. Unless otherwise agreed, the above rates include vehicle and personal expenses, mileage, telephone, survey stakes, and routine expendable supplies; no separate charges will be made for these activities and materials. Non-routine expenses are defined as large quantities of prints, extra report copies, outsourced graphics and photographic reproductions, document recording fees, outside professional and technical assistance, and other items of this general nature. Rates and charges do not include sales tax, if applicable.

Employee Classification	Hourly Billing Rates
Senior Principal	\$220-295/Hour
Principal Engineer/Surveyor/Planner/GIS/Landscape Architect	\$150-235
Senior Engineer/Surveyor/Planner/GIS/Landscape Architect	\$140-225
Project Manager (Inc. Survey, GIS, Landscape Architect)	\$130-250
Project Engineer/Surveyor/Planner/Landscape Architect	\$100-195
Design Engineer/Landscape Designer/Graduate Engineer/Surveyor	\$85-195
Specialist (Nat. Resources; GIS; Traffic; Graphics; Other)	\$90-180
Senior Technician (Inc. Construction, GIS, Survey <sup>1</sup> )	\$100-190
Technician (Inc. Construction, GIS, Survey <sup>1</sup> )	\$80-165
Administrative/Corporate Specialists	\$60-140
Structural/Electrical/Mechanical/Architect	\$120-295
GPS/Robotic Survey Equipment	NO CHARGE
CAD/Computer Usage	NO CHARGE
Routine Office Supplies	NO CHARGE
Routine Photo Copying/Reproduction	NO CHARGE
Field Supplies/Survey Stakes & Equipment	NO CHARGE
Mileage	NO CHARGE





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/13/2021

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 Brown & Brown of Minnesota 530 W Pleasant St, Suite 100 Mankato MN 56001	CONTACT NAME: Mary Portner, CISR	PHONE (A/C, No, Ext): (507) 388-2010	FAX (A/C, No): (866) 800-6599
	E-MAIL ADDRESS: mary.portner@bbrown.com		
INSURED Bolton and Menk, Inc., Bolton & Menk Southeast, LLC 1960 Premier Dr Mankato MN 56001	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Westfield Insurance Company		24112
	INSURER B: Continental Casualty Company		20443
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES CERTIFICATE NUMBER: 2022 - 23 REVISION NUMBER:

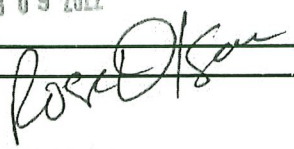

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE 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 <input checked="" type="checkbox"/> Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		Y	CMM 3 406 737	01/01/2022	01/01/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$	
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY			CMM 3 406 737	01/01/2022	01/01/2023	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 checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			CMM 3 406 737	01/01/2022	01/01/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$	
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 N	N/A	Y	WCP 8677645	01/01/2022	01/01/2023	<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
B	Professional Liability E&O Ded \$25,000			AEH114019718	12/31/2021	12/31/2022	Per Claim Limit \$5,000,000 Aggregate Limit \$10,000,000 Retro Date 12/31/1997	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Covers all operations performed by Bolton & Menk for the City of Des Moines during the policy year. Waiver of subrogation in favor of certificate holder applies to the general liability & work comp. Cancellation clause as per the policy provisions. Waiver of governmental immunity endorsement applies. 30 day notice of cancellation applies to all policies.

APPROVED  
FEB 09 2022

<b>CERTIFICATE HOLDER</b>   City of Des Moines IA Engineering Dept City Hall 400 Robert D. Ray Drive  Des Moines IA 50309	<b>CANCELLATION</b> 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 

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Professional Liability and Pollution Incident Liability Insurance  
Policy Endorsement

CANCELLATION/NON-RENEWAL ENDORSEMENT - MINNESOTA

Wherever used in this endorsement: 1) "Named Insured" means the first person or entity named on the Declarations page; 2) "policy period" means **policy term**; and 3) "Insured(s)" means all persons or entities afforded coverage under the policy.

Any cancellation, non-renewal or termination provision(s) in the policy are deleted in their entirety and replaced with the following:

**CANCELLATION AND NON-RENEWAL**

**I. CANCELLATION**

- A. The Named Insured may cancel the policy at any time. To do so, the Named Insured must return the policy to the Insurer or any of its authorized representatives, indicating the effective date of cancellation; or provide a written notice to the Insurer, stating when the cancellation is to be effective.
- B. The Insurer may cancel the policy by mailing or delivering to the Named Insured written notice of cancellation, including the reason for the cancellation, within the first eighty-nine (89) days. The Insurer must mail notice of cancellation to the Named Insured, at the last mailing address known to the Insurer prior to the effective date of cancellation. The Named Insured will receive at least ten (10) days prior notice, if the Insurer cancels for non-payment of premium; or thirty (30) days notice, if the Insurer cancels for any other reason.
- C. If the policy has been in effect for ninety (90) days or more or at any time if the policy is a renewal with the Insurer, it may be canceled only for one of the following reasons:
  1. Non-payment of premium;
  2. Misrepresentation or fraud made by or with the knowledge of the Insured in obtaining the policy or in pursuing a claim under the policy;
  3. Actions by any insured that have substantially increased or changed the risk insured ;
  4. Substantial change in the risk assumed, except to the extent that the Insurer should have reasonably foreseen the change or contemplated the risk in writing the policy;
  5. Loss of reinsurance by the Insurer which provided coverage to the Insurer for a significant amount of the underlying risk insured. A notice of cancellation under this clause shall advise the Named Insured that the Named Insured has ten days from the date of receipt of the notice to appeal the cancellation to the Commissioner of Commerce and that the Commissioner will render a decision as to whether the cancellation is justified because of the loss of reinsurance within 30 business days after receipt of the appeal;
  6. Determination by the Commissioner that continuation of the policy could place the Insurer in violation of Minnesota law;
  7. Refusal of the Insured to eliminate known conditions that increase the potential for loss after notification by the Insurer that the condition must be removed.

The Insurer will mail or deliver written notice of cancellation to the Named Insured including the reason for cancellation, at the last mailing address known to the Insurer prior to the effective date of cancellation. The Named Insured will receive at least ten (10) days prior notice, if the Insurer cancels for non-payment of premium; or sixty (60) days prior notice, if the Insurer cancels for any other permissible

Form No: CNA79168MN (04-2020)

Endorsement Effective Date: 12/31/2021

Endorsement No: 1 ; Page 1 of 3

Underwriting Company: Continental Casualty Company

151 North Franklin Street, Chicago, IL 60606

Policy No: AEH114019718

Policy Effective Date: 12/31/2021

Policy Page: 20 of 34



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

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

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

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

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

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

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

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

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

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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

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

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

whichever is less.

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





**B. LIQUOR LIABILITY COVERAGE EXTENSION**

**SECTION 1, COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Item 2. Exclusions c. Liquor Liability is deleted.**

**C. NON-OWNED WATERCRAFT**

Under **SECTION 1, COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Item 2. Exclusions g.2(a)** is replaced with the following:

- (a) Less than 60 feet long; and

**D. NON-OWNED AIRCRAFT**

Under **SECTION 1, COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Item 2. Exclusions g. Aircraft, Auto or Watercraft,** the following is added:

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

**E. DAMAGE TO PROPERTY - BORROWED EQUIPMENT**

Under **SECTION 1, COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Item 2. Exclusions j.** is deleted and replaced by the following:

**j. Damage To Property:**

- (1) Property you own, rent or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of any real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

- (6) That particular part of any real property that must be restored, replaced, or repaired because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to:

- (i) "property damage" to tools or equipment loaned to you if the tools or equipment are not being used to perform operations at the time of loss; or
- (ii) "property damage" (other than damage by fire) to premises rented to you or temporarily occupied to you with the permission of the owner or to the contents of premises rented to you for a period of seven (7) or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance.**

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were not occupied, rented or held for rental by you beyond one year from the date "your work" was completed.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

**F. DAMAGE TO PREMISES RENTED TO YOU**

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

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

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

**c. Mortgagee, Assignee or Receiver**

A mortgagee, assignee or receiver but only with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

**d. Owners Or Other Interests From Whom Land Has Been Leased**

An owner or other interest from whom land has been leased by you but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**e. Co-owner of Insured Premises**

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

**f. Lessor of Equipment**

Any person or organization from whom you lease equipment. Such person or organization are insureds only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization.

A person's or organization's status as an insured under this endorsement ends when their written contract or written agreement with you for such leased equipment ends.

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

This insurance does not apply:

- (1) To any "occurrence" which takes place after the equipment lease expires; or
- (2) To "bodily injury", "property damage", or "personal and advertising injury" arising out of the sole negligence of such additional insured.

Any insurance provided to an additional insured designated under paragraphs a. through f. above does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard".

As respects the coverage provided under this provision, Paragraph 4.b.(1) of Section IV - Commercial General Liability Conditions is deleted and replaced with the following:

**4. Other Insurance**

**b. Excess Insurance**

- (1) This insurance is excess over:

Any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and non-contributing. Where required by written contractor written agreement, we will consider any other insurance maintained by the additional insured for injury or damage covered by this endorsement to be excess and non-contributing with this insurance.

**J. WHO IS AN INSURED BROADENED**

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

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

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

- (1) Prior to the termination date of any joint venture, limited liability company or partnership; or



**a. Primary Insurance**

This insurance is primary and non-contributory except when b. below applies.

**b. Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent, or on any other basis:

- (1) That is Fire, Extended Coverage, Builders Risk, Installation Risk, or similar coverage for your work;
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos," or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A.
- (4) If the loss is caused by the sole negligence of any additional insured, owner, lessee, or contractor.

When this insurance is excess, we will have no duty under Coverage A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other defends, we will undertake to do so, but we will be entitled to the other insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductibles and self-insured amounts under all that other insurance.

We will share the remaining loss, if any with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the limits of Insurance shown in the declarations of this Coverage Part.

**M. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

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

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

**N. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - AUTOMATIC STATUS**

Under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, item 8. Transfer Of Rights Of Recovery Against Others To Us is deleted and replaced by the following:

We waive any right of recovery we may have against any person or organization with respect to which the insured has waived its right of recovery.

It is further agreed that work commenced under letter of intent or work order, subject to subsequent reduction to writing, with customers whose customary written contracts would require a waiver of recovery rights against them also falls within this blanket waiver of recovery rights.

**O. LIBERALIZATION**

If we adopt a change in our forms or rules which would broaden coverage for contractors under this coverage form without an additional premium charge, your policy will automatically provide the additional coverage's as of the date the broadened coverage is effective in your state.

**P. DEFINITIONS**

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

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

Under SECTION V - DEFINITIONS, item 9. is deleted and replaced with the following:

9. "Insured Contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement;

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

**PRIMARY AND NONCONTRIBUTORY -  
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

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

The following is added to the **Other Insurance Condition** and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

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



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

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**SCHEDULE**

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

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

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

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

**A. WHO IS AN INSURED BROADENED**

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

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

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

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

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

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

- a. Wear and tear, freezing, mechanical or electrical breakdown. Mechanical breakdown does not apply to the accidental discharge of an airbag.

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

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

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

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

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

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

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

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

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

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

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

**I. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

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

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

**J. WORLDWIDE COVERAGE**

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

(5) Anywhere in the world, if:

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

**K. DEFINITIONS**

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

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



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## IOWA CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

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

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

### CANCELLATION

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

#### 2. Cancellation Requirements

a. We may cancel this policy, by mailing or delivering to the first Named Insured and any loss payee written notice of cancellation at least:

- (1) 30 days before the effective date of cancellation if we cancel due to loss of reinsurance coverage;
- (2) 10 days before the effective date of cancellation if we cancel for any other reason.

b. If this policy is a new policy and has been in effect for less than 60 days, we may cancel for:

- (1) Loss of reinsurance, subject to d. below; or
- (2) Any other reason.

c. If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel only for one or more of the following reasons:

- (1) Nonpayment of premium;
- (2) Misrepresentation or fraud made by or with your knowledge

in obtaining the policy, when renewing the policy, or in presenting a claim under the policy;

(3) Acts or omissions by you that substantially change or increase the risk insured;

(4) Determination by the commissioner that the continuation of the policy would jeopardize our solvency or would place us in violation of the insurance laws of this or any other state;

(5) You have acted in a manner which you knew or should have known was in violation or breach of a policy term or condition; or

(6) Loss of reinsurance, subject to d. below.

d. We may cancel due to loss of reinsurance which provides coverage to us for a significant portion of the underlying risk insured, but only if the commissioner determines that such cancellation is justified.

3. We will mail or deliver our notice to the first Named Insured's and any loss payee's last mailing address known to us.

4. Notice of cancellation will state:

a. The reason for cancellation; and

b. The effective date of cancellation. The policy period will end on that date.

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

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

This endorsement modifies insurance provided under the following:

POLICY NUMBER: WCP 8677645  
EFFECTIVE DATE: 01/01/22  
INSURER: WESTFIELD INSURANCE CO.  
CARRIER CODE: 14451  
NAMED INSURED: BOLTON & MENK INC  
AGENCY NUMBER: 22-6319

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

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

**Schedule**

**PRINCIPAL:**

ANY PERSON OR ORGANIZATION FOR WHOM YOU HAVE AGREED IN WRITING IN A CONTRACT OR AGREEMENT TO WAIVE OUR RIGHT TO RECOVER

**DESCRIBED OPERATIONS:**

ANY OPERATIONS OF THE INSURED

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

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

Endorsement Effective  
Insured

Policy No.

Endorsement No.  
Premium

Insurance Company

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