



Roll Call Number

22-0299

Agenda Item Number

10

Date March 7, 2022

APPROVING EXCEPTION TO REQUEST FOR PROPOSAL (RFP) PROCESS FOR GOOD CAUSE AND APPROVING PROFESSIONAL SERVICES AGREEMENT (PSA) WITH KIRKHAM MICHAEL & ASSOCIATES, INC. FOR DESIGN SERVICES FOR TUTTLE STREET FROM S.W. 14th STREET TO S.W. 16th STREET, NOT TO EXCEED \$98,000

WHEREAS, the City Engineer recommends that the procurement of professional services for Tuttle Street from S.W. 14th Street to S.W. 16th Street be exempted from the requirements of the Engineering Department's Request for Proposal (RFP) process and advertising requirement for good cause shown, pursuant to Section 2-726(b)(1)(a) of the Municipal Code of the City of Des Moines.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That good cause has been shown to exempt the procurement of the above-described services from the requirements of the Engineering Department's RFP process and the advertising requirement of such Section.

BE IT FURTHER RESOLVED: That the Professional Services Agreement between the City of Des Moines and Kirkham Michael & Associates, Inc., Michael S. Olson, P.E, President, 12700 West Dodge Road, Omaha, Nebraska, 68154, for a total cost not to exceed \$98,000, based on hourly rates, to provide design services for Tuttle Street from S.W. 14th Street to S.W. 16th Street, is hereby approved, subject to approval as to form by the Legal Department.

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

(City Council Communication Number 22-07B attached)
Activity ID 01-2022-013

Moved by Gatto to adopt. Second by Boesen.

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



Roll Call Number

32-0299

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10

Date March 7, 2022

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

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.

MOJION CARRIED

APPROVED

J. M. Frankhu Cownie Mayor

P. Kay Cmelik

City Clerk

CITY OF DES MOINES
AGREEMENT FOR PROFESSIONAL SERVICES: HOURLY
TUTTLE STREET FROM SW 14th STREET TO SW 16th STREET
Activity ID 01-2022-013

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 Kirkham Michael & Associates, Inc., Michael S. Olson, P.E, President, 12700 West Dodge Road, Omaha, NE, hereinafter referred to as the "Consultant", being a corporation organized and existing under the laws of the State of Nebraska 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 Tuttle Street from SW 14th Street to SW 16th Street Design (hereinafter the "Project"); and

WHEREAS, the Consultant is desirous of performing the professional services for the City in connection with Tuttle Street from SW 14th Street to SW 16th Street Design.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1 - GENERAL

- A. PERFORMANCE:** The performance of the Consultant is limited to the scope of services outlined as hereinafter set forth.
- B. CONSULTANT'S REPRESENTATIONS:** The Consultant represents and agrees that:
1. Consultant is an experienced licensed architectural and/or engineering firm having the ability and skill necessary to perform all the services required of it under this Agreement in connection with the design of the Project having the scope and complexity of the Project contemplated herein; and
 2. Consultant has the capabilities and resources necessary to perform its obligations hereunder; and
 3. Consultant is familiar with all current local, state and federal laws, rules and regulations which are applicable to the design and construction of the Project (including but not limited to city ordinances and building codes of city, state and federal authorities that are applicable to the Project) and that all drawings, plans, specifications and other documents prepared by the Consultant must be prepared in accordance with, and comply with all applicable laws, rules and regulations; and
 4. All plans, drawings, specifications and other documents prepared pursuant to this Agreement must be complete and functional for the purposes intended, and that the Project will be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended; and
 5. That all services provided by the Consultant shall be performed in a timely manner and shall be performed with that degree of care, skill, and diligence ordinarily exercised under similar conditions and in the performance of projects of a similar nature to the services contemplated by this Agreement by competent members of the architectural and engineering professions. Consultant represents that it has the experience and expertise necessary to provide design and engineering services to result in a functional, operating Project. Consultant shall be responsible for all services provided under this Agreement regardless of whether such services are provided by Consultant or by any subconsultant hired by Consultant.
 6. The Consultant is responsible for the professional quality, technical accuracy, timely completion and the coordination of all plans, studies, designs, drawings, specifications, reports, 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 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: Terracon Consultants, Inc.
- 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, and reimbursable costs as shown in the current Consultant's Standard Fee Schedule as shown in Attachment No. 3. The total compensation for the Project services shall not exceed \$98,000 without prior approval of the City.

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

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

- C. DEFINITIONS:** The following definitions shall be used:

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

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

SECTION 4 - COMPLETION OF WORK: The Consultant shall complete all services outlined in this Agreement on or before January 1, 2023 providing no unforeseen delays are experienced beyond the control and without the fault or negligence of the Consultant.

SECTION 5 – PRIMARY CONTACTS FOR THIS AGREEMENT: The City Engineer has designated the primary contact person for the City of Des Moines as Matt Becker, 515-283-4026, mdbecker@dm.gov.org. All communications directed to the City must be in writing to Matt Becker.

The primary contact person for Kirkham Michael & Associates, Inc, shall be Scott Almeida, Vice President, 4390 114th Street, Urbandale, IA 50322, (515) 953-9012, salmeida@kirkham.com. All communications directed to the Consultant must be in writing, such as payments, contracts, etc., directed to Scott Almeida.

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: Matt Becker
400 Robert D Ray Drive
Des Moines, Iowa 50315

To Consultant: Scott Almeida
4390 114th Street
Urbandale, IA 50322

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

KIRKHAM MICHAEL & ASSOCIATES, INC.



T.M. Franklin Cownie, Mayor



Scott Almeida, Vice President

FORM APPROVED:

ATTEST:

^{TV}


Kathleen Vanderpool, Deputy City Attorney



P. Kay Cmelik, City Clerk

ATTACHMENT 1

CITY OF DES MOINES, IOWA PROFESSIONAL SERVICES – CONSTRUCTION DESIGN

INSURANCE & INDEMNIFICATION REQUIREMENTS

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

1. GENERAL

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

2. INSURANCE REQUIREMENTS

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

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

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

C. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: As required by State of Iowa Workers' Compensation Law, the CONSULTANT shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the CONSULTANT is not required to purchase Workers' Compensation Insurance, the CONSULTANT shall have a copy of the State's Nonelection of Workers' Compensation or

Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.***

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

3. **INDEMNIFICATION REQUIREMENTS**

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

resulting from the negligent act or omission of the CITY or the CITY'S employees, consultant's, agents or others for whom the CITY is responsible.

For professional services rendered, to the fullest extent permitted by law, CONSULTANT agrees to pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs and economic damages that may be recovered from or suffered by the CITY that arise out of any negligent act, error or omission of the CONSULTANT , including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT, except to the extent caused by or resulting from the negligent act or omission of the CITY or the CITY'S employees, consultants, agents or others for whom the CITY is responsible.

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

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

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

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

**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 nondiscrimination 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 noncompliance: 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
TUTTLE STREET FROM SW 14TH STREET TO SW 16TH STREET DESIGN
Activity ID 01-2022-013**

The City of Des Moines is planning for the construction of Tuttle Street between SW 14th Street and SW 16th Streets.

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: Contract Management, Project Coordination, Survey and Data Collection, Preliminary Design, Design Phase Services and Bidding Phase Services as described below:

CONTRACT MANAGEMENT

A. Monitoring Project Schedule

The **CONSULTANT** shall prepare and submit monthly email updates (1-page), outlining the following activities during the reporting period: 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 provide task identification, scheduling, task assignment, relating all tasks to the others, and coordination with all entities associated with the project. The **CONSULTANT** shall inform the **CITY** of any services required which may not be included in the scope of services contract approved by the **CITY** for this project. It shall be the responsibility of the **CONSULTANT** to make the **CITY** aware 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 Control Plan

The **CONSULTANT** shall establish review and checking procedures for project deliverables and designate 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, process, and review invoices to ensure they meet **CITY** standards and all necessary information is included. Coordinate with **CITY** staff, as necessary, and answer any questions. The **CONSULTANT** shall verify percent work complete on 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 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. Preliminary Design (30% level)
3. Preliminary Design (60% level)
4. Check Design (90% level)

B. Utility Coordination

The **CONSULTANT** shall contact Iowa One Call through the Design Request System to obtain locations of underground utility facilities within the project limits. The **CONSULTANT** shall contact the owners/operators of the underground utility facilities within the project limits to obtain information on the facilities and establish coordinates and elevations (if possible) for utilities that fall within the limits of the project.

The **CONSULTANT** shall field locate visible valves and utility access within the project limits to accurately account for adjustment and/or replacement. Underground utilities shall be incorporated into the project through map requests to the utility companies and drawn into the design file. This work shall be considered survey quality level "B", per CI/ASCE 38-02. Utilities include phone, gas, fiber optic, water main, overhead/underground electrical, sanitary sewer, storm sewer, and in-pavement traffic control equipment (including power poles, pedestals, valves and manholes).

At a minimum, the **CONSULTANT** shall meet with utilities to advise the nature and extent of the proposed improvements and any potential conflicts during the Preliminary Plans (60%) and Check Plans (90%) phase. It is anticipated that there will be two (2) meetings with representatives of the various utility companies. The **CONSULTANT** shall distribute Final Plans to all potentially impacted utilities. The **CONSULTANT** shall keep a record log of all communications and correspondence with each utility company and provide the record log to the City prior to preconstruction conference.

In the event of a potential conflict, the **CITY** may authorize the **CONSULTANT** to obtain potholes to verify the elevation of the existing utility in conflict via Supplemental Agreement. If required, the **CONSULTANT** shall obtain critical locations using hydro-excavating (potholing). Additional traffic control and survey will be required to facilitate this task.

C. Sanitary Sewer Services

In the event of a potential conflict, the **CONSULTANT** shall obtain the location and elevation of sanitary sewer services. The **CITY** shall provide television reports for existing sanitary sewer mains, if currently available.

D. Public Participation and Involvement

The **CONSULTANT** shall develop a public participation and involvement Plan to be implemented and utilized throughout the design and construction of the project. The plan shall include public notices and one-on-one meetings.

1. Property Owner Coordination - One-on-One Meetings

The **CONSULTANT** recognizes that several stakeholders will be involved in this project. The **CONSULTANT** shall contact stakeholders to identify and address their concerns. Due to the potential impacts to landscaping elements and property access, one-on-one meetings with affected parties shall be anticipated outside of the public meeting(s) and may include on-site meetings, phone calls, and emails. The **CONSULTANT** shall document all correspondence with stakeholders and provide monthly updates to the **CITY** or as issues arise. It is anticipated the list of stakeholders will include, but is not be limited to the following:

- i. Soccer Stadium Developer

For budgeting purposes, the **CONSULTANT** has allotted two (2) hours for one-on-one meetings. If additional hours are required, the **CONSULTANT** shall submit a request for an agreement amendment.

E. Project Permitting

The **CONSULTANT** shall assist the **CITY** in preparing applications, as applicable, for permits from governmental authorities that have jurisdiction to approve the design of the project and participate in

consultations with such authorities, as necessary. Any fees for construction permits, licenses, or other costs associated with permits and approvals shall be the responsibility of, and paid by, the **CITY**. The **CONSULTANT** shall provide technical criteria, written descriptions and design data for the **CITY'S** use in filing the applications for permits. The **CONSULTANT** shall prepare the permit applications and other documentation.

SURVEY AND DATA COLLECTION

A. Survey Control

The **CONSULTANT** shall use the following survey control for services under this Agreement:

1. Horizontal Control – State Coordinate System
2. Vertical Control – City of Des Moines Vertical Datum
3. U.S. Survey Feet

B. Topographic Survey

The **CONSULTANT** shall provide the topographic surveys required for the development of the project. Topographic surveys shall require detailed elevation information for proper construction installation, including, but not limited to:

1. Full width of the Public right-of-way
2. Private properties as determined by the **CONSULTANT**
3. Driveway elevations where rehabilitation presents elevation concerns
4. Gutter and/or roadway profiles as necessary for drainage concerns or ultimate roadway profile condition needs.
5. Sidewalk ramps and landings within the public right-of-way.
6. Fences, signs, buildings, retaining walls, etc.
7. Vegetation 4" diameter and larger
8. Utility appurtenances likely to be impacted by the project
9. Sanitary and storm sewer above ground structures and invert elevations

C. Additional Data Collection

1. Pavement Cores

The **CITY** shall provide any available existing pavement core data to the **CONSULTANT**.

2. Soil Borings

The **CONSULTANT** shall perform soil drilling to a depth of approximately 10' and perform laboratory testing on the samples to evaluate site conditions and develop engineering recommendations for the project. It is anticipated that 8 borings will be performed for the project.

Based upon the results of the geotechnical evaluation, the **CONSULTANT** shall prepare an engineering report that details the results of the testing performed, provides logs of the borings, and a diagram of the site/boring layout. The report shall include the following:

- i. Computer generated boring logs with soil stratification based on visual soil classification.
- ii. Summarized laboratory data.
- iii. Groundwater levels observed during drilling and sampling.
- iv. Boring location plan.
- v. Subsurface exploration procedures.
- vi. Existing pavement thicknesses, if boring obtained in roadway.
- vii. Encountered soils conditions.
- viii. Soil subgrade parameters for pavement design.
- ix. Pavement thickness and design recommendations (design traffic required).
 - x. Subgrade preparation/ earthwork recommendations.
 - xi. Trench excavation considerations.
 - xii. Infiltration rates for permeable pavement and green infrastructure.

The **CONSULTANT** shall provide the **CITY** with a PDF copy of the geotechnical report.

PRELIMINARY DESIGN

A. Develop Design Criteria and Research

The **CONSULTANT** shall prepare design criteria to be used in developing conceptual design plans and specifications. Criteria shall conform to Statewide Urban Design and Specifications (SUDAS) and policies. The criteria to be addressed shall include:

1. Existing conditions
2. ADA sidewalk ramp compliance locations and needs
3. Potential surface and parkway drainage concerns
4. Utility structure deficiencies or impacts (manholes, intakes, valves, handholes, traffic signal equipment, etc.)
5. Conceptual construction staging concept
6. Property owner impacts: access, parkway grading, impacted landscaping, trees, mailboxes, driveway concerns, etc.
7. Estimated number of trees for removal
8. Recommendations
9. Alternative recommendations
10. Design Exceptions

DESIGN PHASE SERVICES

A. Design Sheet Criteria

All plan sheets shall include the project Activity ID and Plan File Number. The **CITY** shall provide the **CONSULTANT** with a standard border and Title Sheet. Page numbers may be modified, as necessary, to conform to Iowa DOT and/or SUDAS standards, as required for this project.

B. Preliminary Plans (30%)

1. Preliminary Plan Preparation

After **CITY's** review of the design criteria and upon authorization from the **CITY**, the **CONSULTANT** shall proceed with the development of Preliminary Design Plans for the project lettings. Upon completion, the design plans shall be approximately 30% complete. The submittal of Preliminary Plans shall be completed on or before the anticipated schedule below.

Preliminary Plans shall be completed to provide the **CITY** the detail necessary to evaluate and budget for ultimate project improvement goals and an understanding of property impacts. The following specific design items are to be included:

- i. Tree clearing & Grubbing
- ii. Property impacts, easement requirements
- iii. Roadway alignment,
- iv. Storm sewer layout
- v. Utility extension design
- vi. Opinion of probable construction costs

2. Field Exam

A Field Exam shall be held with the **CITY** of Des Moines Project Manager to discuss key issues, design concepts, access control and traffic control/stage construction. The review shall determine the completion of the plan design, identify needed adjustments to minimize potential property impact and confirm the proposed staging plans. Revisions shall be noted for preparation of the final design.

3. Deliverables

- i. *Electronic set of Preliminary (30%) Plans and Opinion of Probable Construction Costs*

C. Preliminary Plans (60%)

1. Preliminary Plan Preparation

After CITY's review of the 30% Preliminary Plans and upon authorization from the CITY, the CONSULTANT shall proceed with the development of Preliminary Design Plans for the project lettings. Upon completion, the design plans shall be approximately 60% complete. The submittal of Preliminary Plans shall be completed on or before the outlined in the anticipated schedule below.

Preliminary Plans shall be completed to provide the CITY the detail necessary to evaluate and budget for ultimate project improvement goals and an understanding of property impacts. The criteria to be addressed shall include items listed on the Preliminary Plans (60%) Checklist. The following specific design items are to be included:

- vii. Roadway plan and profile
- viii. Storm sewer plan and profile
- ix. Sidewalk plan
- x. Utility extension plan
- xi. Cost Estimate
- xii. Opinion of Probable Construction Costs

2. Field Exam

A Field Exam shall be held with the CITY of Des Moines Project Manager to discuss key issues, design concepts, access control and traffic control/stage construction. The review shall determine the completion of the plan design, identify needed adjustments to minimize potential property impact and confirm the proposed staging plans. Revisions shall be noted for preparation of the final design.

3. Deliverables

- ii. *Electronic set of Preliminary (60%) Plans and Opinion of Probable Construction Costs*
- iii. *Electronic copy of City conceptual design comments and how each comment was addressed*
- iv. *Preliminary Plan (60%) Checklist*

D. Check Plans (90%)

After CITY's review of the 60% Preliminary Plans and upon authorization from the CITY, the CONSULTANT shall proceed with the development of Check Plans. Upon completion, the design plans shall be approximately 90% complete. It is assumed that no geometric revisions to the roadway design will occur after the start of the development of the check plans. The submittal of Check Plans shall be completed on or before the date outlined in the anticipated schedule below

Check Plans shall be completed in preparation of the letting. The criteria to be addressed shall include items listed on the Check Plans (90%) Checklist. Plan set shall be biddable with only minor changes expected after this submittal.

1. Incorporate Comments from Preliminary Plan Review and Field Exam

The CONSULTANT shall respond to comments resulting from CITY Preliminary Plan (60%) Review and Field Exam. Recommended modifications will be incorporated into the plan set.

2. Draft Special Provisions

The CONSULTANT shall submit any draft special provisions for the project.

3. Opinion of Probable Construction Cost

The CONSULTANT shall prepare an opinion of probable construction cost for the projects. The cost estimates shall be based on representative major project elements and recent bid information. The CONSULTANT shall budget and review bid items and quantities for associated with the project.

4. Deliverables

- i. *Electronic set of 90% plans*
- ii. *Electronic copy of City 60% design comments and how each comment was addressed*
- iii. *Opinion of Probable Construction Costs*

- iv. *Draft Special Provisions*
- v. *Check Plans (90%) Checklist*

E. Final Plans (100%)

After CITY's review of the 90% Check Plans and upon authorization from the CITY, the CONSULTANT shall proceed with the development of Final Plans for the project. Upon completion, the design plans shall be 100% complete. The submittal of final plans shall be completed on or before the date outlined in the anticipated schedule below.

1. Incorporate Comments from Check Plan Review

The CONSULTANT shall respond to comments resulting from the Check Plan (90%) Review. Recommended modifications shall be incorporated into the final plan set.

2. Final Special Provisions

The CONSULTANT shall submit final special provisions incorporating any comments resulting from the Check Plan Review.

3. Opinion of Probable Construction Cost

The CONSULTANT shall prepare an opinion of probable construction cost for the project. The final cost opinion shall include all project elements. The published cost opinion should be rounded to the nearest \$1,000.

4. Deliverables

- i. *Complete set of Final Plans, in PDF format*
- ii. *Signed, sealed, and dated cover sheet, hardcopy*
- iii. *Final quantities and cost estimate, in Excel format*
- iv. *Special Provisions, in Word format*
- v. *All CADD drawings, in Microstation format*
- vi. *Approved permits necessary for the project*

BIDDING PHASE SERVICES

The work tasks to be performed or coordinated by the CONSULTANT during the Bid Period Services shall be based upon one bid letting and shall include the following:

A. Plan Clarification and Addenda

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

SCHEDULE

A. Anticipated Deadlines for Project Milestones

1. Complete topographic survey: March 2022
2. Complete preliminary design: May 2022
3. Check plans (90%) submittal: June 2022
4. Final plans (100%) submittal: August 2022
5. Bid letting: November 2022
6. Contract award: December 2022
7. Commence construction: Spring 2023

ATTACHMENT 3

Kirkham Michael (Iowa) 2022 Billing Rate Schedule by Classification	
KM Classification	2022 Billing Rate
Principal / Operations Manager	\$230.00
Engineering Manager	\$190.00
Principal Engineer	\$210.00
Senior Scientist / NEPA Specialist	\$155.00
Senior Engineer	\$160.00
Associate Engineer	\$150.00
Engineering Intern 1	\$105.00
Engineering Intern 2	\$115.00
Engineering Intern 3	\$125.00
Design Manager	\$145.00
Design Technician	\$95.00
CADD Technician	\$95.00
Licensed Surveyor	\$210.00
Senior Project Surveyor	\$140.00
Project Surveyor	\$120.00
Survey Crew Chief	\$110.00
Construction Engineer	\$145.00
Construction Manager	\$140.00
Senior Construction Observer	\$95.00
Assistant Construction Observer / Technician	\$95.00
Administrative	\$85.00



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/8/2022

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 The Harry A. Koch Co. P.O. Box 45279 Omaha NE 68145-0279	CONTACT NAME: sharon miller PHONE (A/C, No, Ext): 402-861-7000 FAX (A/C, No): E-MAIL ADDRESS: sharon.miller@fnicgroup.com													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : XL Specialty Insurance Co</td> <td>37885</td> </tr> <tr> <td>INSURER B : Charter Oak Fire Insurance Co.</td> <td>25615</td> </tr> <tr> <td>INSURER C : Travelers Property Casualty of America</td> <td>25674</td> </tr> <tr> <td>INSURER D : Travelers Casualty & Surety</td> <td>19038</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : XL Specialty Insurance Co	37885	INSURER B : Charter Oak Fire Insurance Co.	25615	INSURER C : Travelers Property Casualty of America	25674	INSURER D : Travelers Casualty & Surety	19038	INSURER E :		INSURER F :
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INSURER E :														
INSURER F :														
INSURED Kirkham-Michael, Inc. 12700 W. Dodge Rd. Omaha, NE 68154	KIR65771													

COVERAGES

CERTIFICATE NUMBER: 628510965

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
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	P6608M549872COF22	1/31/2022	1/31/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	8109N2804912243G	1/31/2022	1/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y		CUP8M5649062243	1/31/2022	1/31/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
D	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 <input checked="" type="checkbox"/> N N/A		Y	UB8M5493012243G	1/31/2022	1/31/2023	<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
A	Architects/Engineers Profess Liab. Claims Made			DPR9988465	1/31/2022	1/31/2023	Ea.Claim \$3,000,000 Annual Aggregate \$5,000,000 Includes - Pollution Legal Liability

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

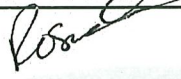
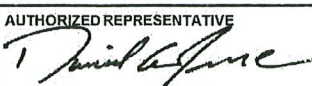
Project: All Projects.

The General Liability, Automobile Liability, Workers' Compensation and Umbrella Liability policies have been endorsed to provide 30 days notice of cancellation, except for cancellation for nonpayment of premium, in which case 10 days notice of cancellation will be provided. Governmental Immunity End. is included in the Policy for City of Des Moines. Policy contains a blanket additional insured endorsement for General Liability, and Auto Liability as permitted by law. Waiver of Subrogation applies to General Liability, Auto and Workers Compensation as permitted by law.

The general liability, auto liability and workers compensation policies have been endorsed to provide 30 days' notice of cancellation.

FEB 08 2022

CERTIFICATE HOLDER**CANCELLATION**

 City of Des Moines and Des Moines Metropolitan WRA Engineering Department 400 Robert D. Ray Drive Des Moines IA 50309-0000	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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POLICY NUMBER: P-660-8M549872-COF-22

GENERAL PURPOSE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED ENTITY - NOTICE OF CANCELLATION PROVIDED BY US
IL T4 05 05 19

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

CONTINUATION OF FORM IL T4 05, PERSON OR ORGANIZATION:

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

This endorsement, effective 12:01 a.m., 01/31/2022 forms a part of

Policy No. DPR9988465

Issued to Kirkham Michael, Inc.

by XL Specialty Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF POLICY CANCELLATION – BLANKET NOTICE TO DESIGNATED ENTITIES

This endorsement modifies insurance provided under the following:

PROFESSIONAL, ENVIRONMENTAL AND NETWORK SECURITY LIABILITY POLICY – ARCHITECTS, CONSULTANTS AND ENGINEERS

Section XI. OTHER CONDITIONS, Paragraph **A. Cancellation** is amended by the addition of the following:

In the event that the Company cancels or non-renews this Policy during the POLICY PERIOD, the Company agrees to provide thirty (30) days' prior written notice of cancellation or non-renewal of this Policy to any entity with whom the NAMED INSURED agreed in a written contract or agreement would be provided with notice of cancellation or non-renewal of this Policy, provided that:

1. The Company receives, at least thirty (30) days prior to the date of cancellation or non-renewal, a written request from the NAMED INSURED to provide notice of cancellation to entities designated by the NAMED INSURED to receive such notice; and
2. The written request includes the name, address and email of each person or entity designated by the NAMED INSURED to receive such notice. The Company will assume that the list provided to the company by the NAMED INSURED is a complete and accurate list.

This endorsement does not apply to non-renewal of the Policy at the end of the POLICY PERIOD or cancellation of the Policy for non-payment of premium to a premium finance company authorized to cancel the Policy. Furthermore, nothing contained in this endorsement shall be construed to provide any rights under the Policy to the entities receiving notice of cancellation pursuant to this endorsement, nor shall this endorsement amend or alter the effective date of cancellation stated in the cancellation notice issued to the NAMED INSURED.

All other terms and conditions of the Policy remain unchanged.

UMBRELLA

3. When we have the duty to defend, we may, at our discretion, investigate and settle any claim or "suit". In all other cases, we may, at our discretion, participate in the investigation, defense and settlement of any claim or "suit" for damages to which this insurance may apply. If we exercise such right to participate, all expenses we incur in doing so will not reduce the applicable limits of insurance.
4. Our duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements, or defense expenses if such expenses are within the limits of insurance of this policy.
5. We will pay, with respect to a claim we investigate or settle, or "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. The cost of:
 - (1) Bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies; or
 - (2) Appeal bonds and bonds to release attachments;
but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of such claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.
 - d. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
 - e. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - f. All interest that accrues on the full amount of any judgment after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable limit of insurance. If we do not pay part of the judgment for any reason other than it is more than the applicable limit of insurance, we will not pay any interest that accrues on that portion of the judgment.

With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY**, these payments will not reduce the applicable limits of insurance, but only if the applicable "underlying insurance" provides for such payments in addition to its limits of insurance. With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE B – UMBRELLA LIABILITY**, these payments will not reduce the applicable limits of insurance.

SECTION II – WHO IS AN INSURED

A. COVERAGE A – EXCESS FOLLOW-FORM LIABILITY

With respect to Coverage A, the following persons and organizations qualify as insureds:

1. The Named Insured shown in the Declarations; and
2. Any other person or organization qualifying as an insured in the "underlying insurance". If you have agreed to provide insurance for that person or organization in a written contract or agreement:
 - a. The limits of insurance afforded to such person or organization will be:
 - (1) The amount by which the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement exceed the total limits of insurance of all applicable "underlying insurance"; or
 - (2) The limits of insurance of this policy; whichever is less; and
 - b. Coverage under this policy does not apply to such person or organization if the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement are wholly within the total limits of insurance of all available applicable "underlying insurance".

B. COVERAGE B – UMBRELLA LIABILITY

With respect to Coverage B:

1. The Named Insured shown in the Declarations is an insured.
2. If you are:
 - a. An individual, your spouse is also an insured, but only with respect to the conduct of a business of which you are the sole owner.

POLICY NUMBER: UB-8M549301-22-43-G

**NOTICE OF CANCELLATION
 TO DESIGNATED PERSONS OR ORGANIZATIONS**

The following is added to PART SIX – CONDITIONS :

Notice Of Cancellation To Designated Persons Or Organizations

If we cancel this policy for any reason other than non-payment of premium by you, we will provide notice of such cancellation to each person or organization designated in the Schedule below. We will mail or deliver such notice to each person or organization at its listed address at least the number of days shown for that person or organization before the cancellation is to take effect.

You are responsible for providing us with the information necessary to accurately complete the Schedule below. If we cannot mail or deliver a notice of cancellation to a designated person or organization because the name or address of such designated person or organization provided to us is not accurate or complete, we have no responsibility to mail, deliver or otherwise notify such designated person or organization of the cancellation.

SCHEDULE

Name and Address of Designated Persons or Organizations:	Number of Days Notice
"ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE AGREED IN A ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF: 1. YOU SEE TO IT THAT WE RECEIVE A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURES RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY, AND 2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT."	30

ADDRESS:

"THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH
 WRITTEN REQUEST FROM YOU TO US."

All other terms and conditions of this policy remain unchanged.

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

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

Endorsement Effective
 Insured

Policy No.

Endorsement No.
 Premium \$

Insurance Company

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. BROAD FORM NAMED INSURED B. BLANKET ADDITIONAL INSURED C. EMPLOYEE HIRED AUTO D. EMPLOYEES AS INSURED E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS G. WAIVER OF DEDUCTIBLE – GLASS | <ul style="list-style-type: none"> H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT J. PERSONAL PROPERTY K. AIRBAGS L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS M. BLANKET WAIVER OF SUBROGATION N. UNINTENTIONAL ERRORS OR OMISSIONS |
|---|---|

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph **A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:**

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c. in A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:**

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

- 1. The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:**

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

- 2. The following replaces Paragraph b. in B.5., Other Insurance, of SECTION IV – BUSINESS AUTO CONDITIONS:**

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

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

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

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., **Policy Period, Coverage Territory**, of SECTION IV – BUSINESS AUTO CONDITIONS:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., **Limits Of Insurance**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., **Limits Of Insurance**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., **Deductible**, of SECTION III – **PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE -- LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of SECTION III -- **PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of SECTION III – **PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., **Coverage Extensions**, of SECTION III – **PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph B.3., **Exclusions**, of SECTION III – **PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of SECTION IV – **BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of SECTION IV – **BUSINESS AUTO CONDITIONS** :

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph B.2., **Concealment, Misrepresentation, Or Fraud**, of SECTION IV – BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|--|--|
| <ul style="list-style-type: none"> A. Non-Owned Watercraft – 75 Feet Long Or Less B. Who Is An Insured – Unnamed Subsidiaries C. Who Is An Insured – Retired Partners, Members, Directors And Employees D. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees E. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies F. Blanket Additional Insured – Controlling Interest G. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers | <ul style="list-style-type: none"> H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises I. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations J. Incidental Medical Malpractice K. Medical Payments – Increased Limit L. Amendment Of Excess Insurance Condition – Professional Liability M. Blanket Waiver Of Subrogation – When Required By Written Contract Or Agreement N. Contractual Liability – Railroads |
|--|--|

PROVISIONS

A. NON-OWNED WATERCRAFT – 75 FEET LONG OR LESS

1. The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:
 - (2) A watercraft you do not own that is:
 - (a) 75 feet long or less; and
 - (b) Not being used to carry any person or property for a charge;
2. The following replaces Paragraph 2.e. of **SECTION II – WHO IS AN INSURED**:
 - e. Any person or organization that, with your express or implied consent, either

uses or is responsible for the use of a watercraft that you do not own that is:

- (1) 75 feet long or less; and
- (2) Not being used to carry any person or property for a charge;

B. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and

COMMERCIAL GENERAL LIABILITY

- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

C. WHO IS AN INSURED – RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2. of SECTION II – WHO IS AN INSURED:

Any person who is your retired partner, member, director or "employee" that is performing services for you under your direct supervision, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no such retired partner, member, director or "employee" is an insured for:

(1) "Bodily injury":

- (a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;
- (b) To the spouse, child, parent, brother or sister of that current partner, member or director as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

(2) "Personal injury":

- (a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph (2)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (2)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(3) "Property damage" to property:

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

D. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES, CO-VOLUNTEER WORKERS AND RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" to a current or retired co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" or retired partners, members or directors while performing duties related to the conduct of your business.

E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph 3. of SECTION II – WHO IS AN INSURED:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only:
 - (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or
 - (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such

organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
 - b. An organization other than a partnership, joint venture or limited liability company; or
 - c. A trust;
- as indicated in its name or the documents that govern its structure.

F. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph 4. of SECTION II – WHO IS AN INSURED:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

G. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed,

COMMERCIAL GENERAL LIABILITY

subsequent to the signing of that contract or agreement; and

- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
 - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

H. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away

openings, sidewalk vaults, elevators, street banners or decorations.

I. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist,

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

- 3. The following replaces the last sentence of Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

- 4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of the insured.

- 5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

- 6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis,

that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

K. MEDICAL PAYMENTS – INCREASED LIMIT

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE:**

- 7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

- a. \$10,000; or
- b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY

The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

If the insured has agreed in a written contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.

COMMERCIAL GENERAL LIABILITY

N. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:
 - c. Any easement or license agreement;
2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.



ONE TOWER SQUARE
HARTFORD CT 06183

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 13 (00) - 001

POLICY NUMBER: UB-8M549301-22-43-G

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS
WAIVER.