

March 6, 2006  
Date

**WHEREAS**, the City of Des Moines provides its employees occupational health services pursuant to its obligations to provide treatment for job related injuries; and

**WHEREAS**, after a competitive search in 2003, the City selected Des Moines University (“DMU”) to provide occupational health services to the City’s employees; and

**WHEREAS**, the current agreement with DMU will expire on June 30, 2006; and

**WHEREAS**, it is in the interest of the City of Des Moines to investigate all possible avenues to determine the most competitive method to provide such clinical services; and

**WHEREAS**, it is believed that a competitive request for proposal (“RFP”) will be the best manner in determining the most cost effective method to provide comprehensive occupational medical services to the City’s employees; and

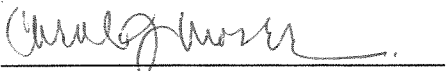
**WHEREAS**, it is recommended that a RFP be issued for such services with the most favorable proposal to be selected subject to legal department review; and

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa:

1. That city staff is directed to issue an RFP to obtain proposals for comprehensive occupational medical services; and
2. That legal department staff is authorized to negotiate an agreement to obtain such occupational medical services; and
3. That the Mayor and the City Clerk are authorized and directed to execute and attest, respectively, the contract approved for and on behalf of the City of Des Moines, Iowa.

Moved by \_\_\_\_\_ to adopt.  
(Council Communication No. 06- 118 )

Approved as to form:



Carol J. Moser  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
HENSLEY				
MAHAFFEY				
KIERNAN				
VLASSIS				
TOTAL				

**CERTIFICATE**

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

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

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**City of Des Moines  
Physical Therapy Data  
4/2003 through 12/2005**

39

CPT CODE	Proposers to Complete		12-months	12-months	4/1 - 12/31
	Capitated	Fee if Not	2005	2004	2003
	Y/N	Captiated	VOLUME	VOLUME	VOLUME
283 ELEC STIM (UNATTENDED)			8	1	
97001 PT EVALUATION			136	150	140
97002 PT RE-EVAL			41	32	28
97012 P/M TRACTION MECH			14	6	1
97014 ELEC STIM (UNATTENDED)			86	52	55
97032 ELEC STIM, MANUAL, 15 MN			15	9	10
97033 IONTOPHORESIS, 15 MN			38	15	39
97035 ULTRASOUND, EA 15 MIN			168	126	109
97110 THER PROC, 1 OR MORE			1282	1124	1008
97112 NEUROMUSCULAR REEDUCATION			4	25	13
97116 GAIT TRAINING			8	5	3
97140 MANUAL THERAPY			433	462	645
97504 ORTHOTIC TRAINING			1		
97530 THERAPY ACTIVITY, DIRECT EA 15			1	5	5
97545 WORK HARD/COND INITIAL 2 HRS			7	13	
97750 PHYS PERFORM TEST, EA 15 MN			3	3	
<b>TOTALS:</b>			<b>2245</b>	<b>2028</b>	<b>2056</b>
<b>TOTAL NUMBER OF PATIENT VISITS:</b>			<b>982</b>	<b>1024</b>	<b>1230</b>

**\*All physical therapy charges are currently included in monthly contracted payment**

Note: Decreasing patient volume with increased # of CPT codes may reflect differences among physical therapists and their preferred treatment modalities

**REQUEST FOR PROPOSAL**  
**OCCUPATIONAL HEALTH SERVICES**

The City of Des Moines is soliciting proposals from qualified health care firms to provide comprehensive, occupational health care services to the City. In general, these services will include the appraisal, maintenance, restoration and improvement of workers' health through application of the principles of preventative medicine, emergency medical care, and environmental medicine. We are also soliciting proposals from qualified providers for occupational-related physical therapy services for City employees.

Currently, the City contracts with Des Moines University (DMU) for the provision of services outlined in Components A and B. The City's current contract with DMU expires June 30, 2006. Proposers are encouraged to submit proposals for each component that they are qualified to provide. Proposers can bid the components separately and/or jointly. Further we will consider either bundling or unbundling of each RFP component.

### Statement of Deadline

The response to the request for proposals must be received no later than 10:30am, Friday, March 31, 2006. All requests for clarification relating to this RFP must be in writing by e-mail to the Procurement Administrator ([mlvalen@dmgov.org](mailto:mlvalen@dmgov.org)) and must be received by 3:00pm, March 17, 2006. Written responses to clarifications will be issued no later than 3:00pm, March 23, 2006. One original and ten (10) copies of the proposal must be submitted to:

Michael L. Valen, Procurement Administrator  
City of Des Moines  
400 Robert D. Ray Drive  
Des Moines, IA 50309

It is estimated that the services to be provided will commence on July 1, 2006. Claim Utilization by year since April 1, 2003 is enclosed.

### Indemnification and Insurance

The PROVIDER shall defend, pay on behalf of, indemnify and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees, agents and volunteers, and others working on behalf of the City, as provided for in Attachment 2. The PROVIDER shall obtain and maintain in continuous effect during the term of this contract with the City and while any of its obligations remain unsatisfied, the insurance coverage, limits and endorsements set forth in Attachment 2.

The services of the provider(s) shall be outlined in the enclosed scope of services.

A review panel will evaluate the proposals. The review panel may conduct on-site facility interviews. After consideration of the panel's recommendation, the City Manager or his designee will prepare a professional service agreement for approval by the City Council.

The City reserves the right to make an award without further discussion or to reject any and all proposals received. The City also reserves the right to negotiate modifications of a proposal to meet City needs.

Proposals will be evaluated on the following basis:

Cost	50%
Convenience and efficiency	15%
Ability to meet City objectives	25%
Experience in providing similar services	10%

Enclosed is a questionnaire for each component of services that must be answered and submitted with your proposal along with pricing instructions.

**RFP**  
**SCOPE OF SERVICES**

**SCOPE OF SERVICES  
COMPONENT A  
OCCUPATIONAL HEALTH SERVICES**

- I Ensure worker suitability for employment with the City of Des Moines by providing:
  - A Post-job offer pre-employment physicals for City employees.
  - B Annual physicals for fire personnel, executive personnel and other special applications.
  - C Special physicals for pre-surgery and fitness for duty/return to work.
  - D Conduct Return-to-Duty evaluation for City employees with non-occupational health problems.
  - E Provide random, return-to-duty, follow-up, post-accident, reasonable suspicion, probable cause, and post-job offer drug and alcohol testing, including MRO duties
  
- II Assure quality medical care for injured employees by providing:
  - A Diagnosis and treatment of all City occupational injuries and illnesses. Services should include all costs such as x-rays, office visits, minor-surgical procedures, dressings, medical splints, slings and laboratory tests, etc.
  - B Provide referrals to other providers for specialized medical care including, but not limited to, orthopedic surgeons, neurologists, audiologists, ophthalmologists and physical therapists.
  - C Complete (within one working day) initial incident report for all injured employees and transmit by either fax or electronic communication to appropriate City staff.
  - D Complete a “Return-to-Duty” form within the same workday for each employee clinic visit.
  - E Provide monthly management report, indicating the number of clinic visits by CPT code.
  - F Provide case management services for all injured employees when referrals are made to other providers.
  - G Provide medical advice and support to City staff on a variety of occupational health and safety issues including:
    - 1 Perform post-exposure meeting with individuals or groups of employees including, but not limited to, issues such as exposure to contagious and infectious diseases and hazardous chemicals.
    - 2 Consult with City staff on issues involving Workers’ Compensation case defense and safety and health hazard elimination, when appropriate.
    - 3 Conduct team meetings to review diagnoses and prognoses of injured employees with City staff and other City vendors.
    - 4 Provide current medical information on the status of each lost time injury case, within 48 hours of treatment.

III Monitor employees to protect against physical and biological health hazards in the work environment through the following:

- A Audiometric testing including providing annual training to meet OSHA Standards 1910-132.
- B Pulmonary Function Testing including annual fit testing and respirator selection.
- C PPD (TB/Titer)
- D Tetanus Booster
- E Hepatitis B Immunizations
- F Rabies Vaccination
- G Rabies Titer
- H Blood Lead Levels
- I Cholinesterase

IV. Facilities

- a. Must have primary physical location within City of Des Moines.
- b. Must have operating hours between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday.
- c. Must have “on-site” capability for drug and alcohol testing. All testing of specimens must be conducted at a NIDA (National Institute on Drug Abuse) certified laboratory.

**SCOPE OF SERVICES  
COMPONENT B  
PHYSICAL THERAPY**

- I. Work with occupational and other referring physicians to develop treatment plans for injured workers.
- II. Provide written treatment plans to the treating physician and appropriate City staff including goals, recommended action and estimated time for therapy.
- III. Provide physical therapy treatment; demonstrate appropriate exercises and monitor therapy progress.
- IV. Communicate with City staff when injured workers fail to keep physical therapy appointments or those who fail to constructively participate in their treatment.
- V. Assist physician in determining new employees' physical suitability for employment.



# **RFP QUESTIONNAIRE**

## **OCCUPATIONAL MEDICAL SERVICES**

## QUESTIONNAIRE

### COMPONENT A OCCUPATIONAL HEALTH CARE CLINIC SERVICES EXCLUDING PHYSICAL THERAPY

1. State your firm's capabilities to perform occupational health care services for the City of Des Moines as outlined in Component A of the Scope of Services.
2. List area firms, organizations or governmental entities for which you have provided similar services. Include contact person, address, and phone number.
3. List the individual names of the person(s) who will be providing medical services as a physician, physician assistant, registered nurse, licensed practical nurse, certified medical assistant or other personnel, their experience, licenses, credentials and qualifications.
4. Has any person(s) in question number 3 ever been disciplined, fined, placed on probation, or had their license revoked or suspended by a professional licensing board? If yes, please explain.
5. State the name and address of the clinic(s) that will be providing services.
6. State your firm's ability and procedures for handling emergency treatment.
7. State your firm's ability and procedures for handling after-hours drug and alcohol testing.
8. State the hours/days your firm will be able to provide non-emergency, occupational medical services.
9. Please state if your clinic(s) will perform x-rays on site.
10. What is your average caseload per day for each physician in the clinic(s) that would be providing service to the City?
11. What is the average waiting time for a clinic visit?
12. Please describe your reporting capabilities. Include sample reports you would be able to provide the City of Des Moines. Please detail any limitations on your reporting capabilities. Indicate which reports are not free of cost and the fee for those reports.
13. What laboratory (SAMSA Certified) will your company utilize?
14. Will the expected services listed in these specifications be provided as a minimum? If not, detail all deviations. What additional services would be provided that are not listed in the scope of services?

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15. If awarded the contract, what information would be needed from the City of Des Moines initially and on a subsequent ongoing basis? In what format?
16. How many times has your clinic or laboratory lost urine samples?
17. How many fatal flaws does your laboratory or clinic average per year?

**QUESTIONNAIRE****COMPONENT B  
PHYSICAL THERAPY**

1. State your firm's capabilities to perform physical therapy services for the City of Des Moines.
2. List area firms, organizations or governmental entities for which you have provided similar services. Include contact person, address, and phone number.
3. List the names of the person(s) who will be providing medical services as a physical therapist and their experience, licenses, credentials and qualifications.
4. Has any person(s) in question number 3 ever been disciplined, fined, placed on probation or had their license revoked or suspended by a professional licensing board of physical and occupational therapy examiners of the State of Iowa or similar boards of other states? If yes, please explain.
5. State who owns the facility.
6. State the location and hours of services at your facility.
7. State the methods that will be utilized by your firm to manage the cost of physical therapy.
8. Explain what steps your firm uses to insure the most effective and efficient delivery of physical therapy.
9. Identify any physical therapy components you are unable to provide, i.e., occupational therapy, hand therapy, etc.

**RFP**

**PRICING INSTRUCTIONS**

**RFP**  
**PRICING INSTRUCTION**

GENERAL

The City will accept proposals for each of the components either separately or combined. Pricing guarantees for total capitation and more than one year is especially attractive. Partial capitation or fee for service proposals is also acceptable. Proposers shall base their bids on the utilization data provided.

COMPONENT A                      OCCUPATIONAL HEALTH CARE

The City is interested in at least a one-year total capitated charge for occupational services. The charge shall include all elements outlined in Component A, Scope of Services, and based on the data provided. Proposers shall clearly state the services that are included and excluded in a capitated charge in the columns provided on the utilization report and include the unit cost for those procedures not included in the capitated charge.

COMPONENT B                      PHYSICAL THERAPY

The City is interested in at least a one-year total capitated charge for physical therapy services. The charge shall include all elements outlined in Component B, Scope of Services and based on the data provided. Proposers shall clearly state the services that are included and excluded in a capitated charge in the columns provided on the utilization report and include the unit cost for those procedures not included in the capitated charge.

Proposers shall clearly state any fees associated with administering occupational health care for the City as outlined in this RFP, including but not limited to report generation, claim processing, physician consultation, etc.

## I. STANDARD PROVISIONS AND REQUIREMENTS FOR REQUESTS FOR PROPOSALS (RFPs)

### 1. Proposal Must Be Signed by Proposer or Its Officer or Designated Agent

A proposal submitted in response to the City's Request for Proposals shall be signed by the proposer if an individual, or by an officer of the proposing firm, or by a designated agent empowered to bind the firm in a contract.

### 2. Partnership and Joint Venture Proposals; Use of Corporate Name or Fictitious Corporate Name.

(a) If a proposal is submitted by two or more persons acting as a partnership, the names of the persons appearing on the proposal must be followed by the notation -- "a partnership", or words of similar import.

(b) If a proposal is submitted by two or more persons or corporate entities as a joint venture, the names of the persons or entities appearing on the proposal must be followed by the notation -- "a joint venture". In that instance, the proposal must also be signed by all such persons and/or the authorized agents of all such entities, and the proposal bond or fidelity bond, if any is required, must cover the joint venture. Joint venture proposals shall identify which person or firm will act as lead person of firm.

(c) A proposal submitted by two or more persons or corporate entities without any indication that they are submitting it as a joint venture, without being signed by all such persons and/or the authorized representatives of all such entities, and without a proposal bond or fidelity bond covering all such persons or entities as a joint venture, will be subject to rejection.

(d) In submitting a proposal and in entering into a contract in response to an RFP, a corporate entity may use its fictitious corporate name in addition to its legal corporate name, if the fictitious name is appropriately registered with the Iowa Secretary of State. Proposers are advised to exercise care in the use of any fictitious name for their firms.

### 3. Proposer Questions, Objections or Requests for Information, Clarification or Interpretation to be Submitted to Procurement Administrator - Proposers Prohibited from Inappropriate Communication with City Officials or Employees - Inappropriate Communication May Result in Rejection or Return of Proposals - Inappropriate Communication May be Considered in Evaluation of Proposals.

In order to ensure an open process and the provision of equal knowledge and opportunity to all potential proposers, the Procurement Administrator or his/her designee will serve as the sole point of contact for questions, objections, informational requests and requests for clarification or interpretation during the RFP process. The City's intention is to avoid such questions, objections, or requests for information or clarification being posed by an individual proposer and then being answered only for that proposer. Instead, the City's goal is to allow such questions, objections and requests to be posed by all potential proposers, and to communicate those questions, objections and requests, and the City's responses, to all potential proposers.

Consequently, only written questions, objections or requests for clarification or interpretation, submitted by mail, FAX, or e-mail, will be accepted from potential proposers, and written responses will be issued to all known potential proposers. Dates and times for acceptance of questions, objections and requests, and for delivery of written responses, will be detailed in the RFP. Oral questions, objections or requests will not be accepted. (Alternative Provision: A proposer's conference will be scheduled as provided in paragraph 4, at which proposer's may submit questions, objections or requests orally or in writing.)

After issuance of an RFP by the City, persons or entities who intend to respond to such RFP by submission of a competitive proposal, and who desire to pose questions, objections, or requests for information, clarification or interpretation regarding any term, provision, or requirement of the RFP, shall not attempt to communicate with, in writing, electronically, or orally, any City official or employee other than the City's Procurement Administrator. After issuance of an RFP, persons or entities who intend to respond to such RFP by submission of a competitive proposal shall not communicate with, in writing, electronically, or orally, any other City official or employee in an attempt to gather information which would be helpful in responding to the RFP, or in an attempt to influence the City's consideration of its competing proposal. All inappropriate communications with City officials or employees will be reported to the Procurement Administrator and evaluation and selection committee. Such inappropriate communication by a proposer or potential proposer may, at the discretion of the Procurement Administrator, constitute grounds for disqualification of that proposer's proposal, resulting in the Procurement Administrator's refusal to accept such proposal or in the return of such proposal. Further, the evaluation and selection committee may in its discretion consider such inappropriate communication in evaluating and scoring such proposal. The Procurement Administrator will advise City officials and staff of the pendency of RFPs for evaluation or award, and during the pendency thereof City staff or officials will be prohibited from engaging in discussion of an RFP with a proposer or potential proposer unless so directed or approved by the Procurement Administrator.

The foregoing notwithstanding, any proposer or potential proposer who believes that the terms of an RFP are objectionable, or who believes that the Procurement Administrator or other City staff have not appropriately responded to its questions, objections, or requests for information, clarification or interpretation regarding any term, provision, or requirement of the RFP, or who believes that the Procurement Administrator, other City staff or the evaluation and selection committee have a bias against it or are treating it unfairly, may communicate its concerns in that regard to the City Manager or City Council. A proposer or potential proposer shall first communicate its concerns directly to the City Manager, orally or in writing. If the City Manager cannot resolve the issue to the satisfaction of the proposer or potential proposer, the City Manager shall, at the request of the proposer or potential proposer, forward such concerns to the City Council for its consideration.

4. **Not Used**

5. **City's Response to Proposer Questions, Objections, and Requests for Clarification or Interpretation; Issuance of Addenda to RFP.**

The City's Procurement Administrator will respond in writing to all questions, objections, or requests for information, clarification or interpretation presented to the City as provided in paragraph 3. The City's written response will be directed to all known potential proposers. Only the City's written responses shall be considered the City's official response binding upon the City. In addition to making a written response, the City may issue addenda amending the RFP by changing or deleting the provisions of, or adding provisions to, the RFP.

6. **Collusion Prohibited - Affidavit Required.**

Any agreement or collusion among proposers or prospective proposers, in restraint of freedom of competition by agreement to propose a fixed price or otherwise shall render the proposals of such proposers void. Proposers will be required to execute and submit with their proposals a Non-Collusion Affidavit in the form appended hereto as Attachment 1. Any disclosure by one proposer to another proposer of the content of a proposal in advance of the submission of proposals shall render the proposals of both such proposers void, and may at the discretion of the Procurement Administrator render the RFP proceedings void.

7. **Gratuities Prohibited.**

(a) The laws of Iowa provide that it is a felony to offer, promise, or give any thing of value or benefit to government employees with the intent to influence that employee's acts, opinion, judgment or exercise of discretion with respect to that employee's duties. Evidence of violations of this clause will be turned over to the appropriate law enforcement agency.

(b) The City of Des Moines provides reimbursement for transportation lodging, meals and miscellaneous expense for its employees incurred while on duty and engaged in the preparation or evaluation of RFPs.

**8. Proposals Not Confidential; Proposer Requests for Confidentiality Under Iowa Open Records Law, Chapter 22 of Iowa Code; Disclosure of Proposal Content.**

Under Chapter 22 of the Iowa Code, "Examination of Public Records", all records of a governmental body are presumed to be public records, open to inspection by members of the public. Section 22.7 of the Iowa Code sets forth a number of exceptions to that general rule, establishing several categories of "confidential records". Under this provision, confidential records are to be kept confidential, "unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information". Among the public records which are considered confidential under this Iowa Code provision are the following:

- 3. Trade secrets which are recognized and protected as such by law.
- 6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

Under Chapter 22 of the Iowa Code, the City, as custodian of the proposal submitted in response to a Request for Proposals, may, but is not required, to keep portions of such proposals confidential under exceptions 3. and 6. noted above. If a responding individual or company determines that a portion or portions of its proposal constitute a trade secret, or should otherwise be kept confidential to avoid giving advantage to competitors, a confidentiality request may be submitted with the proposal identifying which portion or portions of the proposal or bid should be kept confidential and why. The burden will be on each individual proposer to make such confidentiality request and to justify application of a confidentiality exception to its proposal. The City will not under any circumstance consider the entire proposal to be a confidential record.

If a request is thereafter made by a member of the public to examine a proposal including the portion or portions thereof for which a confidentiality request has been made, the City will so notify the proposer and will keep confidential that portion of the proposal covered by the confidentiality request, pending action by the proposer requesting confidentiality to defend its request. In that notification, the proposer requesting confidentiality will be given not more than 5 calendar days within which to file suit in Polk County District Court seeking the entry of a declaratory order and/or injunction to protect and keep confidential such portion of its proposal. Absent such action by a proposer requesting confidentiality, and absent the entry of a court order declaring such portion or portions of the proposal confidential, the entire proposal will be released for public examination.

If the process for selecting the best proposal includes two or more evaluation stages, in which proposals are evaluated at each stage and the field of competing proposals is reduced, all proposals submitted shall be kept confidential, pursuant to Section 22.7 of the Iowa Code, subsection 6 cited above, until completion of the final stage of the evaluation process in order to avoid giving advantage to competing proposers. Upon completion of the final stage in the evaluation process, all competing proposals shall be subject to disclosure, if not otherwise determined confidential as above provided.

**9. Proposal to Include Only Market Available Equipment and Field Tested Software Unless Otherwise Provided**



- (a) All equipment, features, and attachments which are proposed must have been formally announced for market purposes before the date the proposal is submitted to the City.
- (b) All proposer supplied programs/software referred to in the proposal must be field operational before the date the proposal is submitted, unless the services to be provided in response to the RFP include program/software development.
- (c) Demonstrations must utilize the proposed equipment, programs or software precisely as proposed.
- (d) Unless otherwise specified in the specifications, all items on which a proposer submits a proposal shall be new, of the latest model or manufacture and shall be at least equal in quality to that specified in the bidding documents.

**10. Proposer Required to Identify Patented Equipment, Processes, Materials, or Hardware, and Copyrighted Text, Information, Data, or Software Included in Its Proposal; Proposer Required to Include with Its Proposal any Licenses Which City Will be Expected to Execute.**

(a) Proposers shall be required to identify any patented equipment, processes, materials, or hardware, or any copyrighted text, information, data, or software, which it proposes to supply as part of the goods it is required to provide under the RFP or which it proposes to supply as part of the services it is required to perform under the RFP. Every proposer shall likewise identify the licensing agent for such patented or copyrighted items, and shall provide with its proposal a copy of any licensing or use agreement which the City will be expected to execute for the use of such patented equipment, processes, materials, or hardware, or copyrighted text, information, data, or software included in a proposer's proposal, as well as the anticipated cost to the City, if any, for such use under license or agreement. The proposer to whom the contract is awarded shall be required to warrant that the intellectual property rights of third parties (copyright, trademark, or patent) will not be violated by the proposer's or City's use of any equipment, process or service provided in response to the RFP.

(b) All software provided to the City pursuant to a proposer's proposal shall be fully documented. This documentation shall consist of pertinent technical documentation and operator documentation including the following, as applicable:

- ◆ Proprietary source code escrow option Database definitions and file structures;
- ◆ Variable descriptions, variable cross-references and subroutine calling sequences;
- ◆ Interface specifications;
- ◆ Requirements traceability matrix;
- ◆ Communication protocols including field device protocol;
- ◆ Security documentation;
- ◆ System backup and recovery procedures;
- ◆ System operational procedures and error handling;
- ◆ Hard copy user manual segregated into chapters (or volumes) which group topics according to whether the software is used from TMC operator stations, from remote computers, and from either of the above;
- ◆ On-line user manual or help facility;
- ◆ Warrantees on software; and
- ◆ Licenses and liens.

The proposer may use different methods for documentation if it provides sufficient information as determined by the City. All documentation shall be submitted to the City for final approval.

(c) Source Code Escrow. Rights to intellectual property developed, utilized, or modified by the proposer in the performance of the services shall remain the property of the proposer. However, program source

libraries, source code, flow charts of source code, database definitions, file structures, communications protocols, variable descriptions, variable cross-references, subroutine calling sequences, and other documentation are elements of the work product without which the City would be at a severe loss should the proposer be unable or unwilling to provide service for the life of the software. For this reason, the successful proposer shall, to the extent required by the RFP, be required to provide an independent escrow agent to handle such proprietary work product documentation which shall be transferred from escrow agent to the City in the event that the Contractor fails to provide service at a reasonable and justifiable price during the life span of the software.

**11. Not used**

**12. Proposers to Provide Evidence of Ability to Obtain Insurance.**

If insurance is required by this RFP, each proposer shall be required to provide evidence satisfactory to the City that it can obtain the required insurance coverages. For this purpose, each proposer shall submit with its proposal the certification form appended to this RFP as Attachment 3, in which the proposer's insurance agent will be required to certify that the proposer can obtain the required insurance coverages. Failure to submit the required certification form shall be grounds for rejection of the proposal.

**13. Evaluation and Selection Committee; Procedure for Evaluation and Recommendation as to Selection of Best Proposal.**

(a) Competing proposals submitted in response to the RFP shall be evaluated by an evaluation and selection committee appointed by the director of the department sponsoring the RFP. The evaluation and selection committee shall, at the department director's discretion, be composed of city staff members, consultant representatives if a consultant was utilized in formulating the RFP, and other persons deemed knowledgeable of the goods and/or services being procured. The evaluation and selection committee ("committee") will utilize the evaluation criteria and scoring methodology set forth in this RFP in making its determination as to the best proposal.

(b) Upon completing its evaluation and the scoring of competing proposals, the committee shall make a written report of its determination and recommendation as to the selection of the best proposal. The report will be filed with the department director and Procurement Administrator, and the report and Notice of Intent to Award will be provided to all competing proposers by ordinary mail, FAX or e-mail at the address, FAX number or e-mail address shown in their proposals at least 5 days prior to the appeal deadline set forth in the Notice of Intent to Award.

**14. Appeal of Evaluation and Selection Committee Recommendation - Proposer Objections to be Submitted in Writing - Resolution of Proposer Objections.**

(a) Opportunity for Proposers to Appeal Evaluation Committee Recommendation as to Selection of Best Proposal - Required Submission in Support of Objection.

A proposer who is aggrieved by the evaluation and selection committee's determination and recommendation as to the selection of the best proposal, as set forth in the committee's report, may appeal such determination and recommendation by filing a written objection thereto with the Procurement Administrator within the appeal deadline set forth in the Notice of Intent to Award. Such objections may be filed in person or by mail, FAX or e-mail. In its written objection, the appealing proposer shall set forth all of its objections to the committee's recommendation and all arguments in support thereof, and shall attach thereto all documentation supporting its objections which it intends to rely on in making its appeal. The appealing proposer may request a hearing on its appeal, but the determination whether to hold a hearing or to determine the appeal on the basis of the record made in the written objection shall be discretionary with the City Manager. Alternatively, the City Manager may, after the issuance of an RFP, authorize use of the alternative appeal procedure provided in section 2-757 of the Des Moines Municipal Code where it is determined that use of the appeal procedure provided in this section will unduly delay the

City's procurement of necessary goods and/or services. The City Manager's decision, made after the issuance of an RFP, to utilize this alternative appeal procedure shall be communicated to all proposers prior to or contemporaneously with the provision of the report of the evaluation and selection committee and Notice of Intent to Award.

(b) City Manager or Hearing Officer to Review Proposer's Objections; Hearing Optional.

Upon the timely filing of a written objection by an aggrieved proposer as above provided, the City Manager shall review such objection and determine if a hearing will be held to assist in determining the appeal. The City Manager shall likewise determine if the appeal will be determined by the City Manager or if it will be determined by an appeal officer selected by the City Manager. If the City Manager decides that the appeal will be decided pursuant to an appeal hearing, the City Manager shall set the time, date, and place of a hearing on such objection, and shall cause written notification of the hearing to be provided to the appealing proposer and all proposers. The City Manager may set for hearing at the same time, date, and place the objections of two or more proposers. Upon the request of an objecting proposer, the hearing may for good cause shown be rescheduled, provided that the hearing is held not more than 10 days after the filing of the written objection. In the appeal, the burden of persuasion shall be upon the appealing proposer. If a hearing is held, the appealing proposer shall be required to present its evidence first, and shall be entitled to examine the chair of the evaluation and selection committee, or such other member as may then be available. The hearing shall be electronically recorded, and upon the prior approval of the City Manager or appeal officer, the appealing proposer may at its expense cause the proceedings to be reported and transcribed. A transcription of the proceedings shall be made available to the City at no cost. For purposes of this appeal provision, the Deputy City Manager may act in the absence or unavailability of the City Manager.

(c) Report of City Manager or Hearing Officer to City Council and to Appealing Proposer

Upon completing the review of the appealing proposer's written objection, or upon the conclusion of the hearing, the City Manager or the designated hearing officer shall make a written report setting forth the determination of the appeal. All objections made by the appealing proposer shall either be affirmed or overruled. The report shall immediately be forwarded to the appealing proposer.

If an appealing proposer's objection is affirmed, the City Manager or hearing officer shall reject the recommendation of the evaluation and selection committee, and shall direct the committee to reconvene to reevaluate the proposals submitted in response to the RFP. In conducting its reevaluation, the committee shall consider all objections affirmed by the City Manager or hearing officer. Upon completing its reevaluation, the committee shall make a written report of its determination and recommendation as the selection of the best proposal, and shall file the report with the City Manager and mail same to competing proposers.. Such determination and recommendation shall be subject to appeal as herein provided.

If an appealing proposer's objection is overruled, the City Manager's or hearing officer's report shall be forwarded to the City Council, and the appealing proposer and all competing proposers shall be given written notification of the date of the Council meeting at which said report and the recommendation of the evaluation and selection committee will be considered by the City Council.

(d) City Council's Consideration of City Manager's / Hearing Officer's Report and of the Appealing Proposer's Objections.

When the City Manager's or hearing officer's report comes before the City Council for consideration, the City Council may affirm or overrule the findings and determination of the City Manager or appeal officer as set forth in said report. The City Council may, in its discretion, hear presentations by the appealing proposer and by competing proposers with respect to the appealing proposer's objections, and with respect to the findings and determination of the City Manager or hearing officer. If the City Council agrees to hear

such presentations, it may limit the length of such presentations, and all proposers will be given an equal opportunity to speak. The City Council's decision shall be considered final.

If the City Council votes to overrule the report of the City Manager or hearing officer, the recommendation of the evaluation and selection committee shall be considered rejected, and the City Council may direct the committee shall reconvene to reevaluate the proposals submitted in response to the RFP, or the City Council may award the contract as it determines appropriate.

If the City Council votes to affirm the report of the City Manager or hearing officer, it shall then take up and consider the recommendation of the evaluation and selection committee.

(e) The City Council's decision shall be considered final.

**15. City Council Consideration of Evaluation and Selection Committee Recommendation as to Best Proposal - Opportunity for Input by the Public.**

When the evaluation and selection committee's recommendation comes before the City Council for consideration, the City Council may request that the proposer whose proposal is recommended for selection appear before the Council to give a presentation or to answer questions regarding its proposal. Competing proposers will not be allowed to speak at that time unless a prior request has been made by such a proposer and permission to speak granted by the Mayor, or unless a City Council member requests that the competing proposer be allowed to speak and the Council consents to such request. Members of the public may likewise be allowed to speak regarding the selected proposal.

**16. Rejection Of Proposals.**

The City reserves the right to reject any or all proposals in whole or in part received in response to the RFP. The City will not pay for any information requested in the RFP, nor is it liable for any cost incurred by a proposer in responding to the RFP.

**17. City Council Selection of Best Proposal and Authorization to Execute Contract with Successful Proposer - Notification of Successful Proposer.**

The City Council will by resolution approve the proposal which it selects as the best proposal and authorize execution of a contract, either by the Mayor or by the City Manager. Upon the City Council's approval of the proposal, the Procurement Administrator will give notice advising the proposer whose proposal was selected (hereafter the "successful proposer") what actions must be taken to complete the formation of the contract.

**18. Insurance and Indemnity Requirements (See Attachment)**

The successful proposer will, in its contract with the City, be required to agree to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the City, as more particularly provided in Attachment 2 hereto. The successful proposer will also be required to obtain and maintain in continuous effect during the term of its contract with the City, and while any of its obligations under said contract remain unsatisfied, the insurance coverages set forth in Attachment 2 hereto, with amounts, coverages, limits, exclusions, and endorsements as therein provided.

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**19. Not used**

**20. Formation of Contract.**

**Contract to be Negotiated and Executed Upon Selection by Evaluation and Selection Committee or Council Selection of Best Proposal / Designation of Successful Proposer.**

(a) Finalization of Contract Terms Subject to Negotiation.

At the option of the department, upon issuance of the Notice of Intent to Award or upon City Council approval of the recommendation of the evaluation and selection committee and authorization to execute the contract, the selected/successful proposer shall be required to immediately commence negotiations to conclude a contract with the City for the provision of the (goods)(services) proposed in response to the RFP. Only those terms identified as negotiable in the RFP shall be subject to negotiation.

(b) Submission of Evidence of Insurance by Successful Proposer

Upon City Council approval of the recommendation of the evaluation and selection committee, and authorization to execute the contract, the successful proposer shall submit a certificate or certificates of insurance evidencing insurance coverages of the type and amount, and with the endorsements, required by Attachment 2, "Indemnity and Insurance".

(c) Execution of Contract by Successful Proposer.

Upon the successful conclusion of contract negotiations by the City and successful proposer, and/or upon the City's completion of a form of contract incorporating the terms of proposal submitted by the successful proposer in its RFP, the successful proposer shall be required to execute the contract and return it to the City within the time specified by the City. The contract must be executed by the successful proposer if an individual, or by the authorized representative or representatives of any partnership or corporation making or joining in the proposal, and all signatures must be notarized.

(d) Execution of Contract by the City.

Upon the Risk Manager's approval of the evidence of insurance submitted by the successful proposer and upon the Legal Department's approval of the form of contract executed by the proposer, the Mayor or City Manager will execute the contract as directed by the City Council, and the City Clerk will attest the signature of the Mayor or City Manager.

(e) Successful Proposer's Failure to Execute Contract or to Submit Required Insurance.

The successful proposer's refusal to negotiate contract terms as provided in the RFP, or its refusal to limit negotiations to the terms identified in the RFP, shall be considered a default by the proposer and shall be grounds for rejection of proposer's proposal. The successful proposer's failure to submit an insurance certificate or certificates evidencing required insurance coverages shall be considered a default by the proposer and shall be grounds for rejection of proposer's proposal.

**21. Proposal Obligations.**

The contents of this RFP, of a proposal submitted in response thereto, and of the City's official response to a question, objection, or request for clarification or interpretation regarding the RFP, and of any exception to the RFP submitted by the successful proposer and accepted by the City, shall become part of the contractual obligation and shall be deemed incorporated by reference into the ensuing contract.

**22. Disposition of Proposals.**

All proposals submitted in response to the RFP become the property of the City and will not be returned to unsuccessful proposers.

**23. Assignment of Contract Prohibited Unless Approved in Writing by the City.**

No contract awarded pursuant to RFP shall be assignable by the successful proposer without the written consent of the City Manager.

**24. Statutes and Rules.**

Chapter 18, Code of Iowa, and Chapter 2, Municipal Code of the City of Des Moines, contain policies and procedures for procurement under which this request for proposal is issued. The terms and conditions of this bid or request for proposal, the resulting contract or purchase order or activities based upon this bid or

request for proposal shall be construed in accordance with the laws of Iowa. Where statutes and regulations of the United States Government are referenced herein, they shall apply to this request for proposal and resulting purchase order or contract. Wherever differences exist between federal and state statutes or regulations affecting this procurement, interpretation shall be in the direction of that which is most beneficial to the interests of the City of Des Moines.

**25. Attachments.**

- (a) Attachment 1: Non-Collusion Affidavit
- (b) Attachment 2: Insurance and Indemnity / Endorsements
- (c) Attachment 3: Proposer's Certification Regarding Insurance  
Certification of Proposer's Insurance Agent Regarding Proposer's Ability to  
Obtain Required Insurance Coverages.

**II. GENERAL TERMS AND CONDITIONS**

**1. EXCLUSIVE CONTRACT**

The contract which results from this Request for Proposals constitutes the exclusive contract between the parties and incorporates the provisions of these terms and conditions, and supersedes any previous agreements or contracts, either written or oral. The terms and conditions hereof may not be altered without prior written consent of both parties.

**2. REMEDIES UPON DEFAULT**

In any case where the proposer has failed to deliver or has delivered non-conforming goods or services, the Procurement Division shall provide a cure notice by mail, FAX, or e-mail. If after notice the proposer continues to be in default, the Procurement Division may procure goods or services in substitution from another source and charge the difference between the contracted price and the market price to the defaulting proposer.

**3. ACTS OF GOD**

Proposer shall not be considered to be in default under this contract if performance is delayed or made impossible by an act of God, floods, fires, strikes, and similar events; but in each such case, the delay or impossibility must be beyond the control and without the fault or negligence of proposer. It shall be the responsibility of the proposer to promptly advise the Purchasing Division of the delay. The City may elect to cancel all orders on file with the proposer and place the order with another proposer.

**4. SUBCONTRACTORS**

Successful proposers shall be responsible for all acts and performance of any subcontractor or secondary supplier that the successful proposer may engage for the completion of any contract with the city. A delay that results from a subcontractor's conduct, negligence or failure to perform shall not exempt the proposer from default remedies. The successful proposer shall be responsible for payment to all subcontractors or secondary suppliers.

**5. TERMINATION DUE TO NON-APPROPRIATION**

Notwithstanding any other provisions of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the City to appropriate funds, or due to discontinuance or material alteration of the program for which funds were provided, then the City shall have the right to terminate this contract without penalty by giving not less than thirty (30) days written notice documenting the lack of funding, discontinuance or program alteration.

**6. IMMUNITY OF CITY, STATE AND FEDERAL AGENCIES**

Proposer shall defend, indemnify, and hold harmless the City, its officers, employees and agents, and any State or Federal funding source for City from liability arising from proposer's performance or attempted performance of this contract and proposer's activities with subcontractors and all other third parties.

**7. DELIVERY AND ACCEPTANCE**

When an award has been made to a proposer and the official purchase order issued and received by the proposer, deliveries are to be made in the following manner:

1. Deliveries are to be made only to the point specified on the official purchase order. If delivery is made to any other point it shall be the responsibility of the proposer to promptly reship to the correct location. Failure to deliver procured goods on time may result in cancellation of an order or termination of a contract at the option of the City.
2. All delivery charges shall be to the account of the proposer. If not, they must be prepaid and added to the invoice.

3. The nature of any rejections of a shipment, based on apparent deficiencies disclosed by ordinary methods of inspection, will be given by the receiving department to the proposer and carrier within a reasonable time after delivery of the item, with a copy of this notice to the Purchasing Division. Notice of latent deficiencies which would make items unsatisfactory for the purpose intended may be given by the City at any time after acceptance.

4. The proposer must remove at the proposer's expense any item rejected by the City. If the proposer fails to remove that rejected item the City may dispose of the item by offering the same for sale, deduct any accrued expense and remit the balance to the proposer.

5. Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, proposers will be notified in writing that a special test is being made and that payment will be withheld until completion of the testing process.

#### **8. ASSIGNMENT**

Proposers may not assign contracts or purchase orders to any party (including financial institutions) without written permission of the City Manager or his/her designee.

#### **9. ANTI-TRUST ASSIGNMENT**

For good cause and as consideration for submitting a proposal, the proposer, through its duly authorized agent, conveys, sells assigns, and transfers to the City all right, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa, relating to the particular goods or services purchased or acquired by City pursuant to the RFP.

#### **10. TITLE TO GOODS**

Proposer warrants that the goods procured pursuant to the RFP are free from all liens, claims or encumbrances.

#### **11. INDEMNIFICATION**

To the extent the goods procured pursuant to the RFP are not manufactured in accordance with the City's design or specification, the successful proposer shall defend, indemnify and hold harmless the City and the City's assignees, and other users of the goods, from and against any claim of infringement of any Patent, Trade Name, Trademark, Copyright, or Trade Secret by reason of sale or use of any articles purchased hereunder. The City shall promptly notify the successful proposer of any such claim.

#### **12. MISCELLANEOUS**

This contract shall be interpreted in accordance with the laws of the State of Iowa, and any action relating to the contract shall only be commenced in the Polk County, Iowa, District Court or the United State District Court for the Southern District of Iowa. If any provision of this contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

#### **13. DISCRIMINATION AND AFFIRMATIVE ACTION**

Proposer shall comply with the provisions of Federal, State and Local laws and regulations to insure that no employee or applicant for employment is discriminated against because of race, religion, creed, color, age, sex, national origin, sexual orientation, ancestry, or disability. Proposer shall have an affirmative action plan and shall provide the appropriate City, State or Federal agencies with reports required to insure compliance with equal employment legislation and regulations if requested. Proposer shall insure that all authorized sub-proposers comply with provisions of this clause. Iowa Executive order #15, dated April 2, 1973, requires every contractor or subcontractor to have on file their affirmative action program prior to making a bid or proposal, and that a breach of this paragraph shall be considered a material breach of this contract.

#### **14. WARRANTY**



The proposer expressly warrants that all goods supplied shall be merchantable within the meaning of Article 2-314(2) of the Uniform Commercial Code in effect on the date of the bid or proposal in the City of Des Moines, Iowa. Additionally, the goods shall conform to specifications, drawings, and other descriptions and shall be free from defects in materials and workmanship.

**15. CHEMICALS**

OSHA 1910.1200, Chapter 89B of the Iowa Code, and 875 Iowa Administrative Code, Chapter 110, Sec. 110.5, require employers to maintain Material Safety Data Sheets (MSDS) for all chemical-containing products to which its employees are exposed. To ensure City of Des Moines employees have access to the most current MSD, the City requires the most recent MSDS accompany each delivery of a chemical-containing product purchased by the City of Des Moines or its authorized agent. IF there is a question concerning whether a MSDS is needed for a particular product, contact the City's Human Resources/Safety office at (515) 283-4213. Chemical-containing products include certain office supplies such as "white out", toner, etc.

**16. COMPLIANCE WITH ALL APPLICABLE LAWS**

All goods and/or services shall be provided in compliance with all applicable federal, state, and local laws and regulations. The proposer expressly warrants and guarantees that the goods and/or services provided do not violate the rights of third parties, including without limitation, copyright, trademark, patent or other intellectual property rights or interests.

**ATTACHMENT 1  
NON-COLLUSION AFFIDAVIT**

The Proposer hereby certifies:

1. That this proposal is not affected by, contingent on, or dependent on any other proposal submitted for any improvement in the City of Des Moines, Iowa; and
2. That no individual employed by the Proposer was paid or will be paid by any person, corporation, firm, association, or other organization for soliciting the bid, other than the payment of their normal compensation to persons regularly employed by the Proposer whose services in connection with the making of this proposal were in the regular course of their duties for the Proposer; and
3. That no part of the compensation to be received by the Proposer was paid or will be paid to any person, corporation, firm, association, or other organization for soliciting the bid, other than the payment of their normal compensation to persons regularly employed by the Proposer whose services in connection with the making of this proposal were in the regular course of their duties for the Proposer; and
4. That this proposal is genuine and not collusive or sham; that the Proposer has not colluded, conspired, connived or agreed, directly or indirectly, with any other proposer or person, to put in a sham proposal or to refrain from making a proposal, and has not in any manner, directly or indirectly, sought, by agreement or collusion, or communication or conference, with any person, to fix the proposal price of Proposer or of any other Proposer, or to otherwise restrain freedom of competition, and that all statements in this proposal are true; and
5. That the individual(s) executing this proposal have the authority to execute this proposal on behalf of the Proposer.

\_\_\_\_\_  
PROPOSER

\_\_\_\_\_  
SIGNATURE

B

Y

\_\_\_\_\_  
NAME (PRINT/TYPE)

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
CITY, STATE, ZIP CODE

**ATTACHMENT 2**  
**STANDARD PROFESSIONAL SERVICES – MAJOR**

**INSURANCE & INDEMNIFICATION REQUIREMENTS**

**1. GENERAL**

The CONSULTANT shall purchase and maintain insurance to protect the CONSULTANT and the City of Des Moines, Iowa throughout the duration of the Contract. Said insurance shall be provided by an insurance company(ies), “admitted” and “nonadmitted” to do business in the State of Iowa, having no less than an A. M. Best Rating of “B+.” All policies, except professional liability, shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the City of Des Moines. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the City of Des Moines, Iowa prior to contract execution or commencement of work and/or services.

**2. INSURANCE REQUIREMENTS**

A. **WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE:** The CONSULTANT shall procure and maintain during the life of this contract, Worker’s Compensation Insurance, including Employer’s Liability Coverage, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each employee for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease.

B. **COMMERCIAL GENERAL LIABILITY INSURANCE:** The CONSULTANT shall procure and maintain, during the life of this contract, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, and (e) Personal and Advertising Injury.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard for Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions “a” through “o”, or any subsequent ISO equivalent form or a non-ISO equivalent form). Any additional exclusions shall be listed and submitted with the Certificate of Insurance and shall be subject to the review and approval of the City of Des Moines, Iowa.

C. **AUTOMOBILE LIABILITY INSURANCE:** The CONSULTANT shall procure and maintain during the life of this contract, Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

If the CONSULTANT’S business does not own any vehicles, coverage is required on non-owned and hired vehicles.

- D. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsements and deletion of exclusions as required of the primary policy(ies).
- E. PROFESSIONAL LIABILITY INSURANCE: The CONSULTANT shall procure and maintain during the life of this contract, Professional Errors and Omissions Insurance with limits not less than \$3,000,000 per claim and in the aggregate. The CONSULTANT will notify the City if claims made erode the Policy Limits below those required above.
- F. AGENTS AND SUBCONTRACTORS: The CONSULTANT shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this contract to meet the same insurance requirements as are required of the CONSULTANT.
- G. ADDITIONAL INSURED & GOVERNMENTAL IMMUNITY : Except for Workers Compensation and Professional Liability, the policies providing the coverages specified in B, C, and D above shall include the City of Des Moines, Iowa Additional Insured and Governmental Immunities Endorsements. Copies of these endorsements are attached.
- H. CANCELLATION & MATERIAL CHANGES: The insurance policies providing the coverages specified in A, B, C, D and E above shall include the City of Des Moines Cancellation and Material Changes Endorsement. A copy of this endorsement is attached.
- I. PROOF OF INSURANCE: The CONSULTANT shall provide to the City of Des Moines, Iowa a Certificate(s) of Insurance evidencing all required insurance coverage as provided in A through E and G and H above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under "Description of Operations/Locations/Vehicle/Special Items" the title of the contract and that "Where required, Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements have been included as per attached." These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required.

### 3. INDEMNIFICATION REQUIREMENTS

- A. INDEMNIFICATION (HOLD HARMLESS) PROVISION: To the fullest extent permitted by law, CONSULTANT agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, attorney's fees, and for any damages which may be asserted, claimed or recovered against or from the City of Des Moines, Iowa by reason of personal injury, including bodily injury or death, and property damage, including loss or use thereof, which arises out of or results from CONSULTANT's work and/or services rendered to the City of Des Moines, Iowa pursuant to the provisions of this contract.

In addition, CONSULTANT agrees to pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, attorney's fees, and for any damages which may be recovered against or from the City of Des Moines, Iowa by reason of any wrongful

act, including any error or omission or other act that causes liability in the performance of CONSULTANT'S professional services rendered to the City of Des Moines, Iowa pursuant to the provisions of this contract.

It is the intention of the parties that the City of Des Moines, Iowa shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by CONSULTANT, its officers, employees, subcontractors, and others affiliated with CONSULTANT due to accidents, mishaps, misconduct, wrongful acts, negligence, damages or injuries resulting from the work performed by, or the negligent acts and errors or omissions of, CONSULTANT.

CONSULTANT expressly assumes full responsibility for any and all damage caused to City of Des Moines premises resulting from the CONSULTANT's negligent acts, errors or omissions.

CONSULTANT represents that its activities pursuant to the provisions of this contract will be performed and supervised by adequately trained and qualified personnel, and CONSULTANT will observe, and cause its officers, employees, subcontractors, subconsultants, and others affiliated with CONSULTANT to observe all applicable safety rules.

For purposes of this Attachment, the term "CONSULTANT" means and includes the CONSULTANT, its officers, agents, employees, subcontractors, and others affiliated with CONSULTANT, and the term "City of Des Moines, Iowa" means and includes the City of Des Moines, its elected and appointed officials, and its agents, employees, volunteers, and others working on behalf of the City of Des Moines, Iowa.

**4. ENDORSEMENTS**

- A. ENDORSEMENTS: All endorsements required for the work shall be attached to the appropriate Certificate or Certificates of Insurance and shall be, on the face thereof, listed by name (see attached).

**CITY OF DES MOINES, IOWA  
ENDORSEMENTS**

**CITY OF DES MOINES, IOWA  
CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

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

**CITY OF DES MOINES, IOWA  
ADDITIONAL INSURED ENDORSEMENT**

The City of Des Moines, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their boards members, employees, and volunteers, are included as Additional Insureds with respect to liability arising out of the CONSULTANT'S work and services performed for the City of Des Moines, Iowa. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

**CITY OF DES MOINES, IOWA  
GOVERNMENTAL IMMUNITIES ENDORSEMENT**

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
3. Assertion of Government Immunity. The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
5. No Other Change in Policy. The insurance carrier and the City of Des Moines agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

### ATTACHMENT 3

#### CERTIFICATION OF PROPOSER'S INSURANCE AGENT REGARDING PROPOSER'S ABILITY TO OBTAIN REQUIRED INSURANCE COVERAGE

I hereby certify that my client, as identified below, will be able to meet all of the insurance requirements of Attachment 2, has been advised of any additional costs associated with doing so, and has agreed to obtain such coverages if selected as the successful proposer of the RFP to which my client has responded:

Legal Name of Proposer:

\_\_\_\_\_

Name/Address/Phone/FAX # of Insurance Agency:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

Name of Agent/Broker (Print):

\_\_\_\_\_

Signature of Agent/Broker:

\_\_\_\_\_

Date of Signature: \_\_\_\_\_

Signature and stamp of Notary Republic

\_\_\_\_\_

Contact the City of Des Moines Risk Manager, Mark Schultz, at 515-283-4107, for additional information regarding these requirements.