

Date April 23, 2007

WHEREAS, on March 12, 2007, the City Council held a public hearing on the issuance of not to exceed \$40,000,000 of Aviation System Revenue Refunding Capital Loan Notes and there were no written or oral objections; and

WHEREAS, on March 12, 2007, the City Council authorized the Finance Director to proceed on behalf of the City with the sale and issuance of Aviation System Revenue Refunding Capital Loan Notes in an aggregate amount of not to exceed \$40,000,000; and

WHEREAS, a negotiated bond sale under such circumstances is authorized under Iowa law, is deemed advisable and in the best interests of the public, and will help the City attain favorable interest rates and will provide investors a better understanding of the Airport's unique credit factors; and

WHEREAS, debt service on Airport Revenue Bonds is expected to be payable solely from Airport revenues, and thus, will not count against the City's self-imposed general obligation debt limit; and

WHEREAS, the Finance and Aviation Departments have prepared a Request for Proposals (RFP) to solicit a senior managing underwriter for the Airport Revenue Bonds;

NOW THEREFORE BE IT RESOLVED, that the Des Moines City Council hereby accepts and approves the RFP for a Senior Managing Underwriter, and that the Finance Director is directed to proceed with a competitive procurement for said services.

(Council Communication No. 07-215)

Moved by _____ to adopt

Approved as to form:

Ann DiDonato
Ann DiDonato
Assistant City Attorney

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

MOTION CARRIED

APPROVED

Mayor

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.

City Clerk

Date 4-23-07
Agenda Item 33
Roll Call # _____

REQUEST FOR PROPOSALS
To Serve As Senior Managing Underwriter
For The
City of Des Moines, Iowa
Des Moines International Airport

PURPOSE

Des Moines International Airport (the "DSM Airport") is seeking a senior managing underwriter for various revenue bonds issued through the City of Des Moines, Iowa (the "City") in the amounts ranging from \$6 to \$21 million. The DSM Airport is proposing to advance or forward refund the \$42,670,000 City of Des Moines, Iowa Aviation System Revenue Bonds, Series 1998. The refinancing will allow for debt service savings and to modify any existing debt covenants, terms or conditions, which are not conducive to the DSM Airport's future financing objectives.

Future underwriting opportunities are likely to occur over the term of the RFP and may include, but are not limited to, financing related to expansion of public parking facilities to include bond issuance(s) and financing for expansion of rental car facilities (parking and consolidated service facility) to include implementation of a Customer Facility Charge (CFC) and related bond issuance(s).

BACKGROUND

General Information

The City of Des Moines is the state capital, the county seat, and the most populous city in the State of Iowa. Des Moines is located in Polk County in central Iowa, covering an area of approximately 81 square miles. The City has a balanced and diversified economy, serving as the industrial, commercial, financial, trade, and transportation center of Iowa. Des Moines' 2000 U.S. Census population count was 198,682.

Des Moines International Airport

The DSM Airport is owned and operated by the City. It is governed by a seven member Board, composed of citizens appointed by the Des Moines City Council. The Board works to improve the quality of air service and make travel to and from Des Moines more convenient and pleasurable.

DSM Airport is classified by the Federal Aviation Administration (the "FAA") as a small hub. The Airport is a full-service commercial air transportation facility with commercial air service to several major cities in the United States. From its beginning in 1932, the DSM Airport has grown steadily to become not only an important asset to the City, but to all of Central Iowa. The DSM Airport is served by eight (8) scheduled passenger airlines, three (3) major air cargo airlines, the Iowa Air National Guard, and other aviation-related businesses. United Parcel Service operates a regional air operation hub at the DSM Airport for its second-day air delivery system.

The DSM Airport is situated on approximately 2,800 acres of land within the City of Des Moines and features two intersecting 9,000 foot runways. Land is currently being acquired to facilitate construction of a third parallel runway in the near future. The terminal facility consists of approximately 191,000 square feet of enclosed space. The airside portion of the terminal building consists of two airside units, referred to as Concourses A & C, which contain a total of 12 aircraft parking gates and 11 passenger loading bridges. The DSM Airport presently owns all 11 passenger loading bridges. The ground level of Airside and C house airline ramp operations with the second level devoted to passenger departure lounges (open seating areas) and supporting concession and public restroom facilities.

The landside portion of the terminal building consists of the Main Lobby, the Security Screening Area, the Departure Area (ticketing), and the Arrival Area (baggage claim). The Main Lobby consists of a restaurant, lounge, and gift shop. The recently-expanded Security Screening Area houses the TSA operations and four dedicated lanes of passenger screening equipment. The Departure Area consists of passenger ticketing, baggage make-up facilities, and airline offices. The exterior frontage consists of a covered walkway with a permanent skycap facility for curbside check-in or passenger baggage. The Arrival Area consists of passenger baggage claim facilities, rental car agency service desks, an information center, hotel courtesy phones, and access to ground transportation areas.

Two existing parking garages with connecting skywalk to the terminal building, along with surrounding surface parking can accommodate over 3,800 vehicles.

Cargo warehousing and newer “through-the-fence” facilities, along with a fully-lighted Air Cargo Apron capable of accommodating up to 23 large cargo aircraft, allows DSM to be an efficient center for shipping.

OUTSTANDING DEBT

The DSM Airport has the following debt currently outstanding:

- \$6,335,000 Aviation System Revenue Bonds, Series 1998A (Tax-Exempt; Non-AMT) with \$5,790,000 outstanding as of June 1, 2007;
- \$23,870,000 Aviation System Revenue Bonds, Series 1998B (Tax-Exempt; AMT) with \$21,840,000 outstanding as of June 1, 2007;
- \$12,465,000 Aviation System Revenue Bonds, Series 1998C (Taxable) with \$11,355,000 outstanding as of June 1, 2007 and
- Airport Commercial Paper, Series 2000 C with \$8.7 million outstanding as of June 1, 2007.

SCOPE OF SERVICES

The selected firm will be required to perform the following tasks:

- Assist with developing analyses of various capital financing methods available to the DSM Airport highlighting the advantages and disadvantages of each method.
- Assist with the analysis of debt sizing and debt structure of the bonds in accordance with the needs of the DSM Airport and their financial capability.
- Assist in preparing a report to the Board summarizing the recommendation of debt structure and sizing of the bonds.
- Assist with the preparation of necessary legal documents required for the issuance of debt, e.g. resolution, indenture and offering statement.
- Perform all duties necessary to market the bonds to produce a cost effective borrowing.
- Work with City staff, financial advisor, bond counsel, printers, etc. and assist with facilitating the closing of the sale.
- Other necessary duties to ensure the efficient sale of the bonds.

REQUEST FOR PROPOSAL INFORMATION

For consideration as senior managing underwriter, please include the following information when preparing your proposal.

Description of Firm and Project Team

- Please include the name and address of the firm, the name, email address and the phone number of the individual or individuals responsible for this proposal who may be contacted in the event of questions, clarifications or notification, and the location of the office at which the services to be provided hereunder will be performed, if other than that previously stated.
- Please provide a brief description of your firm and how it is organized. Provide an overview of your firm's activities in public finance. How your public finance department is organized. The number of persons involved in your firm's public finance activities. Please distinguish between municipal finance, municipal sales and trading, and any other areas of your public finance activities.
- State the size and components of the firm's capital position.

- Provide a complete description of the proposed project team. Please specify which person or persons will have overall responsibility for the financing and who will be the day-to-day contact person available for meetings. Please provide resumes or relevant experience for each of the team members with an indication of each person's availability to work on this project.

Relevant Experience and Structuring Recommendations

- Describe the firm's recent airport underwriting experience. The number of people specialized in working with airport clients. Provide a list of the airport clients your firm has served in the past three years highlighting your experience with airports with less than 2 million annual enplanements.
- List all tax-exempt financings for airports and other airport related facilities for which your firm has served as senior managing underwriter, and which have been completed in the last three years (or are pending). Include the following information for the most recent eight (8) financings: (a) Name of Issuer, (b) Amount of Financing, (c) Sale Date, (d) Rating, (e) Credit Support (yes or no, type), (f) Forward Purchase Agreements (yes or no, type), (g) Maturity and Pricing Structure, (h) Any Post Sale Analysis Performed, (i) Firm's Role, (j) Type of Sale and (k) Personnel Assigned.
- Please identify any recent transactions and describe your experience as it relates to financing an expansion to an airport's public parking facilities and financing an expansion to the rental car facilities (parking and consolidated service facility) through the use of general aviation revenues, implementation of a segregated parking enterprise fund and Customer Facility Charges (CFC) and related bond issuance(s).
- Provide your preliminary thoughts relating to the financing plan as it relates to the proposed 1998 refundings and expansion projects. Describe potential financing structure or structures that you feel will be best for the DSM Airport. Please include ratings approach highlighting industry-wide factors versus factors specific to the DSM Airport, discuss any rating challenges, use of credit enhancement, variable and fixed rate debt, possibilities for use of a forward purchase agreement, and any other structuring recommendations for the issue, including expected security provisions. *(In the opinion of Bond Counsel, the City and the DSM Airport don't have statutory authority to enter into any floating to fixed interest rate swap or swaption agreements so your proposal should exclude any discussion regarding their applicability. Forward purchase agreements are permitted.)*
- Please provide the name, title, address and phone numbers of four (4) airport clients whom the DSM Airport could contact as references.

Underwriting/Sales Qualifications

- Please describe your firm’s retail and institutional sales capabilities, particularly within Iowa. Describe the distribution i.e., institutional vs. retail would you foresee for this issue.
- Please describe your recommended marketing plan for the proposed issue. Please comment on the advantages and disadvantages of a retail order period.
- Please describe your experience with marketing airport credits as it relates to the DSM Airport’s proposed issuances.
- Please provide a narrative and description of how the proposed DSM Airport Bonds (Federal tax exempt, AMT and taxable) would price relative to the Municipal Market Data Aaa Index and other relevant benchmarks. Indicate how the Series 1998 Bonds priced relative to the respective Index. Explain what you believe are the challenges to achieving these pricing targets. Identify other small hub airports that the DSM Airport should consider using for their pricing comparisons and why those small hub airports are considered adequate comparables.
- Please provide a narrative and description of the “forward penalty” for the proposed forward refunding of the DSM Airport 1998B (AMT) Bonds. Explain what the challenges are to achieving the lowest “forward penalty”. Identify other forward delivery transactions that your organization has worked on within the last three years and indicate the “forward penalty”. Identify the pros and cons of entering into a forward purchase delivery agreement versus waiting until the Spring of 2008 to current refund the Series 1998B (AMT) Bonds.

Conflicts

- Provide a statement of assurance that there are no known conflicts of interest that would prohibit the firm from entering into an agreement with the DSM Airport for the provision of the services or agreements described herein or would otherwise adversely affect the DSM Airport or its operations or properties. In addition, provide a statement of commitment to disclose future actual or potential conflicts of interest.
- Identify and describe fully any fee splitting or other arrangements, including but not limited to, those related to the provision or utilization of financial services, credit supports, or other products that might reasonably be expected to bear upon the engagement with the DSM Airport.

Litigation

- Please identify any material litigation, disciplinary actions or penalties and administrative proceedings affecting your firm or involving allegations of securities law violations by the firm in the past two years and the disposition of such litigation, actions, penalties or proceedings.

Fee Proposal

- Please identify a gross spread to which the firm would commit as a not-to-exceed number for a conventional fixed rate and variable rate financing. Please provide a breakout of the components of the underwriter's discount including all expenses. Please breakout the underwriter's counsel fee from the components of the underwriter's discount and give a not to exceed quote for underwriter's counsel (please confirm this fee amount with your proposed underwriter's counsel as the DSM Airport will not entertain increases to the amount quoted thereafter). If applicable, please identify other costs related to other potential services (forward purchase agreements) that your firm proposes to bill separately (apart from the fee/discount at closing) and how it proposes to be compensated for those services.
- Please describe how your fee proposal above would be affected if the DSM Airport decides to "forward deliver" the refunding bonds for the Series 1998B (AMT) Bonds.
- Please provide a listing of all fees and expenses that the DSM Airport might expect to incur if it proceeds with this financing in the manner(s) suggested in your proposal.
- Please provide the name of at least one law firm that you would propose to hire as underwriter's counsel for this transaction. Identify two recent transactions that they served as underwriter's counsel similar to the financing proposed by the DSM Airport.

THE DSM AIRPORT FINANCIAL INFORMATION

Copies of the DSM Airport's audited financial statements, Master Plan and Annual Reports are located on their website at http://www.dsmairport.com/AboutUs/Annual_Report.htm. Additional information about the DSM Airport will also be provided upon request.

Any requests shall be submitted to the RFP Contact Person hereinafter identified and shall be accompanied by an agreement by the firm requesting such information that neither such firm nor any of its officers, employees or agents will disclose such information to any other firm, entity or person without the written consent of the DSM Airport nor use such information for any purpose other than the preparation of such firm's response to this RFP or the fulfillment of its obligations to the DSM Airport in the event that such firm is engaged to under this RFP.

SELECTION PROCESS AND PROCEDURES

The proposal submitted will be the primary document on which each proposer will be evaluated. Proposals meeting the minimum requirements provided in the RFP will be evaluated on the basis of factors listed below:

- 1) Understanding of the City and Airport's Objectives,

Availability and Experience of the Firm and its assigned personnel.	30 points
2) Cost	25 points
3) Distribution Capacity (Bond Marketing)	20 points
4) Financial Capacity	15 points
5) References	10 points
Total	100 points

A bonus award of one (1) point will be given to proposers within the corporate city limits of Des Moines as described in sections 2-705 and 2-706 of the municipal ordinance.

After initial scoring is completed by the selection committee interviews will be conducted with the higher scoring proposals. The interview process will allow the selection committee to fine tune scores of the proposals.

A Selection Committee shall evaluate all proposals submitted.

DECISION ON PROPOSALS

The DSM Airport reserves the right to reject any and all proposals received in response to this RFP, to waive any informalities, defects in any proposal or provisions herein, and to cancel this request at any time and for any reason.

After review of written proposals, the DSM Airport may conduct interviews of up to three (3), but not more than six (6) firms and thereafter to negotiate a satisfactory arrangement with that firm whose qualifications and proposal are most acceptable to the DSM Airport. The DSM Airport will advise the finalists of the time and location of the interviews.

However, the DSM Airport reserves the right to negotiate and award a contract for the engagement without conducting interviews.

ADMINISTRATIVE SPECIFICATIONS

One original and nine (9) copies of the proposal should be submitted by 10:30 a.m. CDT on May 14, 2007 to:

**City of Des Moines Purchasing Office
400 Robert D. Ray Drive
Des Moines, IA 50309
Attn. Michael L. Valen
Procurement Administrator
515-283-4205**

Requests for clarification will be received via e-mail to the Procurement Administrator at mlvalen@dm.gov no later than 3:00 p.m. CDT on May 2 2007. Written response to requests for clarification will be submitted as an addendum no later than 3:00 p.m. CDT, May 4 2007.

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.

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. **Not used**

10. **Not used:**

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.

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. NON-DISCRIMINATION

Proposer acknowledges and agrees:

- To comply with the Equal Employment Opportunity Program included in the City of Des Moines Contract Compliance Program, which is available at http://cdm/departments/ENG/Bid_Information/index.htm or from the City Engineer's Office.
- To comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62 of the Des Moines Municipal Code.
- 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 or disability.
- To include this provision in all agreements associated with this procurement.

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

By _____
Name (Print/Type)

Title

Street Address

City, State, Zip Code

ATTACHMENT 2

STANDARD PROFESSIONAL SERVICES - MINOR (Standard) 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, unless otherwise indicated below, 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 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 \$100,000 each accident for Bodily Injury by Accident, \$100,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease. **This requirement is waived if, under the law as stated in Chapter 85 of the Code of Iowa, the CONSULTANT is not required to carry such coverage.**

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 form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions "a" through "o" or any subsequent ISO equivalent or a non-ISO equivalent form).**

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 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 as required of the primary policy(ies).

E. FINANCIAL INSTITUTION BOND: The Underwriter Services Provider shall procure and maintain during the life of this Contract, a Financial Institution Bond including all coverages appropriate to this Contract, a list of which shall be included with the Providers response and as a supplement to Providers Certificate of Insurance. The Financial Institution Bond shall be written with limits of liability of no less than \$5,000,000 single loss and yet at a sufficient level to cover any potential loss associated with this Contract. All deductibles shall also be included with the Providers response and indicated on the Certificate of Insurance. Deductibles associated with this Contract shall be subject to the approval of the City of Des Moines.

F. BANKERS PROFESSIONAL LIABILITY INSURANCE: The Underwriter Services Provider shall procure and maintain during the life of this Contract, Bankers Professional Liability Insurance including all coverages appropriate to this Contract, a list of which shall be included with the Providers response and as a supplement to the providers Certificate of Insurance. The Underwriters Professional Liability Insurance shall be written with limits of liability of not less than \$5,000,000 each wrongful act and yet a sufficient level to cover any potential loss associated with Contract. All deductibles shall also be included with the Providers response and indicated on the Certificate of insurance. Deductibles associated with this Contract shall be subject to the approval of the City of Des Moines.

G. ADDITIONAL INSURED & CONTRACTUAL LIABILITY: The City **SHALL NOT be named or included** as an Additional Insured, **but all policies except Workers Compensation and Professional Liability Insurance SHALL include** Contractual Liability, including the obligation to defend and settle, and a definition of “Insured Contract” that includes indemnification of a municipality

H. CANCELLATION: **All policies SHALL include** a Cancellation Endorsement providing the City **no less than 30 days** advance written notification of policy cancellation.

I. 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 meet similar insurance requirements as are required of the CONSULTANT.

J. 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 F and H above. **The Certificate(s) of Insurance shall specify under “Description of Operations/ Locations/ Vehicle/Special Items: (1) the title of the contract, permit, license, etc. and (2) the following statement: “General Liability and Automobile Liability insurance includes Contractual Liability. The General Liability definition of “Insured**

Contract” includes the indemnification of a municipality when required by ordinance or by contract or agreement.”

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, its elected and appointed officials, employees and volunteers and others working on behalf of the City, 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, its elected and appointed officials, employees and volunteers and others working on behalf of the City, 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, its elected and appointed officials, employees and volunteers and others working on behalf of the City, 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 from the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the City, 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, its elected and appointed officials, employees and volunteers and others working on behalf of the City, 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 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.

4. WAIVER OF SUBROGATION

A. WAIVER OF SUBROGATION: To the extent permitted by law, CONSULTANT hereby releases the City of Des Moines, Iowa, its elected and appointed officials, its

agents, employees and volunteers and other working on behalf of the City of Des Moines, Iowa, 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 or damage to property caused by fire or any other casualty. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this contract. The CONSULTANT's policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the CONSULTANT to recover thereunder.

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.