

# **REQUEST FOR PROPOSAL (RFP)**

## **RFP V10-086**

### **HISTORICAL & ARCHITECTURAL SURVEY OF THE DRAKE NEIGHBORHOOD**

All proposals are due on or before 10:30am, CST, April 19, 2010, and shall be valid for 120 days from the RFP due date.

One original and seven (7) copies of the proposal shall be submitted to the Procurement Administrator at:

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

Requests for clarification regarding this RFP must be made to the Procurement Administrator at [mlvalen@dmgov.org](mailto:mlvalen@dmgov.org) no later than 3:00 p.m., April 9, 2010. Proposers wishing to respond to this RFP or receive addendums must notify the Procurement Administrator no later than 3:00 pm, April 9, 2010. Answers to requests for clarification will be provided to all persons making a request no later than 3:00pm, April 12, 2010.

# **REQUEST FOR PROPOSAL**

## **Reconnaissance Level Historical and Architectural Survey of the Drake Neighborhood in Des Moines, Iowa**

The City of Des Moines, Iowa, hereafter known as the City; is seeking a CONSULTANT to complete a reconnaissance-level historical and architectural survey of the Drake Neighborhood. The CONSULTANT will be selected from this proposals received in response to this Request for Proposal (RFP) after competitive evaluation on the basis of the “Selection Criteria” set forth in this RFP.

This request invites qualified CONSULTANTS to submit proposals for accomplishment of the items of work specified. Proposals should be prepared and submitted in accordance with the guidelines and requirements set forth in this request.

At least one copy of each proposal, or an appropriate transmittal letter, must be signed by an official empowered to contractually obligate the proposing firm.

This Request for Proposals does not obligate the City of Des Moines to award a contract to any firm, nor to pay any cost incurred in the preparation of a proposal, or costs in preparation for interviews, submitted in response to this request. The City of Des Moines reserves the right to accept or reject any or all proposals received as a result of this request. All information and material submitted in the response to this request will become the property of the City of Des Moines.

**REQUEST FOR PROPOSALS**  
**Reconnaissance Level Historical and Architectural Survey  
of the Drake Neighborhood in Des Moines, Iowa**

*Table of Contents*

I.	OBJECTIVE	page 4
II.	MINIMUM CONSULTANT QUALIFICATIONS	page 4
III.	DRAKE NEIGHBORHOOD BACKGROUND	page 5
IV.	GEOGRAPHICAL AREA OF STUDY	page 5
V.	SCOPE OF SERVICES	page 6
VI.	INFORMATION TO BE INCLUDED IN THE PROPOSAL	page 8
VII.	SPECIFIC REQUIREMENTS / CONDITIONS	page 9
VIII.	TIMELINE OF KEY DATES	page 10
IX.	SELECTION CRITERIA	page 11
X.	SELECTION PROCESS	page 12
XI.	STANDARD PROVISIONS	page 14

Attachments:

- Attachment 1: Non-Collusion Affidavit
- Attachment 2: Insurance Requirements
- Attachment 3: Insurance Certification

# **Request for Proposals to Prepare a Reconnaissance Level Historical and Architectural Survey of the Drake Neighborhood in Des Moines, Iowa**

## **I. OBJECTIVE**

This document is to solicit proposals from qualified consultants to conduct Reconnaissance-Level Historical and Architectural Survey of the Drake Neighborhood in Des Moines, Iowa. The Drake Neighborhood boundaries are defined on page 4 of this RFP. The City of Des Moines Historic Preservation Commission was awarded a Certified Local Government Grant from the Department of Cultural Affairs Historical Division, otherwise known as the State Historical Society of Iowa, to conduct a Reconnaissance-Level Historical and Architectural Survey of the Drake Neighborhood. Additional funding came from the Drake Neighborhood Association and City of Des Moines Community Development Block Grants.

The reconnaissance survey will examine prior research and create a bibliography that will assist in the identification of potentially significant historical and architectural sites and districts. The project will result in the identification of historic contexts for further study and potential National Register-eligible historic architectural buildings, cultural landscapes, and districts. This survey will provide the basis for the evaluation of approximately 300 historically significant properties/districts in the Drake Neighborhood. An Iowa site inventory form will be provided by the Consultant for each potential district and individually eligible property. The project will also produce a survey report summarizing the findings of the Consultant's work.

## **II. MINIMUM CONSULTANT QUALIFICATIONS**

### **Historian**

The minimum professional qualifications in history required for a proposer are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

### **Architectural Historian**

The minimum professional qualifications in architectural history required for a proposer are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

### III. DRAKE NEIGHBORHOOD BACKGROUND

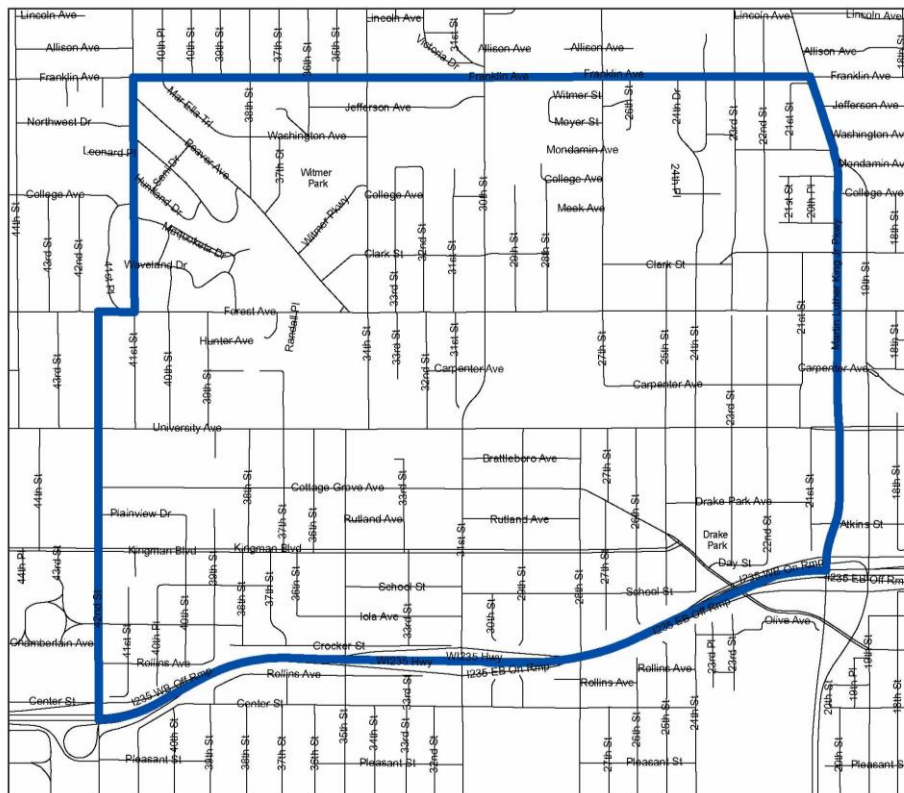
The Drake Neighborhood is located northwest of downtown and encompasses approximately 1,100 acres. The proposed effort will include a Reconnaissance Survey of the entire area designated as the Drake Neighborhood, which includes the former early suburbs of University Place and a portion of North Des Moines. A boundary map of the Drake Neighborhood is attached for reference.

The Drake Neighborhood is a defined area with a distinctive history that offers for study multiple stages of suburban/exurban development. The structures and cultural landscapes offer insights into land development, the dissemination of architectural styles, transportation history, planning philosophies, and education institution relocation (Drake University).

The historic period is considered to span from as early as the 1870s (and perhaps earlier), when farms began to give way to exurban and suburban development, through the 1950s and 1960s, as Drake University undertook a campus master plan by the Saarinen firm that resulted in construction of college dormitories and classrooms designed to shift housing and instruction of students out of the residential neighborhood and onto the expanding campus. Building types range from early farmhouses and public buildings (school and firehouse) to post-World War II saltboxes and Saarinen-designed institutional buildings. Architectural styles range from Second Empire and Gothic Revival to Queen Anne and Colonial Revival to Craftsman and mid-century Modern.

### IV. GEOGRAPHICAL AREA OF STUDY

The Drake Neighborhood is generally bound by on the west by 42<sup>nd</sup> Street south of Forest Avenue and 41<sup>st</sup> Street north of Forest Avenue, Martin Luther King Jr. Parkway on the east, Franklin Avenue on the north, and I-235 on the south. The map shown below shows the boundaries:



## V. SCOPE OF SERVICES

The Consultant is allowed to suggest modifications to this scope of services if such modifications will result in a more complete and thorough Survey. Any additional services must be itemized in terms of cost, time, and assigned Consultant team member. The Scope of Services for this project shall include, but not be limited to the following:

Reconnaissance Survey – The reconnaissance survey will examine prior research and create a bibliography that will assist in the identification of potentially significant architectural sites and districts. The survey will provide for the evaluation of approximately 300 site inventory forms for potential historic districts and individually significant properties in the Drake Neighborhood. The project will result in the identification of historic contexts for further study and the aforementioned 300 potential National Register eligible historic architectural buildings, cultural landscapes, and districts.

The Consultant will be expected to begin the process by taking a windshield driving tour through the neighborhood with the Drake Project Managers to familiarize themselves with the neighborhood and define the universe of properties and districts to be studied. This will also be an opportunity for the Project Managers to provide the Consultant with an overview of known information about the neighborhood and its development plans.

The reconnaissance survey report should document:

- The kinds of properties examined;
- The boundaries of the area surveyed;
- The method of survey, including the extent of survey coverage;
- The kinds of historic properties present in the survey area;
- Specific properties identified, and the categories of information collected; and
- Areas examined that did not contain historic properties.

The following established historic contexts and prior research will be considered during the survey:

- Suburban development of University Place, North Des Moines, and exurban areas, including streetcar lines and commercial nodes.
- Drake University as a real-estate developer and multi-family housing leader, 1881-1960.
- Bungalow and square house development.
- Housing between the World Wars and neighborhood development patterns.
- The reconnaissance survey should also identify other key historic contexts such as multi-family housing, local commercial districts, architects who lived in the neighborhood, and transportation related to the development of the Old Fort Road into Cottage Grove Avenue, the City Beautiful Era Kingman Boulevard, and Highway 6 Bypass from 19<sup>th</sup> Street to Forest Avenue to Beaver Avenue.

Iowa Site Inventory Forms – Iowa Site Inventory Forms will be completed for each potential district and individually eligible property (approximately 300 site inventory forms). If a site inventory form has been completed in the past for a property or district it shall be reviewed and updated if necessary. Ten (10) sample/draft Iowa Site Inventory Sheets will be provided at the half-way point in the process for review by the Historic Preservation Commission and public. The draft copies can be photocopies of the photographs. These drafts can contain more abbreviated information than is usually required. Two (2) original copies of all of the final Iowa Site Inventory Sheets must be provided. Both original copies for the final submission must have at least one color photographic print attached.

Survey Report – The consultant shall summarize the results of the field work, research, historic documentation, and survey findings, and the recommendations, which shall be presented in a final report. Four (4) draft copies of the Survey Report and Four (4) final copies of the Survey Report. One copy is to be reviewed by the State Historical Society, one copy for the Drake Neighborhood Association, one for the Historic Preservation Commission and one for the City of Des Moines Community Development Department.

**The consultant is responsible for answering any questions or responding to any requests related to the survey made by Paula Mohr, State Historical Society of Iowa staff, Kyle Larson, City of Des Moines staff/Project Manager, Jennifer James, Drake Neighborhood Association Member/Project Manager, or Steve Wilke-Shapiro, Drake Neighborhood Association Member/Project Manager.**

#### Electronic Copy

Four (4) CD-ROMS containing identical digital versions of the above requested documents and photographs will be required for final documentation.

#### Presentations and Meetings

The Consultant will be required to attend one (1) neighborhood meeting at the beginning of the process and one (1) neighborhood meeting at the end of the process, and the December 2010 Historic Preservation Commission meeting at the end of the process to discuss the survey and answer questions. The consultant will also be asked to attend or telephone conference call into regularly scheduled monthly progress report meetings with the Project Managers and to submit information as requested to the City for grant reporting purposes.

#### Volunteer Assistance

The Consultant will meet with the two Drake Neighborhood Association (DNA) project managers and the key City of Des Moines Community Development Department contacts to define and clarify project goals, activities and schedule. It is anticipated that the DNA will provide volunteers to assist the Consultant as described below. Day-to-day volunteer activities will be coordinated by the DNA project managers under the direction of the consultant. This will be more specifically defined in the Consultant contract. DNA volunteer coordination duties include contacting volunteers, arranging for training, scheduling work, monitoring progress of volunteers' research, and recording volunteer hours.

Volunteer roles/duties may include but are not limited to the following:

- Gather primary historical information (newspapers, public records, photographs, etc.)
- Conduct oral history interviews
- Transcribe taped oral histories
- Organize research information
- Code survey information for computer storage and database manipulation
- Take good photographs
- Develop photographs
- Describe architectural and engineering details
- Mapping; typing, proofreading and/or edit

## **VI. INFORMATION TO BE INCLUDED IN THE PROPOSAL**

General qualifications and performance data to conduct the services requested will be determined by comparative evaluation on the basis of the “Selection Criteria” set forth in Section VII in this request, the basis of which must be included in your proposal. Proposals shall be submitted on 8½” x 11” paper and shall be printed on both sides. Recycled and recyclable materials are preferred, but is not required. The proposals shall include the following information in the following order:

- A. The CONSULTANT’S name, address, telephone numbers, email address, website, and brief history of the firm.
- B. If a SUB-CONSULTANT is used, the SUB-CONSULTANT’S name, address, telephone numbers, email address, website and brief history of their firm.
- C. Names of specific individuals who would be assigned to this project, and their relevant experience (e.g. Project Manager, Architect, Landscape Architect, Historian Consulting Specialist, Architectural Historian, others). Resumes are requested of each team member assigned to this project.
- D. Three (3) professional references.
- E. Proposals shall be based on the Scope of Services as outlined in Section I of this Request for Proposals. Also, please provide the following in narrative form:
  - 1. Consultants are required to meet the National Park Service Professional Qualifications Standards (see RFP Announcement). Summarize your qualifications and demonstrate compliance with one or more of these Professional Qualifications Standards.
  - 2. A description of the approach and process that is to be used while completing the Reconnaissance Survey.
  - 3. What intrigues you about the Drake Neighborhood Historic Resource Reconnaissance Survey?
  - 4. Describe your philosophy regarding architectural integrity in relation to determining a property's period of significance and potential National Register eligibility.
  - 5. A work plan and proposed schedule showing tasks and time frames necessary to accomplish the requested Scope of Services.
  - 6. Identification of the firm and team member who will be assigned to each part of the work plan.
  - 7. Describe your capacity to complete the scope of work within the defined project schedule. It is expected that the consultant will be available (phone or in-person) for regularly scheduled monthly project meetings with the grant project managers.

8. Describe your approach to completing the scope of work in accordance with the project budget. The project budget is determined by available grant funding. Volunteers will be utilized to assist in appropriate tasks so as to maximize efficient use of the Consultant's time.
9. Describe your experience working with volunteer labor and your approach to coordinating volunteers. It is expected that at least 300 volunteer hours be incorporated into the grant activities as part of the required local match. The grant project managers are qualified preservation professionals and will be available to assist, under the direction of the consultant, in coordinating and training other volunteers.
10. Portions of the project research will be maintained in an online database (to be set up by the grant project managers) and made available to the public. Describe your computer experience and comfort with web-based applications.
11. If you are an out-of-town Consultant, describe your travel requirements, expected number of days on site, and plan for distance work. Grant funds may not be sufficient to provide for extended hotel stays. Lodging and some meals for out-of-town Consultants may be provided "in-kind."
12. At least three examples of similar studies completed for other clients, including sample extracts or full copies of examples.
13. A professional fee schedule with a guaranteed maximum price, documented assignments of project requirements to staff in your firm, and hourly billing rate for professional services provided by each member on the design team. The maximum allowable hourly rate and mileage reimbursement, as established by the National Parks Service, are \$88.10 per hour and 39 cents per mile respectively. The guaranteed maximum fee shall include the Consultant's reimbursable expenses and all anticipated meetings. A general breakdown of the costs associated with this project shall be provided (e.g. staff time, meetings, travel, materials, etc.). The consultant shall include a unit price for additional copies of the final preservation plan and graphics and additional presentation meetings should they be required.
14. Optional: Suggestions for modification to the proposed scope of services along with associated cost, assigned team member, and additional time frame required for suggested service.

## **VII. SPECIFIC REQUIREMENTS / CONDITIONS**

All statements of Qualifications and Experience should include, but not be limited to, the following information and documentation:

- A. The City reserves the right to reject all proposals received.
- B. Only proposals received at the described location and in the given time frame will be considered.

- C. The fee included in the resulting contract will be the maximum paid in total, unless additional work is agreed to and an amendment to the contract is signed by both parties.
- D. All proposals received in response to the invitation shall become the property of the City, and by reference may become part of the contract with the City.
- E. Receipt of a proposal by the City does not, in and of itself, constitute a contract with the City, and the City accepts no responsibility or liability for any cost incurred in the preparation and/or submission of such proposals.
- F. Failure to respond to any portion of this proposal, unless otherwise provided for, may result in possible rejection of the complete proposal from further consideration.
- G. Any attempt to unfairly misrepresent the pricing structures of the cost proposal may also result in possible rejection of the complete proposal from further consideration.
- H. In accordance with the Title VI of the Civil Rights Act of 1964 and Title 49, Code of Federal Regulations, the City of Des Moines will ensure that qualified minority business enterprises will be afforded full opportunity to submit Proposals in response to this request; and further that no person will, on grounds of race, color, age, sex, creed, religion, national ancestry, disability, sexual orientation or national origin, be excluded from participation in any program or activity for which the City of Des Moines received financial assistance.
- I. An Agreement for Professional Services similar to Attachment 3 between the City and the selected Consultant will be executed.
- J. Professional liability insurance and indemnification requirements are required for this project in accordance with Attachment 2.
- K. The selected consultant shall complete all work within 1 year of receiving a Notice to Proceed from the City.

### VIII. TIMELINE OF KEY DATES

RFP Issued	End of March, 2010
Receive questions regarding RFP from consultants	April 9, 2010
Issue answers to consultants' questions	April 12, 2010
Proposals Due	April 19, 2010
Staff selects consultant based on criteria established in RFP	End of April, 2010
City Council approves contract	May 10, 2010
Contact commences	May 11, 2010
Consultant attends 1 <sup>st</sup> meeting with neighborhood organization	TBD
Consultant submits draft of survey report and ten Iowa Site Inventory Forms	December 1, 2010
Consultant attends 2 <sup>nd</sup> meeting with neighborhood organization	TBD
Consultant attends the scheduled Historic Preservation Commission meeting to review the evaluation report	December 15, 2010
The City and the State Historic Society comment on the draft	March 1, 2011

Consultant submits final evaluation report and remaining site inventory forms	June 15, 2011
City and State Historic Society make final comments	June 30, 2011
Final request for reimbursement is made and contract is closed	July 1, 2011

**IX. SELECTION CRITERIA**

Proposals will be evaluated based on the following selection criteria.

**1. QUALIFICATION AND INTEREST**

Previous work experience with and success in projects of similar size, scope and purpose.

The qualifications of key personnel who will be assigned to the project, including guidelines established in the U.S. Secretary of the Interior’s Professional Qualifications Standards.

The Consultant’s interest in a successful project for the State of Iowa, City of Des Moines, and Drake Neighborhood.

*Scoring Range: 0-25 points*

**2. PROJECT OVERVIEW AND WORK PLAN**

The overall approach and process to complete the project in an efficient and effective manner and the understanding of the project, including identification of major issues or problems concerning the project.

The work plan submitted as part of the proposal showing tasks and schedule will be part of this evaluation.

*Scoring Range: 0-25 points*

**3. TIMELY COMPLETION OF THE PROJECT**

The consultant’s current workload and ability to complete the project in a timely manner.

*Scoring Range: 0-25 points*

**4. COST OF SERVICE AND USE OF VOLUNTEER HOURS**

Consultant project budget cannot exceed \$32,000 and a higher amount is non-negotiable. It is anticipated that an additional \$8,925 in volunteer hours and in-kind contributions will be provided to the project.

*Scoring Range: 0-15 points*

## **5. QUALITY AND THOROUGHNESS OF PROPOSAL**

Any additional information formally requested by the Selection Committee will be included in this evaluation.

*Scoring Range: 0-5 points*

## **6. UNIQUE SERVICES OR QUALIFICATIONS**

Any special capabilities the consultant has that would significantly contribute to the success of this project.

*Scoring Range: 0-5 points*

## **7. LOCAL PREFERENCE**

Given to businesses with headquarters, or headquarters of its parent or holding company, residing within the corporate limits of the City of Des Moines as required by section 2-705 of the Municipal Code.

*Scoring Range: 0-1 point*

**The City of Des Moines reserves the right to reject any or all proposals received.**

## **X. SELECTION PROCESS**

- A. Review of proposals. An Evaluation and Selection Committee, consisting of up to 7 members, will review the written responses to the City's RFP. Up to three (3) Consultants will be selected from among those received to participate in a telephone or in-person interviews, using the scoring criteria to determine the top three scores.
- B. The City may conduct reference and background checks on the firm(s) selected as finalist(s) and may request interview(s) with the Consultant and project team members.
- C. The Evaluation and Selection committee will make a selection and recommendation to the City Council for the awarding of a contract. The Evaluation and Selection Committee shall perform any additional investigation, as it considers necessary to obtain full information on the consultants being considered. If reference checks reveal untruthful statements of qualifications, the proposals may be rejected.
- D. All proposals must include one duly-executed copy of the attached Non-Collusion Statement (Attachment 1) and Insurance Certification (Attachment 3).
- E. The Firm/Consultant selected to provide these services must enter into a Professional Services Agreement with the City similar to the one attached to this RFP. The Agreement will include the insurance and indemnification requirements per Attachment 2.

F. The City also reserves the right to:

1. Request clarification or additional information from any firm at any time.
2. Waive immaterial defects or minor irregularities in proposals.
3. Examine the experience and capabilities of the Firm's team members. The City may object to specific proposed team members.
4. Modify, remove, or add requirements to the RFP.

**XI. 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. 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 or appeal officer 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 to 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, 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 2, Municipal Code of the City of Des Moines, contains 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.

**XI. 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](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, gender identity, national origin, religion, disability or ancestry.
- 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 section 554.2314 of the Iowa 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 MSDS, 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 INSURANCE AND INDEMNIFICATION REQUIREMENTS

(Contractor - Minor)

#### 1. GENERAL PROVISIONS

The CONTRACTOR shall purchase and maintain insurance to protect the CONTRACTOR 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 shall be written on a per occurrence basis, unless otherwise approved by the City, and in form and amounts and with companies satisfactory to the City of Des Moines, Iowa. Certificates of Insurance confirming insurance coverage shall be submitted to the City prior to Contract execution or commencement of any work or services.

The City of Des Moines, Iowa hereby reserves the right to revise and enforce the requirements in this Attachment over the term of this Contract but only after providing CONTRACTOR at least sixty (60) days advance written notification of any such change.

#### 2. INSURANCE REQUIREMENTS

A. **Worker’s Compensation Insurance** - at Statutory Limits and **Employer’s Liability Insurance** with limits of not less than \$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.

B. **Commercial General Liability Insurance** - 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*, (e) *Personal and Advertising Injury* and (f) *Explosion, Collapse and Underground (XCU)*.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by the standard ISO form Commercial General Liability Policy (CG 0001 with standard exclusions, or a non-ISO equivalent form). Any additional exclusions shall be submitted with the Certificate of Insurance and shall be subject to the review and approval of the City.

C. **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 CONTRACTOR does not own any vehicles, coverage is required on non-owned and hired vehicles.*

D. **Umbrella/Excess Liability Insurance** – Liability Insurance requirements may be satisfied by a combination of primary and Umbrella/Excess Liability Insurance. *If Umbrella/ Excess Liability Insurance does not follow form of primary policies*, the Umbrella/Excess Liability Insurance policy shall include the same endorsements as required on the primary policy(ies).

E. **Responsibility For The Property Of Others** – CONTRACTOR shall assume full responsibility for all loss or damage from any cause whatsoever to any property brought onto City Property that is owned or rented by CONTRACTOR, or any of CONTRACTOR'S employees, agents, subcontractors, suppliers or their employees

F. **Subcontractors** –CONTRACTOR shall require that any of its agents and subcontractors satisfy insurance requirements 2.A through 2.D. CONTRACTOR shall also require that CONTRACTOR be named an Additional Insured on those insurance policies satisfying requirements 2.B. through 2.D above. CONTRACTOR shall be responsible for receiving and reviewing Certificates of Insurance of any of its agents, subcontractors (*City will not review this requirement*).

G. **Additional Insured & Contractual Liability** - City **SHALL NOT be named or included** as an Additional Insured, **BUT all liability insurance policies shall include** Contractual Liability, *including cost of defense and settlement*, and a General Liability Insurance policy definition of “Insured Contract” that includes indemnification of a municipality (*the same as or equal to that included in ISO CG 0001*).

H. **Cancellation** - **All policies shall include** a Cancellation Endorsement or policy language providing for **no less than 30 days** advance written notification of policy cancellation to the Certificate Holder.

I. **Proof Of Insurance** - The CONTRACTOR shall provide to the City of Des Moines, Iowa a Certificate(s) of Insurance evidencing all required insurance coverage as specified in requirements 2.A. through 2.D. and 2.G. and 2.H. above. **The Certificate(s) of Insurance shall specify under “Description of Operations/ Locations/ Vehicle/Special Items: (1) the title of the Agreement and (2) the following statement: “General Liability and Automobile Liability insurance policies include Contractual Liability. The General Liability Insurance policy definition of “Insured Contract” includes the indemnification of a municipality when required by ordinance or by contract or agreement.”**

### **3. INDEMNIFICATION PROVISION**

For purposes of this section, City shall mean the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers and others working on behalf of the City of Des Moines. To the fullest extent permitted by law, CONTRACTOR agrees to defend, pay on behalf of, indemnify, and hold harmless the City against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including but not limited to attorneys’ fees and court costs, that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including, but not limited to, personal injury, including bodily injury or death, property damage, including loss of use thereof, and economic damages arising out of or in any way connected or associated with CONTRACTOR’S work or services.

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

The City shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONTRACTOR, its officers, employees, subcontractors, and others affiliated with CONTRACTOR, arising out of or in any way connected or associated with CONTRACTOR’S

work or services, except for and only to the extent caused by the negligence of the City of Des Moines, Iowa.

CONTRACTOR expressly assumes full responsibility for any and all damages to City Property arising out of or in any way connected or associated with CONTRACTOR'S work or services including, but not limited to, the activities of CONTRACTOR, its officers, employees, subcontractors, and others affiliated with CONTRACTOR.

CONTRACTOR shall ensure that its activities on City Property will be performed and supervised by adequately trained and qualified personnel and CONTRACTOR will observe, and cause its officers, employees, subcontractors and others affiliated with CONTRACTOR to observe all applicable safety rules.

#### **4. WAIVER OF SUBROGATION PROVISION**

To the fullest extent permitted by law, CONTRACTOR hereby releases the City, its elected and appointed officials, its agents, employees and volunteers and others working on its behalf from and against any and all liability or responsibility to the CONTRACTOR or anyone claiming through or under the CONTRACTOR by way of subrogation or otherwise, for any loss without regard to the fault of the City or the type of loss involved, including loss due to occupational injury. This provision shall be applicable and in full for and effect only with respect to loss or damage occurring during the time of this Contract. The CONTRACTOR'S policies of insurance shall contain a clause or endorsement to the effect that such releases shall not adversely affect or impair such policies or prejudice the right of the CONTRACTOR 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

---