

ATTACHMENT 1

CITY STANDARD PROFESSIONAL SERVICES – MAJOR INSURANCE & INDEMNIFICATION REQUIREMENTS (3/20/09)

1. GENERAL

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

2. INSURANCE REQUIREMENTS

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

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

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

D. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis. If the Umbrella/Excess Insurance policy does not follow the form of the primary policy(ies), it shall include the same endorsements as required of the primary policy(ies).

E. PROFESSIONAL LIABILITY INSURANCE: The Consultant shall procure and maintain, during the life of this Agreement, Professional Errors and Omissions Insurance with limits not

less than \$1,000,000 per claim and in the aggregate. The Consultant will notify the CITY if claims made erode the Policy Limits below those required above.

- F. AGENTS AND SUBCONTRACTORS: The Consultant shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this Agreement to purchase and maintain the same types of insurance as are required of the Consultant.
- G. ADDITIONAL INSURED & GOVERNMENTAL IMMUNITY: Except for Workers Compensation and Professional Liability, the policies providing the coverage's specified in paragraphs B, C, and D above shall include the CITY Additional Insured and Governmental Immunities Endorsements. Copies of these endorsements are attached.
- H. CANCELLATION & MATERIAL CHANGES: The insurance policies providing the coverages specified in paragraphs A, B, C, D and E above shall include the CITY's Cancellation and Material Changes Endorsement. A copy of this endorsement is attached.
- I. PROOF OF INSURANCE: The Consultant shall provide to the CITY a Certificate(s) of Insurance evidencing all required insurance coverage as provided in paragraphs A through E and G and H above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under "Description of Operations/Locations/Vehicle/Special Items" the title of the Agreement and that "Where required, Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements have been included as per attached." These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required.

3. **INDEMNIFICATION REQUIREMENTS**

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

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

For professional services rendered, to the fullest extent permitted by law, Consultant agrees to pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including, but not limited to, attorneys' fees and court costs and economic damages that may be recovered from or suffered by the CITY that arise out of any negligent act, error or omission of the Consultant.

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

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by Consultant arising out of or in any way connected or associated with

Consultant's work, except for and only to the extent caused by the negligence of the City of Des Moines.

Consultant expressly assumes responsibility for any and all damage caused to City property arising out of or in any way connected or associated with Consultant's work

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

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

For professional services rendered, to the fullest extent permitted by law, Consultant agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including, but not limited to, attorneys' fees and court costs and economic damages that may be asserted or claimed against, recovered from or suffered by the CITY that arise out of any negligent act, error or omission of the Consultant.

4. WAIVER OF SUBROGATION

- A. WAIVER OF SUBROGATION: To the fullest extent permitted by law, Consultant 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 Consultant or anyone claiming through or under the Consultant by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved, including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The Consultant's policies of insurance shall contain a clause or endorsement to the effect that such releases shall not adversely affect or impair such policies or prejudice the right of the Consultant to recover thereunder.

5. ENDORSEMENTS

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

**CITY OF DES MOINES, IOWA
ENDORSEMENTS**

CANCELLATION AND MATERIAL CHANGES ENDORSEMENT

Thirty (30) days Advance Written Notice of Cancellation, ten (10) days Written Notification of Cancellation due to non-payment of premium and forty-five (45) days Advance Written Notification of Non-Renewal shall be sent to: Engineering Department, City of Des Moines, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

ADDITIONAL INSURED ENDORSEMENT

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

**GOVERNMENTAL IMMUNITIES ENDORSEMENT
(For use when including CITY as Additional Insured)**

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