

# Request for Proposal

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**City of Minneapolis**  
**Office of the City Attorney**

**Bond Counsel Services RFP**  
**October 30, 2013**

**Proposals Due by: November 22, 2013, 4:00 PM**

# REQUEST FOR PROPOSAL FOR THE PERFORMANCE OF BOND COUNSEL SERVICES

## I. INTRODUCTION

The City of Minneapolis (the "City") is soliciting proposals from qualified law firms ("firm") to enter into one or more contracts to perform bond counsel services. The successful firm or law firms, if more than one firm is chosen, will provide bond counsel services for bonds issued by the City and the Board of Estimate and Taxation, including many of the bonds formerly issued by the Minneapolis Community Development Agency (MCDA).

Each firm must submit to the City **one original and five (5) copies** of its proposal or proposals if the firm intends to be considered for each of the three types of bond counsel services. Proposals must be submitted no later than **4:00 PM Central Time on November 22, 2013** and addressed as follows:

City of Minneapolis  
Procurement Division  
330 Second Avenue South, Suite 552  
Minneapolis, MN 55402

Attn: Bond Counsel Services RFP

The City seeks bond counsel services pursuant to this Request for Proposals (RFP) for the following types of bonded indebtedness: (1) general obligation (G.O.) bonds; (2) conduit, revenue bond sales; and (3) revenue bonds supported in part through the City's Common Bond Fund (CBF revenue bonds).

The City reserves the right to select one firm to provide the bond counsel services described in items (1) G.O. bonds and (3) CBF revenue bonds or the City may select different firms to provide G.O. bond counsel services and CBF revenue bond counsel services.

The City intends to establish a panel of firms to provide the conduit revenue bond counsel services described in item (2) conduit, revenue bond sales.

The firm must clearly declare in its proposal which type of bond counsel services for which the firm wishes to be considered. Additionally, a firm should submit separate sets of proposals if it wants the City to consider awarding the firm a contract for the G.O. bond counsel services, a contract for CBF revenue bond counsel services and if the firm also wants to be considered for placement on the conduit, revenue bond sale panel.

The City does not promise to accept the lowest cost proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any firm, to reject any provisions in any proposal, to obtain new proposals, to negotiate the requested services and contract terms with any firm, or to proceed to do the work otherwise. Incomplete proposals and proposals not sufficiently detailed or not in acceptable form may be returned for completion or may be rejected by the City. The City reserves the right to accept more than one proposal and, in effect, to establish a "panel" of bond counsel for the work described herein.

## II. NONDISCRIMINATION and EQUAL OPPORTUNITY

The City does not discriminate in the selection of contractors on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The successful firm must agree to comply with all applicable federal, state and local equal opportunity and affirmative action laws, directives and regulations. The City acts affirmatively to promote and enter into contracts with women and minority businesses, and small business enterprises (W/MBE; SBE) as defined by Minneapolis Code of Ordinances, Chapter 139 and Chapter 423. The successful firm must agree to ensure that W/MBEs and SBEs will have maximum opportunity to participate in the performance of this contract whenever possible. The successful firm will cooperate with the City in meeting the City's commitments and goals with regard to the maximum utilization of W/MBEs, and SBEs, whenever possible in the performance of the legal services requested under this RFP.

### III. SCHEDULE AND SUBMISSION DEADLINE

RFP Release	October 30, 2013
Questions on RFP due	November 7, 2013
Responses to Questions Provided	November 13, 2013
Proposals Due	November 22, 2013 @ 4:00 P.M.
Estimated Selection	December 4, 2013
Estimated Contract Approval	December 11, 2013
Estimated Contract Execution	December 31, 2013
Estimated Services Start	January 3, 2014
Estimated Services End	December 31, 2017

Written proposals must be received by the City no later than **4:00 p.m.** on November 22, 2013. Only those written proposals received at the City's offices by this deadline will be considered by the City.

### IV. INQUIRIES

All questions relating to this RFP, including all questions relating to clarifications or modifications of this RFP, must be submitted in writing and directed to the attention of:

Ms. Susan L. Segal  
 Minneapolis City Attorney's Office  
 Room 210 – City Hall  
 350 South 5<sup>th</sup> Street  
 Minneapolis, MN 55415  
[susan.segal@ci.minneapolis.mn.us](mailto:susan.segal@ci.minneapolis.mn.us)

If any question submitted makes necessary the issuance of a written addendum to this RFP, the addendum will be furnished to all persons receiving a copy of the RFP. The City will not respond to questions received after November 7, 2013.

**In order to ensure a fair review and selection process, firms are specifically requested to not make other contact with the City staff or City Council Members regarding their proposals.**

### V. BACKGROUND

The City is a municipal corporation and political subdivision of the State; a home rule charter city of the first class. The City is under the supervision and control of the City Council, a thirteen-member governing body and the Mayor. The City structure now includes the Community Planning and

Economic Development Department which has many of the responsibilities that formerly were part of the MCDA mission. The MCDA acting through its Board of Commissioners (the “MCDA Board”) remains in existence for very limited purposes.

## **VI. TERM OF CONTRACT**

The City anticipates entering into three-year contracts for bond counsel services.

## **VII. SCOPE OF WORK**

### **A. General Description of Legal Services.**

All bond counsel services will be performed under the direction of the Minneapolis City Attorney and the Chief Finance Officer. The legal services that all respondents will be capable of providing and expected to provide to the City under this RFP will include:

- Review existing statutes and court decisions to determine that authority exists for proposed bond issues, and advise the City of legal matters relating to proposed borrowings.
- Prepare necessary documentation for authorization of sale and issuance of bonds, including the proceedings providing for the advertisement and sale of the bonds, the bond resolutions and the closing papers.
- Review the completed record of each bond sale.
- Provide authoritative written opinions on the legal validity and binding legal obligations of bond issues.
- Provide authoritative written opinions on the tax exempt status of the interest of bond issues, as provided by federal, state and local tax laws.
- Oversee execution of the closing, preparing the closing memorandum and other documents.
- Provide advice and assist the City in determining whether bonds should be issued by competitive or negotiated sale.
- Propose innovative financing techniques which may assist the City in minimizing costs or simplifying debt financing.
- Assist the City in evaluating the legal aspects of alternative financing proposals and developing the best overall plan for debt issuance.
- Assist the City to develop and prepare guidelines for the sale and issuance of bonds and other debt instruments.
- Offer direction and advice on the appropriate procedures to be followed by the City in connection with the authorization and sale of bonds or other debt instruments.

- Respond to questions, develop information, and provide advice for the City on legal aspects of bond or other debt financing matters.
- Attend meetings of the City Council as requested.
- Cooperate and confer with the City's Finance Officer, Secretary of the Board of Estimate and Taxation, and other City officials as requested.
- Attend meetings and cooperate with other consultants, advisors, and other participants during the bond issuance process.
- Prepare and/or review all bond documents, including commenting on the Official Statement, where advisable, to ensure that there is adequate and appropriate disclosure, and advise the City. Verify the accuracy of language and supervise bond printing, as appropriate.
- Work with the City's Finance Officer, Secretary of the Board of Estimate and Taxation, and financial staff to submit timely information to rating agencies in order to obtain the best possible ratings.
- Undertake such additional actions that will lead to the prompt and successful delivery of the proceeds, and the production and availability of bonds.
- Advise the City and the MCDA Board, as is necessary or appropriate, on the impact and legality of pending state and federal legislation. Draft legislation, as requested, which might be necessary or desirable to improve the City's financing capacity and to carry out the City's financing objectives and requirements. Respond to questions from the City Attorney, Finance Officer or Secretary of the Board of Estimate and Taxation on proposed federal or state tax laws that may impact the tax exemption status of the City's bonds, arbitrage earnings, or other critical factors.
- Advise the City's banking and payment institutions in exercising the duties of bond registrar, paying agent, and transfer agent.
- Provide the City with advice, when requested, on calculations, certifications and other legal advice required to meet arbitrage requirements of federal tax laws and regulations.
- Provide such other legal advice and legal services to the City Council, the City's Finance Officer, Board of Estimate and Taxation and its staff as is necessary or appropriate.

B. General Obligation Bond and Common Bond Fund Description of Legal Services.

In addition to legal services to be provided as outlined in Section VII.A., above, respondents that wish to be considered to provide the G.O. bond and CBF revenue bond, legal services will also be capable of providing and will be expected to provide the following legal services under this RFP:

- Assist in the structuring and sizing of bond issues, including factors such as capitalized interest period, redemption provisions, bond covenants and preparation of legal documents.

- Provide legal services and advice relative to any program, project or district within the meanings of Minnesota Statutes, Chapter 462C, Minnesota Statutes, Section 469.001 et seq., or Minnesota Statutes, Section 469.174 et seq., respectively.
- For CBF revenue bonds, in addition to the legal services to be provided above, assist in determining whether to structure issues as serial versus term bonds, debt service coverage ratios and credit enhancement methods.
- For CBF revenue bonds, advise the City and the MCDA Board where necessary or appropriate.

C. Conduit Revenue Bond Description of Legal Services.

In addition to the legal services to be provided as outlined in Section VII.A., above, respondents that wish to be considered for placement on the Conduit Revenue Bond Panel will also be capable of providing and will be expected to provide the following legal services under this RFP:

- Provide such other legal advice and legal services to the City and the MCDA Board as is necessary or appropriate.
- Provide legal services and advice relative to any conduit revenue bonds issued pursuant to Minnesota Statutes 462C, Minnesota Statutes Section 469.174, et seq. or other authorizing statutes.

The successful firms will be expected to manage files efficiently and work closely with the City's senior management personnel and other designated City staff. As a public and governmental entity, the City requires strict accountability in work descriptions, task performance and billing practices.

## VIII. PROPOSAL FORM AND CONTENTS

Each proposal should not exceed 15 pages and should be printed on 8½ x 11-inch paper. Pages should be consecutively numbered. The proposal must include the following elements:

- **Background.** The proposal must give a general overview or description of the history and background of the firm.
- **Personnel and Staffing.** The proposal must provide a detailed description of the firm's staff size and composition, including the number of partners, associates, law clerks and legal assistants. The proposal also should identify whether the firm's clerical services are provided by in-house staff, through contract or through other arrangements. The proposal must identify specific attorneys and other staff likely to be assigned to perform the requested bond counsel services on behalf of the City. The firm should provide up-to-date detailed professional resumes for these individuals. The firm also should identify the individual who will be designated as the primary contact person with the City for assignments, billings and general contract administration. The firm must list senior staff changes over the last three years. For departures, indicate the reason for the change.
- **Relevant Bond Counsel Experience.** The proposal must clearly outline the firm's experience and background in providing bond counsel services, including:

- ◆ Provide the following information for municipalities and other tax-exempt issues for which the firm has served as bond counsel over the last five years:
  1. Name of issuer;
  2. Date and size of issue;
  3. Managing underwriter and financial advisor;
  4. Nature of the project;
  5. Description of financing method;
  6. Type of opinions offered; and
  7. Name of principal individual in the firm assigned to the project.
  
- ◆ Describe the firm's experience with tax-exempt bonds (including general obligation, governmental revenue and private activity bonds), master leases, variable rate bonds, advance refundings, crossover refundings, special structuring arrangements including interest rate swaps, SEC disclosure, lease/purchase agreements, tax increment and other alternative financing mechanisms.
  
- ◆ Describe the firm's familiarity with arbitrage regulations and calculations required to meet arbitrage rebate requirements of federal tax laws and regulations.
  
- ◆ Describe the firm's familiarity with the Laws of Minnesota as they relate to the City's or the MCDA's issuance of debt, as well as proposed revisions to applicable state and federal statutes and relevant case law.
  
- ◆ Describe the firm's familiarity with financial advisors, underwriters, bond rating agencies and other critical financing participants.
  
- ◆ Describe the firm's capability to provide authoritative written opinions in bonding matters acceptable to underwriters, brokers, bond rating agencies and investors in the national market.
  
- ◆ Describe the firm's experience with competitive bidding and negotiated sales.
  
- ◆ Describe the firm's experience in representing state and local governments in tax dispute matters relating to tax exempt bond issues with the US Internal Revenue Service (IRS); describe the number and complexity of said dispute engagements with the IRS and list the firm's attorneys who work in this area and to what degree their practice is devoted to tax dispute matters with the IRS.
  
- ◆ Indicate whether within the last five years, your organization, or officer or principal of your organization, has been involved in any business litigation or other legal proceedings relating to your bond counsel activities. If so, provide an explanation and indicate the current status or disposition.
  
- **Responsiveness to Client Needs.** The proposal must provide a statement indicating the firm's ability to respond to the City's needs on short notice and to comply with tight timelines and assignments. The statement should include a general description of the resources available to the firm to help the firm respond in a timely manner to requests for legal services.

- **Billings.** The proposal must indicate the firm's capability to provide detailed billing statements which clearly identify the file or matter and the attorneys and other staff assigned to that matter; provide a detailed list of hours expended each day by a specific attorney or other assigned staff; clearly identify the nature of the specific work performed; identify City staff or others with whom the attorney or other assigned staff worked, called, or consulted; and clearly identify and detail all expenses incurred on the matter and an expense-to-date summary by file or project. The firm should submit with its proposal an example of the actual billing format used by the firm.
- **Written Cost Estimates.** The proposal must indicate the firm's willingness to provide written, cost estimates for specific assignments.
- **Fees.** The proposal must outline the firm's billing structure and proposed rates or fees for bond counsel services. The proposal should indicate the firm's willingness to negotiate a final fee schedule and rates as part of the overall contract.
- **Reimbursable Costs and Expenses.** The proposal should indicate the firm's expense reimbursement needs. The City will reimburse only actual out-of-pocket expenses and will not reimburse expenses on a cost-plus or similar basis.
- **Insurance.** The proposal must describe the extent and nature of malpractice and other relevant insurance covering the firm's performance of bond counsel services for the City.
- **Actual or Potential Conflicts of Interest.** The proposal must indicate whether the firm or individual attorneys within the firm's firm represent any clients or interests in lawsuits or other legal actions between them and the City or any of the City's boards and commissions. The proposal also must indicate whether any activities of the firm or individual attorneys within the firm potentially pose a conflict of interest in the firm's representation of or association with the City (or the boards and commissions). For purposes of this RFP, the City's boards and commissions include Minneapolis Community Development Agency, Minneapolis Park Board, Minneapolis Civil Service Commission, Minneapolis Commission on Civil Rights. The firm must immediately advise the City in writing of any real or possible conflicts that arise after the submission of the proposal.
- **Equal Opportunity.** The proposal must include a copy of a current and valid certificate of compliance from the Minnesota Department of Human Rights certifying approval of the firm's affirmative action plan of the employment of minority persons, women, and disabled persons, or a signed affidavit indicating the firm did not have more than twenty (20) full-time employees on a single working day during the previous twelve (12) months. The proposal should identify (separately for each category) the percentage of partners, associates, law clerks, legal assistants and clerical staff that are women, minority persons and disabled persons. The proposal (or the firm's transmittal letter) must include the following statement signed by an authorized representative of the firm:

The undersigned agrees not to discriminate against any employee or applicant for employment on the basis of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, status with regard to public assistance or disability and to take affirmative action to assure that all employees are treated equally with respect to training, hiring, rates of pay and other forms of compensation. The undersigned further agrees to take affirmative action to

include the participation of targeted group businesses whenever possible in the performance of this proposal.

- **Firm's Offer.** The proposal (or the firm's transmittal letter) must include the following statement by an authorized representative of the firm:

This proposal constitutes an offer by the undersigned to enter into a contract to perform the described legal services for the compensations specified in this proposal and containing the terms and conditions in the standard City contract for legal services or required by applicable state or federal law or regulation.

- **References.** The proposal must provide appropriate references, including firm or agency names, contact persons and telephone numbers the City Attorney may contact regarding representation by the firm. References from governmental agencies should be included.

## **IX. FORM OF CONTRACT**

The General Requirements indicated beginning at page 10 of this Request For Proposals (RFP), provide a description of the provisions to be included in the form of contract to be entered into by persons or organizations contracting with the City. Some of the terms of the form of contract may be modified and some terms may be added to meet the requirements of the particular legal services contract to be entered into in response to the RFP and the requirements of applicable federal and state laws.

Prior to entering into a legal services contract with the City, the firm may be required to provide certain certifications.

## **X. EVALUATION AND SELECTION**

Proposals which demonstrate compliance with the certificate of compliance requirements of the Minnesota Department of Human Rights and which indicate the absence of any conflicts of interest prohibited under state and local laws, City policies and the Minnesota Rules of Professional Conduct will be reviewed by a panel consisting of the City Attorney, the City's Finance Officer and the Secretary of the Board of Estimate and Taxation. The panel will review proposals using the following criteria to determine which, if any, proposal is the most advantageous to the City's needs:

- The proposed cost of the legal services. The proposed cost of the legal services is important but is not necessarily the controlling factor in determining contract award.
- The firm's integrity, expertise and record of past performance in bond issuance and related legal work, including the experience and background of specific persons who may be assigned by the firm to perform legal services on behalf of the City.
- The ability of the firm to perform successfully the requested legal services and comply with public policy.
- The financial and technical resources available to the firm and the firm's ability to handle simultaneously numerous public finance matters for the City.

- The ability of the firm to respond flexibly and in a timely manner to requests for legal services from the City Attorney, the Finance Officer, or the Secretary of the Board of Estimate and Taxation.
- The extent to which the firm will include women, minority persons and persons with disabilities in the performance of the requested legal services.
- The extent to which the proposal is complete and responsive to the RFP specifications.
- To the extent to which the proposal demonstrates the firm has represented, or can represent, a governmental entity like the City.
- Other relevant criteria as may be developed by the City Attorney, the Finance Officer or the review panel.

Based on an application of these criteria and its review of the proposals, the review panel may select some firms for interviews and conduct interviews. The review panel will recommend bond counsel(s) to the City Council.

## **XI. GENERAL REQUIREMENTS**

The General Requirements are terms and conditions that the City expects all of its firms to meet. By proposing, the firm agrees to be bound by these requirements unless otherwise noted in the Proposal. The firm may suggest alternative language to any section. Some negotiation is possible to accommodate the firm's suggestions.

(9/2013)

### **1. City's Rights**

The City reserves the right to reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense and reimbursement than described in the Request for Proposal, or the respondent's reply based on the component prices submitted.

### **2. Interest of Members of City**

The Consultant agrees that it has complied with Minnesota Statutes, Section 471.87 and Chapter 3, Section 22 of the City Charter. Therefore unless authorized in Chapter 15 of the City's Code of Ordinances, no member of the governing body, officer, employee or agent of the City shall have any interest, financial or otherwise, direct or indirect, in the Contract.

### **3. Equal Opportunity Statement**

The Consultant agrees to comply with applicable provisions of applicable federal, state and city regulations, statutes and ordinances pertaining to the civil rights and non-discrimination in the application for and employment of applicants, employees, subcontractors and suppliers of the Consultant. Among the federal, state and city statutes and ordinances to which the Consultant shall be subject under the terms of this Contract include, without limitation, Minnesota Statutes, section 181.59 and Chapter 363A, Minneapolis Code of Ordinances Chapter 139, 42 U.S.C. Section 2000e, et seq. (Title VII of the Civil Rights Act of 1964), 29 U.S.C. Sections 621-624 (the Age Discrimination

in Employment Act), 42 U.S.C. Sections 12101-12213 (the Americans with Disability Act or ADA), 29 U.S.C. Section 206(d) (the Equal Pay Act), 8 U.S.C. Section 1324 (the Immigration Reform and Control Act of 1986) and all regulations and policies promulgated to enforce these laws. The Consultant shall have submitted and had an “affirmative action plan” approved by the City prior to entering into a Contract.

#### 4. **Insurance**

Insurance secured by the Consultant shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the Contract and shall remain continuously in force for the duration of the Contract.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Consultant. Any policy deductibles or retention shall be the responsibility of the Consultant. The Consultant shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Consultant's interest or provide adequate coverage. Evidence of coverage is to be provided on a current ACORD Form. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The Consultant shall require any of its subcontractors, if subcontracting is allowable under this Contract, to comply with these provisions, or the Consultant will assume full liability of the subcontractors.

The Consultant and its subcontractors shall secure and maintain the following insurance:

- a) **Workers Compensation** insurance that meets the statutory obligations with Coverage B-Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.
- b) **Commercial General Liability** insurance with limits of at least \$2,000,000 general aggregate, \$2,000,000 products - completed operations \$2,000,000 personal and advertising injury, \$100,000 each occurrence fire damage and \$10,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured. The amount of coverage will be automatically increased if the project amount is expected to exceed \$2,000,000 or involves potentially high risk activity.
- c) **Commercial Automobile Liability** insurance covering all owned, non-owned and hired automobiles with limits of at least \$1,000,000 per accident.
- d) **Professional Liability** Insurance or Errors & Omissions insurance providing coverage for 1) the claims that arise from the errors or omissions of the Consultant or its subcontractors and 2) the negligence or failure to render a professional service by the Consultant or its subcontractors. The insurance policy should provide coverage in the amount of \$2,000,000 each claim and \$2,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the work.

#### 5. **Hold Harmless**

The Consultant will defend, indemnify and hold harmless the City and its officers and employees from all liabilities, claims, damages, costs, judgments, lawsuits and expenses, including court costs and reasonable attorney's fees regardless of the Consultant's insurance coverage, arising directly from any negligent act or omission of the Consultant, its employees, agents or employees of the subcontractors and subcontractors of the Consultant, in the performance of work and delivery of

services provided by or through this Contract or by reason of the failure of the Consultant to perform, in any respect, any of its obligations under this Contract.

The City will defend, indemnify and hold harmless the Consultant and its employees from all liabilities, claims, damages, costs, judgments, lawsuits and expenses including court costs and reasonable attorney's fees arising directly from the negligent acts and omissions of the City by reason of the failure of the City to perform its obligations under this Contract. The provisions of the Minnesota Statutes, Chapter 466 shall apply to any tort claims brought against the City as a result of this Contract.

## **6. Subcontracting**

The Consultant shall provide written notice to the City and obtain the City's authorization to subcontract any work or services to be provided to the City pursuant to this Contract. As required by Minnesota Statutes, Section 471.425, the Consultant shall pay all subcontractors for subcontractor's undisputed, completed work, within ten (10) days after the Consultant has received payment from the City.

## **7. Assignment or Transfer of Interest**

The Consultant shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City. The Consultant shall not subcontract any services under this Contract without prior written approval of the City Department Contract Manager designated herein.

## **8. General Compliance**

The Consultant agrees to comply with all applicable Federal, State and local laws and regulations governing funds provided under the Contract.

## **9. Performance Monitoring**

The City will monitor the performance of the Consultant against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this Contract. If action to correct such substandard performance is not taken by the Consultant within a reasonable period of time to cure such substantial performance after being notified by the City, Contract termination procedures will be initiated. All work submitted by Consultant shall be subject to the approval and acceptance by the City Department Contract Manager designated herein. The City Department Contract Manager designated herein shall review each portion of the work when certified as complete and submitted by the Consultant and shall inform the Consultant of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

## **10. Prior Uncured Defaults**

Pursuant to Chapter 8, Section 24 of the City's Charter, the City may not contract with persons or entities that have defaulted under a previous contract or agreement with the City and have failed to cure the default.

## **11. Independent Consultant**

Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Consultant shall at all

times remain an independent Consultant with respect to the work and/or services to be performed under this Contract. Any and all employees of Consultant or other persons engaged in the performance of any work or services required by Consultant under this Contract shall be considered employees or subcontractors of the Consultant only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, shall be the sole obligation and responsibility of the Consultant.

## **12. Accounting Standards**

The Consultant agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices (GAAP) to properly account for expenses incurred under this Contract.

## **13. Retention of Records**

The Consultant shall retain all records pertinent to expenditures incurred under this Contract in a legible form for a period of six years commencing after the later of contract close-out or resolution of all audit findings. Records for non-expendable property acquired with funds under this Contract shall be retained for six years after final disposition of such property.

## **14. Data Practices**

The Consultant agrees to comply with the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) and all other applicable state and federal laws relating to data privacy or confidentiality. The Consultant must immediately report to the City any requests from third parties for information relating to this Contract. The City agrees to promptly respond to inquiries from the Consultant concerning data requests. The Consultant agrees to hold the City, its officers, and employees harmless from any claims resulting from the Consultant's unlawful disclosure or use of data protected under state and federal laws.

All Proposals shall be treated as non-public information until the Proposals are opened for review by the City. At that time, the names of the responders become public data. All other data is private or non-public until the City has completed negotiating the Contract with the selected Consultant(s). At that time, the Proposals and their contents become public data under the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 and as such are open for public review.

## **15. Inspection of Records**

Pursuant to Minnesota Statutes, Section 16C.05, all Consultant records with respect to any matters covered by this Contract shall be made available to the City and the State of Minnesota, Office of the State Auditor, or their designees upon notice, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

## **16. Living Wage Ordinance**

The Consultant may be required to comply with the "[Minneapolis Living Wage and Responsible Public Spending Ordinance](#)" Chapter 38 of the City's Code of Ordinances (the "Ordinance"). Unless otherwise exempt from the ordinance as provided in Section 38.40 (c), any City contract for services valued at \$100,000 or more or any City financial assistance or subsidy valued at \$100,000 or more

will be subject to the Ordinance's requirement that the Consultant and its subcontractors pay their employees a "living wage" as defined and provided for in the Ordinance.

## **17. Applicable Law**

The laws of the State of Minnesota shall govern all interpretations of this Contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Consultant.

## **18. Conflict and Priority**

In the event that a conflict is found between provisions in this Contract, the Consultant's Proposal or the City's Request for Proposals, the provisions in the following rank order shall take precedence: 1) Contract; 2) Proposal; and last 3) Request for Proposals (only for Contracts awarded using RFP).

## **19. Travel**

If travel by the Consultant is allowable and approved for this Contract, then Consultant travel expenses shall be reimbursed in accordance with the City's [Consultant Travel Reimbursement Conditions](#).

## **20. Billboard Advertising**

City Code of Ordinance 544.120, prohibits the use of City and City-derived funds to pay for billboard advertising as a part of a City project or undertaking.

## **21. Conflict of Interest/Code of Ethics**

Pursuant to Section 15.250 of the City's Code of Ordinances, both the City and the Consultant are required to comply with the City's Code of Ethics. Chapter 15 of the Code of Ordinances requires City officials and the Consultant to avoid any situation that may give rise to a "conflict of interest." A "conflict of interest" will arise if Consultant represents any other party or other client whose interests are adverse to the interests of the City.

As it applies to the Consultant, the City's Code of Ethics will also apply to the Consultant in its role as an "interested person" since Consultant has a direct financial interest in this Contract. The City's Code of Ethics prevents "interested persons" from giving certain gifts to employees and elected officials.

## **22. Termination**

The City may cancel this Contract for any reason without cause upon thirty (30) days' written notice. Both the City and the Consultant may terminate this Contract if either party fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of this Contract. The non-defaulting party shall have the right to terminate this Contract, if the default has not been cured after ten (10) days' written notice or such other reasonable time period to cure the default has been provided. If termination shall be without cause, the City shall pay Consultant all compensation earned to the date of termination. If the termination shall be for breach of this Contract by Consultant, the City shall pay Consultant all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the Contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Consultant under this Contract shall, at the

option of the City, become the property of the City, and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by the Consultant. The City may, in such event, withhold payments due to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Consultant, from asserting any other right or remedy allowed by law, equity, or by statute. The Consultant has not waived any rights or defenses in seeking any amounts withheld by the City or any damages due the Consultant.

### **23. Ownership of Materials**

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Contract shall become the property of the City upon final approval of the final report or upon request by the City at any time before then. The City at its own risk, may use, extend, or enlarge any document produced under this Contract without the consent, permission of, or further compensation to the Consultant.

### **24. Intellectual Property**

Unless the Consultant is subject to one or more of the intellectual property provisions in the paragraphs below, the City own all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any “Work” created, in progress, produced or completed and paid by this Contract. Work covered includes inventions, improvements, discoveries, databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, or other media.

All Work produced by the Consultant under this Contract will be the exclusive property of the City and will be surrendered to the City immediately upon completion, expiration, or cancellation of this Contract. The Consultant may retain a copy of the work for its files in order to engage in future consultation with the City and to satisfy professional records retention standards. The Consultant represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

Each party acknowledges and agrees that each party is the sole and exclusive owner of all right, title, and interest in and to its services, products, software, source and object code, specifications, designs, techniques, concepts, improvements, discoveries and inventions including all intellectual property rights thereto, including without limitations any modifications, improvements, or derivative works thereof, created prior to, or independently, during the terms of this Contract. This contract does not affect the ownership of each party’s pre-existing, intellectual property. Each party further acknowledges that it acquires no rights under this Contract to the other party’s pre-existing intellectual property, other than any limited right explicitly granted in this Contract.

### **25. Equal Benefits Ordinance**

Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to each Consultant and subcontractor with 21 or more employees that enters into a “contract”, as defined by the ordinance that exceeds \$100,000. The categories to which the ordinance applies are personal services; the sale or purchase of supplies, materials, equipment or the rental thereof; and the

construction, alteration, repair or maintenance of personal property. The categories to which the ordinance does not apply include real property and development contracts.

Please be aware that if a “contract”, as defined by the ordinance, initially does not exceed \$100,000, but is later modified so the Contract does exceed \$100,000, the ordinance will then apply to the Contract. A complete text of the ordinance is available at: [http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert\\_261694.pdf](http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_261694.pdf)

It is the Consultant’s and subcontractor’s responsibility to review and understand the requirements and applicability of this ordinance.

## **26. Small & Underutilized Business Program (SUBP) Requirements**

It is the policy of the City of Minneapolis to provide equal opportunity to all contractors and to redress the discrimination in the City’s marketplace against minority-owned business enterprises (MBEs) and woman-owned business enterprises (WBEs). The SUBP, as detailed in the Minneapolis Code of Ordinances Section 423.50, applies to any professional, technical and service contract over \$100,000. Goals are set on proposals based on project scope, subcontract opportunities and projected availability of SUBP firms.

There are no specific goals on this contract. However, should the proposer find an opportunity to subcontract with any businesses on this project, you are required to solicit SUBP firms.

For more information on locating certified businesses, please visit <http://mnucp.metc.state.mn.us/> or call the City at 612-673-2112.

Please attach the following as applicable:

[\(Attachment for RFP with SUBP goals\)](#)

[\(Attachment for RFP without SUBP goals\)](#)