



**REQUEST FOR PROPOSALS
For
Consulting Services
For
Environmental Due Diligence Planning
and
Oversight of Abatement and Demolition Services
For
1500 Towerview Road, Eagan, MN**

Release Date: January 10, 2025

Proposal Due Date: January 31, 2025

Dakota County Community Development Agency
1228 Town Centre Drive
Eagan, MN 55123

For additional information, please contact

Lisa Alfson
lalfson@dakotacda.org
651-675-4467

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1.0 INTRODUCTION AND PROJECT DESCRIPTION

The Dakota County Community Development Agency (CDA) is a local government agency whose mission is to improve the lives of Dakota County residents and enhance the economic vitality of communities through housing and community development.

The CDA is soliciting proposals from environmental, construction management, engineering, and project management Consultants to provide comprehensive environmental due diligence, planning and oversight of abatement and demolition services for a vacant 335,300 square foot corporate headquarters/office building/data center (the Building) located on a 39-acre site (the Site) at 1500 Towerview Road, Eagan. The long-term goal is to demolish the Building, clean up the Site, and work with the City of Eagan on redevelopment plans that will include CDA-owned affordable housing on a portion of the Site. The CDA will sell off excess land to other interested parties for future development.

The awarded Consultant will be expected to act as a General Contractor (GC) representing the interests of the CDA to conduct environmental due diligence and oversee the planning, management, and implementation of the demolition project. The CDA will contract with demolition and abatement contractor after the due diligence is complete.

This RFP neither commits the CDA to execute a contract, nor obligates the CDA to pay for any costs incurred in the preparation and submission of a response to this RFP, or in anticipation of a contract. The CDA reserves the right, at its sole discretion, to make selections, to reject any or all submissions, to issue subsequent RFPs, to remedy technical errors in the RFP process and to enter into contract with one or more consultants from the provision of any, all, or some of the services described herein.

The CDA also reserves the right to fund these services from any local, state, or federal funding source, and the successful vendor must comply with all applicable laws, regulations, and rules.

1.1 Building/Site Information

Site Location:	Generally, southwest of Towerview Road and Pilot Knob Road.
Address:	1500 Towerview Road, Eagan, MN
PID:	107995001030
Tax Description:	Lot 3, Block 1, Unisys Park
Acreage:	39.01 acres
Buildings:	Data Center Office building built in approximately 1982.



The Building and Site were formerly used as a semi-conductor manufacturing facility for Unisys Corporation and were later used as a corporate headquarters for Northwest Airlines and Delta Airlines. The Building has been vacant since approximately 2021 though there has been on-site management to ensure minimal building functions remain intact. The Building contains large heating/cooling systems, data center equipment, and other material found in similar large buildings.

The City of Eagan has completed a small area plan for the Site, which can be found on the city's website here: [Eagan NWCommons SAP DRAFT.indb](#)

1.2 Project Description

The CDA is seeking responses from qualified Consultants to conduct environmental due diligence and oversee the abatement and demolition services of the vacant 335,300 square-foot corporate headquarters/office building/data center. Acting as GC, the awarded Consultant is expected to initiate and manage all aspects of the environmental due diligence, abatement, and demolition implementation, including (but not limited to):

A. Pre-demolition Assessments. The CDA received significant information related to the environmental history of the site as part of the acquisition in August 2024. Please see the attached "Environmental History Summary" for additional information.

The awarded Consultant will be expected to identify any added steps that have yet to be completed or acknowledged, perform any follow-up environmental investigations, structural analysis, MPCA related documentation and filings and any other Federal/State/Local regulatory agencies. The CDA wants the awarded

Consultant to develop and present a roadmap of environmental due diligence needed for this project.

The awarded Consultant will also be required to complete a Regulated Materials Survey for the Building

B. Pre-demolition Planning: Developing a remediation and demolition plan in coordination and compliance with applicable regulatory authorities and relevant organizations. The awarded Consultant shall be responsible for conducting thorough site inspections to assess the condition of the Building and surrounding areas. This includes identifying any potential issues with neighboring properties and evaluating the impact on the right-of-way, if applicable.

The plan must include information on where demolition debris and material will be disposed and that the disposal method and location comply with all relevant laws and requirements.

The awarded Consultant must then develop a comprehensive demolition plan, including demolition specifications, that details the sequence of activities to be carried out, incorporates necessary safety measures, and provides a clear timeline for the project. This plan should ensure minimal disruption to the surrounding areas and adhere to all relevant regulations and standards.

The demolition plan will also include the decommission, asset recovery and removal of the remaining materials in the Building.

C. Contracting: Identifying and procuring contracts with all necessary subcontractors, third-party consultants, and any other entities required to complete the Project on-time and on-budget.

D. Abatement & Demolition: Monitoring abatement and demolition activities of the Building and any other contractors engaged by the CDA to complete abatement and demolition.

2.0 SCOPE OF SERVICES

The awarded Consultant will be responsible for managing the following roles with input and assistance from CDA staff. **Please note: The following is not intended to be an exhaustive scope encompassing all that will be required as part of abatement/demolition.** Additional tasks and services may be required to complete the project as generally defined and respondents are expected to identify any missing items from the scope included within this RFP in their response and accompanying budget.

A. Project Management

- i) Develop and maintain a project schedule.
- ii) Source, hire, and manage a team of subcontractors to complete specialized aspects of the project, if needed.
- iii) Coordinate with all stakeholders, including the CDA, the City of Eagan, Dakota County, and subcontractors.
- iv) Prepare regular payment requisitions to the CDA at defined intervals and provide all supporting documentation necessary.

B. Environmental Due Diligence

- i) Review existing environmental investigations, develop plan/roadmap for needed environmental investigation and due diligence prior to and during demolition.
- ii) Enroll site in MN Pollution Control Agency (MPCA) Brownfield Program and Voluntary Investigation and Cleanup Program.
- iii) Coordinate with MPCA.
- iv) Obtain a No Association letter on behalf of the CDA for Site.
- v) Assist with navigating MPCA Brownfield Program needs for the Site and future redevelopment.

C. Asbestos Abatement

- i) Develop Regulated Materials survey.
- ii) Implement and oversee the completion of all environmental abatement in accordance with MPCA, Dakota County, and any applicable Federal or State requirements.
- iii) Provide required air quality monitoring during abatement activities.

D. Demolition Services

- i) Develop demolition plan (bid specifications).
- ii) Conduct walkthroughs for interested contractors of building prior to response to bid specifications.
- iii) Review bids with CDA staff.
- iv) Oversee demolition bid process.
- v) Monitor demolition process.
- vi) Oversee post-demolition process including but not limited to securing the Site for stormwater/erosion concerns, grading, ensuring impacted soil is not disturbed or exposed beyond what is necessary for demolition.

E. Reporting

- i) Conduct regular project team coordination meetings as needed and work with CDA staff to prepare regular progress reports to the Board of Commissioners, the City of Eagan, Dakota County, community groups, and other stakeholders.
- ii) Document all phases of the project, including environmental due diligence, abatement, and demolition.

3.0 GENERAL INSTRUCTIONS FOR RESPONDING CONTRACTORS

3.1 Contact Person

Responding Consultants sole point of contact for this RFP is:

Lisa Alfson
Dakota County Community Development Agency
1228 Town Centre Drive
Eagan MN 55123
lalfson@dakotacda.org
Phone: 651-675-4467

3.2 Questions

Questions regarding this RFP must be submitted by email and must be received no later than **Friday, January 17, 2025**. Responses from the CDA will be in written form to all recipients of the RFP.

3.3 Addenda/Clarifications

Any revisions or modifications to the RFP shall be made by CDA staff in a written addendum. No verbal modification will be binding.

3.4 Examination of Proposal Documents

By submitting an RFP proposal, Consultants represent that they have thoroughly examined and become familiar with the work required under this RFP and that they are capable of performing quality work to achieve the objectives of this RFP.

3.5 Pre-Contractual Expenses

Pre-contractual expenses are expenses incurred by the Consultants in 1) preparing a proposal in response to this RFP; 2) submitting the proposal to the CDA; or 3) any other expenses incurred by the Consultants prior to the date of execution of the proposed contract. The CDA shall not, in any event, be liable for any pre-contractual expenses incurred by the Consultants in the preparation of their proposals. Consultants shall not include any such expenses as part of their proposals.

3.6 Contract Award

Issuance of this RFP and receipt of proposals does not commit the CDA to award a contract. The CDA reserves the right to postpone proposal review at its own convenience, to accept or reject proposals based on evaluation of the submitted information, to accept proposals other than the lowest cost proposal, to negotiate with others than the selected Consultant should negotiations with the selected Consultant be terminated, to negotiate with more than one Consultant simultaneously, or to cancel all or part of this RFP.

3.7 Public Records and Requests for Confidentiality

Pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes Section 13.591, the names of all entities that submitted a timely bid/proposal to the CDA will be

public once opened. All other information remains private until after the CDA has completed negotiating a contract with the selected Consultant. After a contract has been negotiated, all information received is public information except "trade secret" information as defined in Minnesota Statutes Section 13.37. All information submitted by Consultants therefore shall be treated as public information by CDA unless the Consultant properly requests that information be treated as a confidential trade secret at the time of submitting the bid/proposal.

Any request for confidential treatment of trade secret information in a Consultant's bid/proposal must sufficiently describe the facts that support the classification of information as confidential trade secret. The request must include the name, address, and telephone number of the person authorized by the Consultant to answer any inquiries by the CDA concerning the request for confidentiality. This information shall be provided on the Trade Secret Information Form, see Attachment F. The CDA reserves the right to make the final determination of whether data identified as confidential trade secret by a Consultant falls within the trade secret exemption in the Minnesota Government Data Practices Act.

The envelope or mailing container of any documents submitted with the proposal that the Consultant believes contain confidential trade secret information must be clearly marked as containing confidential trade secret information. Each page on which trade secret information appears must be marked as containing confidential trade secret information.

In addition to marking the documents as confidential, the Consultant must submit one paper and one digital copy of the bid/proposal from which the confidential trade secret information has been excised. The confidential trade secret information must be excised in such a way as to allow the public to determine the general nature of the information removed while retaining as much of the document as possible.

The Consultant's failure to request confidential treatment of confidential trade secret information pursuant to this subsection will be deemed by the CDA as a waiver by the Consultant of any confidential treatment of the trade secret information in the bid/proposal.

Requests by the public for the release of information held by the CDA are subject to the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. Consultants are encouraged to familiarize themselves with these provisions prior to submitting a bid/proposal.

By submitting this bid/proposal, a Consultant agrees to indemnify and hold the CDA, its agents, and employees harmless from any claims or causes of action relating to the CDA's withholding of data based upon reliance on the representations that the information is a trade secret as defined in Minnesota Statutes Section 13.37 and therefore is not public, including the payment of all costs and attorney fees incurred by the CDA in defending such an action.

Public Data Requests can be submitted to: kbraa@dakotacda.org

3.8 Dakota County CDA Rights

CDA staff may investigate the qualifications of any Consultants under consideration, require confirmation of information furnished by Consultants, and require additional evidence of qualifications to perform the work described in this RFP. The CDA staff reserves the right to:

- Reject any or all proposals if such action is in the public interest;
- Cancel the entire RFP;
- Issue a subsequent RFP;
- Remedy technical errors in the RFP process;
- Appoint evaluation committees to review proposals;
- Establish a short list of Contractors eligible for interview after evaluation of written proposals;
- Negotiate with any, all, or none of the RFP respondents; and
- Reject and replace one or more subcontractors.

This RFP does not commit the CDA to enter into a contract, nor does it obligate the CDA to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

4.0 SUBMISSION OF PROPOSALS

4.1 Proposal Submittal

Consultants must review the attached specifications, scope of services, and exhibits and submit one electronic copy of the proposal by Friday, January 31, 2025, to lalfson@dakotacda.org.

During the three-week response period, the CDA will provide:

- The release of at least one addendum answering any questions or requests for clarification received during an open questions period. Once the addendum has been added to the list of published documents as part of this RFP, the CDA will no longer take questions from potential respondents until an awarded proposal is acknowledged.
- Deadline to submit questions to be answered in a distributed addendum January 17, 2025 at 4:30 pm

4.2 Proposal Format

All proposals by corporations shall bear the official seal of the corporation, if applicable, along with the signature of a duly authorized officer of the corporation. All text and exhibits should be succinct and relevant to the RFP requirements.

4.3 Proposal Contents

The proposal must include, at a minimum, the following sections:

A. Letter of Transmittal

The proposal must be submitted on the Consultant's official business letterhead. The letter is to transmit the quote/proposal and must identify all materials and enclosures being forwarded collectively as a response to this RFP.

Include, at a minimum, the following:

- Identification of the offering Consultant(s), including name, address and telephone number;
- Acknowledgment of receipt of RFP addenda, if any;
- Name, title, address, telephone number, and e-mail address of contact person during period of proposal evaluation;
- A statement to the effect that the proposal shall remain valid for a period of not less than 120 days from the date of submittal; and
- Signature of a person authorized to bind the offering Consultant to the terms of the proposal.

B. Consultant Introduction

Provide a brief company history and organizational structure of the Consultant including an outline of the Consultant's previous and current projects demonstrating qualifications to provide the scope of services requested by the RFP.

C. Team Organization

In this section, state in writing or provide an organization chart showing the team members and key personnel. Identify the team members' areas of responsibility. Provide any subcontractors' company name, address, a contact person, email and telephone number.

D. Qualifications and Experience

Identify similar projects undertaken by the Consultant within the last five (5) years. For each project, provide the client's name, address and telephone number for a contact person currently available who is familiar with the Consultant's performance on each project listed.

E. Work Plan and Budget for Scope of Services

All proposals must demonstrate an understanding of the Project and Scope of Services as described in this document. All proposals must include a clear description of the methods or processes to be used to complete each item in the Scope of Services. In addition, all proposals must include a preliminary work plan that details tasks, timelines and work products if different or supplemental to the Scope of Services. For this proposal assume work can begin on or shortly after March 1, 2025. The selected Consultant will work with CDA to make any necessary adjustments to the work plan as determined by the CDA, in consultation with the awarded Consultant, during the contract period.

Consultants must provide a detailed budget for the Project. The budget should include items such as professional fees, direct expenses, and contract labor.

F. Conflict of Interest

Consultants must identify any potential conflict of interest they may have with this proposal. See Attachment E: Non-Collusion and Conflict of Interest Statement.

G. Exceptions and Deviations

Any exceptions to the requirements in this RFP must be included in the proposal submitted by the Consultant. Segregate such exceptions as a separate element of the proposal under the heading “Exceptions and Deviations.”

H. Contract Terms and General Conditions

Attachment C of this RFP sets forth the CDA’s standard Contract Terms. Proposals should indicate the Consultant's willingness to agree to such provisions.

I. Registration and Good Standing

All responders must comply with Minnesota law governing transaction of business in the [State of Minnesota](#). Upon award of the contract, the CDA will verify compliance prior to contracting.

5.0 TIMELINE AND BUDGET

5.1 Estimated Timeline

This RFP will be conducted according to the following tentative schedule. This tentative schedule may be altered at any time at the discretion of the CDA. The term of the contract to be awarded under this RFP is anticipated to be March 1, 2025, through December 31, 2025 but may be adjusted to accommodate unforeseen delays.

Release RFP:	January 10, 2025
Questions Due:	January 17, 2025 - noon
Responses to Questions:	January 24, 2025, 4:30 pm
RFP Proposals Due:	January 31, 2025 at 4:30 pm
Interviews:	February 10 and 11, 2025
Anticipated Contract Start Date:	March 1, 2025
Contract End Date:	December 31, 2025

5.2 Budget

5.2.1 Contractor Budget

The Consultant must identify the budget necessary to perform the services identified in the Scope of Services. The Consultant, when establishing cost estimates for the total Program, shall include all direct expenditures, such as, but not limited to: contractor fees, travel costs, necessary material purchases (subject to CDA approval), etc. Indirect rates or overhead costs – such as rent, utilities, or incidental copying – will not be allowed under this contract.

5.2.2 Payment for Services

The Consultant shall submit a proposal based on hourly charges and reimbursables up to a maximum not to exceed total for all work within the scope of the project. The Consultant's quote/proposal is to include the chargeable hourly rate of each team member, the anticipated number of hours spent on the project for each team member, and the maximum fee. The overall fee shall reflect a maximum not-to-exceed based on the sum of the tasks.

Billing for completed services shall be based upon a monthly invoice submitted by the Consultant. The invoice shall indicate the hours of labor performed by each person charging time to the Project, their charge out rate, and itemizations of the reimbursable expenses charged to the Project. CDA staff will have the right to inspect the Project timesheets. The invoice must also indicate the total contract amount, the total paid to date, the remaining amount to be paid, and the estimated percentage of Project completed. CDA staff, at staff's option, may retain a portion of the total fee to ensure that sufficient fees are available to complete the Project.

6.0 EVALUATION CRITERIA

The award shall be based on, but not limited to, the following factors:

1. Project understanding
2. Proposed project approach
3. Project team and expertise of key personnel: Based on project management team and qualifications and similar project experience of key team members
4. Quality control: Based on methods to ensure a quality product delivered on schedule
5. Performance on similar projects: Based on performance of the team members and the Consultant with successful delivery of similar recent projects
6. Best Value Cost Proposal

7.0 SELECTION PROCESS

Proposals will be evaluated based on the following criteria:

- **Experience and Qualifications: 25%**
 - Relevant experience and the qualifications of key personnel.
- **Cost Proposal: 25%**
 - Reasonableness and competitiveness of the proposed budget.
- **Approach to Project: 20%**
 - Understanding of the project and proposed methodology – especially as it relates to keeping the timeline of the project as short and costs as low as possible (within reason and without impacting the final result)
- **Past Performance: 20%**
 - Success on similar projects and client references.

- **Compliance: 10%**
 - Adherence to the requirements of this RFP.

Favorable consideration will be given to respondents that:

- Provide the most responsive bid
- Promise the quickest delivery of contracted services
- Provide the lowest reasonable price

ATTACHMENT A – ENVIRONMENTAL HISTORY

ATTACHMENT B - STANDARD ASSURANCES

ATTACHMENT C – INSURANCE TERMS

ATTACHMENT D – SAMPLE CONTRACT

ATTACHMENT E – NON-COLLUSION & CONFLICT OF INTEREST

ATTACHMENT F – TRADE SECRET FORM

ATTACHMENT A **ENVIRONMENTAL HISTORY**

- Site was constructed in 1982 and used as a semi-conductor manufacturing facility for Unisys Corporation (formerly Sperry/Univac Corp). Site was referred to as the ESOHQ (Eagan Semiconductor Operations Headquarters).
- The site contained two 35,000 gallon and one 4,000-gallon fuel oil tanks used to store Fuel Oil No. 2 and Fuel Oil No. 6, and were buried along the northeast side of the building. There were also two buried underground chemical overflow tanks in the southeast corner of the courtyard on the north side of the building. A sub-basement in the building contained a sump that drained drainage tile under the building.
- An Environmental Assessment for the ESOHQ was conducted in 1988 (LBG, Inc July 19, 1988) to investigate the hydrogeologic nature of the site and determine if soil and/or groundwater at the site had been impacted by site activities.
- Four test borings and six monitoring wells were initially drilled to characterize soil and groundwater quality and determine direction of flow. Water was encountered from 13 to 28 feet below grade with flow to the southeast across the site.
- Trichloroethylene (TCE) and Trichloroethane (TCA) were detected in water samples from two monitoring wells during two rounds of sampling. TCE was only detected in the two wells to the east and southeast of the building and at levels above the intervention limit for the State of Minnesota. (note that this limit was much higher in 1988 than today). The source of the TCE and TCA could not be accurately determined at that time.
- An expanded Hydrogeologic Investigation was conducted in the later half of 1988 (LBG, Inc. November 17, 1988) to further characterize the geology of the shallow aquifer, define the direction and rate of the groundwater flow, and define the extent of the TCE and TCA in the subsurface. Eight additional test borings and five additional monitoring wells were installed, along with a test well to conduct a pumping test.
- The results of the expanded testing indicated TCE was present in an oblong plume irregularly distributed with three high concentration areas. TCE concentration was 1,800 ug/l in well 4 and 460 ug/l in wells 8 and 11.
- Phase II of the expanded investigation continued through the end of the year in 1988 and was reported in February 1989 (LBG, Inc February 1989) to further delineate the extent of TCE and TCA in the shallow aquifer. This report intended to determine the lateral extent of the contamination, establish a perimeter monitoring well network and install a series of test wells to understand the hydraulic characteristics of the aquifer.

- Groundwater sampling was analyzed in 20 of the 23 test borings. Eight (8) borings detected varying concentrations of TCE. Four test wells were introduced in the affected zone to determine and calculate the capture zone for each well. Water quality results indicated that a valid perimeter monitoring well network was in place around the TCE/TCA area.
- The primary source of the contamination was not determined but suspected it was coming from under the building.
- In 1989, Unisys applied for a pumphouse permit and conducted a groundwater pump out of contaminated groundwater for six years, shutting the system down in 1996. During that time, Northwest Airlines purchased the site and continued a 46-foot-deep dewatering well to keep perched groundwater from intruding into the building. Discharge location is unknown.
- In 1997, Unisys requested closure of the site and MPCA issued a no further action determination. Final groundwater monitoring results indicated the presence of TCE at levels above the High Risk Level (HRL) of 20 ug/l at that time. The MDH has since lowered the HRL for TCE to 0.4 ug/l.
- In 2013, around the time that Delta Airlines sold the property to Digital Realty, Delta removed the underground fuel oil tanks and reported a petroleum leak. The Site was subsequently closed in 2013.
- The MPCA conducted a screening level assessment at the community center for vapor intrusion in 2016. Very low levels of chlorinated ethenes were detected, but nothing that required any sort of response action. However, because of the land use changes and significant drop in the HRL for TCE, the MPCA did request that Unisys revisit the site and collect additional data to verify that groundwater concentrations continued to degrade. They declined to do any work.
- The likelihood for significant environmental liability at this site appears to be high. Redevelopment of the site will require investigation and determination of remaining levels of contamination and remediation response based on proposed land uses.

ATTACHMENT B STANDARD ASSURANCES

1. **NON-DISCRIMINATION**. During the performance of this Contract, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status, veteran's status or public assistance status. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without unlawful discrimination because of their race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status, veteran's status, or public assistance status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices which set forth the provisions of this nondiscrimination clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, sex, national origin, disability, sexual orientation, age, marital status, veteran's status, or public assistance status.

No funds received under this Contract shall be used to provide religious or sectarian training or services.

The Contractor shall comply with any applicable federal or state law regarding non-discrimination. The following list includes, but is not meant to limit, laws which may be applicable:

A. The Equal Employment Opportunity Act of 1972, as amended, 42 U.S.C. § 2000e *et seq.* which prohibits discrimination in employment because of race, color, religion, sex, or national origin.

B. Equal Employment Opportunity-Executive Order No. 11246, 30 FR 12319, signed September 24, 1965, as amended, which is incorporated herein by reference, and prohibits discrimination by U.S. Government contractors and subcontractors because of race, color, religion, sex, or national origin.

C. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.* and 45 C.F.R. 84.3 (J) and (K) implementing Sec. 504 of the Act which prohibits discrimination against qualified handicapped persons in the access to or participation in federally-funded services or employment.

D. The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* as amended, and Minn. Stat. § 181.81, which generally prohibit discrimination because of age.

E. The Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d), which provides that an employer may not discriminate on the basis of sex by paying employees of different sexes differently for the same work.

F. Minn. Stat. Ch. 363A, as amended, which generally prohibits discrimination because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age.

G. Minn. Stat. § 181.59 which prohibits discrimination against any person by reason of race, creed, or color in any state or political subdivision contract for materials, supplies, or construction. Violation of this section is a misdemeanor and any second or subsequent violation of these terms may be cause for forfeiture of all sums due under the Contract.

H. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 through 12213, 47 U.S.C. §§ 225, 611, with regulations at 29 C.F.R. § 1630, which prohibits discrimination against qualified individuals on the basis of a disability in term, condition, or privilege of employment.

I. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and including 45 CFR Part 80, prohibits recipients of federal financial assistance from discriminating on the basis of national origin which includes not discriminating against those persons with limited English proficiency.

J. Equal Protection of the Laws for Faith-based and Community Organizations-Executive Order No. 13279, signed December 12, 2002 and as amended May 3, 2018. Prohibits discrimination against grant seeking organizations on the basis of religion in the administration or distribution of federal financial assistance under social service programs, including grants and loans.

K. Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, with regulations at 41 C.F.R. Part 60-250, which prohibits discrimination in employment against protected veterans.

2. **DATA PRIVACY.** For purposes of this Contract all data created, collected, received, stored, used, maintained, or disseminated by Contractor in the performance of this Contract is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as any applicable Federal laws on data privacy. Contractor must comply with the applicable data management requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the governmental agency (CDA), except as required by the terms of this Contract. All subcontracts shall contain the same or similar data practices compliance requirements.

3. **RECORDS DISCLOSURE/RETENTION.** Contractor's bonds, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Contract are subject to the examination, duplication, transcription, and audit by the CDA and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. The Contractor agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

4. **WORKER HEALTH, SAFETY AND TRAINING.** Contractor shall be solely responsible for the health and safety of its employees in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subcontractors and other persons who may perform work in connection with this Contract. Contractor shall ensure all personnel of Contractor and subcontractors are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks engaged in under this Contract. Each Contractor shall comply with federal, state, and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act which are applicable to the work to be performed by Contractor.

5. **CONTRACTOR GOOD STANDING.** Contractor shall maintain Good Standing status with the Office of the Minnesota Secretary of State, and shall notify CDA of any changes in Good Standing status within 5 calendar days of such change. Foreign business entities must maintain a certificate of authority (foreign corporations, limited liability companies, limited partnerships, and limited liability limited partnerships), or a statement of foreign qualification (foreign limited liability partnerships), or a statement of partnership authority (general partnerships). See Minn. Stat. §§ 303.03 (corporations); 322C.0802 (limited liability companies); 321.0902 and 321.0907 (foreign limited partnership); 321.0102(7) (foreign limited liability limited partnerships); 323A.1102(a) (foreign limited liability partnership); 321.0902 and 321.0907 (foreign general partnerships).

6. **CONTRACTOR DEBARMENT, SUSPENSION, AND RESPONSIBILITY CERTIFICATION.** Federal Regulation 45 CFR 92.35 prohibits the State/Agency from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government. Similarly, Minn. Stat. § 16C.03, subd. 2 provides the Commissioner of Administration with the authority to debar and suspend vendors who seek to contract with the State/Agency. Vendors may be suspended or debarred when it is determined, through a duly authorized hearing process, that they have abused the public trust in a serious manner.

7. **PROHIBITED TELECOMMUNICATIONS EQUIPMENT/SERVICES.** If Contractor is a subrecipient of federal grant funds under this Contract, Contractor certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018) (the "Act"), and 2 CFR § 200.216, Contractor will not use funding covered by this Contract to procure

or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Contractor will include this certification as a flow down clause in any agreement related to this Contract.

By signing this Contract, the Contractor certifies that it and its principals* and employees:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state, or local governmental department or agency; and

B. Have not within a three (3) year period preceding this Contract: 1) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract; 2) violated any federal or state antitrust statutes; or 3) committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

C. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for: 1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction; 2) violating any federal or state antitrust statutes; or 3) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

D. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Contract are in violation of any of the certifications set forth above; and

E. Shall immediately give written notice to the Authorized Representative should Contractor come under investigation for allegations of fraud or a criminal offense in connection with obtaining, or performing a public (federal, state, or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

*"Principals" for the purposes of this certification means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager; plant manager; head of a subsidiary, division, or business segment and similar positions).

ATTACHMENT C INSURANCE TERMS

Contractor agrees to provide and maintain at all times during the term of this Contract such insurance coverages as are indicated herein and to otherwise comply with the provisions that follow. Such policy(ies) of insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the Contract indemnity provisions. The provisions of this section shall also apply to all Subcontractors, Sub-subcontractors, and Independent Contractors engaged by Contractor with respect to this Contract, and Contractor shall be entirely responsible for securing the compliance of all such persons or parties with these provisions.

APPLICABLE SECTIONS ARE CHECKED

1. Workers Compensation. Workers' Compensation insurance in compliance with all applicable statutes including an All States or Universal Endorsement where applicable. Such policy shall include Employer's Liability coverage in an amount no less than \$500,000. If Contractor is not required by Statute to carry Workers' Compensation Insurance, Contractor agrees: (1) to provide the Dakota County Community Development Agency (the "CDA") with evidence documenting the specific provision under Minn. Stat. § 176.041 which excludes Contractor from the requirement of obtaining Workers' Compensation Insurance; (2) to provide prior notice to the CDA of any change in Contractor's exemption status under Minn. Stat. § 176.041; and (3) to hold harmless and indemnify the CDA from and against any and all claims and losses brought by Contractor or any subcontractor or other person claiming through Contractor for Workers' Compensation or Employers' Liability benefits for damages arising out of any injury or illness resulting from performance of work under this Contract. If any such change requires Contractor to obtain Workers' Compensation Insurance, Contractor agrees to promptly provide the CDA with evidence of such insurance coverage.

2. General Liability.

"Commercial General Liability Insurance" coverage (Insurance Services Office form title), providing coverage on an "occurrence" rather than on a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Contract), Independent Contractors, "XC&U" and Products-Completed Operations liability (if applicable). Such coverage may be provided under an equivalent policy form (or forms), so long as such equivalent form (or forms) affords coverage which is at least as broad. An Insurance Services Office "Comprehensive General Liability" policy which includes a Broad Form Endorsement GL 0404 (Insurance Services Office designation) shall be considered to be an acceptable equivalent policy form.

Contractor agrees to maintain at all times during the period of this Contract a total combined general liability policy limit of at least \$1,500,000 per occurrence and aggregate, applying to liability for Bodily Injury, Personal Injury, and Property Damage, which total limit may be satisfied by the limit afforded under its Commercial General Liability policy, or equivalent policy, or by such policy in combination with the limits

afforded by an Umbrella or Excess Liability policy (or policies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy is at least as broad as that afforded by the underlying Commercial General Liability policy (or equivalent underlying policy).

Such Commercial General Liability policy and Umbrella or Excess Liability policy (or policies) may provide aggregate limits for some or all of the coverages afforded thereunder, so long as such aggregate limits have not, as of the beginning of the term or at any time during the term, been reduced to less than the total required limits stated above, and further, that the Umbrella or Excess Liability policy provides coverage from the point that such aggregate limits in the underlying Commercial General Liability policy become reduced or exhausted. An Umbrella or Excess Liability policy which "drops down" to respond immediately over reduced underlying limits, or in place of exhausted underlying limits, but subject to a deductible or "retention" amount, shall be acceptable in this regard so long as such deductible or retention for each occurrence does not exceed the amount shown in the provision below.

Contractor's liability insurance coverage may be subject to a deductible, "retention" or "participation" (or other similar provision) requiring the Contractor to remain responsible for a stated amount or percentage of each covered loss; provided, that such deductible, retention or participation amount shall not exceed \$25,000 each occurrence.

Such policy(ies) shall name the CDA, its officers, employees and agents as Additional Insureds thereunder.

3. Professional Liability. Professional Liability (errors and omissions) insurance with respect to its professional activities to be performed under this Contract. This amount of insurance shall be at least \$1,500,000 per occurrence and aggregate (if applicable). Coverage under such policy may be subject to a deductible, not to exceed \$25,000 per occurrence. Contractor agrees to maintain such insurance for at least one (1) year from Contract termination.

It is understood that such Professional Liability insurance may be provided on a claims-made basis, and, in such case, that changes in insurers or insurance policy forms could result in the impairment of the liability insurance protection intended for the CDA hereunder. Contractor therefore agrees that it will not seek or voluntarily accept any such change in its Professional Liability insurance coverage if such impairment of the CDA's protection could result; and further, that it will exercise its rights under any "Extended Reporting Period" ("tail coverage") or similar policy option if necessary or appropriate to avoid impairment of the CDA's protection. Contractor further agrees that it will, throughout the one (1) year period of required coverage, immediately: (a) advise the CDA of any intended or pending change of any Professional Liability insurers or policy forms, and provide the CDA with all pertinent information that the CDA may reasonably request to determine compliance with this section; and (b) immediately advise the CDA of any claims or threats of claims that might reasonably be expected to reduce the amount of such insurance remaining available for the protection of the CDA.

4. Automobile Liability. Business Automobile Liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned and hired automobiles and other motor vehicles utilized by Contractor in connection with its performance under this Contract. Such policy shall provide total liability limits for combined Bodily Injury and/or Property Damage in the amount of at least \$1,500,000 per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy(ies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy(ies) shall be at least as broad with respect to such Business Automobile Liability insurance as that afforded by the underlying policy. **Unless included within the scope of Contractor's Commercial General Liability policy, such Business Automobile Liability policy shall also include coverage for motor vehicle liability assumed under this contract.**

Such policy, and, if applicable, such Umbrella or Excess Liability policy(ies), shall include the CDA, its officers, employees and agents as Additional Insureds thereunder.

5. Additional Insurance. The CDA shall, at any time during the period of the Contract, have the right to require that Contractor secure any additional insurance, or additional feature to existing insurance, as the CDA may reasonably require for the protection of their interests or those of the public. In such event Contractor shall proceed with due diligence to make every good faith effort to promptly comply with such additional requirement(s).

6. Evidence of Insurance. Contractor shall promptly provide the CDA with evidence that the insurance coverage required hereunder is in full force and effect prior to commencement of any work. At least 10 days prior to termination of any such coverage, Contractor shall provide the CDA with evidence that such coverage will be renewed or replaced upon termination with insurance that complies with these provisions. Such evidence of insurance shall be in the form of the CDA's Certificate of Insurance, or in such other form as the CDA may reasonably request, and shall contain sufficient information to allow the CDA to determine whether there is compliance with these provisions. At the request of the CDA, Contractor shall, in addition to providing such evidence of insurance, promptly furnish Contract Manager with a complete (and if so required, insurer-certified) copy of each insurance policy intended to provide coverage required hereunder. All such policies shall be endorsed to require that the insurer provide at least 30 days' notice to the CDA prior to the effective date of policy cancellation, nonrenewal, or material adverse change in coverage terms. On the Certificate of Insurance, Contractor's insurance agency shall certify that he/she has Error and Omissions coverage.

7. Insurer: Policies. All policies of insurance required under this paragraph shall be issued by financially responsible insurers licensed to do business in the State of Minnesota, and all such insurers must be acceptable to the CDA. Such acceptance by the CDA shall not be unreasonably withheld or delayed. An insurer with a current A.M. Best Company rating of at least A:VII shall be conclusively deemed to be acceptable. In all other instances, the CDA shall have 15 business days from the date of receipt of Contractor's evidence of insurance to advise Contractor in writing of any insurer that is not acceptable to the CDA. If the CDA does not respond in writing within such 15 day period, Contractor's insurer(s) shall be deemed to be acceptable to the CDA.

8. Noncompliance. In the event of the failure of Contractor to maintain such insurance and/or to furnish satisfactory evidence thereof as required herein, the CDA shall have the right to purchase such insurance on behalf of Contractor, which agrees to provide all necessary and appropriate information therefor and to pay the cost thereof to the CDA immediately upon presentation of invoice.

9. Loss Information. At the request of the CDA, Contractor shall promptly furnish loss information concerning all liability claims brought against Contractor (or any other insured under Contractor's required policies), that may affect the amount of liability insurance available for the benefit and protection of the CDA under this section. Such loss information shall include such specifics and be in such form as the CDA may reasonably require.

10. Release and Waiver. Contractor agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to the property interests of Contractor. Contractor hereby releases the CDA, its officers, employees, agents, and others acting on their behalf, from all claims, and all liability or responsibility to Contractor, and to anyone claiming through or under Contractor, by way of subrogation or otherwise, for any loss of or damage to Contractor's business or property caused by fire or other peril or event, even if such fire or other peril or event was caused in whole or in part by the negligence or other act or omission of the CDA or other party who is to be released by the terms hereof, or by anyone for whom such party may be responsible.

Contractor agrees to effect such revision of any property insurance policy as may be necessary in order to permit the release and waiver of subrogation agreed to herein. Contractor shall, upon the request of the CDA, promptly provide a Certificate of Insurance, or other form of evidence as may be reasonably requested by the CDA, evidencing that the full waiver of subrogation privilege contemplated by this provision is present; and/or, if so requested by the CDA, Contractor shall provide a full and complete copy of the pertinent property insurance policy(ies).

**ATTACHMENT D
SAMPLE CONTRACT**

**CONTRACT BETWEEN THE DAKOTA COUNTY COMMUNITY DEVELOPMENT
AGENCY
AND [CONTRACTOR]
FOR [SERVICE]**

This Contract is between the Dakota County Community Development Agency (the "CDA") and [Contractor], [Address, City, State, Zip], ("Contractor"). Contractor is a [insert state where business is organized/incorporated (e.g., Minnesota)] [insert business type (e.g., corporation)]. This Contract uses the word "parties" for both CDA and Contractor.

WHEREAS, the CDA requires services for [concise description of services], as identified in the CDA's Request for Proposal ("Choose an item."), dated [date of RFP], attached and incorporated as Exhibit 1; and

WHEREAS, the Contractor represents, covenants, and warrants it can and will perform the services according to the provisions of this Contract and Contractor's Proposal ("Contractor's Proposal"), attached and incorporated as Exhibit 2; and

ACCORDINGLY, the parties agree:

1. TERM

This Contract is effective and enforceable on the date the last party executes this Contract [or a specific/future date] ("Effective Date") and expires on [expiration date] or the date on which all Services have been satisfactorily performed and final payment is made, whichever occurs first.

2. CONTRACTOR'S OBLIGATIONS

- 2.1. General Description. Contractor shall provide the services generally described in the Choose an item. and Contractor's Proposal (collectively, "Services").
- 2.2. Conformance to Specifications. Contractor represents, covenants, and warrants it can and will perform the Services in a timely manner according to this Contract.
- 2.3. Standard of Care. In the performance of the Services, Contractor shall use the care and skill a reasonable practitioner in Contractor's profession would use in the same or similar circumstances.
- 2.4. Ability to Perform. Contractor shall maintain staff, facilities, and equipment necessary to perform under this Contract. Contractor shall promptly provide Notice to the CDA when it knows or suspects it may be unable to perform under this Contract. The CDA shall determine whether such inability requires amendment or

termination of this Contract. No Notice of Default is required to terminate under this section.

- 2.5. Changes in Policy or Staff. The CDA may terminate this Contract by providing 10 calendar days' Notice if the Contractor makes or proposes significant changes in policies or staffing.
- 2.6. Successors and Assigns. In order to continue Services under the Contract and subject to the CDA's prior written consent, in the event of a voluntary or involuntary dissolution, merger, sale, transfer, reorganization, acquisition or winding down of the Contractor's business, all rights, duties, liabilities, obligations, and provisions of this Contract bind, benefit, and are assumed by the successors, legal representatives, trustees, or assigns of the Contractor as permitted by the CDA.

3. PAYMENT

- 3.1. Total Cost. CDA will pay Contractor a total amount not to exceed [Maximum Amount] and [cents]/100 Dollars (\$[Dollar Amount]) ("Contract Maximum"). The Contract Maximum is not subject to any express or implied condition precedent. The CDA is not required to pay for any minimum amount of any Services.
- 3.2. Compensation. The CDA shall pay for purchased Services in the fixed amounts set out in the Contractor's Proposal.
- 3.3. Time of Payment. The CDA shall pay Contractor within 35 calendar days after the date on which Contractor's invoice is received. If the invoice is incorrect, defective, or otherwise improper, the CDA will notify Contractor within 10 calendar days after the date on which the invoice is received. The CDA will pay Contractor within 35 calendar days after the date on which the corrected invoice is received.
- 3.4. Interest on Late Payments. This provision is required by Minn. Stat. § 471.425. The CDA shall pay interest of 1 ½ percent per month or any part of a month to the Contractor on any undisputed amount that is not paid on time. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For unpaid balances of less than \$100, the CDA shall pay the actual interest penalty due the Contractor.
- 3.5. Late Request for Payments. The CDA may refuse to pay invoices received or postmarked more than 90 calendar days after the date that the invoiced Services were performed.
- 3.6. Payment for Unauthorized Claims.
 - A. Payment does not prevent the CDA from disputing the claim. Payment of a claim is not a waiver, admission, release, ratification, satisfaction, accord, or account stated by the CDA.

- B. The CDA is not responsible for any interest, fee, or penalty if it withholds payment for failure to comply with any provision of this Contract or during the pendency of an audit or inspection.
- C. If the CDA requires an audit or inspection, the CDA does not have to pay any invoices until the audit or inspection is complete. Upon completion of the audit or inspection, the CDA will pay the Contractor pursuant to the time period for payment after receipt of an invoice.
- D. The CDA may offset any overpayment or disallowance of claim by reducing future payments.

4. COMPLIANCE WITH LAWS/STANDARDS

- 4.1. General. Contractor shall abide by all Federal, State or local laws, statutes, ordinances, rules, and regulations now in effect or hereafter adopted pertaining to this Contract or to the facilities, programs, and staff for which Contractor is responsible. This includes, but is not limited to, all Standard Assurances, which are attached and incorporated as Exhibit 3 [Exhibit 1 Attachment]. Any violation of this section is a material breach of this Contract. No Notice of Default is required to terminate under this section.
- 4.2. Minnesota Law to Govern. The laws of Minnesota govern all matters related to this Contract, without giving effect to the principles of conflict of law. Venue and jurisdiction for any litigation related to this Contract must be in those courts located within Dakota County, State of Minnesota or U.S. District Court, District of Minnesota.
- 4.3. Licenses. At its own expense, Contractor shall procure and maintain all licenses, certifications, registrations, permits, or other rights required to perform the Services under this Contract. Contractor shall furnish copies of the above to the CDA upon request. Contractor shall provide Notice to the CDA of any changes in the above within 5 calendar days of the change. Any violation of this section is a material breach of this Contract. No Notice of Default is required to terminate under this section.

5. INDEPENDENT CONTRACTOR STATUS

Contractor is an independent contractor. Nothing in this Contract is intended to create an employer and employee relationship between the CDA and the Contractor. Contractor is not entitled to receive any of the benefits received by CDA employees and is not eligible for workers' or unemployment compensation benefits. Contractor also acknowledges and agrees that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Contractor, and that it is Contractor's sole obligation to comply with the applicable provisions of all State and Federal tax laws.

6. NOTICES

- 6.1. Each Notice must be signed by the Authorized Representative. Notices may be signed electronically. Unless otherwise stated in a specific section of this Contract, any notice or demand, (collectively, "Notice") must be in writing and provided to the Authorized Representative by at least one of the following:
- A. Personal delivery, which is deemed to have been provided upon receipt as indicated by the date on the signed affidavit; or
 - B. Registered or Certified Mail, in each case, return receipt requested and postage prepaid, which is deemed to have been provided upon receipt as indicated by the date on the signed receipt, certification, or affidavit; or
 - C. Nationally or internationally recognized overnight courier, with tracking service with all fees and costs prepaid, which is deemed to have been provided upon receipt as indicated by the date on the signed receipt, certification, or affidavit; or
 - D. Except for Notices of Termination and Notices of Default, email, which is deemed to have been provided upon receipt as indicated by the date on a report generated by the outgoing email server indicating that the email was successfully sent, passed, or transmitted to the email server of the Authorized Representative's email address, or upon receiving an email confirming delivery to the Authorized Representative's email address.
- 6.2. If the Authorized Representative rejects or otherwise refuses to accept the Notice, or if the Notice cannot be provided because of a change in contact information for which no Notice was provided, then the Notice is effective upon rejection, refusal, or inability to deliver.

7. INDEMNIFICATION

- 7.1. General. To the greatest extent allowed by law, in the performance of or failure to perform this Contract, Contractor shall indemnify, defend (in the case of third-party claims, with counsel satisfactory to CDA), and hold harmless the CDA, its officers, agents, and employees, from and against any actual or alleged loss, litigation cost (including, but not limited to, reasonable attorney fees and costs and expenses of defense), costs, settlement, judgment, demands, damage, liability, lien, debt, injury, harm, fees, fines, penalties, interest, expenditure, diminution in value, disbursement, action, claim, proceeding, or dispute of any sort (collectively "Losses"), whether or not involving a third party, which are attributable to Contractor's, or Contractor's agents', independent contractors', employees', or delegates', actual or alleged:

- A. Intentional, willful, or negligent acts or omissions; or
- B. Actions or omissions that give rise to strict liability; or
- C. Negligent or intentional misrepresentation, breach of warranty, covenant, contract, or subcontract whether or not well-founded in fact or in law, known or unknown, foreseen or unforeseen, fixed or contingent and howsoever originating or existing, and whether or not based upon statute, common law, or equity. This indemnity provision survives expiration or termination of this Contract.

7.2. Limitations. The indemnification, defense, and hold harmless obligations of this section do not apply to the extent that liability is the direct or proximate result of the negligence or fault of the CDA or any third party for whom the Contractor is not legally liable. This limitation is not a waiver on the part of the CDA of any immunity or limits on liability under Minn. Stat. Ch. 466, or other applicable State or Federal law.

7.3. Notice. The parties shall promptly provide Notice in writing and in reasonable detail of:

- A. Any demand, action, suit, or proceeding against the party providing Notice; or
- B. Any event or fact that may give rise to indemnification under section 7.1 by Contractor.

7.4. Control of Defense and Settlement. Contractor shall promptly provide Notice to the CDA of any proposed settlement, and Contractor may not, without CDA's prior written consent (which the CDA will not unreasonably withhold, condition, or delay), settle such claim or consent to entry of any third-party judgment. Nothing in this section precludes Contractor from allowing CDA to undertake control of the defense.

8. **INSURANCE**

Contractor shall maintain policies of insurance as set forth in Exhibit 4 [**Exhibit 1 Attachment**], and pay all retentions and deductibles under such policies of insurance. Any violation of this section is a material breach of this Contract. This section survives expiration or termination of this Contract. No Notice of Default is required to terminate under this section.

9. **SUBCONTRACTING**

9.1. Subcontracting Generally Prohibited. Contractor shall not assign or delegate any interest, right, duty, or obligation related to this Contract without the CDA's prior

written consent. The CDA may void any purported assignment, delegation, or subcontract in violation of this section.

- 9.2. Permitted Subcontracting. Contractor may subcontract with the subcontractors identified in Contractor's Proposal or as permitted by the CDA in writing, subject to the following:
- A. Contractor shall be responsible for the performance of its subcontractors.
 - B. All subcontractors shall comply with the provisions of this Contract.
 - C. Contractor remains responsible for performing Services under and complying with this Contract, regardless of any subcontract.
- 9.3. Notice to CDA. Contractor shall provide Notice to the CDA of any complaint, demand, action, proceeding, filing, lien, suit, or claim that Contractor has not paid or failed to timely pay any subcontractor. Notice must be provided no later than 10 calendar days after the date on which the Contractor first receives the complaint, demand, action, proceeding, filing, lien, suit, or claim.
- 9.4. Payment of Subcontractors. This provision is required by Minn. Stat. § 471.425. Contractor shall pay the subcontractor within 10 calendar days after the date on which the Contractor receives payment from the CDA for undisputed Services performed by the subcontractor. Contractor agrees to pay interest of 1½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For unpaid balances of less than \$100, the Contractor shall pay the actual interest penalty due the subcontractor.
- 9.5. A violation of any part of this section is a material breach of contract.

10. FORCE MAJEURE

Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

11. DEFAULT

- 11.1. Notice of Default. Unless otherwise stated in a specific section of this Contract, no event or circumstance constitutes a default giving rise to the right to terminate for cause unless and until a Notice of Default is provided to the defaulting party,

specifying the particular event or circumstance, series of events or circumstances, or failure constituting the default and cure period, if any.

11.2. Cure Period. The party providing the Notice of Default has the option, but is not required, to give the other party an opportunity to cure the specified default. If an opportunity to cure is given, it must be specifically described in the Notice of Default, including any period in which to comply.

11.3. Withholding Payment. Notwithstanding any other provision of this Contract, the CDA may, after giving Notice of Default, withhold, without penalty or interest, any payment which becomes due after Notice of Default is provided until the specified default is excused or cured, or the Contract is terminated.

12. TERMINATION

12.1. Termination Without Cause. Either party may terminate this Contract without cause by providing 30 calendar days' Notice of Termination to the other party.

12.2. Termination for Cause or Material Breach. Either party may terminate this Contract for cause by providing 7 calendar days' Notice of Termination to the other party, unless a different procedure or effective date is stated within the specific section of this Contract under which the default occurs. In addition to other specifically stated provisions of this Contract or as otherwise stated in law, events or circumstances constituting default and giving rise to the right to terminate for cause, unless waived, include but are not limited to:

A. Making material misrepresentations either in the attached exhibits or in any other material provision or condition relied upon in the making of this Contract;

B. Failure to perform Services or provide payment within the time specified in this Contract;

C. Failure to perform any other material provision of this Contract;

D. Failure to diligently and timely perform Services so as to endanger performance of the provisions of this Contract;

E. The voluntary or involuntary dissolution, insolvency, merger, sale, transfer, reorganization, acquisition or winding down of the Contractor's business.

12.3. Termination by CDA – Lack of Funding. The CDA may immediately terminate this Contract for lack of funding. A lack of funding occurs when funds appropriated for this Contract as of the Effective Date from a non-CDA source are unavailable or are not appropriated by the CDA Board. The CDA has sole discretion to determine if there is a lack of funding. The CDA is not obligated to pay for any Services that are performed after providing Notice of Termination for lack of funding. The CDA

is not subject to any penalty or damages for termination due to lack of funding. No Notice of Default is required to terminate under this section.

- 12.4. Notice of Termination. The Notice of Termination must state the intent to terminate the Contract and specify the events or circumstances and relevant Contract provision warranting termination of the Contract and whether the termination is for cause.
- 12.5. Duties of Contractor upon Termination. Upon the CDA providing of the Notice of Termination, and except as otherwise stated, Contractor shall:
 - A. Discontinue performance under this Contract on the date and to the extent specified in the Notice of Termination.
 - B. Complete performance of any work that is not discontinued by the Notice of Termination.
 - C. Cooperate with CDA with any transition of Services.
 - D. Cancel all orders and subcontracts to the extent that they relate to the performance of this Contract.
 - E. Return all CDA property in its possession within 7 calendar days after the date on which the Contractor receives the Notice of Termination to the extent that it relates to the performance of this Contract that is discontinued by the Notice of Termination.
 - F. Submit an invoice for Services satisfactorily performed prior to the effective date of termination within 35 calendar days of said date.
 - G. Maintain all records relating to the performance of the Contract as may be directed by the CDA in the Notice of Termination or required by law or this Contract.
- 12.6. Duties of CDA upon Termination of the Contract for Cause or Without Cause. Upon delivery of the Notice of Termination, and except as otherwise provided, the CDA shall make final payment to Contractor in accordance with section 3.3 of this Contract for Services satisfactorily performed.
- 12.7. Effect of Termination for Cause or without Cause.
 - A. Termination of this Contract does not discharge any liability, responsibility, or right of any party that arises from the performance of, or failure to adequately, perform the provisions of this Contract prior to the effective date of termination. Termination shall not discharge any obligation which, by its nature, would survive after the date of termination, including by way of illustration only and

not limitation, the requirements set forth in Exhibit 3 [Exhibit 1 Attachment] (Standard Assurances) and the indemnity provisions of section 7.

B. The CDA shall not be liable for any Services performed after Notice of Termination, except as stated above or as authorized by the CDA in writing.

13. CONTRACT RIGHTS AND REMEDIES

13.1. Rights Cumulative. All remedies under this Contract or by law are cumulative and may be exercised concurrently or separately. The exercise of any one remedy does not preclude exercise of any other remedies.

13.2. Waiver. Any waiver is only valid when reduced to writing, specifically identified as a waiver, and signed by the waiving party's Authorized Representative. A waiver is not an amendment to the Contract. The CDA's failure to enforce any provision of this Contract does not waive the provision or the CDA's right to enforce it.

14. AUTHORIZED REPRESENTATIVE

14.1. The Authorized Representatives of the respective parties for purposes of this Contract are as follows:

To Contractor:

SAMPLE CONTRACT

[Title]

[Street]

[City, State Zip]

Telephone: [Telephone Number]

[Email Address]

To the CDA:

[Name]

[Title]

[Department]

[Street]

[City, State Zip]

Telephone: [Telephone Number]

[Email Address]

14.2. The Authorized Representative, or his or her successor, has authority to bind the party he or she represents and sign this Contract. The CDA's Authorized Representative shall have only the authority granted by the CDA Board. The parties shall promptly provide Notice to each other when an Authorized Representative's successor is appointed. The Authorized Representative's successor shall thereafter be the Authorized Representative for purposes of this Contract.

14.3. In addition, Notices regarding breach or termination shall also be provided to:

Dakota County Attorney's Office
Civil Division
1560 Highway 55
Hastings, Minnesota 55033.

15. LIAISON

15.1. The Liaisons of the respective parties for purposes of this Contract are as follows:

Contractor Liaison: SAMPLE	CDA Liaison: [Name]
Telephone: [Telephone Number]	Telephone: [Telephone Number]
Email Address: [Email Address]	Email Address: [Email Address]

15.2. The Liaison, or his or her successor, has authority to assist the parties in the day-to-day performance of this Contract, ensure compliance, and provide ongoing consultation related to the performance of this Contract. The parties shall promptly provide Notice to each other when a Liaison's successor is appointed. The Liaison's successor shall thereafter be the Liaison for purposes of this Contract.

16. OWNERSHIP OF WORK PRODUCT

[Select one clause and delete the other]

[Standard ownership] As the CDA's contractor for hire, the CDA shall own in perpetuity, solely and exclusively, all rights of every kind and character, in all proceeds, works, drawings, products, plans, and all other materials created by Contractor pursuant to this Contract (collectively referred to as "Works"), and the CDA shall be deemed the author thereof for all purposes. Such Works are deemed "works for hire," as defined in the U.S. Copyright Act, 17 U.S.C. § 101. Contractor shall, upon the request of the CDA, execute all papers and perform all other acts necessary to assist the CDA to obtain and register copyrights on such Works. If, for any reason, any of the Works do not constitute a "work made for hire," Contractor hereby irrevocably assigns to the CDA, in each case without additional consideration, all right, title, and interest throughout the universe in and to the works, including all copyrights therein.

[Use if Contractor pushes back; License] Contractor grants CDA a royalty-free irrevocable, non-exclusive, non-transferable, non-assignable perpetual license in all works or materials created pursuant to this Contract. The CDA may prepare, copy, use, and distribute these works or materials and create derivative works or materials for the benefit of CDA or government purposes or uses, or as required by law. The only restrictions on the CDA's use of works or materials and derivative works or materials related to this Contract are those specifically stated in this section.

17. AMENDMENTS

Any amendments to this Contract are only valid when reduced to writing, specifically identified as an amendment, and signed by both parties' Authorized Representative.

18. SEVERABILITY

The provisions of this Contract are severable. If any provision of this Contract is void, invalid, or unenforceable, it will not affect the validity and enforceability of the remainder

of this Contract unless the void, invalid, or unenforceable provision substantially impairs the value of the entire Contract with respect to either party.

19. MERGER

19.1. Final Agreement. This Contract is the final expression of the agreement of the parties. This Contract is the complete and exclusive statement of the provisions agreed to by the parties. This Contract supersedes all prior negotiations, understandings, or agreements. There are no representations, warranties, or provisions, either oral or written, not contained herein.

19.2. Exhibits. The following Exhibits and addenda, including all attachments, are incorporated and made a part of this Contract:

Exhibit 1 – CDA’s Request for Choose an item. (**including Attachments**)

Exhibit 2 - Contractor's Response to Request for Choose an item. dated [Enter Date]

Exhibit 3 – Standard Assurance

Exhibit 4 – Insurance Terms

19.3. By signing this Contract, Contractor acknowledges receipt of all the above Exhibits and addenda, including all attachments. If there is a conflict between any provision of any Exhibit and any provision in the body of this Contract, the body of this Contract will prevail. To the extent reasonably possible, the Exhibits will be construed and constructed to supplement, rather than conflict with, the body of this Contract. If there is a conflict between any provision of an Exhibit and another Exhibit, the following is the order of precedence: Exhibit 1, Exhibit 2.

20. CONFIDENTIALITY

20.1. “Protected Data” has the same meaning as Not Public Data as defined in Minn. Stat. § 13.02, subd. 8a. Trade Secret Data as defined in Minn. Stat. § 13.37, subd. 1(b) shall be identified by Contractor to CDA and included in the definition of Protected Data.

20.2. For purposes of this Contract, all data created, collected, received, stored, used, maintained, or disseminated by Contractor in the performance of this Contract is subject to the requirements of the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. Chapter 13 and its implementing rules, as well as any other applicable State or Federal laws on data privacy or security. Contractor must comply with, and is subject to, the provisions, remedies, and requirements of the MGDPA as if it were a governmental entity.

20.3. Contractor acknowledges that the CDA may transmit Protected Data to Contractor in connection with Contractor’s performance of this Contract. Contractor shall not, at any time, directly or indirectly reveal, report, publish, duplicate, or otherwise

disclose Protected Data to any third party in any way whatsoever, unless required or allowed by law. Contractor agrees to implement such procedures as are necessary to assure protection and security of Protected Data and to furnish the CDA with a copy of said procedures upon request.

- 20.4. Each party shall provide the other party with prompt Notice of a breach of the security of data as defined in Minn. Stat. § 13.055, subd. 1(a) or suspected breach of the security of data and shall assist in remedying such breach. Providing or accepting assistance does not constitute waiver of any claim or cause of action for breach of contract.
- 20.5. Contractor shall cooperate with the CDA in responding to all requests for data. Contractor does not have a duty to provide access to public data if the public data are available from the CDA, except as required by the provisions of this Contract. The parties shall promptly notify each other when any third party requests Protected Data related to this Contract or the Services. Contractor shall ensure that all subcontracts contain the same or similar data practices compliance requirements. All provisions of this Section apply to any subcontract or subcontractor.
- 20.6. This section survives expiration or termination of this Contract.

21. ELECTRONIC SIGNATURES

Each party agrees that the electronic signatures of the parties included in this Contract are intended to authenticate this writing and to have the same force and effect as wet ink signatures.

22. CONTRACT INTERPRETATION AND CONSTRUCTION

This Contract was fully reviewed and negotiated by the parties. Any ambiguity, inconsistency, or question of interpretation or construction in this Contract shall not be resolved strictly against the party that drafted the Contract. It is the intent of the parties that every section (including any subsection), clause, term, provision, condition, and all other language used in this Contract shall be constructed and construed so as to give its natural and ordinary meaning and effect.

23. WAGE WITHHOLDING TAX

Pursuant to Minn. Stat. § 270C.66, CDA shall make final payment to Contractor only upon satisfactory showing that Contractor and any subcontractors have complied with the provisions of Minn. Stat. § 290.92 with respect to withholding taxes, penalties, or interest arising from this Contract. A certificate by the Minnesota Commissioner of Revenue (Minnesota Department of Revenue Form IC-134, entitled "Withholding Affidavit for Contractors") satisfies this requirement with respect to the Contractor or subcontractor.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date(s) indicated below.

DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY

CONTRACTOR

(I represent and warrant that I am authorized by law to execute this contract and legally bind the Contractor.)

By: **SAMPLE CONTRACT**

[Name, Title]
[Department]

Date of Signature:

By: **SAMPLE CONTRACT** _____
Signature

Title

Date of Signature: _____

**ATTACHMENT E
NON-COLLUSION AND CONFLICT OF INTEREST STATEMENT**

Please print or type (in ink)

CONTRACTOR NAME:

FEDERAL TAX ID NUMBER:

Company Address:

City:

State:

Zip Code:

Contact Person:

Title:

Phone Number:

Email:

In signing this bid, proposal or quote, Contractor certifies that it has not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of the competition; that no attempt has been made to induce any other person or Consultant to submit or not to submit a bid, proposal or quote; that this bid, proposal or quote has been independently arrived at without collusion with any other party submitting a bid, proposal or quote, competitor or potential competitor, that this bid, proposal or quote has not been knowingly disclosed prior to the opening of the bids, proposals or quotes to any bid, proposal or quote competitor; that the above statement is accurate under penalty or perjury.

Contractor also certifies that to the best of its knowledge none of its owners, directors, officers or principals (collectively, "Corporate Executive") are closely related to any Dakota County Community Development Agency (the "CDA") employee who has or may appear to have any control over the award, management, or evaluation of the contract. A Contractor's Corporate Executive is closely related when any of the following circumstances exist:

1. A Corporate Executive and any CDA employee who has or appears to have any control over the award, management or evaluation of the contract are related by blood, marriage or adoption; or

2. A Corporate Executive and any CDA employee who has or appears to have any control over the award, management or evaluation of the contract are current or former business partners, co-workers, or have otherwise previously worked closely together in the private or public sector; or
3. A Corporate Executive and any CDA employee who has or appears to have any control over the award, management or evaluation of the contract share a personal relationship that is beyond that of a mere acquaintance, including but not limited to friendship or family friendship.

If one or more of the above circumstances exist, Contractor must disclose such circumstance(s) to the CDA in writing. Failure to disclose such circumstances invalidates the Contract.

Contractor will comply with all terms, conditions, specifications required by the party submitting a bid, proposal or quote in this Request for Proposals and all terms of our bid, proposal or quote response.

Authorized Signature

Title

Date

**ATTACHMENT F
TRADE SECRET FORM**

The following form must be provided by responding Consultants to assist the Dakota County Community Development Agency in making appropriate determinations about the release of data provided in the Consultant's bid or proposal.

All responders must select one of the following boxes:

- My bid/proposal **does not** contain "trade secret information", as defined in Minn. Stat. § 13.37, Subd. 1(b). I understand that my entire bid/proposal will become public record in accordance with Minn. Stat. § 13.591.

- My bid/proposal **does** contain "trade secret information" because it contains data that:
 1. (a) is a formula, pattern, compilation, program, device, method, technique or process; **AND**
 - (b) is the subject of efforts by myself or my organization that are reasonable under the circumstances to maintain its secrecy; **AND**
 - (c) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
 2. I have submitted one paper and one digital copy of my bid or proposal from which the confidential trade secret information has been excised. The confidential trade secret information has been excised in such a way as to allow the public to determine the general nature of the information removed while retaining as much of the document as possible **AND** I am attaching an explanation justifying the trade secret designation.

Please note that failure to attach an explanation may result in a determination that the data does not meet the statutory trade secret definition. All data for which trade secret status is not justified will become public in accordance with Minn. Stat. § 13.591.

Submit this form as part of the Bid or Proposal response