

**DES MOINES METROPOLITAN
WASTEWATER RECLAMATION
AUTHORITY**

**REQUEST FOR PROPOSALS FOR
LEGAL SERVICES**

INQUIRIES AND PROPOSALS SHOULD BE DIRECTED TO:

Scott Hutchens, P.E., Director
Des Moines Metropolitan Wastewater Reclamation Authority
3000 Vandalia Road, Des Moines, Iowa 50317
STHutchens@DMGOV.ORG
(515) 323-8031

I. GENERAL.

The Des Moines Metropolitan Wastewater Reclamation Authority (WRA) is soliciting proposals from Des Moines-area attorneys and law firms to meet its needs for legal services to supplement or replace certain legal services currently provided to the WRA and its Board by the Des Moines City Attorney and the City's legal staff under an existing "Operating Contract" between the WRA and the City of Des Moines as "Operating Contractor".

- A. Purpose.** The purpose of this Request for Proposals ("RFP") is to obtain proposals from well qualified law firms and attorneys ("Proposers") interested in providing legal services to the Des Moines Metropolitan Wastewater Reclamation Authority (hereinafter referred to as the "WRA") with such engagement to commence on/about June 1, 2023.

The WRA is seeking proposals to serve in the capacity as outside general counsel from attorneys or law firms with broad experience representing municipal entities, including 28E-28F entities, in the areas of municipal law, government operations, regulatory compliance, public improvement and construction law, contract preparation and review, easement preparation and acquisition, administrative proceedings and other litigation.

The scope of the engagement is expected to include all of the WRA's requirements for legal services as more fully described in Section II below, but excluding the excluded legal services set forth in Section II-B below. The expected scope of services will include regular meetings with Operating Contractor staff and with Operating Contractor legal representatives, or both, as necessary to provide the WRA's requirements for legal services referenced herein. The Operating Contractor's City Manager will be available for participation in such regular meetings, as needed.

Although, the WRA will consider engagement of a single attorney or law firm to cover the entire range of its legal needs within the scope of this RFP to the extent practical, the WRA will at all times reserve the right to be represented by other counsel on any matter in its sole discretion and will consider any responses to this RFP from law firms or attorneys who may seek to be engaged as special counsel within a limited scope of representation defined in their proposals.

Proposals must be prepared and submitted in accordance with the requirements described in this Request for Proposals (RFP). Once one or more attorneys or firms are selected, a contract or contracts for legal services will be negotiated based on a mutually agreed upon scope of services.

- B. Eligibility.** Only attorneys who are currently licensed to practice law in Iowa and who maintain an office in Des Moines Metropolitan Area, or law firms including such attorneys, shall be eligible for selection as counsel under this RFP.
- C. Description of WRA.** The WRA is a regional wastewater treatment entity created under Chapters 28E and 28F of the Iowa Code by agreement among numerous public entities in

the Des Moines Metropolitan Area. It currently exists and operates as provided in the “Second Amended and Restated Agreement for the Des Moines Waste Water Reclamation Authority” filed as Agreement M507115 with the Iowa Secretary of State on June 11, 2014 (the 28E-28F Agreement”). It is governed by a Board constituted under Article III of the 28E-28F Agreement. The operations of the WRA are currently primarily conducted under an Operating Contract between the WRA and the City of Des Moines, Iowa (the “Operating Contract”). The WRA currently obtains legal services under the Operating Contract from lawyers employed by the City of Des Moines and from certain special counsel, including bond counsel, specialty litigation counsel and various other outside counsel as needed.

D. Proposal Submission. Responses to the RFP must be received by the WRA as follows:

Due Date: Friday, April 21, 2023

Time: Prior to 3:00 p.m.

Deliver To:

Scott Hutchens, P.E.
WRA Director
Des Moines Metropolitan Wastewater Reclamation Authority
3000 Vandalia Road
Des Moines, IA 50317

The proposal must be submitted in a sealed envelope clearly marked in the lower left-hand corner with the following information:

SEALED PROPOSAL FOR LEGAL SERVICES
[Attorney or Firm Name and mailing address]

It is the responsibility of the Proposer to ensure that the proposal is received by WRA, by the date and time specified above. Late or unsealed proposals will not be considered.

During the proposal evaluation, the WRA reserves the right to request additional written information to assist in the evaluation of proposals. Proposals and written responses to the WRA’s request for additional information shall be signed by the Proposer (if an individual), by an officer of the Proposing firm, or by a designated agent empowered to bind the Proposer in a contract.

Upon receipt, the proposals shall become the property of the WRA for disposition or usage by the WRA at its discretion.

F. Contact Person. Any questions concerning the proposals shall be directed in writing to Scott Hutchens, P.E., WRA Director, Des Moines Metropolitan Wastewater Reclamation Authority, 3000 Vandalia Rd., Des Moines, IA 50317, fax 515-323-8050, or by e-mail to STHutchens@dmgov.org.

G. Term of Engagements. Any engagement resulting from this RFP will be subject to termination by the WRA at any time, and may likewise be terminated by the attorneys or law firms at any time subject only to the Iowa Code of Professional Responsibility for Lawyers and applicable rules of Court.

II. SCOPE OF SERVICES. The WRA seeks attorney relationships that provide high quality and consistent service at a predictable cost for all or any defined part of the Included Scope of Services as described below. The intent is to retain counsel to provide all Board legal services currently provided by the Des Moines City Attorney and his staff (“City Legal”) to the Board under the Operating Contract with such period of transition as may be considered appropriate after counsel are engaged.

The WRA also expects to continue to retain its existing outside counsel for at a least a period of time.

Commitment to diversity and the highest standards of ethics and business conduct are expected.

WRA’s use of legal services is focused on the following major subject areas outlined in Section A below. The RFP does not cover services excluded under Section B below.

A. Included Scope of Services Provided Directly to the Board. Proposers seeking to serve as General Counsel must be readily available to perform legal services on behalf of WRA as the need arises on a wide variety of issues, subjects, claims, interpretations, agreements, and real estate transactions, including but not limited to:

1. Attend WRA Board meetings, and other WRA meetings as necessary and, if requested, draft minutes thereof.
2. Advise the Board on all legal issues coming before the Board.
3. Advise the Board generally on matters of local, state, and federal law.
4. Advise and assist the Board on legal issues related to the WRA’s 28E-28F entity status, its Operating Contract, on other 28E Agreements and on any other Agreements
5. Review personnel, fiscal and other policies for the Board.
6. Draft, review or revise proposed forms of policy for adoption by WRA or proposed forms of City ordinance to be proposed by the WRA to the City of Des Moines for adoption
7. Assist with general oversight of Board legal matters, including advice on responses to court process and orders, and public records requests from third parties for non-operating contractor records.

8. Other Board legal services as needed or requested.

B. Included Scope of Services Performed in Cooperation with Operating Contractor

Legal. Proposers seeking to serve as General Counsel must also be available to work in conjunction with Operating Contractor Legal staff to perform legal services on behalf of WRA as the need arises on a wide variety of issues, subjects, claims, interpretations, agreements, and real estate transactions, including but not limited to:

1. Review, draft, and negotiate contracts, easement, deeds, and leases and other real estate matters to which the WRA is a party.
2. Advise the Board, and in conjunction with Operating Contractor legal staff, Operating Contractor staff, on construction contracts, claims, and disputes, including issues under Chapter 26 and Chapter 573 of the Iowa code.
3. Advise the Board on professional services agreements and on other contracts for procurement of goods and services.
4. Advise the Board on regulatory matters, including discharge permits.
5. Draft and review for legal correctness and acceptability of other legal documents, contracts, settlement agreements, non-employment severance agreements, releases, and other legal drafting, as requested, but only those items which in this paragraph do not involve Operating Contractor personnel in any manner.
6. Advise the Board on government grant and contract issues.
7. Defend Board lawsuits, administrative claims, or other legal claims to the extent requested.
8. Conduct other Board litigation to the extent requested;
9. Regular meetings with Operating Contractor staff and with Operating Contractor legal representatives, or both, as necessary to provide WRA's legal services.

C. Excluded Scope. The Scope of any general engagement resulting from the RFP will **exclude:** (1) engagement of bond counsel; (2) engagement of defense counsel in cases covered by insurance; (3) matters that are handled by the Operating Contractor and its chosen legal counsel for Operating Contractor functions that are outside the scope of services under Sections II-A and II-B above , irrespective of whether the matters benefit the WRA and are chargeable as indirect costs pursuant to the Operating Contract, and; (4) other matters of a specialized nature for which the WRA in its sole discretion has elected or elects to engage special counsel at this time or any later time.

III. PROPOSAL CONTENTS. To standardize responses and simplify the comparison and evaluation of responses, all Proposals must be organized in the manner set forth in this RFP, separated into sections, and appropriately labeled. All information and materials requested shall be provided in the proposal under a single cover.

A. Cover Letter. Include a cover letter from the proposing attorney, or if a law firm from a

contact person who has authority to bind the firm contractually, giving his or her title. The letter must certify that all of the information contained in the submission is accurate and complete.

- B. Limited Scope Proposals.** If the Proposal is for a limited scope within the Scope of Services, the Proposal should state the specific scope of services proposed to be provided.
- C. Firm Overview.** Provide a brief background of the attorney or if a firm, the areas of practice, and number of attorneys employed. Identify the specific experience of the firm in the areas listed in the Scope of Services with emphasis on experience related to public sector entities, utilities and public Boards.
- D. Qualifications.** Provide resumes of any attorneys who will be assigned the legal work and clearly designate the lead attorney responsible for the client relationship. Qualifications including education, position in firm, years and types of experience and continuing professional education will be considered. All assigned attorneys must be licensed in good standing to practice law in the state of Iowa.
- E. References.** Provide addresses, phone numbers, and e-mail addresses of at least two (2) recent clients and one (1) former client as references. WRA may contact any other known clients, whether offered as references or otherwise, to obtain information that will assist WRA in evaluating the proposal.
- F. Fee structure.** All fees should be clearly stated in the proposal and must remain in effect for a period of three (3) years. Fees for years four and five of the initial term and any extensions will be negotiated. List fees per hour for principal attorneys, other firm attorneys, and support personnel. Identify the minimum increment of time billed. Provide a schedule of reimbursable costs such as mileage and travel time. Provide information regarding the firm's willingness to accept alternative billing arrangements such as fixed fee, hourly rates, volume discount, blended hourly rate, dedicated attorney and incentive billing. Once the desired firm(s) has been identified, WRA reserves the right to negotiate additional terms and conditions, including hourly rates, or other method of compensation, with such firm(s).
- G. Billing.** Provide information on the firm's billing procedures.
- H. Terms of Representation.** Provide an example of the firm's proposed engagement letter or engagement contract for this engagement.
- I. Insurance.** A statement shall be included that the Insurance and Indemnification Requirements included as Attachment 1 have been read and understood and will be accepted by the Proposer without modification upon entering into an engagement with the WRA.
- J. Conflicts.** Identify any current or potential conflicts of interest and indicate what

procedures your firm would utilize to identify and resolve future conflicts of interest. It is of the utmost importance that no real or apparent conflict of interest exists between Proposer and WRA or the Operating Contractor, including officials and employees of each. Therefore, Proposer shall disclose in writing in its proposal any real or possible conflicts of interest which exists or may exist. In addition, the firm shall be responsible to promptly disclose to WRA any situations which may create possible conflicts of interest during the term of the agreement so that appropriate action can be taken. See Attachment 2 for a partial list of WRA's members and frequent business contacts to be considered in the conflict review.

K. Additional Information. Provide any other information that may be helpful in assessing the firm's ability to perform the work and in applying the evaluation criteria set out in the Request for Proposals.

L. Required Format for Proposals. All proposals must follow the required format. Failure to follow the required format may result in disqualification of a proposal:

1. Page Limit: 20, including cover page
2. Attorney Qualifications section should be attached and is not included in the page limit
3. Page Size: 8 ½ x 11; portrait
4. Font Size: 12
5. Double-spaced
6. Margins: 1" minimum on the top, bottom, and sides of all pages
7. Do not use material in proposals dependent on color distinctions, animated electronics, etc.
8. Do not include attachments other than those requested or required by this RFP.

M. Submission of Proposals. All proposals shall include one (1) original and five (5) copies.

IV. QUESTIONS AND COMMUNICATION WITH THE WRA.

A. Questions, and Requests for Clarification or Interpretation. After issuance of this RFP, Proposers that have questions regarding the RFP, or who object to any term, provision, or requirement of the RFP, or who desire clarification or interpretation of any term, provision, or requirement of the RFP, may submit such questions, objections, or requests for clarification or interpretation to the Contact Person named above no later than seven calendar days prior to the proposal due date. Such questions, objections, requests for clarification or interpretation shall be submitted in writing and shall clearly identify the individual or entity submitting same, including the name, address, telephone number, FAX number and e-mail address, if any, of such person or entity.

B. Response to Proposer Questions, Objections, and Requests for Clarification or Interpretation and Issuance of Addenda to RFP. The Contact Person will respond in writing to all questions, objections, requests for clarification or interpretation presented to

the WRA as provided above. Only the WRA's written responses shall be considered the WRA's official response binding upon the WRA. In addition to making a written response, the WRA may issue addenda amending the RFP by changing, deleting, or adding terms, provisions, or requirements to the RFP. Written answers to all written inquiries will be sent to all firms that have been sent this RFP and posted on the Des Moines Metropolitan Wastewater Reclamation Authority's web site at:

<http://www.dmmwra.org/asp/operatingcontractor.aspx>.

In no case will verbal communications override written responses or requirements of this RFP.

10. Proposer Communications with WRA Officials and Employees Restricted.

Except as otherwise set forth below, no person or entity intending to be a Proposer shall contact any officer or staff member of the WRA for additional information except in writing directed to the Contact Person as provided above.

Persons or entities who intend to respond to such RFP by submission of a competitive proposal shall not contact or communicate, in writing, electronically, or orally, with any WRA official, City of Des Moines employee, or any WRA Participating Community official or employee or any Selection Committee member in an attempt to gather information which would be helpful in responding to the RFP, or in an attempt to influence the WRA's consideration of its competing proposal. The WRA may refuse to accept or may return the proposal of any person or entity determined to be in violation of this provision.

The foregoing restrictions shall not apply to any communications with any Proposer currently engaged as counsel to the WRA with respect to any matter within the scope of the engagement.

V. BASIS OF EVALUATION AND SELECTION.

A. Award of Engagement. The Award of engagements will be to the Proposer or Proposers deemed best qualified to provide the legal service required by the WRA. WRA will conduct a comprehensive, fair and impartial evaluation of all proposals received in response to this Request for Proposals. Each proposal will be analyzed to determine the Proposer's overall responsiveness and qualifications under the Request for Proposals.

B. Evaluation Criteria. The following evaluation criteria, will be considered - not necessarily listed in order of importance:

1. Qualifications and experience of the individual or firm in the areas listed in the Scope of Work, as well as experience in municipal law issues.
2. Qualifications, experience, knowledge and demonstrated competence of the assigned attorneys and the prior experience of the individual attorneys with respect to the Scope of Work.
3. Capability and resources to handle the WRA's work.
4. Responses from references and other contacts.
5. Hourly rates for each class of personnel, expected out-of-pocket costs, discounts for multi-year commitments, hourly rates/fees for additional services and alternative billing measures offered.
6. Additional factors, including but not limited to: local Des Moines metropolitan area presence, demonstration of special knowledge, experience or capabilities and any other significant items brought forward in the evaluation process and interview, if held, that may be of particular advantage to WRA.
7. Interviews, if conducted.

C. Evaluation and Selection Process. Proposals will be initially evaluated by a selection committee consisting of the WRA Executive Committee and Co-Chairs of the Organizational Assessment Committee (the "Selection Committee"). It is anticipated that the City Attorney of the City of Des Moines will be invited to address the Selection Committee on the scope of the engagement or engagements contemplated by the Selection Committee. Any number of attorneys and firms deemed most well qualified by the Selection Committee may be invited for additional presentations to, or interviews with the Selection Committee. However, the WRA reserves the right to request interviews of any, all, or none of the Proposers. Upon completion of its evaluation the Selection Committee will make recommendations to the WRA Board.

D. WRA Board Consideration. When the Selection Committee's recommendation comes before the WRA Board for consideration, the WRA Board may request that the Proposer or Proposers recommended for selection appear before the Board to give a presentation or to answer questions. Competing Proposers will not be allowed to speak at that time unless a prior request has been made by such a Proposer and permission to speak granted by the WRA Board Chair, or unless a WRA Board member requests that the competing Proposer be allowed to speak and the Board consents to such request. Members of the public may likewise be allowed to speak regarding the selection or selections.

E. Rejection of Proposals. The WRA reserves the right to reject any or all proposals in whole or in part and to waive irregularities in proposals received.

F. Notifications of Award. Upon conclusion of final negotiations regarding the

successful proposal or proposals, all other Proposers will be informed, in writing, of the names of the successful Proposers.

VI. OTHER GOVERNING TERMS.

- A. Award.** WRA reserves the right to select and engage counsel in a manner deemed to be in the best interests of WRA or to reject any and all proposals received in response to this RFP. An engagement letter or contract for each accepted proposal or proposals will be drafted based upon the factors described in this RFP.
- B. Stability of Proposed Prices.** Fee proposals from Proposers must be valid for a period of 90 days from the due date of the proposals.
- C. Amendment or Cancellation of the RFP.** WRA reserves the right to cancel, amend, modify, or otherwise change this RFP at any time if it deems it to be in the best interests of WRA.
- D. Proposal Modifications.** No additions or changes to any proposal will be allowed after the proposal due date, unless such modification is specifically requested by WRA. WRA, at its option, may seek Proposer clarification of any discrepancy or contradiction found during its review of proposals.
- E. Proposer Presentation of Supporting Evidence.** Proposers must be prepared to provide any evidence of experience, performance, ability, and financial responsibility that WRA deems necessary or appropriate to fully establish the performance capabilities represented in their proposals.
- F. Proposer Demonstration of Proposed Services.** Proposers must be able to confirm their ability to provide the services as proposed.
- G. Erroneous Awards.** WRA reserves the right to correct inaccurate awards. This includes revoking the awarding of an engagement to a Proposer and subsequently awarding the engagement to a different Proposer. Such action shall not constitute a breach of contract on the part of WRA because the contract with the initial Proposer will be deemed voided as if no contract were ever in place.
- H. Ownership of Proposals.** All proposals shall be the property of WRA and will not be returned.
- I. Ownership of Work Product.** Any product, whether acceptable or unacceptable, developed under an engagement awarded as a result of this RFP shall be the sole property of WRA unless otherwise stated in an agreement with the WRA. All works eligible for copyright shall be deemed a work for hire with the copyright owned by the WRA.

- J. Oral Agreement or Arrangements.** Any alleged oral agreements or arrangements made by Proposers with WRA will be disregarded in any proposal evaluation or associated award.
- K. Not a Contract.** This RFP is not an offer or a contract and, alone, shall not be interpreted as such. Rather, this RFP serves only as the instrument through which proposals are solicited. WRA will pursue negotiations with the strongest proposal. If, for some reason, WRA and the initial Proposer fail to reach consensus on the issues relative to a contract, then WRA may commence contract negotiations with other Proposers. WRA may decide at any time to start the RFP process again. The selected Proposer will be required to sign a formal contract.
- L. Costs.** All costs incurred in the preparation of a proposal responding to this RFP will be the responsibility of the Proposer. The WRA will not pay for any information requested in the RFP or any cost incurred in submitting proposals, responding to additional questions, or participating in the interview process.
- M. Insurance Requirements.** Attachment 1, Insurance and Indemnification Requirements, describes the minimum insurance the consultant must have in order to enter into a professional services contract with the WRA. All firms that submit proposals in response to this RFP will be required to accept and comply with Attachment 1, Insurance and Indemnification Requirements if selected. These requirements are not subject to negotiation.
- N. Assignment of Contract or Subcontracting Prohibited.** No engagement awarded pursuant to the RFP shall be assignable by a successful Proposer or performed by any subcontractor without the prior written consent of the WRA Board.
- O. Statutes and Rules.** The terms and conditions of this RFP or the resulting contract or purchase order or activities based upon this bid or request for proposal shall be construed in accordance with the laws of Iowa. Where statutes and regulations of the United States Government are referenced herein, they shall apply to this bid or request for proposal and resulting purchase order or contract. Wherever differences exist between federal and state statutes or regulations affecting this procurement, interpretation shall be in the direction of that which is most beneficial to the interests of the WRA.
- P. Iowa Open Records.** Under Chapter 22 of the Iowa Code, “Examination of Public Records”, all records of a governmental body are presumed to be public records, open to inspection by members of the public. Section 22.7 of the Iowa Code sets forth exceptions to that general rule, establishing several categories of “confidential records”. Under this provision, such confidential records are to be kept confidential, “unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information”.

Under Chapter 22 of the Iowa Code, the WRA, as custodian of the proposal submitted in

response to a Request for Proposals, may, but is not required, to keep portions of such proposals confidential under Section 22.7 of the Iowa Code. All proposals submitted shall be initially kept confidential during the selection process, pursuant to Section 22.7 (6) of the Iowa Code, until completion of the final stage of the evaluation process in order to avoid giving advantage to competing Proposers.

Upon completion of the final stage in the evaluation process, all competing proposals shall be subject to disclosure; if not otherwise determined confidential.

If a Proposer in good-faith reasonably determines that a portion or portions of its proposal constitute a trade secret, or should otherwise be kept confidential under Section 22.7 of the Code of Iowa to avoid giving advantage to competitors, **a confidentiality request may be submitted with the proposal** identifying which portion or portions of the proposal or bid should be kept confidential and why. The burden will be on each individual proposer to make such confidentiality request and to justify application of a confidentiality exception to its proposal. The WRA will not under any circumstance consider the entire proposal to be a confidential record, except during the Selection Evaluation process as noted above. If a request is thereafter made by a member of the public to examine a proposal including the portion or portions thereof for which a confidentiality request has been made, the WRA will so notify the Proposer and will keep confidential that portion of the proposal covered by the confidentiality request, pending action by the proposer requesting confidentiality to defend its request. In that notification, the Proposer requesting confidentiality will be given not more than 5 calendar days within which to file suit in Polk County District Court seeking the entry of a declaratory order and/or injunction to protect and keep confidential such portion of its proposal. Absent such action by a Proposer requesting confidentiality, and absent the entry of a court order declaring such portion or portions of the proposal confidential, the entire proposal will be released for public examination. Proposer shall be responsible for all costs relating to a declaratory judgment or injunctive action, including the payment of any damages assessed and attorney fees and litigation expenses awarded.

ATTACHMENT 1

DES MOINES METROPOLITAN WASTEWATER RECLAMATION AUTHORITY PROFESSIONAL SERVICES – INSURANCE & INDEMNIFICATION REQUIREMENTS

For purposes of this Attachment and all provisions included herein the term "FIRM" means and includes any attorney and any law firm engaged by WRA pursuant to this RFP together with their officers, agents, employees, and others under the control of FIRM. The term "WRA" means the Des Moines Metropolitan Wastewater Reclamation Authority. The term "CITY" means the City of Des Moines, Iowa. The term "OPERATING CONTRACTORS" means the CITY and any successor to CITY performing any of the duties currently performed by CITY under the Operating Contract between the CITY and the WRA. The terms WRA, CITY, and OPERATING CONTRACTORS include their elected and appointed officials, agents, employees, volunteers, and any others working on behalf of each.

1. GENERAL

The FIRM shall purchase and maintain insurance to protect (1) the FIRM, (2) the WRA (3) the CITY in its capacity as operating contractor to the WRA and (3) any successor to CITY in whole or in part as WRA's Operating Contractor throughout the duration of the FIRM'S engagement with the WRA. Said insurance shall be provided by insurance companies "admitted" or "nonadmitted" to do business in the State of Iowa having no less than an A. M. Best Rating of "B+." All policies, except professional liability, shall be written on an occurrence basis and in form and amounts satisfactory to the WRA. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the WRA prior to the earlier of the execution of an engagement letter or contract or the commencement of work or services.

2. INSURANCE REQUIREMENTS

A. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: As required by State of Iowa Workers' Compensation Law, the FIRM shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the FIRM is not required to purchase Workers' Compensation Insurance, the FIRM shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the WRA and OPERATING CONTRACTORS is required.***

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The FIRM shall procure and maintain Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. ***Waiver of Subrogation in favor of the WRA and***

OPERATING CONTRACTORS is required.

Neither the WRA or OPERATING CONTRACTORS shall be included as Additional Insureds.

D. CONTRACTUAL LIABILITY: The General Liability Insurance policy shall include Contractual Liability coverage appropriate to meet the contractual obligations outlined in the Agreement.

C. PROFESSIONAL LIABILITY INSURANCE: The FIRM shall procure and maintain Professional Errors and Omissions Insurance with limits not less than \$10,000,000 per claim and in the aggregate.

E. CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT: The General Liability Insurance and Professional Liability Insurance policies shall be endorsed to provide the WRA with no less than ten (10) days Advance Written Notice of Cancellation or Nonrenewal.

Written notifications shall be sent to:

- **Des Moines Metropolitan Wastewater Reclamation Authority, Executive Director, 3000 Vandalia Rd, Des Moines, IA 50317**

F. WAIVER OF SUBROGATION: To the fullest extent permitted by law, FIRM hereby releases the WRA and OPERATING CONTRACTORS from and against any and all liability or responsibility to the FIRM or anyone claiming through or under the FIRM by way of subrogation or otherwise, for any loss without regard to the fault of the WRA or OPERATING CONTRACTORS or the type of loss involved, including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The FIRM'S Worker's Compensation and General Liability policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the WRA and OPERATING CONTRACTORS.

G. PROOF OF INSURANCE: The FIRM shall provide to the WRA Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through F above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items". A Copy of the Cancellation and Nonrenewal Notification Endorsement shall be submitted with the Certificates of Insurance.

Mail Certificates of Insurance to:

- **Des Moines Metropolitan Wastewater Reclamation Authority, Executive Director, 3000 Vandalia Rd, Des Moines, IA 50317**

H. AGENTS, SUBCONSULTANTS AND SUBCONTRACTORS: The FIRM shall require that any of its agents and subcontractors who perform work and/or services on behalf of the FIRM purchase and maintain the types of insurance customary for the services being provided.

3. INDEMNIFICATION REQUIREMENTS

For other than professional services rendered, to the fullest extent permitted by law, FIRM agrees

to defend, pay on behalf of, indemnify, and hold harmless the WRA and OPERATING CONTRACTORS against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the WRA or OPERATING CONTRACTORS by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage, including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with FIRM'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of FIRM.

For professional services rendered, to the fullest extent permitted by law, FIRM agrees to pay on behalf of, indemnify, and hold harmless the WRA and OPERATING CONSULTANT against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs and economic damages that may be recovered from or suffered by the WRA or OPERATING CONSULTANT that arise out of any negligent act, error or omission of the FIRM including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of FIRM.

FIRM'S obligation to indemnify the WRA and OPERATING CONSULTANT contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The WRA and OPERATING CONSULTANT shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by FIRM arising out of or in any way connected or associated with FIRM'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of FIRM, except to the extent caused by or resulting from the negligent act or omission of the WRA or OPERATING CONSULTANT.

FIRM expressly assumes responsibility for any and all damage caused to WRA property arising out of or in any way connected or associated with FIRM'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of FIRM.

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

ATTACHMENT 2

WRA Constituent Members and Frequent Adverse Parties

The following is list of WRA's Members to be considered for conflict review.

City of Altoona
City of Ankeny
City of Bondurant
City of Clive
City of Cumming
City of Des Moines
Greenfield Plaza
City of Grimes
City of Johnston
City of Norwalk
City of Pleasant Hill
City of Polk City
Polk County
Urbandale Sanitary Sewer District
Urbandale Windsor Heights Sanitary District
City of Waukee
City of West Des Moines
Warren County

Other frequent adverse parties:

Construction contractors
Civil engineering firms and architects engaged in wastewater utility work.
Iowa Department of Natural Resources
[Others]