

***Request for Proposals
for
Marketing and Media Services
August 25, 2023***

City of Sioux Falls, South Dakota

Proposal Request No. 23-0108



PUBLISH: August 25 and September 1, 2023

REQUEST NO. 23-0108

REQUEST FOR PROPOSALS

The City of Sioux Falls, SD, Requests Proposals for Marketing and Media Services.

Competitive Sealed Proposals shall be received at the Customer Service Counter, Ground Floor, City Hall, 224 W. 9th St., P.O. Box 7402, Sioux Falls, SD 57117-7402, not later than 2 p.m., October 5, 2023. The request for proposals will be opened but not read at 3 p.m.

The Request for Proposal is available from Purchasing at the above address or online at www.siouxfalls.org/business Cite Request for Proposal No. 23-0108.

The City of Sioux Falls reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the City of Sioux Falls, SD.

Published twice at the approximate cost of \$_____.

Request for Proposals for Marketing and Media Services

SECTION 1 GENERAL INSTRUCTIONS

1.01 Purpose of the RFP

This Request for Proposal (RFP) is issued by the City of Sioux Falls (hereinafter referred to as the “City”). The purpose of this RFP is to solicit proposals to provide Marketing and Media Services from a qualified, experienced, and innovative Firm(s) interested in partnering with the City.

Proposers have the option of submitting, but not limited to, creative services and media purchasing options to provide the City.

The City is open to all proposals and solutions that could be presented by the Firm(s). The RFP process will conclude with the negotiation of a management contract with a qualified Firm(s) for Marketing and Media Services.

1.02 Contact Person, Telephone, Fax Number, and Email

Oliva Larson, Purchasing Specialist, Finance Department, is the point of contact for this RFP. Unauthorized contact regarding the RFP with other City employees may result in the vendor being disqualified.

Oliva Larson, Purchasing Specialist, Finance Department

Phone: 605-367-8604

Email: olarson@siouxfalls.org

1.03 RFP Schedule of Events

This schedule of events represents the City’s best estimate of the schedule that will be followed for this RFP. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule is as follows:

- RFP issued: **August 25, 2023**
- Pre-proposal meeting: **September 6, 2023, at 9 a.m.**
- Deadline for questions: **September 15, 2023, at 2 p.m.**
- Questions Posted: **September 22, 2023, at 2 p.m.**

- Proposals due: **October 5, 2023, at 2 p.m.**
- Review of Proposals: **October 2023**
- Presentations (if necessary): **October-November 2023**
- Intent to Award: **November 2023**
- Execute Contract: **November–December 2023**

1.04 Return Mailing Address and Deadline for Receipt of Proposals

Firms must submit one (1) original hard copy (marked “Original”) and one (1) thumb drive with the proposal saved as one PDF file on the drive. The proposal shall be in a sealed envelope or package.

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the City before the deadline for receipt. Envelopes or packages must be addressed as follows:

City of Sioux Falls Purchasing Office
Attention: Oliva Larson
Media Services
RFP No. 23-0108
224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD 57117-7402

Proposals must be received by the Purchasing Office at the location specified no later than **2 p.m., Central standard time, on Thursday, October 5, 2023**. Proposals will not be publicly read at the opening.

Proposals may not be delivered orally, by facsimile transmission, by other telecommunication, or electronic means.

Firms assume the risk of the method of dispatch chosen. The City assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the City. A Firm’s failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

1.05 Questions and Addenda

Questions regarding this RFP shall be submitted in writing to Olivia Larson, Purchasing Specialist, at olarson@siouxfalls.org. The deadline for questions is 2 p.m., Central standard time, on **September 15, 2023**. Answers to questions will be posted to the City’s website by **September 22, 2023**, at 2 p.m. Central standard time.

Firms will be provided the opportunity to attend a pre-proposal meeting on **September 6, 2023, at 9 a.m.** Firms shall be limited to two in-person representatives. A virtual option will be made available in the event the Firm wants more than two representatives to be present for the meeting. Firms shall notify the City by **2 p.m. on September 5, 2023**, of the need for the virtual meeting link by providing the name and email address of the attendee(s).

If deemed necessary, addenda to the RFP will be issued and will be emailed to the proposers. No addenda will be issued after **2 p.m. on September 22, 2023**.

Responding Firms are prohibited from communicating in any other manner about this project with any other City employee from the date of issuance of this proposal until the final selection unless otherwise directed by the Purchasing Manager. Other means of communication or contact may disqualify the submitting Firms.

SECTION 2 SCOPE OF SERVICES

2.01 Introduction

This RFP describes the project as currently conceived and includes an outline of the expected Scope of Services. The successful Firm(s) for services will be expected to work collaboratively and cooperatively with all agencies working with the City.

The City has a staff of approximately 1,359 full-time equivalent positions and 500 part-time equivalent positions. The City Communications Department, along with various departments within the City, engage in paid advertising campaigns in accordance with the budgets approved by the City Council.

The City anticipates this relationship lasting for an initial two-year term with the option to extend for three additional one-year terms. Additionally, future budgets are set and subject to City Council approval on an annual basis.

2.02 Working with the City

The City Communications team connects, informs, and engages with our community to increase the impact of City resources and services through:

- Leading key initiatives through strategic communications.
- Emergency incident management and preparedness.
- Supporting daily needs of essential City operations.
- Proactively engaging residents, anticipating needs, inspiring discovery, and responding appropriately.

- Building trust and positive community sentiment through efficient use of resources and providing accurate, easy-to-find information.
- Maintaining and innovating resident communication channels.

The City Communications team oversees the strategy and production of a variety of marketing activities, including creative development; media buying and placement; production of digital and print collateral; website and social media platforms; email marketing; analytics; local listings; and public relations. Large signature events, other visitor services programs, and cooperative programs with the State of South Dakota or other entities, industry associations, and local businesses and organizations may be a part of the work associated with this RFP. The City seeks a strategic and creative marketing partner to generate effective and measurable results. The successful Firm(s) will be able to demonstrate the following:

- Knowledge of and interest in improving the Sioux Falls community and what makes us unique.
- Eager to make an impact/difference in the Sioux Falls community.
- A partner invested in building long-term relationships with our team and collaborating to define the biggest areas of potential impact.
- Experience working with large organizations and/or government entities while balancing the realities of government operations.
- Possess full-service marketing capabilities.
- Provide thoughtful leadership and best practices.
- Collaborative, transparent, and accountable with clear lines of communication.
- Knowledge and best practices of marketing data and analytics.
- Ability to provide data showing industry benchmarks to measure the success of marketing efforts.

2.03 Scope of Services

The City invites you to submit a proposal for the following scope of services. You may submit for one or both of these services. Please clarify your intent when submitting your proposal.

The City has the right to accept or refuse any branding or messaging prior to its publication or release. The City provides its own brand standards in terms of logos, font, and color options. These will be made available to the successful Firm(s). Written approval from the City is required for all services prior to publication or release.

The successful Firm(s) will be compensated for their work on a professional fee basis (not via commissions on total media spending), with an agreed-upon fee structure split up and paid monthly.

The successful Firm(s) will pay all invoices from media/vendors on behalf of the City within thirty (30) days of receipt of payment from the City for the same invoices. Media buying agency will submit their invoices monthly to the City.

The successful Firm(s) will coordinate with and provide creative agencies with all creative deadlines and make sure media deadlines are met.

The successful Firm's project team is expected to be available to meet the City's needs. The project team should have the ability to meet in person for pre-campaign planning and post-campaign analysis of media buying and/or creative services activities. The project team shall also be able to respond to requests to make changes to media buying and/or creative services plans within 4 hours for emergency situations such as, but not limited to, public safety and inclement weather.

The award of the contract for a particular service does not guarantee the successful Firm(s) exclusivity to perform the tasks under that service. Subcontractors may be required to work in tandem with other subcontractors.

Marketing Strategy & Creative

State of Marketing & Best Practices

- In-person internal training focusing on sharing consumption habits of Sioux Falls community, the latest trends with an emphasis on digital and government grounded in where we're at today
- Includes best practices for traditional and digital (web, email, social, analytics, SMS, etc.)

Creative Strategy & Development

- Includes creative strategy, positioning, messaging, and creative production
- In 2024 creative campaigns would include:
 - General recruitment/branding highlighting City of Sioux Falls as an employer of choice, including audit of current efforts
 - Police recruitment
 - May include other City initiatives

Media Strategy + Placement

Media Placement

- Strategy, purchasing, coordination, trafficking, reporting, specific to campaigns. Analytics setup (if necessary), reporting (monthly and post). Does not include creative services.
- Centralize one-off media buys via annual media placement strategy and buy for non-campaigns (i.e. digital billboards for real-time updates like snow

emergency, mosquito spray, etc.)

- In some, if not all of these instances, placement would be done by or in conjunction with City staff.
- City will provide creative to Firm(s) for non-campaign placements.

2.04 Budgets

The proposed budget for the professional services detailed herein is approximately \$200,000.00 in 2024. Additionally, the City may have the opportunity to utilize various awarded grant funding throughout the year. Therefore, there may be additional requirements beyond what are mentioned in this RFP. The attachments associated with this RFP communicate the typical requirements associated with Federal grant requirements. The City will communicate any additional requirements as necessary in these instances.

2.05 Marketing Goals and Metrics

Success will be defined for each individual marketing effort. Overall, the City aims to:

- Establish overarching benchmarks on brand sentiment.
- Begin to build a culture around defining marketing success beyond website visits (i.e., conversions), including setting up tracking and connecting back to business objectives.
- Understand effectiveness of emergency communications.
- Easily understand which owned channels are most impactful and to whom.

The City's goals for its paid marketing campaigns are to raise awareness of the City's programs and initiatives, to notify citizens of important events related to inclement weather and public safety, to recruit new employees, and to produce a positive ROI that is measurable. The media buying agency selected will work closely with City staff to understand the various departments'/divisions' operations and products/services before strategizing on which placements will best achieve these goals.

SECTION 3 PROPOSAL FORMAT AND CONTENT

3.01 Submittal Requirements

Prior to submittal of the RFP response, potential respondents are encouraged to submit a letter of intent to the City acknowledging receipt of the RFP and informing the City of its intent to respond prior to the scheduled pre-proposal meeting. The potential respondent should also provide the name, address, telephone number, and email address of a contact individual who can address inquiries related to this RFP and the Firm's proposal. This contact would also receive any clarifications or additions to the RFP from the City.

For uniformity, all respondents are required to submit information in the order and format requested in this RFP. Failure to do so may cause the proposal to be deemed nonresponsive. Information requested in the RFP, which is deemed privileged information and confidential by the Firm, may be submitted in a separate envelope marked "Privileged and Confidential Information." The City will use its best efforts to protect such information from disclosure to the extent allowable by law. There will be no release of information until the selection process is complete and a contract has been executed. This information shall be submitted in a separate sealed envelope for the physical copy and in a separate file folder for the electronic version.

To provide each proposer with an equal opportunity for consideration, adherence to a standardized proposal format is required. The format of your proposal must contain the following elements organized into separate chapters and sections.

The submittal must contain the following information:

Proposals shall not exceed ten (10) pages front and back in length using a minimum 11-point font size type. Resumes and references should be included as attachments and will not be counted as part of the ten- (10-) page proposal limit.

Required Proposal Sections	Maximum Page Limit
Cover Letter	2 Pages
Project Understanding and Approach	As Necessary
Scope of Services	As Necessary
Team Members	4 Pages
Qualifications, Experiences, and References	As Necessary
Timeline and Fee Schedule	As Necessary
Cost Proposal	1 Page

Cover Letter

- Provide the name and address of the Firm and main contact person with address, telephone number, and email address.
- Summarize your understanding of the project. Provide a statement indicating your ability to provide timely services and meet the requirements of the proposed schedule. Indicate your acceptance of the requirements of this RFP.
- Indicate which proposal you would like your proposal to be considered for: Creative Services, Media Services, or both.
- Signature from Point of Contact on Cover Letter.

Project Understanding and Approach

- Outline your Firm’s approach for the project for the outlined proposal you wish to

be considered.

- Describe how your team's understanding and experience will be used to complete the initial scope of work and any additional tasks necessary to support its completion.
- Describe the accounts or services in which you believe you have special strengths.
- Explain how you identify and research the appropriate target market/demographic for campaigns and other marketing services.

Scope of Services

- A description of the Firm's qualifications and resources for providing the referenced services.
- **Creative Development Process:** Discuss your creative development process and communications planning process.
 - Please discuss where research tools fit into your process and the ability of data and analytics to deliver marketing ROI. Describe what analytical tools are utilized by your Firm (e.g., Google Analytics, GMB, etc.).
- **Media Services:** Describe your capabilities and strengths in media research, planning, buying, monitoring, reporting, and overall stewardship of your clients' funds.
- **Digital Services:** Provide a brief description of all digital services your Firm utilizes and which one you think would have the most value for the City. This could include, but is not limited to, mobile, Google Analytics, SEO, CRM, e-commerce, website development, and analytics.
- **Reporting Methods:** Provide an example of how you measured the success of a previous campaign.
- **Other Specialized Services:** List any other specialized services offered, if any.

Team Members

- Share company history, current ownership, and current size.
- Provide a short biography for the team that would be working with the City.
- List the team who would be on the project.
- Identify the project manager and each individual who will work as part of this engagement.
 - Include a description of each team member's role related to this RFP. Include any professional designations and affiliations, certifications, and licenses, etc. Include years of experience in the field, length of employment with your Firm, their responsibilities or specialties, and current work assignment(s).
- The City reserves the right to restrict subcontractors and requires written notification of any subcontractor that will be used during the contract period.
 - Which services or parts of this RFP will you hire subcontractors to provide?
 - How do you manage subcontractors so that the client is able to easily convey its strategy, goals, and objectives, and answer questions from the people working on its accounts?

Qualifications and Experience

- Describe at least three (3) projects that are complementary in nature to this RFP. References for each scope of service should be included (preferably another city, town, or local government in South Dakota that the Firm has provided services to).
- Demonstrated ability to work with public/government agencies.
- Does your Firm have any experience working on State and Federal grant funded projects? If so, please list the most recent ones.

Timeline and Fee Schedule

- Detailed scope of work and the fees to be charged to the City by task and a total proposed project cost for fiscal year 2024 (based upon supplied expected media budgets).
- At least three client references on projects of similar size and scope within the last three years. Company name, contact person, phone number, and email address shall be provided.

Cost Proposal

- Rates and Fees: Please include your proposed rate structure, including hourly rates for staff roles required to service the scope described in the RFP document. RFP submissions without agency rates and/or compensation information will be automatically disqualified.
- Please account for the fact that preliminary estimates will be required on all campaigns that include the level of effort and estimated budget to communicate the campaign.
- Include any equipment or ancillary costs such as copy paper, office supplies, etc. There shall be no additional fees beyond what is submitted in your cost proposal.
- Include a pricing breakdown for media buys and placement. (What a 30-second radio ad costs, what a billboard ad costs, prime time television spot, etc.)
- The City prefers that outside media purchases be invoiced back to the City at the actual cost plus a percentage rate. The responding Firm(s) shall state this markup percentage (i.e., TV, print publications, radio, etc.).
- Please include pricing for partnerships and/or hired consultants that the Firm(s) may utilize to achieve the services described in the RFP document.

Completed forms from Attachment A and B of this RFP

- Funding for this contract may include federal grant funds requiring the provisions of Attachments A and B included in this RFP.

SECTION 4 REVIEW OF PROPOSALS AND SELECTION PROCESS

4.01 Selection Process

Upon receipt of the proposals, an evaluation team will determine the best proposal(s) deemed most qualified based on the following criteria:

The evaluation team will rely on the qualitative information contained and presented in the proposals, the reference checks made, and the ability to work well with other project team members in making the decision to select the most qualified Firm to provide services for the City.

4.02 Selection Criteria

Method of Providing Service: Firm(s) must provide a detailed narrative description of the specified methods the offeror intends to use in order to provide the services needed as described in this RFP.

Scope of Services: Information is desired as to client reporting methods, in-house production capabilities, and possible use of subcontractors.

The City's selection committee will take the following criteria into account when evaluating proposals. A total of 100 points are possible.

Experience of Firm/Team (40 points)

- Experience providing media buying and/or creative services.
- Recent or current projected workload.
- Experience with media buying and/or creative services in the Sioux Falls area.
- Proven results, grounded in data.
- Alignment with the City's core values of Safety, Teamwork, Innovation, Character, and Respect.

Cost (30 points)

- Total anticipated fees for the requested media buying services.
- Access to preferred pricing/discounts and relationships with relevant advertising partners in key markets.

References (10 Points)

Project Understanding (20 Points)

- Understanding the project objectives and scope of work.

Upon review of the proposals, the City will score the proposals and may short-list and may interview the highest-ranking Firms. Upon completion of the interviews, the highest-ranking Firm or Firms may be asked to enter into contract negotiations with the City. If an agreement cannot be reached with the highest ranked Firm or Firms, the City may move to the next highest-ranked Firm or Firms. The same process will be repeated with the other ranked Firm or Firms if no such agreement can be reached. The City reserves the right to not select a Firm or Firms as part of this process if an agreement cannot be reached or for any other reason.

4.03 Special Conditions

The City reserves the right to reject any and all proposals, to waive formalities, and to select the proposal and the Firm that, in the City's sole discretion, is in the best interests of the City.

The City reserves the right to:

- a. Amend, modify, or withdraw this RFP;
- b. Revise any requirements under this RFP;
- c. Require supplemental statements of information from any responding party;
- d. Extend the deadline for submission of responses hereto;
- e. Negotiate or hold discussions with any bidder to correct insufficient responses that do not completely conform to the instructions contained herein;
- f. Waive any nonconformity with this RFP;
- g. Cancel, in whole or in part, this RFP if the City deems it is in its best interest to do so;
- h. Request additional information or clarification of information provided in the response without changing the terms of the RFP; and
- i. Waive any portion of the selection process in order to accelerate the selection and negotiation with the top-ranked management company.

The City may exercise the foregoing rights at any time without notice and without liability to any bidder, or any other party, for expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of the bidder.

- Nothing stated at any time, by any representative of the City, will effect a change in, or constitute an addition to, this RFP unless confirmed in writing by the City.
- Respondents hereto must agree to keep confidential their response and any information received from the City.
- All information submitted in response to the RFP shall become the property of the City, and as such, may be subject to public review as public records.
- Respondents acknowledge and agree that the City will not be liable for any costs, expenses, losses, damages (including damages for loss of anticipated profit), or liabilities incurred by the respondent or any member thereof as a result of, or arising out of, submitting a proposal, negotiating changes to such proposal, or due to the City's acceptance or nonacceptance of the proposal.
- The City shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to

release information to the public must receive prior written approval from an authorized representative of the City.

- Neither the City nor any of its officers, agents, consultants, or employees shall be responsible for the accuracy of any information provided as part of this RFP (including appendices). All respondents are encouraged to independently verify the accuracy of any information provided. The use of this information in the preparation of a response to the RFP is at the sole risk of the respondent.
- The respondent shall not collude in any manner or engage in any practices with any other respondent(s), which may restrict or eliminate competition or otherwise restrain trade. Violation of this instruction will cause the City to reject the respondent's submittal. This prohibition is not intended to preclude joint ventures or subcontracts.
- All responses submitted must be the original work product of the respondent. The copying, paraphrasing, or other use of substantial portions of the work product of another respondent is not permitted. Failure to adhere to this instruction will cause the City to reject the response.
- The successful respondent will be required to enter into contract by signature on separate contract documents, which will be prepared by the City from information in the RFP and the successful respondent's proposal.

4.03 Contract Award

It is the City's intent to enter into a contract with a Firm or Firms who best demonstrate the ability to provide all or some of the services that best fit the need of the City. After review of the proposals, if the City decides to not enter into a contract, the City will notify all Firms.

SECTION 5 STANDARD PROPOSAL INFORMATION

5.01 Authorized Signature

An individual authorized to bind the Firm to the provisions of the RFP must sign all proposals.

5.02 City Not Responsible for Preparation Costs

The City will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

5.03 Proprietary Information

Excluding proprietary information, the successful Firm's proposal and contract are deemed public records and shall be available to the public upon request. In addition, the

City shall maintain a “Register of Proposals for this Contract,” which shall contain the names of companies who submitted a proposal and the name of the company who was awarded the contract; however, the proposals of the submitting Firms not awarded the contract are nonpublic records and will remain confidential.

5.04 Conflict of Interest

Firms must disclose any instances where the Firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g., employed by the City). The City reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the Firm’s proposal. The City’s determination regarding any questions of conflict of interest is final.

5.05 Firm’s Certification

By signature on the proposal, the Firm certifies that it complies with:

- The laws of the state of South Dakota.
- All applicable local, state, and federal laws, codes, and regulations.
- All terms, conditions, and requirements set forth in this RFP.
- A condition that the proposal submitted was independently arrived at without collusion.
- A condition that the offer will remain open and valid for the period indicated in this solicitation and any condition that the Firm and/or any individuals working on the contract do not have a possible conflict of interest (e.g., employed by the City).

If any Firm fails to comply with the provisions stated in this paragraph, the City reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

5.06 No Contact Policy

Any contact with any City representatives (other than already contracted business), related officials, or representatives other than those outlined in the RFP is prohibited. Such unauthorized contact may disqualify your Firm from this procurement.

5.07 Indemnification

To the fullest extent permitted by law, the provider, its subcontractors, agents, servants, officers, or employees, shall indemnify and hold harmless the City including, but not limited to, its elected and appointed officials, officers, employees, and agents from any and all claims brought by any person or entity whatsoever, arising from any act, error, or omission of the provider during the Firm’s performance of the agreement or any other

agreements of the Firm entered into by reason thereof. The Firm shall indemnify and defend the City including, but not limited to, its elected and appointed officials, officers, employees, and agents with respect to any claim arising, or alleged to have arisen from negligence, and/or willful, wanton, or reckless acts or omissions of the Firm, its subcontractor, agents, servants, officers, or employees, and any and all losses or liabilities resulting from any such claims, including, but not limited to, damaged awards, costs, and reasonable attorney's fees. The indemnification shall not be affected by any other portions of the agreement relating to insurance requirements. The Firm agrees that it will procure and keep in force at all times at its own expense insurance in accordance with these specifications.

5.08 Insurance Requirements

The Firm shall secure the insurance specified below. All insurance secured by the Firm under the provisions of this section shall be issued by insurance companies acceptable to the City. The insurance specified in this section may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance shall be provided to the City upon execution of this agreement.

1. Workers' compensation. The policy shall provide the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability coverage of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.
2. Commercial general liability. The policy shall provide occurrence form contractual, personal injury, bodily injury, and property damage liability coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage. The policy shall name the City and its representatives as an additional insured. If "occurrence form" insurance is not available, "claims made" insurance will be acceptable. The policy shall be maintained for three years after completion of this contract.
3. Automobile liability. The policy shall cover all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
4. Loss or breach of data liability coverage/cyber liability insurance covering third-party (including City employees) privacy liability claims resulting from theft, loss, or unauthorized display/use of confidential information, such as confidential third-party corporate and/or personally identifiable information in its care, custody, or control (electronically, on paper, or on a laptop). Such insurance must include coverage for a Contractor's employee causing the loss or breach. Coverage shall also be provided for liability arising from any confidential

information that will be transferred or any transactions that will occur over the Internet (including breach of confidentiality or credit injury to any City customer or vendor arising out of these Internet activities). The aggregate limit shall be \$1,000,000. If coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement; and that continuous coverage will be maintained or an extended discovery period will be purchased for a period of one (1) year beginning when the services under the contract are completed. The City shall be named as an additional insured.

5. The Contractor will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The Contractor agrees to hold the City harmless from any liability, including additional premium due, because of the Contractor's failure to maintain the coverage limits required.
6. The City's approval or acceptance of certificates of insurance does not constitute the City's assumption of responsibility for the validity of any insurance policies, nor does the City represent that the above coverages are adequate to protect any individual/group/business, its consultants' or subcontractors' interests, and assumes no liability therefor.
7. The City of Sioux Falls utilizes myCOI to track and verify Contractor's insurance coverage, if required, so the Contractor does not have to spend time requesting, collecting or delivering a Certificate of Insurance (COI) to the City. Upon the City's receipt of this executed contract and approval as a Contractor, the Contractor will receive an email from registration@myCOItracking.com. The Contractor must follow the instructions contained in the email and complete the online registration if not previously completed. Upon completion of registration, myCOI will request proof of insurance agent(s). In addition to other terms and conditions contained herein, Contractor shall not commence work and no payments shall be made to Contractor, unless vendor is registered with myCOI and a compliant COI has been received.

5.09 Nonappropriation

If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this Agreement, this Agreement shall impose no obligation on the City for payment. This Agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of the Contractor, its successors or assignees, for any further payments.

5.10 Civil Rights

The Contractor shall be subject to the provisions of Chapter 98 of the Code of

Ordinances of Sioux Falls, SD. It is declared to be discrimination for the Contractor, because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.

If the Contractor is guilty of discrimination, this Agreement may be terminated in whole or in part by the City and the Contractor shall be liable for any costs or expense incurred by the City in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the Agreement so terminated or canceled.

Should the Sioux Falls Human Relations Commission in a proceeding brought as provided by the Code of Ordinances of Sioux Falls, SD, find that the Contractor has engaged in discrimination in connection with this Agreement and issue a cease and desist order with respect thereto, the City shall withhold up to 15 percent of the contract price until such time as the Commission's order has been complied with or the Contractor has been adjudicated not guilty of such discrimination.

The Contractor will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission, its agencies or representatives, to ascertain compliance with the above provisions.

This section shall be binding on all subcontractors or suppliers.

Attachment A—Federal Contract Clauses

Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that Federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal laws, regulations, executive orders, Federal policies, procedures, and directives.

1. **Equal Opportunity.** Contractor shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by EO 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Minority and Women Business Enterprises (Construction Contracts) Contractor hereby agrees to comply with the following when applicable: The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), **when applicable.** Accordingly, the Contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- a. Including qualified women’s business enterprises and small and minority businesses on solicitation lists;
- b. Assuring that women’s enterprises and small and minority businesses are solicited whenever they are potential sources;
- c. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women’s business enterprises;
- d. Where the requirement permits, establishing delivery schedules which will encourage participation by women’s business enterprises and small and minority business;
- e. Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce;
- f. If any subcontracts are to be let, requiring the prime Contractor to take the affirmative steps in a through e above.

For the purposes of these requirements, a Minority Business Enterprise (MBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Natives. A Women Business Enterprise (WBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women.

2. **Suspension and Debarment. (applies to all purchases.)** (A) This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor is required to verify that none of Contractor’s principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

(B) The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(C) This certification is a material representation of fact relied upon by the City of Sioux Falls. If it is later determined that the contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(D) The Contractor agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended. (Applies to all purchases.)** Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Purchases over \$100,000 - Contractors must sign the certification on the last page of this addendum

4. **Access to Records. (applies to all purchases.)** (A) The Contractor agrees to provide the City of Sioux Falls, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means or to copy excerpts and transcriptions as reasonably needed, and agrees to cooperate with all such requests.
- (B) The Contractor agrees to provide the Treasury Department or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (C) No language in this contract is intended to prohibit audits or internal reviews by the Treasury Department or the Comptroller General of the United States.

5. **Rights to Inventions Made Under a Contract or Agreement.** Contracts or

agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable implementing regulations.

6. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333)** (applies only to purchases over \$100,000, when laborers or mechanics are used.) Where applicable, all contracts in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704 of the Contract Work Hours and Safety Standards Act, as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 3702 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

7. **Clean Air Act & Federal Water Pollution Control Act (applies to purchases of more than \$150,000.)**
 - (A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - (B) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - (C) The Contractor agrees to report each violation of the Clean Air Act and the Water Pollution Control Act to the City of Sioux Falls and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - (D) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

8. **Buy American Preference - Build America Buy America Act.** Contractor is required to comply with section 70914 of the Infrastructure Investment and

Jobs Act (IIJA) that requires that:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

9. Prohibition on certain telecommunications and video surveillance services or equipment (Huawei and ZTE)

Contractor is prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by **Huawei Technologies Company or ZTE Corporation** (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director

of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

10. Procurement of Recovered Materials: (applies only if the work involves the use of materials)

(A) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

(B) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(C) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

12. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job **seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles.**

13. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job **seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles.**

14. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers.

15. **Copeland “Anti-Kickback” Act.** Contractor and any subcontractors performing work under contract shall comply with 18 U.S.C. §874. The City shall report all suspected or reported violations to the appropriate Federal awarding agency.
16. **Compliance with Department of Health and Human Services (HHS) Regulations.** The contractor will comply with applicable HHS regulations at 45 CFR Part 92.36 (b) though (i).
17. **Wages and Fair Labor Policies.** Contractor must follow state and local requirements for prevailing wages and fair labor policies.
18. **Termination.**

Termination for Convenience

The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the City’s best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to City, the Contractor will account for the same, and dispose of it in the manner the City directs.

Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure

The City, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 15 days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within 15 days after receipt by Contractor of written notice from City setting forth the nature of said breach or default,

City shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Default

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

Attachment B—Required Forms

SUSPENSION DEBARMENT CERTIFICATION

The Contractor certifies that, neither the Contractor firm nor any owner, partner, director, officer, or principal of the Contractor, nor any person in a position with management responsibility or responsibility for the administration of federal funds:

(a) Is presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any federal or department/agency;

(b) Has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or

(d) Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

(e) The contractor is “Actively” registered with SAMS (Service for Award Management), and has been assigned the following Unique Entity Id: _____.

The Contractor further certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

Dated this _____ day of _____, 20 _____

By _____

Authorized Signature for Contractor

Printed Name and Title

- This form is required only for purchases of more than \$100,000 -

31 CFR Part 21 – New Restrictions on Lobbying - CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of their knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL](#), "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Ch. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor’s authorized official

Date: _____

(Print name of person signing above)

(Print title of person signing above)