CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: **DATE:** **May 4, 2015**

Resolution – Amendment to Alluvion RISE Agreement
IDOT Agreement No. 2015-5-002

FINANCIAL IMPACT:

None.

BACKGROUND:

The City is constructing street improvements as part of the Alluvion development. On July 24, 2015, the City requested RISE funding for a portion of the Alluvion street improvements. The original RISE agreement was granted by the State and approved by the City on June 28, 2014. Subsequent to the approval of the RISE agreement, there were changes made to the scope of the improvements to accommodate the site plan. The City had requested the Iowa Department of Transportation (IDOT) modify the approved RISE agreement to reflect the roadway modifications. No changes in the eligible project costs were being proposed by either the City or the IDOT. The IDOT Commission approved the modified agreement on March 10, 2015. The IDOT has requested the Council formally approve the modifications to the agreement which include changes to the first two pages of the agreement (depicted in red) and Exhibit A. The IDOT has requested the City acknowledge the modification to the agreement by initialing and dating each modification.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Resolution Approving Amendment to Alluvion RISE Agreement.

Lead Staff Member: **Duane C. Wittstock, P.E., L.S., City Engineer**

STAFF REVIEWS

Department Director	Duane C. Wittstock, City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	RTG

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Works		
Date Reviewed	April 29, 2015		
Recommendation	Yes	No	Split

Resolution Approving Amendment to Alluvion RISE Agreement

WHEREAS, an existing RISE agreement is in place between the Iowa Department of Transportation (IDOT) and the City of West Des Moines for the following described public projects:

Alluvion Street Improvements
RISE Agreement No.2015-5-002

and,

WHEREAS, the City has received an amended RISE agreement from the IDOT revising the original scope of work to match the current street improvement plans;

WHEREAS, the financial considerations of the original RISE agreement remain unchanged;

therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that the modifications to the RISE agreement is hereby approved and that the City Clerk is authorized and directed to initial and date the modifications to the agreement noted in red on the amended agreement.

PASSED AND APPROVED this **4th** day of **May, 2015.**

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

Iowa Department of Transportation
Agreement for a
Revitalize Iowa's Sound Economy Program (RISE) Project

RECIPIENT: City of West Des Moines

PROJECT NO: RM-8260(638)--9D-77

IOWA DOT
AGREEMENT NO.: 2015-R-002

This is an agreement between City of West Des Moines (hereinafter referred to as Recipient) and the Iowa Department of Transportation (hereinafter referred to as the DOT). The Recipient submitted an application to the DOT for funding through the Revitalize Iowa's Sound Economy (RISE) fund under Iowa Code Chapter 315 (2011), and the application was approved by Transportation Commission Order No. PPM-2015-5 on July 8, 2014 **and a modification approved by the Transportation Commission Order No. PPM-2015-46 on March 10, 2015**.

Pursuant to the terms of this agreement, and applicable statutes and administrative rules the DOT agrees to provide funding to the Recipient for the authorized and approved costs for eligible items associated with the **construction of Maffitt Lake Road from Veterans Parkway southeast approximately 3,500 feet to South 8th Street, the reconstruction of South 8th Street approximately 1,600 feet north under Iowa 5 and construction of White Crane Road east approximately 2,300 feet to the development site of a new Microsoft data center facility**.

In consideration of the foregoing and the mutual promises contained in this agreement, the parties agree as follows:

1. The Recipient shall be the lead organization for carrying out the provisions of this agreement.

2. All notices required under this agreement shall be made in writing to the DOT's and/or the Recipient's contact person. The DOT's contact person shall be Jennifer Kolacia, Office of Systems Planning, 800 Lincoln Way, Ames, Iowa 50010, 515-239-1738, email Jennifer.Kolacia@dot.iowa.gov. The Recipient's contact person shall be Clyde Evans, City of West Des Moines, 4200 Mills Civic Pkwy, Suite 2E, P.O. Box 65320, West Des Moines, IA 50265-0320, clyde.evans@wdm.iowa.gov.

3. The Recipient shall be responsible for the development and completion of the following described project:

   Construction of Maffitt Lake Road from Veterans Parkway southeast approximately 3,500 feet to South 8th Street, the reconstruction of South 8th Street

Iowa Department of Transportation
Agreement for a
Revitalize Iowa's Sound Economy Program (RISE) Project

RECIPIENT: City of West Des Moines

PROJECT NO: RM-8260(638)--9D-77

IOWA DOT
AGREEMENT NO.: 2014-R-021

This is an agreement between City of West Des Moines (hereinafter referred to as Recipient) and the Iowa Department of Transportation (hereinafter referred to as the DOT). The Recipient submitted an application to the DOT for funding through the Revitalize Iowa's Sound Economy (RISE) fund under Iowa Code Chapter 315 (2011), and the application was approved by Transportation Commission Order No. PPM-2015-5 on July 8, 2014.

Pursuant to the terms of this agreement, and applicable statutes and administrative rules the DOT agrees to provide funding to the Recipient for the authorized and approved costs for eligible items associated with the development of the construction of Maffitt Lake Road from Veterans Parkway southeast approximately 4,000 feet to South 8th Street and the reconstruction of South 8th Street approximately 2,000 feet north under Iowa 5 to the development site of a new Microsoft data center facility.

In consideration of the foregoing and the mutual promises contained in this agreement, the parties agree as follows:

1. The Recipient shall be the lead organization for carrying out the provisions of this agreement.

2. All notices required under this agreement shall be made in writing to the DOT's and/or the Recipient's contact person. The DOT's contact person shall be Jennifer Kolacia, Office of Systems Planning, 800 Lincoln Way, Ames, Iowa 50010, 515-239-1738, email Jennifer.Kolacia@dot.iowa.gov. The Recipient's contact person shall be Clyde Evans, City of West Des Moines, 4200 Mills Civic Pkwy, Suite 2E, P.O. Box 65320, West Des Moines, IA 50265-0320, clyde.evans@wdm.iowa.gov.

3. The Recipient shall be responsible for the development and completion of the following described project:

   the construction of Maffitt Lake Road from Veterans Parkway southeast approximately 4,000 feet to South 8th Street and the reconstruction of South 8th Street approximately 2,000 feet north under Iowa 5 to the development site of a new Microsoft data center facility. See Exhibit A.

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approximately 1,600 feet north under Iowa 5 and construction of White Crane Road east approximately 2,300 feet to the development site of a new Microsoft data center facility. See Exhibit A.

4. Eligible project costs for the project described in Section 3 of this agreement, listed above, which are incurred after the effective date of this agreement shall be paid as follows:

City RISE Funds (Grant):	$3,519,375
City Local Contribution:	$3,519,375
Project Total:	$7,038,750

5. The local contribution stated above may include cash or non-cash contributions to the project. The Recipient shall certify to the DOT the value of any non-cash contribution to the project prior to it being incurred. For right of way contributions, the recipient shall submit an appraisal from a qualified independent appraiser. The DOT reserves the right to review the Recipient's certificate of value and has sole authority to determine the value of the Recipient's non-cash contribution for the purposes of this agreement. If, as a result of the DOT's determination, the Recipient's total cash and non-cash contribution is below that stated in the terms of this agreement, the Recipient shall increase its cash contribution in order to complete the Recipient's local contribution, or the grant and/or loan amount associated with this project shall be reduced accordingly.

6. The portion of total project costs paid by RISE grant shall not exceed the amount stated above $3,519,375 or 50 percent of the total cost of the eligible items, whichever is the smaller amount. Any cost overruns shall be paid solely by the applicant.

7. Project activities or costs eligible for funding include only those items set out in Exhibit B which is attached hereto and by this reference incorporated into this agreement, and which are necessary to complete the project as described in Section 3.

8. Activities or costs ineligible for funding include but are not limited to those items set out in Exhibit C which is attached hereto and by this reference incorporated into this agreement.

9. Notwithstanding any other provisions of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State of Iowa to appropriate funds or discontinuance or material alteration of the program for which funds were provided, the DOT shall have the right to terminate this contract without penalty by giving not less than ninety (90) days written notice.

10. The DOT reserves the right to delay reimbursement of funds to the Recipient if necessary to maintain a positive cash flow. If such a delay is necessary and lasts more than five working days, the DOT shall so notify the Recipient in writing and shall give the Recipient an estimate of when reimbursement might be expected. The DOT shall establish a system to equitably make reimbursements to all Recipients so affected.

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City RISE Funds (Grant):	$3,519,375
City Local Contribution:	$3,519,375
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11. The attached project implementation schedule, Exhibit D, shall be used unless the Recipient submits to the DOT, no later than 30 days subsequent to the Recipient's signature date on this agreement, a revised implementation schedule.

12. The Recipient must have let the contract or construction started within three years of the date this project is approved by DOT. If the Recipient does not do this, they will be in default for which the DOT can revoke funding commitments. This agreement may be extended for periods up to six months upon receipt of a written request from the Recipient at least sixty (60) days prior to the deadline.

13. If any part of this agreement is found to be void and unenforceable, the remaining provisions of this agreement shall remain in effect.

14. It is the intent of both parties that no third party beneficiaries be created by this agreement.

15. This agreement shall be executed and delivered in two or more copies, each of which so executed and delivered shall be deemed to be an original and shall constitute but one and the same instrument.

16. This agreement is not assignable without the prior written consent of the DOT.

17. If the project described in Section 3 of this agreement crosses a DOT primary road, then:

    A. The Recipient shall convey title to the State of Iowa, by quit claim deed, to any right of way necessary for the primary road crossing, all at no cost to the DOT. However, the DOT shall prepare detailed legal descriptions and plats. The general configuration of the right of way to be conveyed shall be agreed to by the Recipient and the DOT prior to the survey.

    B. The Recipient shall submit six copies of plans for all primary road system crossings to the DOT contact person for review and approval by the District Offices for necessary permits, Offices of Road Design and Maintenance with regard to crossing design and location, signing, fencing, safety, maintenance, compliance with access control policy, etc. Said approval shall be obtained before the Recipient proceeds with the construction of any primary road system crossing.

    C. The use of primary highway right of way for this projects' purpose shall be subject to any rights enjoyed by any existing utility lines presently within the right of way. If excavation of a utility line over which this project has been placed is necessary for any reason, the utility shall be responsible for proper backfilling of said excavation to ground level. The Recipient shall be responsible for any necessary resurfacing or restoration.

D. The use of primary highway right of way for this projects' purposes shall be subject to any future plans for reconstruction, improvement, maintenance, and/or relocation of the highway by the DOT. Any relocation of this project necessary because of said plans shall be at the expense of the Recipient, all at no cost to the DOT.

18. The Recipient shall acquire the project right of way, whether by lease, easement or fee title and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in the DOT's Right of Way manual. The Recipient shall contact the DOT for assistance, as necessary, to ensure compliance with the required procedures, even if no federal funds in the right of way purchase are involved. The Recipient will need to get environmental concurrence before acquiring any needed right of way. With prior approval, hardship and protective buying is possible. If the Recipient requests Federal-aid participation for right of way acquisition, the Recipient will need to get environmental concurrence and Federal Highway Administration (FHWA) authorization before purchasing any needed right of way.

19. The Recipient shall comply with the Policy for Accommodating Utilities on City and County Federal-aid Highways Right of Way and the Policy for Accommodating Utilities on Primary Road system when on the DOT's right of way. Certain utility relocation, alteration, adjustment, or removal costs to the Recipient for the project may be eligible for Federal-aid reimbursement in accordance with the FHWA rules applicable to the type of utility involved and Iowa Code Chapter 306A.

20. The Recipient shall be responsible for obtaining any permits, such as the Right to Occupy and/or Perform Work Within the Right of Way, Permit of Access, Utility Accommodation, Right to Install and Maintain Traffic Control Devices, and/or other construction permits required for the project prior to the start of construction.

    In addition, the Recipient shall certify to the DOT's contact person that all known required environmental permits have been received and that all environmental regulations have been complied with before funds are reimbursed or credited.

    Neither the approval of the project application for funding nor the signing of this agreement shall be construed as approval of any required permit from DOT.

21. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 761 Iowa Administrative Code Chapter (IAC) 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.

22. In the event that right of way is required for the project, said right of way will be acquired in accordance with 761 IAC Chapter 111, Real Property Acquisition and Relocation Assistance, and the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

23. The project plans, specifications and cost estimate shall be prepared and certified by a professional engineer, architect and or landscape architect (whichever applies), licensed to practice in the State of Iowa. The Recipient shall submit the plans, specifications and other agreement documents to the DOT for review. This submittal may be in divisions and in the order of preference as determined by the Recipient. However, the plans, specifications and other agreement documents for each division must be submitted at least thirty (30) days prior to the project letting of each division. The DOT shall review said submittal(s) recognizing the Recipient's development schedule and shall, after satisfactory review, authorize in writing the Recipient to proceed with implementation of the project. The work on this project shall be in accordance with the survey, plans, and specifications on file. Any modification of these plans and specifications must be approved by the DOT prior to the modification being put into effect.

24. The recipient shall be responsible for the daily inspection of the project. For projects let to contract, the Recipient shall compile a daily log of materials and quantities. For projects constructed with local forces, the Recipient shall compile a daily log of materials, equipment and labor on the project. The DOT reserves the right to inspect project activities and to audit claims for funding reimbursement. The purpose of the inspection or audit is to determine substantial compliance with the terms of this agreement.

25. The Recipient shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred for the project. The Recipient shall also make such materials available at all reasonable times during the construction period and for three years from the date of final reimbursement, for inspection by the DOT, FHWA, or any authorized representatives of the Federal government. Copies of said materials shall be furnished by the Recipient if requested.

26. The Recipient may submit to the DOT periodic itemized claims for reimbursement for eligible project costs. Reimbursement claims shall include certification that all eligible project costs, for which reimbursement is requested, have been completed in substantial compliance with the terms of this agreement.

27. The DOT shall reimburse the Recipient for properly documented and certified claims for eligible project activity costs less a retainage of not more than ten percent, either by state warrant, or by crediting other accounts from which payment may have been made initially. If, upon audits of contracts, the DOT determines the Recipient is overpaid, the Recipient shall reimburse the overpaid amount to the DOT.

28. Upon completion of the project described in this agreement, a professional engineer, architect and or landscape architect (whichever applies), licensed to practice in the State of Iowa, shall certify in writing to the DOT that the project activities were completed in substantial compliance with the plans and specifications set out in this agreement.

In addition, prior to final reimbursement for the project the Recipient shall furnish three sets of "as-built" plans of the project to the DOT.

Final reimbursement of funds, including retainage, shall be made only after the DOT accepts the project as complete.

29. If, in the opinion of the Recipient, the specific provisions of this agreement requiring the services of a professional engineer, architect and or landscape architect (whichever applies), licensed to practice in the State of Iowa, prove to be burdensome to the Recipient or otherwise not in the public interest, and if the Recipient decides that the provisions of this agreement can be otherwise complied with without endangering public safety, the Recipient may request that said provisions be waived on all or specific parts of the project identified by the Recipient. Such request shall be made in writing to the DOT's contact person who shall, after consultation with other DOT staff, as necessary, make the final determination concerning said waiver. If said waiver is granted, all provisions of this agreement requiring the services of a professional engineer, architect and or landscape architect (whichever applies), licensed to practice in the State of Iowa, shall be performed by the Recipient's contact person or designee.

30. The Recipient agrees to indemnify, defend and hold the DOT harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection or use of this project. This agreement to indemnify, defend and hold harmless applies to all aspects of the DOT's application review and approval process, plan and construction reviews and funding participation.

31. This agreement may be declared to be in default by the DOT if the DOT determines that the Recipient's application for funding contained inaccuracies, omissions, errors or misrepresentations; or if the DOT determines that the project is not developed as described in the application.

32. If the Recipient fails to perform any obligation under this agreement, the DOT shall have the right, after first giving thirty (30) days written notice to the Recipient by certified mail return receipt requested, to declare any part or all of this agreement in default. The Recipient shall have thirty (30) days from date of mailing of the notice to cure the default. If the Recipient cures the default, the Recipient shall notify DOT no later than five (5) days after cure or before the end of said thirty (30) day period given to cure the default. Within ten (10) working days of receipt of Recipient's notice of cure, the DOT shall issue either a notice of acceptance of cure or a notice of continued default.

33. In the event a default is not cured the DOT may revoke funding commitments and/or seek repayment of funds loaned or granted by this agreement. By signing this agreement the Recipient agrees to repay said funding if they are found to be in default. Repayment methods must be approved by the DOT Commission and may include cash repayment, installment repayments with negotiable interest rates, charges against the Recipient's share of road use tax funds, or other methods as approved by the Commission.

34. In case of dispute concerning the terms of this agreement, the parties shall submit the matter to arbitration pursuant to Iowa Code Chapter 679A (2011). Either party has the right to submit the matter to arbitration after ten (10) days notice to the other party of their intent to seek arbitration. The written notice must include a precise statement of the disputed question. DOT and the Recipient agree to be bound by the decision of the appointed arbitrator. Neither party may seek any remedy with the state or federal courts absent exhaustion of the provisions of this section for arbitration.

35. The Recipient shall maintain, or cause to be maintained for the intended public use, the improvement for twenty (20) years from the completion date in a manner acceptable to the DOT. Failure to comply with this provision may be considered a default of this agreement.

36. The Recipient shall comply with all provisions of the equal employment opportunity requirements prohibiting discrimination and requiring affirmative action to assure equal employment opportunity as required by the Iowa Code Chapter 216 (2011) and IAC 160. No person shall, on the grounds of age, race, creed, sex, color, national origin, religion, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives state funds from the DOT.

37. The Recipient shall use positive efforts to solicit bids from and to utilize Targeted Small Business (TSB) enterprises as contractors and ensure that the contractors make positive efforts to utilize these enterprises as subcontractors, suppliers or participants in the work covered by this agreement. Efforts shall be made and documented in accordance with Exhibit E which is attached hereto and by this reference incorporated into this agreement.

38. The Recipient shall conduct the project development and implementation in compliance with applicable laws, ordinances and administrative rules. For portions of the project let to bid, the Recipient shall advertise for bidders, make a good faith effort to get at least three bidders and hold a public letting for the project work. Prior to awarding the contract, the Recipient shall provide the DOT file copies of project letting documents within five (5) working days after the letting. The Recipient must wait for DOT concurrence before making the final award.

39. The Recipient shall include in their Notice to Bidders that Sales Tax Exemption Certificates will be issued, as provided for by Iowa Code section 423.3, subsection 80. The Recipient shall be responsible for obtaining the sales tax exemption certificates through the Iowa Department of Revenue and Finance. The Recipient shall issue these certificates to the successful bidder and any subcontractors to enable them to purchase qualifying materials for the project free of sales tax.

40. The Recipient shall notify the DOT's contact person within 30 days of the date the RISE project was constructed and open to traffic. The Recipient shall certify to the DOT's contact person within two years of the date the RISE project is constructed and open to traffic any associated economic development which has resulted from the project,

including infrastructure improvements, capital investment, and/or job creation. This certification by the Recipient is subject to review by the DOT.

The DOT shall monitor the progress of the associated economic development following the construction of the RISE project. Failure to certify the associated economic development shall be considered a default under this agreement.

41. This agreement as set forth in sections 1 through 41 herein, including referenced exhibits, constitutes the entire agreement between the DOT and the Recipient concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement must be made in the form of an addendum to this agreement. Said addendum shall become effective only upon written approval of the DOT and Recipient.

IN WITNESS WHEREOF, each of the parties hereto has executed Agreement No. 2014-R-021 as of the date shown opposite its signature below.

RECIPIENT: West Des Moines

By: _____ Date July 28, 2014

Title: Mayor

CERTIFICATION:

I, Judy E. Smith, certify that I am the Clerk of the city, and that
(Name of City Clerk)

Steven K. Gaer, who signed said Agreement for and on behalf of
(Name of Mayor/Signer Above)

the city was duly authorized to execute the same by virtue of a formal resolution duly passed and adopted by the city, on the 28th day of July, 2014

Signed: _____

City Clerk of West Des Moines, Iowa.

IOWA DEPARTMENT OF TRANSPORTATION
Planning, Programming and Modal Division
800 Lincoln Way, Ames, Iowa 50010

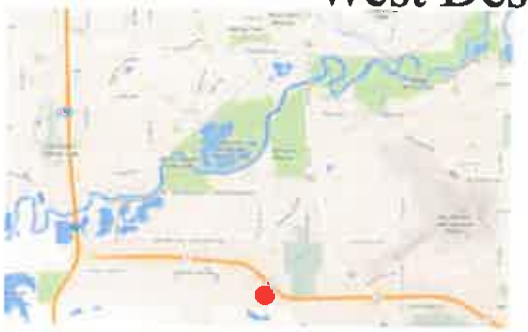
By: _____ Date 8 5, 2014

Craig Markley
Director
Office of Systems Planning

April 2012

Exhibit A

West Des Moines



Modified 3/10/2015

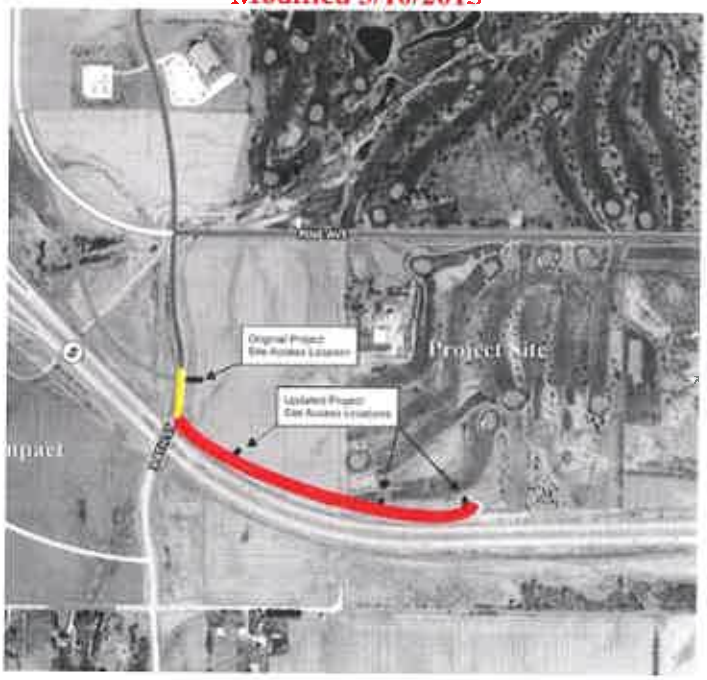


Exhibit A

Project Site Map

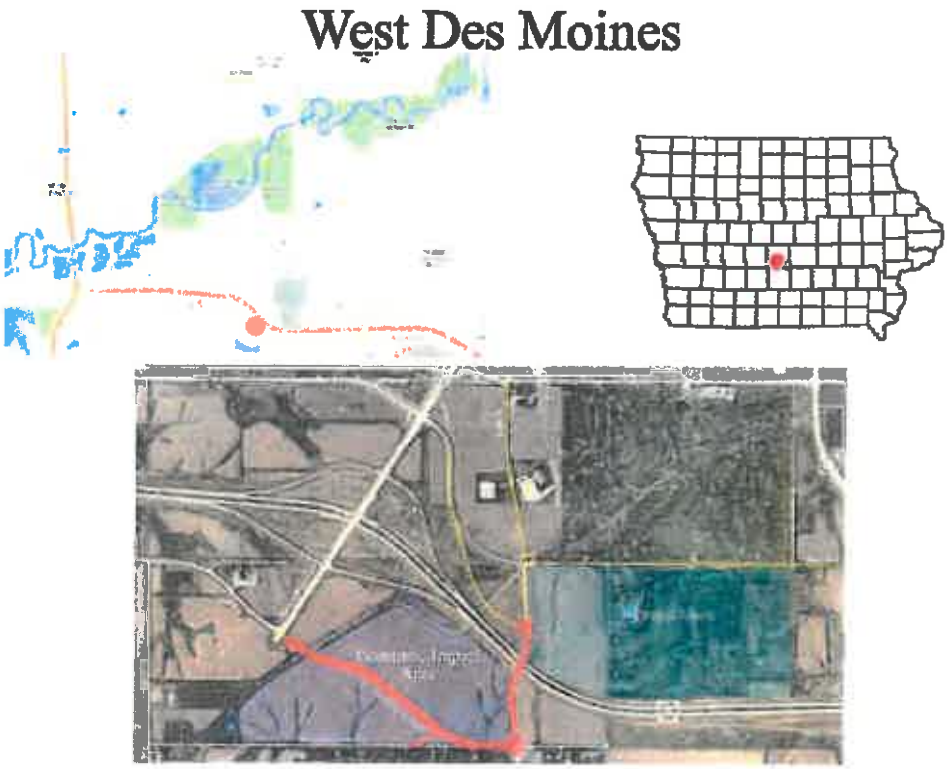


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Exhibit B

Project activities or costs eligible for RISE funding include only the following:

a. Roadway resurfacing, rehabilitation, modernization, upgrading, reconstruction or initial construction, including grading and drainage, paving, erosion control, pavement overlays and shoulder widening and stabilization.

b. Bridge and culvert repair, modernization, replacement or initial construction.

c. Roadway intersection and interchange improvements including warranted traffic signalization when it is integral to the improvement.

d. Right of way purchase.

e. Construction or improvement of motorist rest areas, welcome centers and information centers.

f. Design engineering costs and construction inspection costs associated with RISE-financed projects.

g. County and City bond principal and interest payments associated with RISE projects. No financing expenses incurred prior to funding commitment shall be eligible.

h. Storm drainage and storm sewer costs to the extent needed for draining the roadway.

Exhibit C

Activities or costs ineligible for RISE funding include but are not limited to the following:

a. Any and all costs incurred prior to a funding commitment by the Transportation Commission <u>except</u> advance right of way costs to protect or preserve a project corridor.

(1) If there is an extreme urgency involving right of way acquisition, a potential applicant may formally request from the department a written waiver which, if granted, will permit the applicant to acquire the right of way immediately without jeopardizing the eligibility of the acquisition costs for future RISE funding. Granting of the waiver shall not imply or guarantee that a subsequent application which includes the acquisition costs will be funded. The request for the advance eligibility must include justification regarding the urgency of the acquisition, a description of the land to be acquired, and a map showing its location.

(2) The advance eligibility waiver must be requested and approved prior to the applicant's acquisition of the land in question, and the RISE application which included the acquisition costs must be received by the DOT within two years following the granting of the waiver, or the waiver is not valid.

b. Routine roadway, bridge and culvert maintenance, including pothole filling, crack sealing, seal coating, patching, shoulder maintenance, gravel or earth roadway maintenance, and bridge painting.

c. Winter roadway and bridge maintenance, including snow plowing, sanding and salting.

d. Overhead and operating costs associated with eligible project activities, including auditing.

e. Expenses associated with the preparation and submission of applications for RISE funding.

f. Pre-design engineering expenses.

g. Traffic signalization, except as an integral part of a roadway project.

h. Pavement marking and traffic signs, except as an integral part of a roadway project.

i. Electric, water, natural gas, telephone and other utility construction, reconstruction or adjustment <u>except</u> when utilities located on private property are replaced or relocated for project construction.

j. Safety appurtenances, except as an integral part of a roadway project.

k. Lighting, except as an integral part of a roadway project.

l. Lighting energy and maintenance costs.

m. Sidewalks, bicycle paths and railroad-highway crossings, except when replacing those facilities in service and affected by the project, or as an integral part of a roadway project.

n. Parking expenditures, including those for structure, lots, meters and marking.

o. Non-roadway transportation expenditures, including those for railway, aviation, public transportation and inland waterway facilities and equipment.

p. Purchase of furnishings, construction equipment and personal property.

q. General government expenses and expenses associated with the provision of any public service which are not eligible for RISE program assistance.

r. Sanitary sewers.

s. Water mains.

t. Donated right of way.

Exhibit D

Commission Approval Date:	July 8, 2014
Construction:	March 2015 - October 2015
Project Closeout:	October 2015

Exhibit E

CONTRACT PROVISION

Targeted Small Business (TSB) Affirmative Action Responsibilities

on

Non-Federal Aid Projects (Third-Party State-Assisted Projects)

April 2012

April 2012

CONTRACT PROVISION

Targeted Small Business (TSB) Affirmative Action Responsibilities on Non-Federal-aid Projects (Third-party State-Assisted Projects)

1. TSB DEFINITION

A TSB is a small business, as defined by Iowa Code Section 15.102(5), which is 51% or more owned, operated and actively managed by one or more women, minority persons or persons with a disability. Generally this is a for-profit small business enterprise under single management, is located in Iowa and has an annual gross income of less than 3 million dollars computed as an average of the three preceding fiscal years.

2. TSB REQUIREMENTS

In all State-assisted projects made available through the Iowa Department of Transportation, local governments have certain affirmative action requirements to encourage and increase participation of disadvantaged individuals in business enterprises. These requirements are based on Iowa Code Section 19B.7 and 541 Iowa Administrative Code Chapter 4. These requirements supersede all existing TSB regulations, orders, circulars and administrative requirements.

3. TSB DIRECTORY INFORMATION

Available from: Iowa Department of Inspections and Appeals
Targeted Small Business
Lucas Building
Des Moines, IA 50319
Phone: 515-281-7102
Website: http://dia.iowa.gov/page7.html

4. THE CONTRACTOR'S TSB POLICY

The contractor is expected to promote participation of disadvantaged business enterprises as suppliers, manufactures and subcontractors through a continuous, positive, result-oriented program. Therefore the contractor's TSB policy shall be:

> It is the policy of this firm that Targeted Small Business (TSB) concerns shall have the maximum practical opportunity to participate in contracts funded with State-assisted funds which are administered by this firm (e.g. suppliers, manufactures and subcontractors). The purpose of our policy is to encourage and increase the TSB participation in contracting opportunities made available by State-assisted programs.

5. CONTRACTOR SHALL APPOINT AN EQUAL EMPLOYMENT OPPORTUNITY (EEO) OFFICER

The contractor shall designate a responsible person to serve as TSB officer to fulfill the contractors affirmative action responsibilities. This person shall have the necessary statistics, funding, authority and responsibility to carry out and enforce the firm's EEO policy. The EEO officer shall be responsible for developing, managing and implementing the program on a day-to-day basis. The officer shall also:

A. For current TSB information, contact the Iowa Department of Inspections and Appeals (515-281-7102) to identify potential material suppliers, manufactures and contractors.

B. Make every reasonable effort to involve TSBs by soliciting quotations from them and incorporating them into the firm's bid.

C. Make every reasonable effort to establish systematic written and verbal contact with those TSBs having the materials or expertise to perform the work to be subcontracted, at least two weeks prior to the time quotations are to be submitted. Maintain complete records of negotiation efforts.

D. Provide or arrange for assistance to TSBs in seeking bonding, analyzing plans/specifications or other actions that can be viewed as technical assistance.

E. Ensure the scheduled progress payments are made to TSBs as agreed in subcontract agreements.

F. Require all subcontractors and material suppliers to comply with all contract equal opportunity and affirmative action provisions.

6. COUNTING TSBs PARTICIPATION ON A PROJECT

TSBs are to assume actual and contractual responsibilities for provision of materials/supplies, subcontracted work or other commercially useful function.

A. The bidder may count:

(1) Planned expenditures for materials/supplies to be obtained from TSB suppliers and manufacturers; or
(2) Work to be subcontracted to a TSB; or
(3) Any other commercially useful function.

B. The contractor may count:

(1) 100% of an expenditure to a TSB manufacturer that produces/supplies goods manufactured from raw materials.
(2) 60% of an expenditure to TSB suppliers that are not manufacturers; provided the suppliers perform a commercially useful function in the supply process.
(3) Only those expenditures to TSBs that perform a commercially useful function in the work of a contract, including those as a subcontractor.
(4) Work the Contracting Authority has determined that it involves a commercially useful function. The TSB must have a necessary and useful role in the transaction of a kind for which there is a market outside the context of the TSB program. For example, leasing equipment or purchasing materials from the prime contractor would not count.

7. REQUIRED DATA, DOCUMENTS AND CONTRACT AWARD PROCEDURES FROM BIDDERS/CONTRACTORS FOR PROJECTS WITH ASSIGNED GOALS

A. Bidders

Bidders who fail to demonstrate reasonable positive efforts may be declared ineligible to be awarded the contract. Bidders shall complete the bidding documents plus a separate form called "TSB Pre-Bid Contact Information". This form includes:
(1) Name(s) of the TSB(s) contacted regarding subcontractable items.
(2) Date of the contract.
(3) Whether or not a TSB bid/quotation was received.
(4) Whether or not the TSB's bid/quotation was used.
(5) The dollar amount proposed to be subcontracted.

B. Contractors Using Quotes From TSBs

Use those TSBs whose quotes are listed in the "Quotation Used in Bid" column along with a "yes" indicated on the Pre-bid Contact Information form.

C. Contractors NOT Using Quotes From TSBs

If there are no TSBs listed on the Pre-bid Contract Information form, then the contractor shall document all efforts made to include TSB participation in this project by documenting the following:

(1) What pre-solicitation or pre-bid meetings scheduled by the contracting authority were attended?
(2) Which general news circulation, trade associations and/or minority-focused media were advertised concerning the subcontracting opportunities?
(3) Were written notices sent to TSBs that TSBs were being solicited and was sufficient time allowed for the TSBs to participate effectively?
(4) Were initial solicitations of interested TSBs followed up?
(5) Were TSBs provided with adequate information about the plans, specifications and requirements of the contract?
(6) Were interested TSBs negotiated with in good faith? If a TSB was rejected as unqualified, was the decision based on an investigation of their capabilities?
(7) Were interested TSBs assisted in obtaining bonding, lines of credit or insurance required by the contractor?
(8) Were services used of minority community organization, minority contractors groups; local, State and Federal minority business assistance offices or any other organization providing such assistance.

The above documentation shall remain in the contractor's files for a period of three (3) years after the completion of the project and be available for examination by the Iowa Department of Inspections and Appeals.

8. POSITIVE EFFORT DOCUMENTATION WHEN NO GOALS ARE ASSIGNED

Contractors are also required to make positive efforts in utilizing TSBs on all State-assisted projects which are not assigned goals. Form "TSB Pre-bid Contact Information" is required to be submitted with bids on all projects. If there is no TSB participation, then the contractor shall comply with section 7C. of this document prior to the contract award.

Form 730007WP 7-97

Contractor _____ Page#_____

Project# _____

County _____

City _____

TARGETED SMALL BUSINESS (TSB)
PRE-BID CONTACT INFORMATION

(To Be Completed By All Bidders Per The Current Contract Provision)

In order for your bid to be considered responsive, you are required to provide information on this form showing your Targeted Small Business contacts made with your bid submission. This information is subject to verification and confirmation.

In the event it is determined that the Targeted Small Business goals are not met, then before awarding the contract, the Contracting Authority will make a determination as to whether or not the apparent successful low bidder made good faith efforts to meet the goals.

NOTE: Every effort shall be made to solicit quotes or bids on as many subcontractable items as necessary to achieve the established goals. If a TSB's quote is used in the bid, it is assumed that the firm listed will be used as a subcontractor.

TABLE OF INFORMATION SHOWING BIDDERS PRE-BID
TARGETED SMALL BUSINESS (TSB) CONTACTS

SUBCONTRACTOR	TSB	DATES CONTACTED	QUOTES RECEIVED		QUOTATION USED IN BID	
			YES/ NO	DATES CONTACTED	YES/ NO	DOLLAR AMT. PROPOSED TO BE SUBCONTRACTED

Total dollar amount proposed to be subcontracted to TSB on this project $_____
List items by name to be subcontracted:

April 2012

UTILIZATION OF TARGETED SMALL BUSINESS (TSB) ENTERPRISES ON NON-FEDERAL AID PROJECTS (THIRD-PARTY STATE-ASSISTED PROJECTS-LET LOCALLY)

In accordance with Iowa Code Section 19B.7 and 541 Iowa Administrative Code (IAC) Chapter 4, it is the policy of the Iowa Department of Transportation (Iowa DOT) that Targeted Small Business (TSB) enterprises shall have the maximum practicable opportunity to participate in the performance of contracts financed in whole or part with State funds.

Under this policy, and for locally let projects, the Recipient shall be responsible to make a positive effort to solicit bids or proposals from TSB firms and to utilize TSB firms as contractors or consultants. The Recipient shall also ensure that the contractors or consultants make positive efforts to utilize TSB firms as subcontractors, subconsultants, suppliers, or participants in the work covered by this agreement.

The Recipient's "positive efforts" shall include, but not be limited to:

1. Obtaining the names of qualified TSB firms from the Iowa Department of Inspections and Appeals (515-281-7102) or from its website at: http://dia.iowa.gov/page7.html

2. Notifying qualified TSB firms of proposed projects involving State funding. Notification should be made in sufficient time to allow the TSB firms to participate effectively in the bidding or request for proposal (RFP) process.

3. Soliciting bids or proposals from qualified TSB firms on each project, and identifying for TSB firms the availability of subcontract work.

4. Considering establishment of a percentage goal for TSB participation in each contract that is a part of this project and for which State funds will be used. Contract goals may vary depending on the type of project, the subcontracting opportunities available, the type of service or supplies needed for the project, and the availability of qualified TSB firms in the area.

5. For construction contracts:

   a) Including in the bid proposals a contract provision titled "TSB Affirmative Action Responsibilities on Non-Federal Aid Projects (Third-Party State-Assisted Projects)" or a similar document developed by the Recipient. This contract provision is available on-line at:

      http://www.dot.state.ia.us/local_systems/publications/tsb_contract_provision.pdf

   b) Ensuring that the awarded contractor has and shall follow the contract provisions.

6. For consultant contracts:

   a) Identifying the TSB goal in the Request for Proposal (RFP), if one has been set.

   b) Ensuring that the selected consultant made a positive effort to meet the established TSB goal, if any. This should include obtaining documentation from the consultant that includes a list of TSB firms contacted; a list of TSB firms that responded with a subcontract proposal; and, if the consultant does not propose to use a TSB firm that submitted a subcontract proposal, an explanation why such a TSB firm will not be used.

The Recipient shall provide the Iowa DOT the following documentation:

1. Copies of correspondence and replies, and written notes of personal and/or telephone contacts with any TSB firms. Such documentation can be used to demonstrate the Recipient's positive efforts and it should be placed in the general project file.

2. Bidding proposals or RFPs noting established TSB goals, if any.

3. The attached "Checklist and Certification." This form shall be filled out upon completion of each project let by the Recipient and forwarded to: Iowa Department of Transportation, Civil Rights Coordinator, Office of Employee Services, 800 Lincoln Way, Ames, IA 50010.

April 2012

CHECKLIST AND CERTIFICATION
For the Utilization of Targeted Small Businesses (TSB)
On Non-Federal-aid Projects (Third-Party State-Assisted Projects-Locally Let)

Recipient: _____ Project Number: _____

County: _____ Agreement Number: _____

1. **Were the names of qualified TSB firms obtained from the Iowa Department of Inspections and Appeals? ☐ YES ☐ NO**

   If no, explain _____

2. **Were qualified TSB firms notified of project? ☐ YES ☐ NO**

   If yes, by ☐ letter, ☐ telephone, ☐ personal contact, or ☐ other (specify) _____

   If no, explain _____

3. **Were bids or proposals solicited from qualified TSB firms? ☐ YES ☐ NO**

   If no, explain_____

4. **Was a goal or percentage established for TSB participation? ☐ YES ☐ NO**

   If yes, what was the goal or percentage? _____

   If no, explain why not: _____

5. **Did the prime contractor or consultant use positive efforts to utilize TSB firms on subcontracts? ☐ YES ☐ NO**

   If no, what action was taken by Recipient? _____

   Is documentation in files? ☐ YES ☐ NO

6. **What was the dollar amount reimbursed to the Recipient from the Iowa Department of Transportation?** $_____
   What was the final project cost? $_____
   What was the dollar amount performed by TSB firms? $_____

   Name(s) and address(es) of the TSB firm(s)_____
   (Use additional sheets if necessary)

   Was the goal or percentage achieved? ☐ YES ☐ NO

   If no, explain _____

As the duly authorized representative of the Recipient, I hereby certify that the Recipient used positive efforts to utilize TSB firms as participants in the State-assisted contracts associated with this project.

_____
Title

_____ _____
Signature Date