CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Approval of IDNR State Clean Diesel Grant **DATE:** November 30, 2015

FINANCIAL IMPACT:

The State Clean Diesel Grant Program provides the City of West Des Moines $125,500 for the replacement and disablement of a 1995 fire engine. The new fire engine is estimated to have a cost of $640,000, thus the City portion will be approximately $514,500. The expenses for this replacement will be included in the FY 2016-17 budget and the City match will be covered using vehicle replacement funds.

BACKGROUND:

The Diesel Emissions Reduction Act (DERA) authorized the U.S. Environmental Protection Agency (EPA) to provide pass-through funding to the State of Iowa to promote diesel emissions reduction projects. The Iowa Department of Natural Resources (DNR) has created a competitive grant program to help fund voluntary diesel exhaust reduction projects. The City of West Des Moines applied for funding from this program to replace a qualifying 1995 E-One fire engine, the City's request was for $160,000 and was awarded $125,500. This fire engine was scheduled to be replaced in FY 2017-18, but has been moved up to FY 16-17 for this grant program. The City of West Des Moines was one of two entities to be award funding for the 2015 program. The timeline for the grant requires the City of West Des Moines to purchase the new fire engine no later than July 1, 2016 and take possession on later than August 1, 2016. The 1995 E-One fire engine that must be disabled by cutting a 3 inch diameter hole in the engine block and manifold no later than 8/30/16. There will be an opportunity to sell the body of the fire engine for scrap, but will not be able to sell or trade in the fire engine for re-use to another entity. The grant award was presented and discussed with the Finance and Administration Sub-Committee on November 18, 2015, the Sub-Committee recommended approval.

RECOMMENDATION:

Staff is recommending that City Council accept the contract for the State Clean Diesel Grant Program from the Environmental Protection Agency Region VII which provides the opportunity to reduce diesel emission through a sub-grant program allowing for vehicle replacement.

Lead Staff Member: Rian Rasmussen

STAFF REVIEWS

Department Director	Bret Hodne, Director of Public Works
Appropriations/Finance	
Legal	
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance & Administration		
Date Reviewed	November 18, 2015		
Recommendation	Yes	No	Split

IOWA DEPARTMENT OF NATURAL RESOURCES
CONTRACT NUMBER 16ESDAQBCIIIAM-0006

Between

IOWA DEPARTMENT OF NATURAL RESOURCES
And
CITY OF WEST DES MOINES

This Contract was approved by the Environmental Protection Commission on December 15, 2015.

IN WITNESS THEREOF, the parties hereto have entered into this Contract on the day and year last specified below.

DEPARTMENT OF NATURAL RESOURCES

By: _____ Date: _____
Bruce Trautman, Deputy Director

CITY OF WEST DES MOINES

By: _____ Date: _____
Steven K. Gaer, Mayor

For DNR use only:

Retain the original contract in the project file and send a hardcopy with the first invoice.
a) Fax contract to 515-281-8895 (check one box below before faxing)
OR
b) Email scanned copy to your Division's Contract Rep:

	DIVISION	DIVISION CONTRACT REP
☐	Conservation & Recreation	Kim.Rasler@dnr.iowa.gov
☐	Director's Office	Karen.Fynaardt@dnr.iowa.gov
X	Environmental Services	Jerah.Sheets@dnr.iowa.gov
☐	Management Services	Jennifer.StJohn@dnr.iowa.gov

If you do not have faxing or scanning/emailing capabilities, you may mail a copy of the contract to IA DNR, Wallace State Office Building, Attention: (your respective bureau's contract rep), 502 East 9th Street, Des Moines, IA 50319.

PROFESSIONAL SERVICES
SPECIAL CONDITIONS

This Contract is entered into between the Iowa Department of Natural Resources (DNR) and the City of West Des Moines (West Des Moines). The parties agree as follows:

Section 1 IDENTITY OF THE PARTIES

1.1 Parties. DNR is authorized to enter into this Contract. DNR's address is: Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.

West Des Moines, a local government is organized under the laws of the State of Iowa and is registered with the Iowa Secretary of State. West Des Moines' address is: 4200 Mills Civic Parkway, Ste. 2B; PO Box 653320; West Des Moines, IA 50265.

1.2 Project Managers. Each party has designated a Project Manager, who shall be responsible for oversight and negotiation of any contract modifications, as follows:

DNR Project Manager:
Jim McGraw
AQB Supervisor, Program Development Section
Air Quality Bureau
7900 Hickman Rd, Suite 1
Windsor Heights, IA 50324
Phone: 515-725-9543
Email: jim.mcgraw@dnr.iowa.gov

West Des Moines Project Manager:
Rian Rasmussen
Fleet Manager
560 S. 16th Street
West Des Moines, IA 50265-0320
Phone: 515-222-3488
Email: rian.rasmussen@wdm.iowa.gov

Section 2 STATEMENT OF PURPOSE

2.1 Background. The DNR was awarded a FY 2015 State Clean Diesel Grant Program from the Environmental Protection Agency, Region VII (EPA) that provides for the opportunity to reduce diesel emissions in West Des Moines, Iowa through a sub-grant program allowing for vehicle replacement.

2.2 Purpose. The parties have entered into this Contract for the purpose of allowing West Des Moines to voluntarily reduce emissions through the purchase of a 2013 (or newer) fire engine and the disablement of a 1995 fire engine.

Section 3 DURATION OF CONTRACT

3.1 Term of Contract. The term of this Contract shall be December 16, 2015 through September 25, 2016, unless terminated earlier in accordance with the Termination section of this Contract. However, this Contract shall not begin until it has been signed by both parties.

3.2 Approval of Contract. If the amount of compensation to be paid by DNR according to the terms of this Contract is equal to or greater than $25,000.00, then performance shall not commence unless by December 15, 2015 this Contract has been approved by the Environmental Protection Commission.

Section 4 DEFINITIONS

4.1 "Deliverables" shall mean services to be provided by, or on behalf of, West Des Moines pursuant to this Contract. Deliverables shall include everything produced by West Des Moines that is related to the Tasks, such as reports, meetings, documentation, designs, copy, artwork, data, information, graphics, images, processes, techniques, materials, plans, papers, forms, studies, modifications, content, concepts, and all other tangible and intangible works, materials and property of every kind and nature that are related to the Deliverables.

4.2 "Milestone Date" shall mean any of the dates contained in the contract stating a deadline for accomplishing tasks required by this Contract.

Section 5 STATEMENT OF WORK

5.1 Statement of Work. West Des Moines shall perform the following tasks. West Des Moines shall complete its obligations under this Contract by the Milestone Dates set out in the following table:

<table>
<tr><th>Obligation</th><th>Milestone Date</th></tr>
<tr><td>
Task 1: Purchase New Fire Engine
Description: West Des Moines shall purchase a 2013 model year or newer EPA-certified vehicle to replace the following fire engine currently in the West Des Moines fleet:
• 1995, Detroit Diesel 8V92 (VIN#AENDAAA8XS1004577)
West Des Moines shall ensure that the replacement vehicle:
• Is powered by an engine certified to the 2013 model year or newer standards for highway heavy-duty engines, is particulate filter equipped, and meets regulatory requirements for vehicles manufactured in 2013 or later;
• Is of the same type and similar gross vehicle weight rating or horsepower as the vehicle being replaced; Horsepower increases of more than 25% will require specific approval prior to purchase;
• Performs the same (or primarily the same) function as the vehicle that is being replaced;
• Is not scheduled to be replaced, due to be replaced, or has a "life expiration" before September 30, 2018; and
• Is procured fairly and in open competition according to City of West Des Moines procurement requirements.
Delivery. West Des Moines shall ensure delivery of the replacement fire engine no later than August 1, 2016.
</td><td>
No later than
<u>Purchase:</u>
7/1/16
<u>Delivery:</u>
8/1/16
</td></tr>
<tr><td>
Task 2: Disablement & Scrappage Verification
Description: Purchase of a new fire engine to expand the West Des Moines fleet is not allowed. Permanent disablement of the vehicle being replaced is required so that it is no longer suitable for use, and permanent disablement shall:
• Take place within ninety (90) days of the receipt of the new fire engine; and
• Require cutting a 3 inch diameter hole in the engine block and manifold.
West Des Moines shall provide evidence to the DNR that permanent disposal of the vehicle identified in Task 1 has taken place. Evidence shall include:
• Photograph(s) showing the location of the 3 inch hole, the engine VIN number, and the serial number;
• Date permanent disposal took place;
• Signed, detailed statement verifying that the replacement project was an early attrition. Detailed statement shall:
  • Describe West Des Moines' fleet operating plan, standard procedures, and/or vehicle retirement schedule;
  • Show the fleet age ranges and average turnover rates per vehicle; and
  • Verify that without this grant award the replacement activity would not have occurred.
Equipment and vehicle components that are not part of the engine or chassis (i.e. seats, tires) may be salvaged from the unit being replaced. West Des Moines may 1) retain possession or 2) sell the scrapped or salvaged engines/vehicles components. If West Des Moines determines to sell the scrapped or salvaged pieces, program income requirements apply. Pursuant to program income requirements, West Des Moines shall:
• Maintain adequate records to document the extent to which transactions generate program income and the disposition of the income;
• Disburse income from the total purchase price before requesting payment by the DNR.
• Provide the name, address, and phone number regarding the buyer; and
• Provide a signed copy of the receipt identifying the amount of purchase.
</td><td>
No later than
8/30/16
OR
within 90 days of the receipt of the new fire engine, whichever comes first.
</td></tr>
<tr><td>
Task 3: Progress Reporting - Quarterly
Description: West Des Moines shall submit electronic project progress reports to the DNR on a quarterly basis.
<table>
<tr><th>Due Date</th><th>Reporting Period</th></tr>
<tr><td>April 15, 2016</td><td>December 16, 2015 – March 31, 2016</td></tr>
<tr><td>July 15, 2016</td><td>April 1 – June 30, 2016</td></tr>
<tr><td>September 15, 2016</td><td>July 1 – September 1, 2016</td></tr>
</table>
Reporting requirements shall include, but are not limited to:
• Project Status Summary. Project to date summary that shall include, but is not limited to:
  • Include the date of the purchase and install (as applicable);
  • Identify any milestones not met and explain 1) why they were not met and 2) how to remedy any constraints. Also provide a timeline of when the milestone/project will be back on track;
  • Identify any public relations events that took place during this reporting period. Include links to websites where the program was publicized, as necessary;
  • Identify what tasks/steps are anticipated for the next reporting period; and
  • Any additional concerns or accomplishments
</td><td>
No later than
Ongoing Due Dates specified in Task 3
</td></tr>
</table>

Obligation	Milestone Date
Task 3 CONT'd: Progress Reporting - Quarterly **Description:** Reporting requirements shall include, but are not limited to: • **Additional Items as Requested.** Additional reporting information may be requested by the DNR at any time during the term of this Contract to meet upcoming reporting guidance and requirements as are established or may be established by the EPA. West Des Moines shall respond in writing to DNR requests for information within five (5) business days of the written request.	**No later than** Ongoing Due Dates specified in Task 3
Task 4: Invoice and Final Documentation **Description:** In accordance with Section 7.5, West Des Moines shall submit an invoice for payment no later than September 25, 2016. The invoice shall itemize all reimbursable charges. Appropriate documentation to support the fees or charges shall be attached and shall include, but is not limited to: • **Vehicle Replacement (Task 1).** Copies of the vehicle replacement purchase receipts/invoices; which should include the following information: • Model information related to the vehicle replacement: • Purchase Information: • Where/who purchased from; • Description of vehicle purchased; • Date of purchase; • Purchase price and payment mechanism (credit card, check, etc.); and • Copy of the signed acceptance of delivery and the date received for items shipped/delivered after date of purchase. • **Disablement & Scrappage Verification (Task 2)** • **Evidence Vehicle Inoperable.** In accordance with details outlined in Task 2, provide evidence that the old vehicle being replaced has been made inoperable. • **Evidence of Program Income.** If applicable, provide evidence of program income from sale of the old vehicle scrappage in accordance with the details outlined in Task 2. • **Evidence of Need.** In accordance with details outlined in Task 2, provide a signed statement verifying that without this grant award the replacement activity would not have occurred. • **Fair and Open Competition.** Identification of how West Des Moines procured fairly and in open competition according to City of West Des Moines procurement requirements the replacement vehicles. Copies of all bids received during the open/fair competition for vendor selection shall be submitted. • **Final Project Status Summary.** West Des Moines shall provide a final electronic report to the DNR no later than September 25, 2016 that identifies, but in not limited to: • Summary of project from beginning to end; • Summary of success and lessons learned from the project; • Summary of any additional concerns or accomplishments; and • Completed DERA Fleet Description Form. • **Additional Items as Requested.** Additional reporting information may be requested by the DNR at any time during the term of this Contract to meet upcoming reporting guidance and requirements as are established or may be established by the EPA. West Des Moines shall respond in writing to requests for information within 5 business days of the request.	**No later than** 9/25/16

Vehicle Being Replaced	Replacement Vehicle
Make, Model, and Engine Year	Make, Model, and Engine Year
Vehicle Identification Numbers	Vehicle Identification Numbers
Date taken out of service	Date put in-service

5.2 Disclaimer. Any publications created by West Des Moines pertaining to work performed under this Contract shall contain the following statements:

> "This project was funded through the support of the Iowa Department of Natural Resources and the U.S. Environmental Protection Agency. However, any opinions, findings, conclusions, or recommendations expressed herein are those of the author(s) and do not necessarily reflect the views of DNR or EPA."

The DNR reserves the right to publish the reports, publications, and other forms of material completed by West Des Moines and delivered to the DNR. Written and oral releases are considered to be within the context of publication rights so reserved by the DNR.

5.3 Non-Exclusive Rights. This Contract is not exclusive. DNR reserves the right to select other contractors to provide services similar or identical to the Statement of Work described in this Contract during the term of this Contract.

5.4 Industry Standards. Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the relevant industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

5.5 Amendments. Amendments including modifications, deletions and additions may be made only by mutual written consent of the parties.

Section 6 MONITORING AND REVIEW

6.1 Performance. West Des Moines shall complete its obligations under this Contract by the Milestone Dates set out in Section 5.1.

Failure by West Des Moines to complete the above-designated portions of its obligations by the Milestone Dates set out herein shall constitute material breach of this Contract by West Des Moines and shall be grounds for DNR to immediately terminate this Contract for cause.

6.2 Review Meetings. The DNR may request a meeting with West Des Moines for the purpose of reviewing activities under the Contract at any time. West Des Moines shall attend such meeting (either in person or by telephone conference call) and address the issues presented at the meeting to the best of their ability at that time or in the timeframe determined by both parties.

6.3 DNR right to review and observe. DNR and EPA Project Managers shall have the right to review and observe, at any time, completed work or work in progress. West Des Moines shall allow the State of Iowa, DNR, or EPA, without cost, to inspect its facilities and books and records relating to invoicing and time records for the purpose of monitoring and evaluating performance of this Contract.

Section 7 COMPENSATION

7.1 Source of Funding. The source of funding for this Contract is DNR-EPA Assistance Program 66.040, State Clean Diesel Grant Program (B); DNR cost center 7260. The statutory authority for the DNR to enter into this Contract is 455B.103(5).

7.2 Not-to-exceed total amount of Contract. Payment to West Des Moines according to the terms of this Contract shall not exceed $125,500.00. Funds shall be paid out on a reimbursement basis for eligible expenses incurred and paid by West Des Moines. Payment shall be for satisfactory completion of the Statement of Work outlined in this Contract, provided that West Des Moines has complied with the terms of this Contract.

7.3 Final Notice Acceptance. If DNR concludes, in its sole discretion, that all the Tasks required by the Statement of Work have been timely completed and all Deliverables required by this Contract have been satisfactorily completed and delivered, and that the implementation of the Statement of Work is completed and successfully deployed, then DNR shall pay West Des Moines according to Section 7.6.

7.4 Budget. The budget for this Contract shall be as follows:

Task	Amount of compensation per Task	Invoice Due
Task 1: Purchase of Fire Engine	Not to exceed $ 125,500.00	9/25/16
Task 2: Disablement & Scrappage Verification*	$0.00	N/A
Task 3: Progress Reporting – Quarterly*	$0.00	N/A
Task 4: Final Documentation and Invoice*	$0.00	N/A
Total	**Not to exceed $125,500.00**	

*Payment for completion of Task 1 where specific payment is allotted shall be dependent upon the timely completion of corresponding items required by Tasks 2, 3 & 4 where no specific payment is allotted.

7.5 Submission of Invoice. West Des Moines shall submit a single invoice to the DNR no later than September 25, 2016. The invoice shall itemize the work performed pursuant to the Contract. The invoice shall comply with all applicable rules concerning payment of such claims and shall contain appropriate documentation necessary to support the fees or charges included in the invoice. DNR shall have the right to dispute any invoice item submitted for payment and to withhold payment of any disputed amount if DNR reasonably believes the invoice is inaccurate or incorrect in any way. The original invoice shall be submitted to:

Iowa Department of Natural Resources – Air Quality Bureau
Attention: Christina Iiams
7900 Hickman Rd, Suite 1
Windsor Heights IA 50324

7.6 Payment of Invoice. DNR shall pay the approved invoice in arrears and in conformance with Iowa Code section 8A.514. Unless otherwise agreed to in writing by the parties, West Des Moines shall not be entitled to receive any other payment or compensation from the State of Iowa for any services provided by or on behalf of West Des Moines under this Contract. Payment will be issued to:

City of West Des Moines
Attention: Rebecca Scott, Accounting Manager
4200 Mills Civic Parkway Ste. 2B
PO Box 65320
West Des Moines IA 50265

7.7 No advance payment. No advance payments shall be made for any Deliverables provided by West Des Moines pursuant to this Contract.

7.8 Delay of Payment Due to Contractor's Failure. If DNR determines that West Des Moines has failed to perform or deliver any Deliverable required by this Contract, then West Des Moines shall not be entitled to any compensation or any further compensation if compensation has already occurred, under this Contract until such Deliverable is performed or delivered. DNR shall withhold that portion of the invoice amount which represents payment for the Deliverable that was not completed, delivered and successfully deployed.

7.9 Erroneous Payments and Credits. West Des Moines shall promptly re-pay or refund to DNR the full amount of any overpayment or erroneous payment within ten business days after either discovery by West Des Moines or notification by DNR of the overpayment or erroneous payment.

7.10 Set-off Against Sums Owed by Contractor. In the event that West Des Moines owes DNR or the State any sum (including any State taxes in arrears) under the terms of this Contract, any other contract, pursuant to a judgment, or pursuant to any law, DNR may set off such sum against any sum invoiced to DNR by West Des Moines. This may be done in DNR's sole discretion unless otherwise required by law.

7.11 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Contract separate from the compensation referred to in this section, unless agreed to by both parties in an amendment to this Contract or in a Change Order executed by both parties. Unless otherwise specifically provided for in this Contract, West Des Moines shall be solely responsible for all its costs and expenses, including travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other costs and expenses of West Des Moines.

7.12 Stop Services. In addition to its other remedies described herein, DNR shall have the right at any time during the Contract term to direct the services of West Des Moines fully or partially suspended or stopped, if the Deliverables fail to conform to applicable specifications and requirements under this Contract. DNR shall give West Des Moines the reasons for the stop work directive.

7.13 Final Payment. Before final payment or a termination settlement under this Contract, West Des Moines shall execute and deliver to DNR a release of all claims against DNR arising under, or by virtue of, this Contract except claims which are specifically exempted by West Des Moines. Unless otherwise provided in this Contract, by State law or otherwise expressly agreed to by the parties to the Contract, final payment under a settlement upon termination of this Contract shall not constitute a waiver of DNR's claims against West Des Moines, or West Des Moines' sureties under this Contract or applicable performance and payment bonds.

Section 8 FEDERAL PROGRAMMATIC CONDITIONS

8.1 This Contract is funded, in whole or in part, with federal funds. West Des Moines has read and understands the provisions of Exhibit B – Additional Requirements for Federally-funded Agreements, attached hereto and made part of this Contract by this reference, and West Des Moines agrees to conform to the requirements contained therein.

8.2 West Des Moines agrees to comply with the current EPA general terms and conditions available at: http://www2.epa.gov/sites/production/files/2015-10/documents/general_tc_as_of_10-6-2015.pdf. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions. The EPA repository for the general terms and conditions by year can be found at: http://www2.epa.gov/grants/grant-terms-and-conditions. A copy of the EPA general terms and conditions applicable to this Contract is available from DNR. A copy of the grant award terms, conditions and restrictions applicable to this Contract is available from DNR.

GENERAL CONDITIONS

Section 1 COMPLIANCE WITH THE LAW

The Contractor, and its employees and agents, shall comply with all applicable federal, State, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as suppliers. The Contractor, and its employees and agents shall also comply with all federal, State and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. Contractor represents and warrants that it has complied with all federal, State, foreign and local laws applicable to the performance of its obligations under this Contract.

Section 2 TERMINATION

2.1 Termination Due to Lack of Funds or Change in Law. DNR shall have the right to terminate this Contract without penalty by giving 60 days written notice to the Contractor as a result of any of the following:

- **2.1.1** The legislature or governor fail in the sole opinion of DNR to appropriate funds sufficient to allow DNR to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or if funds anticipated for the continued fulfillment of the Contract are, at any time, not forthcoming or are insufficient, either through the failure of DNR to appropriate funds or funding from a federal source is reduced or discontinued for any reason, or through discontinuance or material alteration of the program for which funds were provided;
- **2.1.2** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by DNR to make any payment hereunder are insufficient or unavailable for any other reason as determined by DNR in its sole discretion;
- **2.1.3** If DNR's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified;
- **2.1.4** If DNR's duties, programs or responsibilities are modified or materially altered; or
- **2.1.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects DNR's ability to fulfill any of its obligations under this Contract.

2.2 Immediate Termination by DNR. DNR may terminate this Contract for any of the following reasons effective immediately without advance notice and without penalty:

- **2.2.1** In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
- **2.2.2** DNR determines that the actions, or failure to act, of the Contractor, and its agents and employees have caused, or reasonably could cause, any person's life, health or safety to be jeopardized;
- **2.2.3** The Contractor fails to comply with confidentiality laws or provisions; or
- **2.2.4** The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

2.3 Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for DNR to declare the Contractor in default of its obligations under this Contract.

- **2.3.1** The Contractor fails to perform, to DNR's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;
- **2.3.2** DNR determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;
- **2.3.3** The Contractor fails to make substantial and timely progress toward performance of the Contract;
- **2.3.4** The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or State law to the extent allowed by applicable federal or State law including bankruptcy laws; the Contractor terminates or suspends its business; or DNR reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or State law;
- **2.3.5** The Contractor has failed to comply with applicable federal, State and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;
- **2.3.6** The Contractor has engaged in conduct that has or may expose the State or DNR to liability, as determined in DNR's sole discretion;
- **2.3.7** The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or the Contractor has misappropriated a trade secret, or
- **2.3.8** Contractor fails to comply with any of the Task Milestone Dates contained in this Contract.

2.4 Notice of Default. If there is a default event caused by the Contractor, DNR shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in DNR's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, DNR may either:

2.4.1 Immediately terminate the Contract without additional written notice; or

2.4.2 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

2.5 Termination upon Notice. Following 30 days written notice, DNR may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to DNR up to and including the date of termination.

2.6 Remedies of the Contractor in Event of Termination by DNR. In the event of termination of this Contract for any reason by DNR, DNR shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which DNR is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to DNR under this Contract in the event of termination. However, DNR shall not be liable for any of the following costs:

2.6.1 The payment of unemployment compensation to the Contractor's employees;

2.6.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

2.6.3 Any costs incurred by the Contractor, including, but not limited to, startup costs, overhead or other costs not directly associated with the performance of the Contract; and

2.6.4 Any taxes that may be owed by the Contractor not directly in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

2.7 The Contractor's Termination Duties. The Contractor upon receipt of notice of termination or upon request of DNR, shall:

2.7.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished and conclusions obtained.

2.7.2 Immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor.

2.7.3 Comply with DNR's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

2.7.4 Cooperate in good faith with DNR, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

2.7.5 Immediately return to DNR any payments made by DNR for services that were not rendered by the Contractor.

2.8 Rights in incomplete products. In the event the Contract is terminated, all finished or unfinished documents, data, reports, or other materials prepared by the Contractor under this Contract shall, at the option of DNR, become DNR's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other material.

Section 3 CONFLICT BETWEEN SPECIAL AND GENERAL CONDITIONS

If a General Condition conflicts with a Special Condition, they shall be construed, if possible, so that effect is given to both provisions. If the conflict between the provisions is irreconcilable, then the Special Condition shall prevail as an exception to the General Condition.

Section 4 INDEPENDENT CONTRACTOR

The status of the Contractor shall be that of an independent contractor. The Contractor, and its employees and agents performing under this Contract are not employees or agents of the State or any agency, division or department of the State. Neither the Contractor nor its employees shall be considered employees of DNR or the State for federal or State tax purposes. DNR will not withhold taxes on behalf of the Contractor. Contractor shall be responsible for payment of all taxes in connection with any income earned from performing this Contract.

Section 5 CONFLICT OF INTEREST

5.1 The Contractor covenants that the Contractor presently has no interest and shall not acquire any interest, direct and indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

5.2 During the term of this Contract, Contractor shall not provide services that would create a conflict of interest with the Contractor's duties set out in this Contract. In determining whether a particular activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

5.2.1 The activity involves the use of the State's or DNR's time, facilities, equipment, and supplies or other evidences of employment for purposes other than the performance of Contractor's obligations under this Contract.

5.2.2 The activity involves the receipt of, promise of, or acceptance of money or other consideration by Contractor from anyone other than the State or DNR for the performance of any acts that Contractor is required or expected to perform as a part of Contractor's performance under this Contract.

5.2.3 The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of DNR.

5.3 If the activity creating a conflict of interest is in progress when the term of this Contract begins or is described in paragraph 5.2.1 or 5.2.2 above, then Contractor shall immediately cease the activity. During the term of this Contract, Contractor shall not enter into any activity described in paragraph 5.2.3 or which constitutes any other unacceptable conflict of interest. Contractor shall immediately disclose to DNR the existence of any conflict of interest, including conflicts of interest which are described in paragraph 5.2.3 and are in progress when the term of this Contract begins.

Section 6 AMENDMENTS

This Contract may be amended only by written mutual consent of the parties.

Section 7 CHOICE OF LAW AND FORUM

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or federal court, which may be available to DNR or the State.

Section 8 SEVERABILITY

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

Section 9 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between DNR and the Contractor with respect to the subject matter hereof, and the Contractor acknowledges that it is entering into the Contract solely on the basis of the terms and conditions herein contained and not in reliance upon any representation, statement, inducement or promise, whether oral or written, not contained herein. This Contract supersedes all prior contracts and agreements between DNR and the Contractor for the services provided in connection with this Contract.

Section 10 ASSIGNMENT AND DELEGATION

This Contract may not be assigned, transferred or conveyed, in whole or in part, without the prior written consent of the other party. For the purpose of construing this provision, a transfer of a controlling interest in the Contractor shall be considered an assignment.

Section 11 REPRESENTATIONS AND WARRANTIES

11.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law. All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to DNR, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

11.2 Concepts, Materials, and Works Produced. Contractor represents and warrants that all the concepts, materials and deliverables produced, or provided to DNR pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and work product produced under this Contract. The Contractor represents

and warrants that the concepts, materials and work product produced under this Contract, and DNR's use of same, and the exercise by DNR of the rights granted by this Contract, shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and work product produced under this Contract will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute any software, the materials owned by the Contractor and any other materials, work product produced under this Contract and methodologies used in connection with providing the services contemplated by this Contract.

11.3 Professional Practices. The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

11.4 Conformity with Contractual Requirements. The Contractor represents and warrants that the work product produced under this Contract will appear and operate in conformance with the terms and conditions of this Contract.

11.5 Authority to Enter into Contract. The Contractor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to DNR.

11.6 Obligations Owed to Third Parties. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that DNR will not have any obligations with respect thereto.

11.7 Title to Property. The Contractor represents and warrants that title to any property assigned, conveyed or licensed to DNR is good and that transfer of title or license to DNR is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

11.8 Industry Standards. The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the applicable industry standards in the performance of this Contract.

11.9 Technology Updates. The Contractor represents warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

Section 12 CONFIDENTIALITY

12.1 Access to Confidential Data. The Contractor's employees and agents may have access to confidential data maintained by DNR to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by DNR. The Contractor shall provide to DNR a written description of its policies and procedures, if any exist, to safeguard confidential information. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents and employees to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of DNR at all times. Failure by the Contractor to submit its confidentiality policies or to comply in any way with the requirements of this paragraph shall not affect Contractor's obligations to comply with other requirements herein. Nothing in this paragraph shall be construed to in any way affect the Contractor's obligations to comply with Iowa and DNR statutes and rules applicable to confidentiality, as well as DNR policies and procedures regarding confidentiality, including Department of Administrative Services (DAS) and DNR IT Security policies and procedures.

12.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of DNR, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of DNR. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of DNR.

12.3 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify DNR and cooperate with DNR in any lawful effort to protect the confidential information.

12.4 Reporting of Unauthorized Disclosure. The Contractor shall immediately report to DNR any unauthorized disclosure of confidential information.

12.5 Survives Termination. The Contractor's obligation under this Contract regarding confidential materials and information shall survive termination of this Contract.

Section 13 PROPERTY, INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT

13.1 Title to Property. Title to all property furnished by DNR or the State to Contractor to facilitate the performance of this Contract shall remain the sole property of DNR and the State. All such property shall be used by Contractor only for

purposes of fulfilling its obligations under this Contract and shall be returned to DNR upon the earliest of completion, termination, or cancellation of this Contract or at DNR's request. Contractor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Contract, Contractor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities. Title to all property purchased by Contractor, for which Contractor has been reimbursed or paid by DNR under this Contract, shall pass to and vest in the State, except as otherwise provided in this Contract.

13.2 Care of Property. Contractor shall be responsible for the proper custody and care of any DNR-owned property, including data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and DNR property furnished for Contractor's use in connection with the performance of the Contract. Contractor shall exercise its best efforts to prevent damage to all such property and shall, at DNR's request, restore damaged property to its condition prior to the damage at the sole expense of Contractor. Such restoration shall be complete when judged satisfactory by DNR. In the event such property cannot be restored to DNR's satisfaction, Contractor shall reimburse DNR for any loss or damage to such property caused by Contractor, or any agent, contractor or subcontractor employed or utilized by Contractor. Contractor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of DNR and the State. Contractor shall obtain the prior advance written approval from DNR prior to Contractor's use of the name, marks or intellectual property rights of DNR or the State.

13.3 Hardware and Equipment. In the event that any hardware and other equipment owned by Contractor and used in connection with this Contract is subject to the security interest or a legal or equitable interest by a third party who is not a party to this Contract, Contractor shall insure in any such transactions that DNR shall be notified of a default occurring under the instrument and if Contractor does not cure the default within the time allowed, DNR may, in its sole discretion, cure the default by Contractor and assess or set off all costs associated with affecting cure, including the amount in default and reasonable attorneys fees against Contractor.

13.4 Ownership of Deliverables and Intellectual Property. Contractor agrees that the Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, such Deliverables, shall become and remain the sole and exclusive property of the DNR and the State. Contractor hereby irrevocably transfers, assigns and conveys to the DNR and the State all right, title and interest in and to such Deliverables and intellectual property rights and proprietary rights. Contractor shall take all actions as may be necessary or requested by the DNR to carry out and effect such transfer, assignment and conveyance. Contractor represents and warrants that the DNR and the State shall acquire good and clear title to such Deliverables, free from any claims, liens, security interests, encumbrances or other rights or interests of Contractor or of any third party. The DNR and the State shall have the right to obtain and hold copyrights, patents or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. Contractor shall assist the DNR and the State to obtain and secure copyrights, patents or other intellectual property rights, registrations or protections with respect to all such Deliverables in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to the DNR and the State all the right, title and interest in and to such Deliverables. Contractor also agrees to waive and not assert any moral rights it may have with regard to such Deliverables. The Contractor shall not retain any property interests or other rights in and to such Deliverables and shall not use such Deliverables, in whole or in part, for any purpose, without the prior written consent of the DNR and the payment of such royalties or other compensation as the DNR deems appropriate. As the owner of such Deliverables, the DNR and the State may, without limitation: (i) adapt, change, modify, edit or use the Deliverables as the DNR or the State sees fit, including in combination with the works of others, prepare derivative works based on the Deliverables, and publish, display and distribute throughout the world any Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium, and (ii) make, use, sell, license, sublicense, or lease the Deliverables and any intellectual property rights therein or related thereto without payment of additional compensation to Contractor.

13.5 Further Assurances. At the DNR's request, Contractor shall execute and deliver such instruments and take such other action as may be requested by the DNR to establish, perfect or protect the State's and the DNR's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances required by this Contract. Contractor shall execute any instruments, provide all facts known to it, and do all other things requested by the DNR (both during and after the term of this Contract) in order to vest more fully in the State and the DNR any and all ownership rights and intellectual property rights in and to the Deliverables. In the event the DNR is unable, after reasonable effort, to secure Contractor's signature on any letters, patent, copyright, or other analogous protection relating to the Deliverables, for any reason whatsoever, Contractor hereby irrevocably designates and appoints the DNR, and its duly authorized officers, employees and agents, as Contractor's agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Contractor.

13.6 Disputes. In any dispute over ownership or licensing rights, Contractor shall have the burden of proving prior or independently developed rights by clear and convincing proof.

Section 14 JOINT AND SEVERAL LIABILITY

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, then all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default activities and obligations.

Section 15 WAIVER

Except as specifically provided for in a waiver signed by duly authorized representatives of DNR and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

Section 16 NOTICE

16.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows in Section 1, Special Conditions, of this Contract.

16.2 Each such notice shall be deemed to have been provided:

16.2.1 At the time it is actually received;

16.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

16.2.3 Within five days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

16.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

Section 17 CUMULATIVE RIGHTS

The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

Section 18 TIME IS OF THE ESSENCE

Time is of the essence with respect to the performance of the terms of this Contract.

Section 19 RECORD RETENTION AND ACCESS

The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to DNR throughout the term of this Contract for a period of at least 5 years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

Section 20 SOLICITATION

The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

Section 21 OBLIGATIONS BEYOND CONTRACT TERM

This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of DNR and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

Section 22 DELAY OR IMPOSSIBLITY OF PERFORMANCE

The Contractor shall not be in default under this Contract if performance is delayed or if Contractor may not reasonably perform the Contract due to an act of God, flood, fire or similar events. In each such case, the delay or impracticability must be beyond the reasonable control and anticipation of the Contractor, and without the fault or negligence of the Contractor. If

delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and this paragraph shall not be applicable. It shall be the responsibility of the Contractor to prove that performance was delayed or impracticable within the meaning of this paragraph.

Section 23 SUPERCEDES FORMER CONTRACTS OR AGREEMENTS

Unless this Contract is an amendment to a contract entered into between DNR and Contractor and is designated as such, then this Contract supersedes all prior contracts or agreements between DNR and the Contractor for the services provided in connection with this Contract.

Section 24 USE OF THIRD PARTIES AND SUBCONTRACTORS

Contractor may not contract with third parties for the performance of any of Contractor's obligations under this Contract, unless and then only to the extent that the Special Conditions of this Contract specify otherwise. If the Special Conditions provide for a subcontractor or subcontractors, then the following conditions shall apply:

24.1 All subcontracts shall be subject to prior approval by the DNR. The DNR's consent shall not be deemed in any way to provide for the incurrence of any obligation of DNR in addition to the remuneration agreed upon in this Contract. Any subcontract to which DNR has consented shall be in writing and shall in no way alter the terms and conditions of this Contract.

24.2 The Contractor may enter into subcontracts to complete the work required by this Contract provided that the Contractor remains responsible for all services performed under this Contract. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision, or liability under this Contract. The Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any subcontractor.

24.3 All restrictions, obligations and responsibilities of the Contractor under this Contract also shall apply to the subcontractors.

24.4 DNR shall have the right to request the removal of a subcontractor from the Contract for good cause. The Contractor shall indemnify, defend and hold harmless DNR and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's breach of any subcontract in which it enters, including Contractor's failure to pay any and all amounts due by Contractor to any subcontractor.

24.5 Each subcontract shall contain provisions for DNR access to the subcontractor's books, documents, and records and for inspections of work, as required of Contractor herein.

24.6 Any action of a subcontractor, which, if done by Contractor, would constitute a breach of this Contract, shall be deemed a breach by Contractor and have the same legal effect.

24.7 If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and Section 22, "Delay or Impossibility of Performance," shall not be applicable.

24.8 If the Contract is subject to the provisions of Iowa Code chapter 8F, then the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontract Contractor enters into pursuant to this Contract. Any compliance documentation, including but not limited to certification, received from any subcontractor shall be forwarded to DNR immediately.

Section 25 SELF-INSURANCE BY THE STATE OF IOWA

Pursuant to Iowa Code chapter 669, DNR and the State are self-insured against all risks and hazards related to this Contract. No separate fund has been established to provide self-insurance, and the State is not obligated to establish any such fund during the term of this Contract.

Section 26 INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the State and DNR, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, related to or arising from: any breach of this Contract; any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor; the Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor; any failure by the Contractor to comply with the Compliance with the Law provision of this Contract; any failure by the Contractor to make all reports, payments and withholdings required by federal and State law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State; any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

Section 27 IMMUNITY FROM LIABILITY
Every person who is a party to the Contract is hereby notified and agrees that the State, DNR, and all of their employees, agents, successors, and assigns are immune from liability and suit for Contractor's and subcontractors' activities involving third parties arising from the Contract.

Section 28 NON-SUPPLANTING REQUIREMENT
To the extent required by federal or State law, federal and State funds made available under this Contract shall be used to supplement and increase the level of State, local, and other non-federal funds that would in the absence of such federal and State funds be made available for the programs and activities for which funds are provided and will in no event take the place of State, local, and other non-federal funds.

Section 29 CERTIFICATION REGARDING SALES AND USE TAX
By executing this Contract, the Contractor certifies that it is either (a) registered with the Iowa Department of Revenue, collects and remits sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code sections 423.1(42) and (43). The Contractor also acknowledges that the DNR may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the DNR filing action for damages for breach of contract.

Section 30 TAXES
The State is exempt from federal excise tax, and no payment will be made for any taxes levied on Contractor's employees' wages. The State is exempt from State and local sales and use taxes on the Deliverables.

Section 31 EQUAL EMPLOYMENT PROVISIONS
The Contractor has read and understands the provisions in Exhibit A, Equal Employment Opportunity, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

Section 32 FEDERALLY-FUNDED AGREEMENTS
If this Contract is funded by federal monies, then the Contractor has read and understands the provisions of Exhibit B, Additional Requirements for Federally-Funded Agreements, attached hereto as Exhibit C and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein in addition to the requirements in Section 8 of the Special Conditions of this Contract.

Section 33 RESERVED

Section 34 INFORMATION TECHNOLOGY SECURITY
The Contractor and all Contractor personnel shall comply with Iowa information technology security statutes, rules and policies. By signing this Contract, the Contractor acknowledges that the Contractor has read and understands the provisions of the information technology security policies adopted by the Iowa Department of Administrative Services (DAS), the Iowa Office of the Chief Information Officer (OCIO), and DNR in effect on the date of signing. The Contractor further agrees to read and abide by any revised DAS, OCIO, and DNR policies, posted on the respective agency websites that come into effect during the term of this Contract.

EXHIBIT A
Equal Employment Opportunity

West Des Moines agrees to the following:

1. West Des Moines shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability. West Des Moines shall take affirmative action to ensure that applicants are employed and that employees are treated, during employment, without regard to their race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability relates to a bona fide occupational qualification reasonably necessary to the normal operation of West Des Moines' business. Such action shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. West Des Moines agrees to post notices, setting forth provisions of this nondiscrimination clause, in conspicuous places available to employees and applicants for employment.
2. West Des Moines shall in all solicitations or advertisements for employees, placed by or on behalf of West Des Moines, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability is a bona fide occupation qualification reasonably necessary to the normal operation of West Des Moines' business.
3. West Des Moines shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965, as amended, Iowa Executive Order 15 of 1973, Chapter 19B, Code of Iowa, Federal Executive Order 11246 of 1965, as amended by Federal Executive Order 11376 of 1967, and Title VI of the Civil Rights Act of 1964, as amended. West Des Moines shall furnish all information and reports requested by the State or required by, or pursuant to, the rules and regulations thereof and shall permit access to payroll and employment records by the State for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.
4. In the event of West Des Moines' noncompliance with the nondiscrimination clauses of this Contract or with any of the aforesaid rules, regulations or requests, this Contract may be canceled, terminated or suspended in whole or in part. In addition, the State may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act of 1965, as amended, Chapter 216, Code of Iowa, or as otherwise provided by law.
5. West Des Moines shall include the provisions of paragraphs 1 through 4 hereof in every subcontract, unless specifically exempted by approval of the State, so that such provisions shall be binding on each subcontract. West Des Moines shall take such action with respect to any subcontract as the State may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event West Des Moines becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the State, West Des Moines may request the State to enter into such litigation to protect the interests of the State.
6. In accordance with the provisions of 541 Iowa Administrative Code Chapter 4:
   - West Des Moines or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and State law, executive orders and rules of the department of management, which pertain to equal employment opportunity and affirmative action.
   - West Des Moines or subcontractor may be required to have on file a copy of the affirmative action program, containing goals and time specifications. These contractual provisions shall be fully enforced. Any breach of them shall be regarded as a material breach of the Contract.
   - Compliance with the provisions of Iowa Code section 19B.7 and all applicable rules of the department of management prior to the execution of the Contract shall be a condition of the Contract binding upon West Des Moines or service provider, its successors, and assignees.
   - Failure to fulfill the nondiscrimination requirements of this Contract or any of the rules and orders may cause the Contract to be canceled, terminated, or suspended in whole or in part, and West Des Moines or service provider may be declared ineligible for future State contracts in accordance with authorized procedure or West Des Moines may be subject to other sanctions as provided by law or rule.
   - West Des Moines may be required to submit to the department of management or the DNR a copy of its affirmative action plan containing goals and time specifications.
   - West Des Moines shall be able to demonstrate to the satisfaction of the department of management or the DNR that its affirmative action program is productive.
   - West Des Moines may be required to submit reports as requested by the department of management. The department of management may request other relevant information from West Des Moines at any time.
   - The department of management may undertake a compliance review of West Des Moines and the department of management may take action, as appropriate, to seek to terminate contracts or funding found to be in violation of the rules.

EXHIBIT B
Additional Requirements for Federally-funded Agreements

1. **Suspension and Debarment.** Entities identified on the Excluded Parties List System at http://www.epls.gov are ineligible to enter into contracts with DNR.

   West Des Moines shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." West Des Moines is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. West Des Moines is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. West Des Moines acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

   West Des Moines may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

2. **Lobbying Restrictions.** West Des Moines shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

3. **Pro-Children Act of 1994.** Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by federal grant, contract, loan or loan guarantee. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party. West Des Moines certifies that it will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

4. **Certified Audits.** Local governments and non-profit sub-recipient entities that expend $500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to DNR if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by DNR. If an audit report is not required to be submitted per the criteria above, the sub-recipient must provide written notification to DNR that the audit was conducted in accordance with government auditing standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the DNR. See A-133 Section 21 for a discussion of sub-recipient versus vendor relationships.

5. **Drug Free Work Place.** West Des Moines shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.

Sub-Award Certification
Federal Funding Accountability and Transparency Act

To be completed by Department:

1. Grant Name and Number: Diesel Vehicle Emissions Reductions for Metro/Micro Statistical Areas

   DS-97745501-2

2. Amount of proposed Sub-Award: $125,500.00
3. Name of Sub-recipient: City of West Des Moines

To be completed by Sub-Recipient:

4. Data Universal Numbering System (DUNS) Number: 618734032
5. Did your organization receive 80% or more of its annual gross revenues from Federal Awards or in Federal contracts preceding the fiscal year?

   Yes (No)

6. If you answered yes to the previous question, did your organization receive $25,000,000 or more in annual gross revenues from Federal Awards or in Federal contracts the preceding fiscal year?

   Yes No

7. If you answered yes to questions **5 and 6**, is information regarding compensation of top five executives publicly available?

   Yes No

8. Are you owned by another entity?

   Yes (No)

9. If yes, what is the DUNS number of the parent entity? _____
10. Location Information:

    Address of Sub-recipient:
    City: West Des Moines
    State: Iowa
    Congressional District: 3rd
    County: Polk
    Zip Code: 50265

11. Primary Location of Performance Under the Award if different from Sub-recipient address:

    City: _____
    State: _____
    Congressional District: _____
    County: _____
    Zip Code: _____

_____ Signature of Authorized Official

_____ Date

United States
Environmental Protection Agency

DS-97745501-2
EPA Project Control Number

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, **LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her 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 any 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 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 sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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.

Steven K. Gaer, Mayor
Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative

RELEASE OF CLAIMS

In accordance with Section 7.13 of Contract *#16ESDAQBCIIAMS-0006*, the undersigned certifies that: THE CITY OF WEST DES MOINES releases the Iowa Department of Natural Resources against all claims arising under, or by virtue of, this Contract except claims which are specifically exempted.

Unless otherwise provided in the above referenced Contract, by state law or otherwise expressly agreed to by the parties to the Contract, final payment under a settlement upon termination of this Contract shall not constitute a waiver of DNR's claims against the City of West Des Moines, or their sureties under this Contract or applicable performance and payment bonds.

CITY OF WEST DES MOINES

By: _____ Date: _____

Printed Name: Steven K. Gaer

Title: Mayor