



## COMMUNITY DEVELOPMENT

Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement

## MEMORANDUM

**To:** Mayor and City Council Members  
**Cc:** Gregg Mandsager, City Administrator  
**From:** Steven Boka, Director of Community Development  
**Date:** November 8, 2012  
**Re:** Request to approve a contract with the IDNR

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**INTRODUCTION:** The City has been working with the Iowa Department of Natural Resources (IDNR) to develop a program for reducing diesel emissions from city vehicles utilizing funds awarded to the State of Iowa from the Environmental Protection Agency (EPA).

**BACKGROUND:** A sub-grant agreement has been prepared that will allow the city to receive funding from the EPA via the IDNR through the 2013 State Clean Diesel Grant Program. If approved, the city will receive \$123,564.00 to purchase and install 8 Diesel Particulate Filters and 8 Back Pressure Monitors for existing city transit buses. The funding will also permit the purchase of 5 Crankcase Ventilation Systems, 5 Diesel Oxidation Catalysts, and 1 Regeneration Panel for city dump trucks. The funding does not require a local match.

**RECOMMENDATION/RATIONALE:** If approved, I will be signing the Agreement/Contract on behalf of the City of Muscatine. The executed documents will then be returned to the State for their final approval and signatures. It is anticipated that the completed Agreement will be returned to the City the week of November 21, 2012. Upon receipt of the fully executed Agreement/Contract, the city may begin to incur costs associated with the Program.

It is recommended that the City Council approve and authorize Steven Boka to sign the attached contract on behalf of the City of Muscatine.

**BACKUP INFORMATION:****1. Contract**

**IOWA DEPARTMENT OF NATURAL RESOURCES  
CONTRACT NUMBER 13S-ESDAQB0001-7260CIIAM**

**Between**

**IOWA DEPARTMENT OF NATURAL RESOURCES  
And  
CITY OF MUSCATINE**

This Contract was approved by the Environmental Protection Commission on November 20, 2012.

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 MUSCATINE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Steve Boka, Community Development Director

***For DNR use only:***

**Instructions:** Retain the original contract in the project file and send a hardcopy with the first invoice.

This contract has been recorded in the DNR's central office database. \_\_\_\_\_ initials

If the box above is not checked, follow the instructions below:

1. Identify the appropriate division:

Conservation & Recreation       Environmental Services  
 Management Services       Director's Office

Immediately upon obtaining all signatures, scan, fax to 515-281-8895, or mail a signed copy of the contract for entry into DNR's central office database. Mailing address: Wallace State Office Building, Attention: (your respective division coordinator), 502 East 9<sup>th</sup> Street, Des Moines, Iowa 50319.

## PROFESSIONAL SERVICES SPECIAL CONDITIONS

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

### **Section 1      IDENTITY OF THE PARTIES**

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

Muscatine, a local government is organized under the laws of the State of Iowa and is registered with the Iowa Secretary of State. Muscatine's address is: City of Muscatine, 215 Sycamore Street, Muscatine, Iowa 52761.

**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: 515-242-5167  
Email: [jim.mcgraw@dnr.iowa.gov](mailto:jim.mcgraw@dnr.iowa.gov)

**Muscatine Project Manager:**      Steve Boka  
Community Development Director  
215 Sycamore Street  
Muscatine, IA 52761  
Phone: 563-262-4141  
Email: [sboka@muscataineiowa.gov](mailto:sboka@muscataineiowa.gov)

### **Section 2      STATEMENT OF PURPOSE**

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**2.1 Background.** The DNR was awarded a FY 2013 State Clean Diesel Grant Program from the Environmental Protection Agency, Region VII (EPA) that provides for the opportunity to reduce diesel emissions in Muscatine, Iowa through a sub-grant program allowing for the purchase and installation of diesel reduction strategies on public transportation diesel fueled buses and other municipal vehicles.

**2.2 Purpose.** The parties have entered into this Contract for the purpose of allowing Muscatine to voluntarily reduce emissions through the purchase and installation of retrofit technologies, including eight (8) Diesel Particulate Filters, eight (8) Back Pressure Monitors, five (5) Crankcase Ventilation Systems, five (5) Diesel Oxidation Catalysts, and one (1) Regeneration Panel.

### **Section 3      DURATION OF CONTRACT**

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**3.1 Term of Contract.** The term of this Contract shall be November 21, 2012 through September 25, 2013, 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 November 21, 2012 this Contract has been approved by the Environmental Protection Commission.

### **Section 4      DEFINITIONS**

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**4.1** "Deliverables" shall mean services to be provided by, or on behalf of, Muscatine pursuant to this Contract. Deliverables shall include everything produced by Muscatine 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.** Muscatine shall perform the following tasks. Muscatine shall complete its obligations under this Contract by the Milestone Dates set out in the following table:

Obligation	Milestone Date
<p><b>Task 1: Diesel Particulate Filters.</b>  <b>Description:</b> Muscatine shall purchase and install eight (8) Diesel Particulate Filters (DPFs) and eight (8) Back Pressure Monitors.</p> <p>Muscatine shall purchase 8 DPFs and 8 Back Pressure Monitors. Muscatine shall ensure that the retrofit equipment is:</p> <ul style="list-style-type: none"> <li>• a verified technology. Verify technologies at <a href="http://epa.gov/cleandiesel/verification/verif-list.htm">http://epa.gov/cleandiesel/verification/verif-list.htm</a> or <a href="http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm">http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm</a>.</li> <li>• procured fairly and in open competition according to City of Muscatine procurement requirements.</li> </ul> <p>Muscatine shall install or have an outside source install 8 DPFs and 8 Back Pressure Monitors on the following vehicles:</p> <ul style="list-style-type: none"> <li>• 2004, Navistar (VIN#1FDXE45P14HA91635)</li> <li>• 2004, Navistar (VIN#1FDXE45P84HA91633)</li> <li>• 2006, Navistar (VIN#1FDXE45P06HB33120)</li> <li>• 2006, Navistar (VIN#1FDXE45P26HB33121)</li> <li>• 2006, Navistar (VIN#1FDXE45P46HB33122)</li> <li>• 2006, Navistar (VIN#1FDXE45P66HB33123)</li> <li>• 2006, Navistar (VIN#1FDXE45P86HB33124)</li> <li>• 2006, Navistar (VIN#1FDXE45PX6HB33125)</li> </ul>	<p>No later than</p> <p><u>Purchase:</u> 3/31/13</p> <p><u>Install:</u> 8/30/13</p>
<p><b>Task 2: Regeneration Panel.</b>  <b>Description:</b> Muscatine shall purchase and install one (1) Regeneration Panel.</p> <p>Muscatine shall purchase 1 Regeneration Panel. Muscatine shall ensure that the panel is procured fairly and in open competition according to City of Muscatine procurement requirements.</p> <p>Muscatine shall install or have an outside source install 1 Regeneration Panel in the City of Muscatine Storage Garage.</p>	<p>No later than</p> <p><u>Purchase:</u> 3/31/13</p> <p><u>Install:</u> 8/30/13</p>
<p><b>Task 3: Crankcase Ventilation Systems and Diesel Oxidation Catalysts.</b>  <b>Description:</b> Muscatine shall purchase and install 5 Crankcase Ventilation Systems (CCVs) and 5 Diesel Oxidation Catalysts (DOCs).</p> <p>Muscatine shall purchase 5 CCVs and 5 DOCs. Muscatine shall ensure that the retrofit equipment is:</p> <ul style="list-style-type: none"> <li>• a verified technology. Verify technologies at <a href="http://epa.gov/cleandiesel/verification/verif-list.htm">http://epa.gov/cleandiesel/verification/verif-list.htm</a> or <a href="http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm">http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm</a>.</li> <li>• procured fairly and in open competition according to City of Muscatine procurement requirements.</li> </ul> <p>Muscatine shall install or have an outside source install 5 CCVs and 5 DOCs on the following vehicles:</p> <ul style="list-style-type: none"> <li>• 1994, International DT466 (VIN#1HTSHAAT7RH674435)</li> <li>• 1995, International DT466 (VIN#1HTSHAAT8SH669365)</li> <li>• 1998, International DT466E (VIN#1HTSCAAN8WH570972)</li> <li>• 2000, Caterpillar 312B (VIN#1GDM7H1C3YJ507710)</li> <li>• 2004, Mercedes MBE900 (VIN#1FVACXCS24HN23937)</li> </ul>	<p>No later than</p> <p><u>Purchase:</u> 3/31/13</p> <p><u>Install:</u> 8/30/13</p>

Obligation	Milestone Date										
<b>Task 4: Progress Reporting - Quarterly</b> <b>Description:</b> Muscatine shall submit electronic project progress reports to the DNR on a quarterly basis. <table border="1" data-bbox="326 327 1102 512"> <thead> <tr> <th data-bbox="326 327 582 363">Due Date</th><th data-bbox="582 327 1102 363">Reporting Period</th></tr> </thead> <tbody> <tr> <td data-bbox="326 363 582 399">January 15, 2013</td><td data-bbox="582 363 1102 399">November 21 – December 31, 2012</td></tr> <tr> <td data-bbox="326 399 582 436">April 15, 2013</td><td data-bbox="582 399 1102 436">January 1 - March 31, 2013</td></tr> <tr> <td data-bbox="326 436 582 472">July 15, 2013</td><td data-bbox="582 436 1102 472">April 1 – June 30, 2013</td></tr> <tr> <td data-bbox="326 472 582 512">September 25, 2013</td><td data-bbox="582 472 1102 512">July 1 – September 15, 2013</td></tr> </tbody> </table>	Due Date	Reporting Period	January 15, 2013	November 21 – December 31, 2012	April 15, 2013	January 1 - March 31, 2013	July 15, 2013	April 1 – June 30, 2013	September 25, 2013	July 1 – September 15, 2013	No later than Due Dates specified in Task 4
Due Date	Reporting Period										
January 15, 2013	November 21 – December 31, 2012										
April 15, 2013	January 1 - March 31, 2013										
July 15, 2013	April 1 – June 30, 2013										
September 25, 2013	July 1 – September 15, 2013										
Reporting requirements shall include, but are not limited to: <ul style="list-style-type: none"> <li><b>Project Status Summary.</b> Project to date summary that shall include, but is not limited to:               <ul style="list-style-type: none"> <li>Number of purchases and/or installations completed. Also include the date of the purchase and install (as applicable);</li> <li>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;</li> <li>Identify any public relations events that took place during this reporting period. Please provide links to websites where the program was publicized, as necessary;</li> <li>Identify what tasks/steps are anticipated for the next reporting period; and</li> <li>Summary of any additional concerns or accomplishments.</li> </ul> </li> <li><b>Additional Items as Requested.</b> 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.</li> </ul> <p>Muscatine shall respond in writing to DNR requests for information within five (5) business days of the written request.</p>											
<b>Task 5: Progress Reporting - FINAL</b> <b>Description:</b> Muscatine shall submit a final report via electronic format to the DNR no later than September 25, 2013. Reporting requirements shall include, but are not limited to: <ul style="list-style-type: none"> <li><b>Project Status Summary.</b> Project summary for the period of November 21, 2012 – September 15, 2013 that shall include, but is not limited to:               <ul style="list-style-type: none"> <li>Identify any final milestones not met and explain why they were not met;</li> <li>Summary of success and lessons learned from the project; and</li> <li>Summary of any additional concerns or accomplishments.</li> </ul> </li> <li><b>Proof of Purchase.</b> Copies of the retrofit equipment purchase receipts/invoices; which should include the following information:               <ul style="list-style-type: none"> <li>model information related to the retrofit equipment;</li> <li>where/who purchased from;</li> <li>describe the purchase;</li> <li>the date of purchase; and</li> <li>purchase price and payment mechanism (credit card, check, etc).</li> </ul> </li> <li><b>Date of Delivery.</b> Copies of the signed acceptance of delivery and the date received for items shipped/delivered after date of purchase;</li> <li><b>Proof of Installation.</b> Copies of the retrofit equipment install invoices; which should include the following information:               <ul style="list-style-type: none"> <li>where/who purchased from;</li> <li>identify installation hours;</li> <li>the date of installation; and</li> <li>price and payment mechanism (credit card, check, etc) for the installation.</li> </ul> </li> <li><b>Fair and Open Competition.</b> Identification of how Muscatine procured fairly and in open competition according to City of Muscatine procurement requirements the retrofit equipment and installation.</li> <li><b>Additional Items as Requested.</b> 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.</li> </ul> <p>Muscatine shall respond in writing to DNR requests for information within five (5) business days of the written request.</p>	No later than 9/25/13										

**5.2 Disclaimer.** Any publications created by Muscatine 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 Muscatine 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.

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## Section 6 MONITORING AND REVIEW

**6.1 Performance.** Muscatine shall complete its obligations under this Contract by the Milestone Dates set out in Section 5.1.

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

**6.2 Review Meetings.** The DNR may request a meeting with Muscatine for the purpose of reviewing activities under the Contract at any time. Muscatine 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. Muscatine 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.

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## 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 Muscatine according to the terms of this Contract shall not exceed \$123,564.00. Funds shall be paid out on a reimbursement basis for eligible expenses incurred and paid by Muscatine. Payment shall be for satisfactory completion of the Statement of Work outlined in this Contract, provided that Muscatine 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 Muscatine according to Section 7.6.

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

Task	Amount of compensation per Task
<b>Task 1: Diesel Particulate Filters</b> 8 Diesel Particulate Filters (\$11,475/vehicle) 8 Back Pressure Monitors (\$745/vehicle) Installation (\$3,000)	Not to exceed \$ 100,760.00 \$ 91,800.00 \$ 5,960.00 \$ 3,000.00
<b>Task 2: Regeneration Panel</b> 1 Regeneration Panel (\$5,179) Installation (\$1,500)	Not to exceed \$ 6,679.00 \$ 5,179.00 \$ 1,500.00
<b>Task 3: Crankcase Ventilation Systems and Diesel Oxidation Catalysts</b> 5 Diesel Oxidation Catalysts (\$2,150/vehicle) 5 Crankcase Ventilation Systems (\$800/vehicle) Installation (\$275/vehicle)	Not to exceed \$ 16,125.00 \$ 10,750.00 \$ 4,000.00 \$ 1,375.00
<b>Total</b>	<b>Not to exceed \$123,564.00</b>

**7.5 Submission of Invoice.** Muscatine shall submit a single invoice to the DNR no later than September 25, 2013. 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, Muscatine 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 Muscatine under this Contract. Payment will be issued to:

City of Muscatine  
Attention: Steve Boka, Community Development Director  
215 Sycamore St.  
Muscatine IA 52761

**7.7 No advance payment.** No advance payments shall be made for any Deliverables provided by Muscatine pursuant to this Contract.

**7.8 Delay of Payment Due to Contractor's Failure.** If DNR determines that Muscatine has failed to perform or deliver any Deliverable required by this Contract, then Muscatine 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.** Muscatine 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 Muscatine or notification by DNR of the overpayment or erroneous payment.

**7.10 Set-off Against Sums Owed by Contractor.** In the event that Muscatine 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 Muscatine. 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, Muscatine 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 Muscatine.

**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 Muscatine fully or partially suspended or stopped, if the Deliverables fail to conform to applicable specifications and requirements under this Contract. DNR shall give Muscatine the reasons for the stop work directive.

**7.13 Final Payment.** Before final payment or a termination settlement under this Contract, Muscatine 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 Muscatine. 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 Muscatine, or Muscatine's sureties under this Contract or applicable performance and payment bonds.

## **Section 8 FEDERAL PROGRAMMATIC CONDITIONS**

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**8.1** This Contract is funded, in whole or in part, with federal funds. Muscatine has read and understands the provisions of Exhibit B and C - EPA Required Conditions and Requirements for Federally-funded Agreements, attached hereto and made part of this Contract by this reference, and Muscatine agrees to conform to the requirements contained therein.

## 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 IMPOSSIBILITY 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.

**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) and DNR in effect on the date of signing. The Contractor further agrees to read and abide by any revised DAS and DNR policies, posted on the respective agency websites that come into effect during the term of this Contract.

**EXHIBIT A**  
**Equal Employment Opportunity**

Muscatine agrees to the following:

1. Muscatine 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. Muscatine 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 Muscatine's 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. Muscatine agrees to post notices, setting forth provisions of this nondiscrimination clause, in conspicuous places available to employees and applicants for employment.
2. Muscatine shall in all solicitations or advertisements for employees, placed by or on behalf of Muscatine, 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 Muscatine's business.
3. Muscatine 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. Muscatine 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 Muscatine's 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. Muscatine 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. Muscatine 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 Muscatine becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the State, Muscatine 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:
  - o Muscatine 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.
  - o Muscatine 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.
  - o 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 Muscatine or service provider, its successors, and assignees.
  - o 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 Muscatine or service provider may be declared ineligible for future State contracts in accordance with authorized procedure or Muscatine may be subject to other sanctions as provided by law or rule.
  - o Muscatine 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.
  - o Muscatine shall be able to demonstrate to the satisfaction of the department of management or the DNR that its affirmative action program is productive.
  - o Muscatine may be required to submit reports as requested by the department of management. The department of management may request other relevant information from Muscatine at any time.
  - o The department of management may undertake a compliance review of Muscatine, 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.

Muscatine 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)." Muscatine 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. Muscatine is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Muscatine 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.

Muscatine may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."
- 2. Lobbying Restrictions.** Muscatine 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. Muscatine 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.** Muscatine shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.

**Exhibit C - EPA Required Conditions and Requirements**  
Grant #DS-97735801-0

**Definitions for the portion of Exhibit C:** **Recipient:** means the DNR      **Sub-recipient:** means the City of Muscatine

**Administrative Conditions**

**1. SUB-AWARD POLICY.** Recipient agrees to follow applicable sub-grant procedures in accordance with 40 CFR Part 30, or Part 31, as appropriate. Sub-grants/sub-awards do not have to be competed; however, successful applicants cannot use sub-grants/sub-awards to avoid requirements in EPA regulations for competitive procurement by using sub-grants/sub-awards to acquire commercial services or products from for-profit organizations.

Recipient agrees to comply with the following when selecting sub-recipients and establishing sub-awards:

- a. to establish all sub-award agreements in writing;
- b. to maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a sub-recipient)
- c. to ensure that any sub-award(s) comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and will not be used to acquire commercial goods or services for the recipient;
- d. to ensure that any sub-award(s) are awarded to eligible sub-recipient(s) and that proposed sub-award costs are necessary, reasonable, and allocable;
- e. to ensure that any sub-award(s) to 501(c) (4) organizations do not involve lobbying activities;
- f. to monitor the performance of the sub-recipient(s) and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
- g. to obtain the appropriate consent from the EPA Project Officer prior to making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
- h. to obtain prior approval from the EPA Project Officer for any new sub-award work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

Recipient agrees that any questions about the eligibility of a sub-recipient or other issues pertaining to the sub-award(s) will be addressed to the recipient's EPA Project Officer listed on the first page of the DNR/EPA assistance award or assistance amendment document. Recipient agrees to be responsible for selection of any sub-recipient(s) and, if applicable, for conducting sub-award competitions. Additional information regarding sub-awards may be found at:

<http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and sub-recipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 may be found at:  
<http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>

Recipient shall obtain a final report detailing how the sub-recipient expended funds in a format prescribed by the recipient.

Recipient shall ensure that every sub-grant includes any clauses required by Federal statute and executive orders and their implementing regulations. Recipient shall ensure that sub-recipients are aware of requirements imposed upon them by applicable Federal statutes, regulations, and these terms and conditions.

**Non-profit Sub-recipients:** Sub-recipients that are non-profit organizations are subject to the provisions of regulations in 40 CFR Part 30, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations".

**State and Local Government Sub-recipients:** State and local government sub-recipients are subject to the provisions of regulations in 40 CFR Part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments".

**For-profit Sub-recipients:** Recipient shall utilize terms and conditions in all sub-grants to for-profit sub-recipients that apply the following regulations to for-profit sub-recipients: 40 CFR Part 30.2, 30.13, 30.14, 30.16, 30.17, 30.18, 30.20, 30.23, 30.25, 30.26(d), 30.28, 30.31, 30.34, 30.35, 30.36, 30.37, 30.40-47, 30.51, 30.53, 30.61, 30.62. For the purpose of applying the listed regulations to for-profit sub-recipients, the Recipient shall perform the functions that the regulations provide will be performed by EPA. Recipient shall establish a procedure for resolving disputes with for-profit sub-recipients.

Recipient shall not reimburse a for-profit sub-recipient until receipt of documentation that the sub-recipient has incurred eligible and allowable costs. Per 40 CFR 30.27 the allowability of costs incurred by for-profit organizations is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31.

**CENTRAL CONTRACTOR REGISTRATION & UNIVERSAL IDENTIFIER REQUIREMENTS –**

- a. **Requirement for Central Contractor Registration (CCR).** Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
- b. **Requirement for Data Universal Numbering System (DUNS) numbers.** If you are authorized to make sub-awards under this award, you:

1. Must notify potential sub-recipients that no entity (see definition in paragraph C of this award term) may receive a sub-award from you unless the entity has provided its DUNS number to you.
2. May not make a sub-award from you unless the entity has provided its DUNS number to you.

c. **Definitions.** For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR internet site <http://www.ccr.gov>
2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D7B by telephone (currently 866-705-5711) or the Internet <http://fedgov.dnb.com/webform>
3. Entity as it is used in this award means all of the following, as defined at 2 CFR Part 25, subpart C.
  - A Governmental organization, which is a state, local government, or Indian tribe;
  - A foreign public entity;
  - A domestic or foreign nonprofit organization;
  - A domestic or foreign for-profit organization; and
  - A federal agency, but only as a sub-recipient under an award or sub-award to a non-Federal entity.
4. Sub-award
  - This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible sub-recipient.
  - The term does not include your procurement of property and services needed to carry out the project or program (for further explanation see Sec.\_210 of the attachment to OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations").
  - A sub-award may be provided through any legal agreement, including an agreement that you consider a contract.
5. Sub-recipient means an entity that
  - Receives a sub-award from you under this award; and
  - Is accountable to you for the use of the Federal funds provided by the sub-award.

#### **REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION**

a. **Reporting of First-tier Sub-awards.**

1. Reporting of first-tier sub-awards.
  - Applicability. Unless you are exempt as provided in paragraph d of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a sub-award to an entity (see definitions in paragraph e of this award term).
2. Where and when to report
  - You must report each obligating action described in paragraph a.1 of this award term to [www.frsr.gov](http://www.frsr.gov).
  - For sub-award information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2012, the obligation must be reported by no later than December 31, 2010).
3. What to report. You must report the information about each obligating action that the submission instructions posted at [www.frsr.gov](http://www.frsr.gov) specify.

b. **Reporting Total Compensation of Recipient Executives.**

1. Applicability and what to report.
  - You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
    - The total Federal funding authorized to date under this award is \$25,000 or more;
    - In the preceding fiscal year, you received:
      - 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
      - \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards).
    - The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchanges Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

2. **Where and when to report.** You must report executive total compensation described in paragraph b.1 of this award term:
  - As part of your registration profile at [www.ccr.gov](http://www.ccr.gov).
  - By the end of the month following the month in which this award is made, and annually thereafter.
- c. **Reporting of Total Compensation of Sub-recipient Executives.**
  1. **Applicability and what to report.**
    - Unless you are exempt as provided in paragraph d of this award term, for each first-tier sub-recipient under this award, you shall report the names and total compensation of each of the sub-recipient's five most highly compensated executives for the sub-recipient's preceding completed fiscal year, if –
      - In the sub-recipient's preceding fiscal year, you received:
        - 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
        - \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards).
      - The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchanges Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).
    - 2. **Where and when to report.** You must report sub-recipient executive total compensation described in paragraph c.1 of this award term:
      - To the recipient
      - By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the sub-recipient by November of that year.
- d. **Exemptions.** If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:
  1. Subawards, and;
  2. The total compensation of the five most highly compensated executives of any sub-recipient.
- e. **Definitions.** For purposes of this award term:
  1. **Entity** means all of the following, as defined at 2 CFR part 25, subpart C.
    - A Governmental organization, which is a state, local government, or Indian tribe;
    - A foreign public entity;
    - A domestic or foreign nonprofit organization;
    - A domestic or foreign for-profit organization; and
    - A federal agency, but only as a sub-recipient under an award or subaward to a non-Federal entity.
  2. **Executive** means officers, managing partners, or any other employees in management positions.
  3. **Subaward**
    - This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible sub-recipient.
    - The term does not include your procurement of property and services needed to carry out the project or program (for further explanation see Sec.\_.210 of the attachment to OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations").
    - A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
  4. **Sub-recipient** means an entity that
    - Receives a subaward from you under this award; and
    - Is accountable to you for the use of the Federal funds provided by the subaward.
  5. **Total Compensation** means the cash and noncash dollar value earned by the executive during the recipient's or sub-recipient's preceding fiscal year and includes the following (for more information see 17CFR 229.402 (c)(2)):
    - Salary and bonus
    - Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (revised 2004) (FAS 123R), Shared Based Payments.

- Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- Above-market earnings on deferred compensation which is not tax-qualified.
- Other compensation, if the aggregate value on all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**2. FINANCIAL STATUS REPORTS.** Recipient agrees to submit the Federal Financial Report (FFR) for SF-425 to EPA no later than ninety (90) days after the end of the grant budget/project period. The EPA requires only the information requested on FFR lines 10a through 10o. A blank FFR is available for completion on the Las Vegas Finance Centers (LVFC) website: <http://www.epa.gov/ocfo/finservices/forms.htm>. The final FFR form SF-425 must be submitted to:

USEPA LVFC  
4220 S Maryland Parkway  
Bldg C, Room 503  
Las Vegas, NV 89199

**3. QUARTERLY BILLING REQUESTS.** Recipient agrees to submit, at a minimum, a quarterly billing (payment) request(s) to the EPA, for all eligible, allowable, allocable, necessary and reasonable costs which are incurred for this project/program. A payment request is not required to be submitted in the event that the recipient has not incurred such costs during the quarterly period, but more frequent payments may be requested as costs are incurred.

**4. MANAGEMENT FEES.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

**5. LOBBYING AND LITIGATION - ALL RECIPIENTS.** Pursuant to EPA's annual Appropriations Act, the chief executive officer of the recipient's agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Recipient agrees to comply with the respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Recipients subject to the requirements of 40 CFR Part 30 agree to comply with the respective OMB Circular (A-21 or A-122) which prohibits the use of federal grant funds to participate in various forms of lobbying or other political activities.

**6. ANTI-LOBBYING ACT.** Recipient agrees to comply with the Anti-Lobbying Act, Section 319 of Public Law 101-121, effective December 23, 1989. Recipient acknowledges that if any expenditure is made as prohibited by the Act, that they shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. Recipient further acknowledges that failure to file or amend the disclosure form, if required, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Recipient also agrees to include in all solicitation documents the following:

"Sub-recipients who request or receive from the grant recipient a sub-grant, contract, or sub-contract exceeding \$100,000, at any tier under a federal grant shall comply with the Anti-Lobbying Act, Section 319 of Public Law 101-121, and file and Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to the next tier above."

**7. SUSPENSION AND DEBARMENT.** The recipient agrees to fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions." Recipient must ensure 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. Recipient agrees to include a similar term or condition in any subsequent lower tier covered transactions. Recipient agrees that failing to disclose the required information in 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov).

**8. DRUG-FREE WORKPLACE CERTIFICATION.** Recipient agrees to make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C. The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E.

**9. HOTEL-MOTEL FIRE SAFETY.** Recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the Hotel and Motel Fire Safety Act of 1990.

**10. INDIRECT COSTS.** Recipient agrees that if indirect costs are authorized in this award they will be charged at the approved indirect rate for the year in which the funds are actually expended and in accordance with the negotiated indirect costs agreement.

**11. SINGLE AUDITS.** The Recipient agrees if \$500,00 or more in total federal funds is expended in any fiscal year, the recipient will obtain a single audit from an independent auditor according to the guidance provided in OMB Circular A-133. The recipient agrees that within nine months after the fiscal year end or 30 days after receiving the report from the auditor, the recipient will electronically submit a copy of the data collection form SF-SAC and a Single Audit Report Package to the Federal Audit Clearinghouse Internet Data Entry System.

For complete instructions for electronic submission of the SF-SAC and the Single Audit Report Package are located at the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

**12. TRAFFICKING VICTIM PROTECTION ACT OF 2000.** To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

- a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a sub-recipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the sub-recipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 1532. You must inform the DNR immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.
- b. EPA's right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.
- c. The recipient must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

**Prohibition Statement** – You as the recipient, your employees, sub-recipients under this award, and sub-recipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.

**13. RECYCLING AND WASTE PREVENTION.** The recipient agrees, in accordance with EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

The Recipient agrees to follow the requirements set out in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA Section 60023 that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in the guidelines contained in 40 CFR 247.

**14. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**GENERAL COMPLIANCE, 40 CFR, Part 33** – The recipient agrees to comply with the requirements of EPA's Program for Utilization of Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

**FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D** – A recipient must negotiate with the appropriate EPA award official, or his/her designee, Fair share objectives for MBE and WBE participation in procurement under the financial assistance agreement.

**CURRENT FAIR SHARE OBJECTIVE/GOAL** - The dollar amount of this assistance agreement is \$250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is \$250,000, or more. The Iowa Department of Natural Resources (IDNR) has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

Iowa	MBE	WBE
Supplies	0.6%	05.6%
Equipment	2.5%	10.4%

Services	2.5%	11.3%
Construction	1.7%	02 2%

**NEGOTIATING FAIR SHARE OBJECTIVES/GOALS, 40 CFR, Section 33.404** - If the recipient has not yet negotiated its MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

**SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C** - Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- a. Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State, and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- b. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- c. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- d. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- e. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce in finding DBEs.
- f. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

**MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503** - The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted semiannually for the periods ending March 31 and September 30.

The reports are due within 30 days of the end of the semiannual reporting periods (April 30 and October 30). Reports should be sent to **ATTN: Grant Assistant**. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302** - The DNR agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)** - Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidder's list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

## Programmatic Conditions

**1. UNIFORM ADMINISTRATIVE REQUIREMENTS.** Recipient agrees to comply with the requirements established by 40 C.F.R. Part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments. Work under this agreement must be completed in accordance with the final approved work plan. Recipient agrees to obtain the prior approval of EPA for any revision of the scope or objectives of the project or the need to extend the period of availability of funds, in accordance with 40 CFR Section 31.30.

Recipient shall consult the EPA Project Manager regarding whether a budget or work plan revision constitutes a change in the scope or the objective of the project or program.

**2. SUBSTANTIAL FEDERAL INVOLVEMENT.** EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the project by EPA; participation and collaboration between EPA and the DNR in program content; review of project progress, and quantification and reporting of results.

**3. EMISSIONS CONTROL TECHNOLOGIES.** Emissions Control Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Verification Program. See <http://www.epa.gov/cleandiesel/verification/verif-list.htm> for an updated list of EPA's verified technologies and <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm> for a list of CARB's verified technologies. Any question as to the preference of a retrofit technology, including engine replacement and repowers, should be directed to the DNR Project Manager.

**4. QUARTERLY REPORTING AND ENVIRONMENTAL RESULTS.** Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made regarding achieving the work plan goals. In general, quarterly reports will include summary information on technical progress, planned activities for next quarter. Quarterly reports are due to EPA according to the following schedule:

January 1-March 31:	Report due April 30
April 1-June 30:	Report due July 30
July 1-September 30:	Report due October 30
October 1 – December 31:	Report due January 30

If a project start date falls within a defined reporting period the recipient must report for that period by the given due date. This quarterly reporting schedule shall be repeated for the duration of the award agreement.

**5. FINAL REPORT.** The final project report will include all categories of information required for quarterly reporting, including a final, detailed fleet description. The final project report will also include a narrative summary of the project or activity, actual results (outputs and outcomes) and costs, the successes and lessons learned for the entire project.

For projects involving vehicle/equipment replacement and repowers the recipient must provide in the final report: 1) Evidence that the replacement activity is an "early replacement," and would not have occurred during normal attrition/fleet turnover (i.e. without the financial assistance provided by EPA) within three years of the project period start date. Supporting evidence can include verification that the vehicles or equipment being replaced have useful life left and fleet characterization showing fleet age ranges and average turnover rates per the vehicle or fleet owner's budget plan, operating plan, standard procedures, or retirement schedule; 2) Evidence of appropriate scrappage or remanufacture, including the engine serial number and/or the vehicle identification number (VIN); and 3) Specification of the model years and the emission standard levels for PM and NOx, for both the engine being replaced and the new engine.

For projects that take place in an area affected by, or includes vehicles, engines or equipment affected by federal law mandating emissions reductions, the recipient must provide in the final report evidence that emission reductions funded with EPA funds were implemented prior to the effective date of the mandate and/or are in excess of (above and beyond) those required by the applicable mandate. The final report shall be submitted to EPA within 90 days after the project period end date or termination of the assistance agreement.

## 6. USE OF FUNDS RESTRICTION

- a. Direct Implementation: The Recipient must use funds to develop and administer a subgrant and/or loan program(s) as appropriate to meet the recipient's State Air Program needs and goals relating to the reduction of diesel emissions. The recipient cannot use DERA State Program funds to directly implement diesel emissions reduction projects; however, the recipient may use DERA State Program funds to award subgrants, rebates, and/or loans to other entities to carry out diesel emission reduction projects.
  - 1) State Fleets: Recipients may use funds to provide subgrants, rebates, and/or loans for the benefit of State fleets and State projects. The recipient may transfer funds to another State entity as a subgrantee as allowable under State law.
  - 2) In-Kind Assistance: The recipient may purchase equipment through blanket purchase agreements or some other mechanism that ensures a low price for the item. The recipient may then provide the equipment in lieu of money as in-kind assistance through a subgrant. In general, except where providing goods and/or services in

administrative type costs (e.g. personnel, benefits, travel, and supplies). Total project costs include the federal share as well as any cost-share provided by the recipient. The recipient's indirect costs are not considered as administrative type costs and do not count towards the 15 percent maximum.

- b. **Mandated Measures:** Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under Federal, State or local law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reduction measures shall not be considered "mandated" regardless of whether the reductions are included in the State Implementation Plan of a State.
- c. **Normal Attrition:** Recipient agrees that funds under this award cannot be used for emission reductions that result from vehicle/equipment replacements or repowers that would have occurred through normal attrition/fleet turnover during the project period. Any question as to eligibility of a vehicle/equipment replacement or repower should be directed to the EPA Project Officer.
- d. **Fleet Expansion:** Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles or equipment to expand a fleet. The recipient agrees that:
  - 1) The replacement vehicle, engine, or equipment will perform the same function and operation as the vehicle, engine, or equipment that is being replaced (e.g., an excavator used to dig pipelines would be replaced by an excavator that continues to dig pipelines);
  - 2) The replacement vehicle, engine, or equipment will be of the same type and similar gross vehicle weight rating or horsepower as the vehicle, engine, or equipment being replaced (e.g., a 300 horsepower bulldozer is replaced by a bulldozer of similar horsepower).
  - 3) The engine being replaced will be scrapped or rendered 'permanently disabled within ninety (90) days of the replacement, or returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Permanently disabling the engine while retaining possession of the engine is an acceptable scrapping method. Disabling the engine may be completed by drilling a hole in the engine block (the part of the engine containing the cylinders). Alternatively, disabling the engine may be completed by removing the engine oil from the crankcase, replacing it with a 40 percent solution of sodium silicate and running the engine for a short period of time at low speeds, thus rendering the engine inoperable. Remanufacturing of non-road engines requires that the engine be returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Remanufacturing of highway engines requires that the engine be returned to the original engine manufacturer for remanufacturing to MY 2007 or newer certified emission standards. Other acceptable scrappage methods may be considered and will require prior EPA approval. If scrapped or remanufactured engines are to be sold, program income requirements apply.
  - 4) The vehicle/equipment being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement, or returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Permanently disabling the chassis and the engine (see iii above) while retaining possession of the vehicle/equipment is an acceptable scrapping method. Disabling the chassis may be completed by cutting the chassis in half. Remanufacturing of non-road vehicle/equipment requires that the vehicle/equipment be returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Remanufacturing of highway vehicle/equipment requires that the - vehicle/equipment be returned to the original engine manufacturer for remanufacturing to MY 2007 or newer certified emission standards. Other acceptable scrappage methods may be considered and will require prior EPA approval. Vehicle/equipment components that are not part of the engine or chassis may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, etc.). If scrapped or remanufactured vehicle/equipment or salvaged vehicle/equipment chassis or components are to be sold, program income requirements apply.
  - 5) For tire replacement projects, the original tires should be scrapped according to local or state requirements, or the tires can be salvaged for reuse or retreading. The salvaged value of the original tires must be treated as program income.
- e. **Matching Funds:** Recipient agrees that funds under this award cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings, and cannot be used to sue the Federal Government or any other government entity. Likewise, recipient may not use federal funds as cost-share funds for the State Clean Diesel Grant Program, including funds received under the National Diesel Emissions Reduction Program and federal Supplemental Environmental Project (SEP) funds.

**7. DELAYS OR FAVORABLE DEVELOPMENTS.** The Recipient agrees that it will promptly notify the EPA Project Officer of any problems delays, or adverse conditions which may materially impair its ability to deliver on the outputs/outcomes specified in the work plan. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

lieu of money under a subgrant agreement, the recipient cannot directly contract or procure goods and/or services with their DERA State Program funds.

- 3) Expense Cap: No more than 15 percent of the recipient's total allocation of federal funds may be used to cover

The Recipient agrees that it will also notify the EPA Project Officer of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

**8. SUFFICIENT PROGRESS.** EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

**9. PROCUREMENT AND SUB-GRANT PROCEDURES.** The Recipient must follow applicable procurement and sub-grant procedures. EPA will not be a party to these transactions. If EPA funds are used to purchase goods or services, the recipient agrees to compete the contracts for those goods and services and conduct cost and price analyses to the extent required by the fair and open competition for procurement provisions of 40 CFR Part 31, as appropriate. Approval of a funding proposal does not relieve recipients of their obligations to complete service contracts, conduct cost and price analyses, and use sub-grants only for financial assistance purposes, in accordance with Subpart B Section .210 of OMB Circular A-133.

**10. EMPLOYEE AND/OR CONTRACTOR SELECTION.** EPA will not help select employees or contractors hired by the DNR. The DNR will not help select employees or contractors hired by the Grantee.

**11. PUBLIC NOTIFICATION.** No later than 60 days after the date of the award of a subgrant, rebate, or loan by a State, the State shall publish on the Web site of the State:

- a. For subgrants, rebates, and loans provided to the owner of a diesel vehicle or fleet, the total number and dollar amount of subgrants, rebates, or loans provided, as well as a breakdown of the technologies funded through the subgrants, rebates, or loans; and
- b. For other subgrants, rebates, and loans, a description of each application for which the subgrant, rebate, or loan is provided.

**12. PROGRAM INCOME.** If program income is generated during the course of the project, program income requirements apply. Program income is defined as gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the Award Document. Program income earned during the project period shall be retained by the recipient and, in accordance with 40 CFR Parts 31.25, recipient is authorized to use program income as follows:

- a. Program income may be added to funds committed to the project by EPA and recipient and used to further eligible project or program objectives. The program income shall be used for the purposes and under the conditions of the grant agreement.
- b. Program income may be used to finance the non-federal share of the project or program, including any mandatory or voluntary cost-share. The amount of the Federal grant award remains the same.
- c. Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based. This means that the recipient shall spend program income on project activities before spending/requesting federal funds for project activities. This may result in unspent federal funds at the end of the project period.

The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income.

**13. EQUIPMENT USE, MANAGEMENT, AND DISPOSITION.** These equipment use, management, and disposition instructions are applicable to assistance agreement Recipients and Subrecipients acquiring equipment under this award. State agencies may use, manage and dispose of equipment acquired under assistance agreements by the State in accordance with State laws and procedures.

Recipient agrees the equipment acquired under this assistance agreement will be subject to the use and management and disposition regulations at 40 CFR 30.34 and 31.32, as applicable. Equipment is defined as tangible non-expendable personal property having a useful life of more than one year and an acquisition cost and/or current market value of \$5,000 or more per unit. Certified or verified technologies, vehicles, engines and non-road equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period they will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by EPA/DNR funds.

# Sub-Award Certification

## Federal Funding Accountability and Transparency Act

**To be completed by Department:**

1. Grant Name and Number: Diesel Vehicle Emissions Reductions for Muscatine DS-97735801-0
2. Amount of proposed Sub-Award: \$123,564.00
3. Name of Sub-recipient: City of Muscatine

**To be completed by Sub-Recipient:**

4. Data Universal Numbering System (DUNS) Number: \_\_\_\_\_
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: CITY OF MUSCATINE

State: IOWA

Congressional District: 2ND

County: MUSCATINE

Zip Code: 52761

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

## RELEASE OF CLAIMS

In accordance with Section 7.12 of Contract #13S-ESDAQB0001-7260CIIAM, the undersigned certifies that: THE CITY OF MUSCATINE 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 Muscatine, or their sureties under this Contract or applicable performance and payment bonds.

### CITY OF MUSCATINE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: STEVEN W. BOYD

Title: DIRECTOR OF COMMUNITY DEVELOPMENT



DS-97735801-0  
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.

**Steve Boka, Community Development Director**

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative