



## Public Works

City Transit  
263-8152

## MEMORANDUM

Equipment Maintenance  
Roadway Maintenance  
Collection & Drainage  
Building & Grounds  
Engineering

To: Gregg Mandsager, City Administrator

CC: Fran Donelson, Secretary

FROM: Randy Hill, Public Works Director

DATE: April 30, 2013

RE: Musser Park – Wiggens Road Trail Agreement

## INTRODUCTION:

The City of Muscatine plans on construction a Mississippi River Trail link labeled Musser Park to Wiggens Road Trail.

## BACKGROUND:

As part of the comprehensive trail network plan a trail that connects Musser Park to Wiggens Road has been developed. This trail segment is part of the National Mississippi River Trail system. It will be a combination of “share the road” and separate trail approximately 7+ miles in length. This trail will provide a continuous route from Louisa County to Wild Cat Den.

## RECOMMENDATION/RATIONALE:

The estimated cost for this trail is \$922,244. The City has received a Federal Earmark in the amount of \$459,635.60. In addition \$381,100 of State Recreational Trail Grant has been awarded. The local match for the project is \$81,508.40. It is anticipated that private donations will be sought to cover the match. The schedule for the bid letting of this project is March 2014 with construction to begin in May 2014.

It is necessary for the City to enter into an Agreement with the Iowa Department of Transportation for an Earmark Funded Project – Iowa DOT Agreement Number: 2012-EDP-103; Project Number: EDP-5330(622)—7Y-70.

Staff recommends approval of the Agreement.

**BACKUP INFORMATION:**

1. IDOT Agreement for an Earmark Funded Project
- 2.
- 3.
- 4.

**IOWA DEPARTMENT OF TRANSPORTATION  
AGREEMENT FOR AN  
EARMARK FUNDED PROJECT**

PROJECT NAME: MRT-Musser Park to Wiggins Road Trail

RECIPIENT: City of Muscatine

PROJECT NUMBER: EDP-5330(622)--7Y-70

IOWA DOT AGREEMENT NUMBER: 2012-EDP-103

This is an agreement between the city of Muscatine, hereinafter referred to as RECIPIENT and the Iowa Department of Transportation, hereinafter referred to as the DOT. Iowa Code Sections 306A.7 and 307.44 provide for the RECIPIENT and the DOT to enter into agreements with each other for the purpose of financing transportation improvement projects in Iowa with Federal funds. The RECIPIENT proposes a project using Earmark funding under Sec. 133(b)(8) and Sec. 101(a)(35) of Title 23, United States Code.

The Office of Management and Budget (OMB) Circular A-133 requires the RECIPIENT to report the Catalog of Federal Domestic Assistance (CFDA) number and title on all Federal-Aid projects. The RECIPIENT will use CFDA #20.205 and title, "Highway Planning and Construction" for this project. This information should be reported in "The Schedule of Expenditures of Federal Awards".

Pursuant to the terms of this agreement, applicable statutes, administrative rules, and programming by the DOT and the Bi-State Regional Commission, the DOT agrees to provide funding to the RECIPIENT for the authorized and approved costs for eligible items associated with the development of the MRT project.

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

1. The RECIPIENT shall be the lead organization for carrying out the provisions of this agreement.
2. All notices required under this agreement shall be made in writing to the DEPARTMENT's and/or the RECIPIENT's contact person. The

DEPARTMENT's contact person shall be Yvonne Diller, Office of Systems Planning, 800 Lincoln Way, Ames, Iowa 50010; telephone 515-239-1252; e-mail yvonne.diller@dot.iowa.gov. The RECIPIENT'S contact person shall be Randy Hill, Public Works Director, 1459 Washington Street, Muscatine, Iowa 52761-5040, telephone 563-263-8933, email rhill@muscatineiowa.gov.

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

Mississippi River Trail-Musser Park to Wiggins Road Trail  
The estimated total cost is \$922,244.

4. Estimated Costs and Funding Sources

Estimated project costs and funding sources for the project described in Section 3 of this agreement, which are incurred after the date of Federal Highway Administration (FHWA) authorization shall be paid as follows:

Type of Funding	Funds Provided By This Agreement*	State Recreational Trails	City Share	Total Cost (approximate)
HP 1243	\$359,960.00			
TI 0115	\$99,675.60			
		\$300,000.00		
		\$81,100.00		
<b>Total</b>	<b>\$459,635.60</b>	<b>\$381,100.00</b>	<b>\$81,508.40</b>	<b>\$922,244.00</b>

\*The amounts shown are estimates and are subject to the limits and/or other provisions specified below.

- A. Pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), a total upper limit of \$400,000.00 in High Priority (HP) funds has been set aside for this project. Beginning with Federal Fiscal Year (FFY) 2005, and continuing through FFY 2009, 20% of this total will be allocated each year. However, after each year's allocation is distributed, the actual amount of HP funds available for obligation (and consequently, reimbursement) will be limited by the amount of obligation authority made available each year by Congress, or the total amount of obligation authority

accumulated to date. Therefore, the portion of the project costs reimbursed with HP funds shall be limited to a maximum of either 80% of eligible costs (other than those costs reimbursed with other Federal funds) or the total amount of obligation authority, whichever is less.

B. Pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), a total upper limit of \$110,000.00 in Transportation Improvement (TI) funds has been set aside for this project. Of this total, 10% will be allocated in FFY 2005, 20% in 2006, 25% in 2007 and 2008, and 20% in 2009. However, after each year's allocation is distributed, the actual amount of TI funds available for obligation (and consequently, reimbursement) will be limited by the amount of obligation authority made available each year by Congress, or the total amount of obligation authority accumulated to date. Therefore, the portion of the project costs reimbursed with TI funds shall be limited to a maximum of either 80% of eligible costs (other than those costs reimbursed with other Federal funds) or the total amount of obligation authority, whichever is less.

C. The Obligation Limitation to be applied to each year's funding is as follows: FY05 – 85.5%; FY06 – 87%; FY07 - 90.5%; FY08 - 92.4%; FY09 - 93.6%.

D. The RECIPIENT shall be responsible for all other project costs which are not reimbursed with or paid for by the funds specified above.

E. State Recreational Trails program funds shall not exceed the amount stated above of \$381,100.00.

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

or the grant and/or loan amount associated with this project shall be reduced accordingly.

6. The portion of total project costs paid by Earmark funds shall not exceed the amount stated above (\$510,000.00) or 80 percent of the total cost of the eligible items, whichever is the smaller amount. Cost overruns shall be paid solely by the applicant.
7. Project activities or costs eligible for funding include only those items set out in Exhibit A, which is attached hereto and by this reference incorporated into this agreement, and are necessary to complete the project as described in Section 3.
8. Activities or costs ineligible for funding include, but are not limited to, those items set out in Exhibit B, which is attached hereto and by this reference incorporated into this agreement.
9. Notwithstanding any other provisions of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State of Iowa to appropriate funds or discontinuance or material alteration of the program for which funds were provided, the DOT shall have the right to terminate this contract without penalty by giving not less than ninety (90) days written notice.
10. The DOT reserves the right to delay reimbursement of funds to the RECIPIENT if necessary to maintain a positive cash flow. If such a delay is necessary and lasts more than 5 working days, the DOT shall so notify the RECIPIENT in writing and shall give the RECIPIENT an estimate of when reimbursement might be expected. The DOT shall establish a system to equitably make reimbursements to all RECIPIENTS so affected.
11. The RECIPIENT shall submit to the DOT, no later than 30 days subsequent to the RECIPIENT'S signature date on this agreement, a timetable outlining the project schedule. Failure to do so by the RECIPIENT may be considered a default under this agreement.
12. The RECIPIENT must have let the contract or have construction started within two years of the date this agreement is executed by the DOT. If the RECIPIENT does not do this, they will be in default for which the DOT

can revoke funding commitments. This agreement may be extended for periods of up to six months upon receipt of a written request from the RECIPIENT at least sixty (60) days prior to the deadline if approved.

13. This agreement will become null and void if the project described in Section 3 drops out of the Bi-State Regional Commission current Transportation Improvement Program (TIP) or the approved current DOT Statewide Transportation Improvement Program (STIP) prior to authorization of Federal funds.

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

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

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

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

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

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

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

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

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

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

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

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

prior to the start of construction.

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

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

22.Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 76 Iowa Administrative Code Chapter (IAC) 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.

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

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

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

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

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

28.The DOT will reimburse the RECIPIENT for properly documented and certified claims for eligible project costs less a withholding of 5% of the Federal and / or State share of construction costs. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final audit or review, the DOT determines that the RECIPIENT has been overpaid, the RECIPIENT shall reimburse the overpaid amount to the DOT. After the final audit or review is complete and after the RECIPIENT has provided all required paperwork, the DEPARTMENT will release the Federal or State funds withheld.

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

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

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

30If, in the opinion of the RECIPIENT, the specific provisions of this agreement requiring the services of a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa prove to be burdensome to the RECIPIENT or otherwise not in the public interest, and if the RECIPIENT decides that the provisions of this agreement can be otherwise complied with without endangering public safety, the RECIPIENT may request that said provisions be waived on all or specific parts of the project identified by the RECIPIENT. Such request shall be made in writing to the DOT'S contact person who shall, after consultation with other DOT staff as necessary, make the final determination concerning said waiver. If said waiver is granted, all provisions of this agreement requiring the services of a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa shall be performed by the RECIPIENT'S contact person or designee.

- 31.The RECIPIENT agrees to indemnify, defend and hold the DOT harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection or use of this project. This agreement to indemnify, defend and hold harmless applies to all aspects of the DOT'S application review and approval process, plan and construction reviews and funding participation.
- 32.This agreement may be declared to be in default by the DOT if the DOT determines that the RECIPIENT'S application for funding contained inaccuracies, omissions, errors or misrepresentations, or if the DOT determines that the project is not developed as described in the application.
- 33.If the RECIPIENT fails to perform any obligation under this agreement, the DOT shall have the right, after first giving thirty (30) days written notice to the RECIPIENT by certified mail return receipt requested, to declare any part of all of this agreement in default. The RECIPIENT shall have thirty

(30) days from the date of the mailing of the notice to cure the default. If the RECIPIENT cures the default, the RECIPIENT shall notify the DOT no later than five (5) days after the cure or before the end of said thirty (30) day period given to cure the default. Within ten (10) working days of receipt of the RECIPIENT'S notice of cure, the DOT shall issue either a notice of acceptance of cure or a notice of continued default.

34In the event a default is not cured, the DOT may revoke funding commitments and/or seek repayment of funds granted by this agreement. By signing this agreement the RECIPIENT agrees to repay said funding if they are found to be in default. Repayment methods must be approved by the Iowa Transportation Commission and may include cash repayment, installment repayments with negotiable interest rates, charges against the RECIPIENT'S share of road use tax funds, or other methods as approved by the Iowa Transportation Commission.

35.In case of a dispute concerning the terms of this agreement, the parties shall submit the matter to arbitration pursuant to IAC 679A (2003). Either party has the right to submit the matter to arbitration after ten (10) days notice to the other party of their intent to seek arbitration. The written notice must include a precise statement of the disputed question. The DOT and the RECIPIENT agree to be bound by the decision of the appointed arbitrator. Neither party may seek any remedy with the state or federal courts absent exhaustion of the provisions of this section for arbitration.

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

37.The RECIPIENT shall comply with all provisions of the equal employment opportunity requirements prohibiting discrimination and requiring affirmative action to assure equal employment opportunity as required by the IAC 216 (2003). No person shall, on the grounds of age, race, creed, sex, color, national origin, religion, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the RECIPIENT receives state funds from the DOT.

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

Additionally, for projects where Federal Highway funds or Federal non-highway funds are used to match the project, the RECIPIENT shall also follow all administrative and contracting procedures, which would normally be used when such funds are used. The RECIPIENT shall comply with all requirements for use of said funds as outlined in Exhibit C.

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

40. This agreement, as set forth in items 1 through 40 herein, including referenced exhibits, constitutes the entire agreement between the DOT and the RECIPIENT concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement must be made in the form of an addendum to this agreement. Said addendum shall become effective only upon written approval of the DOT and the RECIPIENT.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement Number 2012-EDP-103 as of the date shown opposite its signature below.

**RECIPIENT:** City of Muscatine

By \_\_\_\_\_ Date \_\_\_\_\_, 2013

Title \_\_\_\_\_

I, \_\_\_\_\_, certify that I am the City Clerk and that \_\_\_\_\_, who signed said Agreement for and on behalf of the City of Muscatine was duly authorized to execute the same by virtue of a formal Resolution duly passed and adopted by the City of Muscatine on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Signed \_\_\_\_\_ Date \_\_\_\_\_, 2013  
City Clerk

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

By \_\_\_\_\_ Date \_\_\_\_\_, 2013  
Craig Markley

Director  
Office of Systems Planning

## **EXHIBIT A**

### **Eligible Project Costs for Usage of Earmark Funds**

Project activities or costs eligible for Earmark funding include:

- Land acquisition, including appraisal and negotiation. Land may be acquired by lease, easement or fee title.
- Construction of the project.
- Design engineering and construction inspection directly associated with the project.

## **EXHIBIT B**

### **Ineligible Project Costs for Usage of Earmark Funds**

Project activities or costs not eligible for Earmark funding include:

- Any and all costs incurred prior to the execution of an agreement and written receipt of federal concurrence in environmental clearance for a project.
- Routine maintenance of the project.
- Overhead and operating costs – such as auditing, legal and administrative costs – associated with the project.
- Expenses associated with the preparation and submission of a project application.
- Utility costs not necessitated by the project.
- Purchase of office furnishings or equipment, construction equipment or personal property.

**Exhibit C**  
**Standard Provisions for use of Federal-Aid**

1. Since this project is to be financed in part with local and Federal funds, the Recipient shall take the necessary actions to comply with applicable State and Federal laws and regulations.

In all programs and activities of Federal-aid recipients, sub-recipients and contractors, no person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination on the grounds of race, color, national origin, sex, age, or handicap/disability. While no specific commitment or numeric goal has been established for this project, the Recipient is encouraged in accordance with Title 49, Code of Federal Regulations – Part 26 (49 CFR 26), to make a good faith effort to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts.

2. The Recipient must receive notice of FHWA authorization from the DOT before beginning any work for which federal-aid reimbursement will be requested. The cost of work, occurring prior to securing FHWA authorization, will not be reimbursed with federal-aid funds. The Recipient must contact the DOT to obtain the procedures necessary to secure FHWA authorization.
3. The Recipient shall take the appropriate actions and prepare the necessary documents to fulfill the FHWA requirements for project environmental studies including historical/cultural reviews and location/design approval. The Recipient shall complete any mitigation agreed upon in the FHWA approval document. If farmland is to be acquired, whether for use as project right of way or permanent easement, the Recipient shall submit the U.S. Department of Agriculture Farmland Conversion Impact Rating form, when required, to the U.S. Natural Resources Conservation Service (NRCS).
4. The Recipient shall certify to the DOT's contact person that all known required environmental permits have been received and that all environmental regulations have been complied with before funds are reimbursed or credited.

5. The Recipient shall obtain agreements, as needed, from railroad and utility companies and shall obtain project permits and approvals, when necessary, from the Iowa Department of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers and the DOT, etc.
6. General requirements and covenants (Division 11) of the DOT's standard specifications shall apply to all projects let at the DOT.
7. The project plans, specifications and project cost estimate (PS&E) shall be prepared and certified by a professional engineer licensed to practice in the State of Iowa. The Recipient shall submit the plans, specifications and other contract documents to the DOT for review and authorization to let the project.
8. The project shall be constructed under the DOT's Standard Specifications and applicable special provisions. Prior to their use in the PS&E, specifications developed by the Recipient for individual construction items shall be approved by the DOT.
9. The Recipient shall comply with the procedures and responsibilities for materials testing and construction inspection according to the DOT's Instructional Memorandums (I.M.'s). The DOT will bill the Recipient for testing services according to its normal policy.
10. If Federal-aid is requested for in-house engineering services, the Recipient will follow the procedure outlined by the DOT. The Recipient, desiring to claim indirect costs under Federal awards, must prepare an indirect cost rate proposal and related documentation in accordance with the requirements of Office of Management and Budget (OMB) Circular A-87 – Cost Principles for State, Local, and Indian Tribal Governments. Reimbursement eligibility requires an indirect cost rate proposal to be certified by the governmental unit designated cognizant agency or the Federal agency providing the largest amount of Federal funds to the governmental unit.
11. If Federal-aid is requested for preliminary and/or construction engineering costs, the Recipient will select a consultant(s) in accordance with the DOT's consultant selection process.

12. The Recipient and the Consultant shall prepare a consultant contract for engineering services in accordance with Title 23, Code of Federal Regulations, Part 172 – Administration of Negotiated Contracts (23 CFR 172). This is required only if the Recipient uses federal funds for engineering services.
13. After the contents of the consultant contract have been mutually approved, the Recipient shall execute the contract and forward the same to the DOT for authorization only if federal funds are used for engineering services.
14. If preliminary engineering is federally funded, if the "do nothing" alternate is not selected, and if right of way acquisition for or actual construction of the road is not started by the close of the tenth fiscal year following the fiscal year in which the Federal-aid Project Agreement is executed, the Recipient will repay to the DOT an amount equal to the amount of Federal funds made available for such engineering.
15. The Recipient shall forward a Federal-aid Project Development Certification and final PS&E to the DOT. Following FHWA's authorization, the DOT will advertise the project for letting and furnish the Recipient with a sample letting package. As a condition for the DOT to let the project, the Recipient agrees that the Recipient has the financial resources to proceed with the project if bids submitted are 110% of the project cost estimate or less. If the Recipient is a city, the Recipient shall comply with the public hearing requirements of the Iowa Code section 384.102.
16. Procurement procedures shall be as follows unless some other method is considered to be cost effective (such as the use of Recipient local forces), is proposed by the Recipient, and is approved by the DOT.
  - A. Procurement by **small purchase procedures**. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more (in aggregate) than \$25,000 for cities and \$50,000 for counties. If small purchase procedures are used, price or rate quotations will be obtained from an adequate number of qualified sources.

- B. Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed-price (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
- C. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.
- D. Procurement by non-competitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the circumstances noted in Title 49 Code of Federal Regulations – Part 18.36 Procurement.

The Recipient shall notify the DOT of the procurement method it intends to use. If procurement method "C" or "D" above is selected, the Recipient shall include justification for its selection and obtain approval from the DOT.

- 17. For contracts let to sealed bid, the letting shall be conducted by the DOT's Office of Contracts unless specifically requested and approved otherwise by the parties hereto.
- 18. If portions of the project are let to sealed bid by the Recipient, the Recipient shall advertise for bidders ten working days before the letting, make a good faith effort to get at least three (3) bidders, hold a public letting and award contracts for the project work. DOT concurrence in the award must be obtained prior to the award. The Recipient shall provide the DOT file copies of project letting documents within five (5) days after the letting. If the Recipient is not a political subdivision of the State of Iowa, the Recipient shall comply with the applicable laws, administrative rules and procedures for public purchasing and contracting as applicable to political subdivisions of the State of Iowa.

19. When let by the DOT, the DOT will prepare an Iowa DOT Staff Action for concurrence to award the contract. The DOT will mail three (3) originals of the unexecuted contract(s) to the Recipient.
20. The Recipient shall take action to award the contract or reject all bids. Following award of the contract and signature by the lowest responsive bidder, the Recipient shall forward to the DOT two (2) copies of the fully executed contract, two (2) copies of the performance bond and two (2) copies of the certificate of insurance.
21. If Federal-aid is requested for force account construction, the Recipient will follow the procedure outlined by the DOT.
22. The Recipient shall assure compliance with Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and Title 49 Code of Federal Regulations – Parts 660 and 661 regarding "Buy America" provisions on the procurement of foreign products and materials.
23. The Recipient shall assure that all contracts entered in furtherance of this project shall contain the following provisions:
  - a. Contain notice of awarding agency requirements and regulations pertaining to reporting.
  - b. Contain a provision allowing access by the DOT, the Federal Highway Administration, the Comptroller General of the United States, or any of their duly authorized representatives to any records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.
  - c. Contain a provision requiring retention of all required records for three years after the contracting agency makes final payments and all other pending matters are closed.
  - d. Contain mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation

plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

- e. All contracts for construction or repair shall require compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).
- f. If the project is within a Federal-aid highway right of way and is in excess of \$2,000, the contract shall require compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).
- g. Construction contracts in excess of \$2,000 and other contracts in excess of \$2,500 which involve the employment of mechanics or laborers, shall require compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR part 5).
- h. If the contract is for more than \$10,000, it shall provide for termination for cause and for convenience by the contracting agency, including the manner by which it will be effected and the basis for settlement.
- i. Construction contracts in excess of \$10,000 shall require compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- j. If the contract is for more than \$100,000, it shall contain administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

It also requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

24. The DOT will prepare the Federal-aid Project Agreement and submit it for FHWA approval and obligation of Federal-aid funds.
25. If the project right of way is federally funded and if the actual construction is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the Federal-aid project agreement is executed, the Recipient will repay the sum or sums of Federal funds in the right of way to the DOT.
26. If this agreement is to fund the Historical Preservation of a structure, the Recipient shall preserve the architectural, historical and cultural integrity of the structure by maintaining and repairing the property in compliance with "The Secretary of the Interior's Standards for Rehabilitating Historical Buildings". No alterations shall be made to the existing structure without first obtaining the written consent of the State Historical Society of Iowa (State Historic Preservation Officer).
27. If the Recipient, within the next twenty (20) years after project completion, decides to sell the structure to a private party, or it is now under private ownership, the Recipient shall:
  - A. Execute a recordable document for preserving the historical and architectural integrity for twenty (20) years from the date of receipt of public funds; or
  - B. Repay the State of Iowa all the funds received by the Recipient.
28. If the Recipient elects to levy special assessments as a means of raising the local share of the total project costs, the Recipient shall reimburse the DOT in the amount that payments of Federal-aid and collections of special assessments, excluding interest and penalties, exceed the total cost of the public improvement as established by the provisions of Iowa Code Chapter 384. The Recipient agrees that at such time as its collections (exclusive of interest and penalties which shall be retained by the Recipient) from special assessments levied for this project exceed the local share of the total project costs, the Recipient shall refund to the DOT all funds collected in excess of the total project costs (including interest and penalties associated with the amount of excess) within sixty (60) days of the receipt of any special assessment payments. The Recipient shall notify the DOT

when any lands specially assessed no longer qualify for an agricultural deferment of the special assessment, and notify the DOT when all special assessments have been satisfied. The DOT shall credit reimbursement billings to the FHWA in the amount of refunds received from the Recipient.