

**Environmental Protection Commission
Iowa Department of Natural Resources**

ITEM

14

DECISION

TOPIC

**Contract - Department of Economic Development for Small Business
Assistance Program: Small Business Environmental Assistance Liaison**

Recommendations:

Commission approval is requested for a two year-service contract with the Iowa Department of Economic Development (DED) of Des Moines, IA. The contract will begin on July 1, 2009 and terminate on June 30, 2011. The total amount of this contract shall not exceed **\$129,284**; SFY 2010 not to exceed \$63,870, SFY 2011 not to exceed \$65,414. This contract is an Iowa Code Chapter 28E agreement.

Funding Source:

This contract will be funded through cost reimbursable payments funded by Title V program fees (not to exceed \$103,642), Pollution Prevention funds (not to exceed \$12,000), and Brownfield funds (not to exceed \$13,642). The statutory authority for the DNR to enter into this contract is under Section 507 of the Clean Air Act and 455B.133(8)(a).

Background:

The Small Business Assistance Program, which is mandated by Section 507 of the Clean Air Act, provides technical and non-technical assistance to small businesses. This contract establishes the requirements of Iowa's non-technical assistance program; also referred to as the Small Business Environmental Liaison (Liaison).

Purpose:

The parties propose to enter into this Contract for the purpose of creating a Small Business Environmental Liaison Program that will help to ensure a) small businesses receive assistance (through education and outreach) to come into compliance with applicable environmental regulations, and b) the requirements of Section 507 of the Clean Air Act for a small business ombudsman for small business stationary sources is being met.

Contractor Selection Process:

DED was chosen for this project because it has been demonstrated through the current and previous intergovernmental agreements that the Liaison has been very effective in assisting both the DNR and small businesses with outreach and other assistance as needed. It was also specified in the 1992 Iowa State Implementation Plan (SIP) with EPA that the Liaison would be housed at a state agency other than DNR. At that time it was deemed that DED would fulfill the role of Iowa's small business non-technical assistance provider.

The DNR is allowed to contract with DED without using a competitive selection process pursuant to state law.

Christina Iiams
Program Planner 2
Air Quality Bureau – Environmental Services Division
May 19, 2009

Attachment(s): Special Conditions for Contract

IOWA DEPARTMENT OF NATURAL RESOURCES

AGREEMENT NUMBER 2010-7230-04

With

IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT

Agreement Title: Small Business Assistance Program Pursuant to Section 507 of the Clean Air Act Amendments of 1990: Small Business Environmental Assistance Liaison

Agreement Amount: not to exceed \$129,284 performance total (\$63,870 SFY 10; \$65,414 SFY 11)

Time of Performance: July 1, 2009 to June 30, 2011

Submit Original Interagency Expenditure Transfer and supporting documentation to:

Jennifer Nelson
Department of Natural Resources
Wallace State Office Building
Des Moines, IA 50319-0034
ATTN: Budget and Finance Bureau

Issue Payment to:

Department of Economic Development
200 East Grand Avenue
Des Moines, IA 50309

The Department of Economic Development agrees to deliver all supplies and perform all services set forth in the attached Special Conditions for the consideration stated herein. The rights and obligations of the parties to this Agreement shall be subject to and governed by the Special Conditions and General Conditions. To the extent of any inconsistency between the Special Conditions or the General Conditions and any specifications or other conditions which are made a part of this Agreement, by reference or otherwise, the Special Conditions and General Conditions shall control. To the extent of any inconsistency between the Special Conditions and the General Conditions, the Special Conditions shall control. This Agreement contains 13 articles.

IN WITNESS THEREOF, the parties hereto have executed this agreement on the day and year last specified below.

**DEPARTMENT OF
ECONOMIC DEVELOPMENT**

**DEPARTMENT OF
NATURAL RESOURCES**

By: _____
Director
Date: _____

By: _____
Deputy Director
Date: _____

This Agreement was approved, as required by Subsection 445B.105(6) of the Code of Iowa, by the Environmental Protection Commission on _____, 2009.

SPECIAL CONDITIONS

ARTICLE I IDENTIFICATION OF PARTIES

This Agreement, which is a joint or co-operative undertaking within the meaning of Iowa Code section 28E.1, is entered into by and between the Iowa Department of Natural Resources (hereinafter referred to as DNR) and the Iowa Department of Economic Development (hereinafter referred to as DED). DED's Small Business Environmental Assistance Liaison (hereinafter referred to as Liaison) shall be responsible for the duties, technical reporting, and activities required under this Agreement.

ARTICLE II STATEMENT OF PURPOSE

This Agreement is entered into for the purpose of creating a Small Business Environmental Assistance Liaison Program. The creation of the Liaison Program will help to ensure:

- a) Small businesses receive assistance (through education and outreach) to come into environmental compliance with applicable regulations,
- b) The requirements of a small business ombudsman for small business stationary sources¹ as required by Section 507 of the Clean Air Act Amendments of 1990 (hereinafter CAAA) is being met, and
- c) An objective source of information and assistance is available to both small businesses and the DNR regarding complaints and feedback.

For the purpose of this Agreement the Liaison's "clientele" includes small business stationary sources that meet one or more of the following criteria:

- a) Defined by Sec. 507(c)(1) of CAAA as owned or operated by a person that employs 100 or fewer individuals;
- b) A small business concern as defined in the Small Business Act;
- c) Not a major stationary source;
- d) Does not emit 50 tons or more per year of any regulated pollutant;
- e) Emits less than 75 tons per year of all regulated pollutants.

The Liaison may respond to requests for assistance from small business stationary sources regarding any of the media funded through this Agreement.

The Liaison's "clientele" may also include schools, hospitals and city governments/municipalities and other similar small business organizations. However, the Liaison shall not provide assistance regarding air quality issues to entities other than small business stationary sources, except that the Liaison:

- a) May refer the clientele to the DNR Air Quality Bureau for further assistance;
- b) Shall not be funded for assistance provided beyond general information and referrals, unless the clientele meets the criteria for small business stationary sources.

¹Small stationary sources meet one or more of the following criteria: (1) Defined by Sec. 507(c)(1) of CAAA as owned or operated by a person that employs 100 or fewer individuals; (2) A small business concern as defined in the Small Business Act; (3) Not a major stationary source; (4) Does not emit 50 tons or more per year of any regulated pollutant; (5) Emits less than 75 tons per year of all regulated pollutants.

ARTICLE III TIME OF PERFORMANCE

This Agreement shall be effective for a total of two (2) state fiscal years (2010 thru 2011). Performance by DED shall commence after this Agreement has been signed, but not prior to July 1, 2009. The performance required herein shall be completed by June 30, 2011, with the exception of the specific reports named in this document that are due on or before July 15, 2011.

ARTICLE IV DESIGNATION OF OFFICIALS

4.1 DNR –The Deputy Director of DNR shall be the official authorized to execute any changes in terms, conditions, or amounts specified in this Agreement. The Division Administrator and the respective program area Bureau Chief (or their designee), are designated by the Deputy Director to negotiate, on behalf of DNR, and subject to the approval of the Deputy Director, any changes to this Agreement.

4.2 DED – The Director of DED shall be the official authorized to execute any changes in terms, conditions, or amounts specified in this Agreement. The Regulatory Assistance Coordinator is designated by the Director to negotiate, on behalf of DED, and subject to the approval of the Director, any changes to this Agreement.

4.3 The above officials shall represent their respective agencies in all matters necessary to the successful completion of this Agreement.

4.4 Key Personnel. The Liaison is designated as Key Personnel for this Agreement and is considered essential to the work and services to be performed. If for any reason substitution for the Key Personnel becomes necessary, the other party shall be notified in writing no later than ten (10) working days prior to the proposed effective date of the change.

4.5 The parties to this Agreement may engage in informal conflict resolution. Any party to the Agreement may call for informal conflict resolution with the informal resolution process being determined by the parties as needed. At anytime, any party may request the end of the informal conflict resolution and the parties shall immediately proceed to arbitration as outlined in Attachment C – General Conditions, Section 6 of this Agreement.

ARTICLE V REQUIREMENTS OF 28E

5.1 In accordance with Iowa Code section 28E.6, the DNR Deputy Director, the program specific Bureau Chiefs (or designees), DED Director, DED Regulatory Assistance Coordinator, and the Liaison shall serve as the joint board responsible for the administration and day-to-day management of this Agreement. The joint board shall also be responsible to carry out and ensure the completion of Article VI and VII in this Agreement.

5.2 In accordance with Iowa Code section 28E.8, this Agreement shall be filed by the DNR with the Iowa Secretary of State's Office.

5.3 The Agreement has also been approved, in accordance with Iowa Code section 28E.12, by the governing body of the Department of Economic Development and the Environmental Protection Commission. The Liaison shall retain on site for a minimum of five (5) years any documents citing the governing board's approval. The document(s) shall be made available to the DNR and/or state auditor upon request.

ARTICLE VI SCOPE OF WORK

General Provisions

6.1 The Liaison shall, as requested, provide clientele with multi-media and technical referral assistance. Assistance shall include, but is not limited to maintaining a toll-free hotline, maintaining an accessible web-site, responding in written and/or oral format to inquiries or referrals.

Deliverable(s):

- a) Detail the assistance provided and the outcomes of the assistance in reports submitted per Article VII, 7.4.
- b) The clientele tracking system created by the Liaison shall be updated as needed. The tracking system shall continue to identify 1) how contact was established, 2) the DNR program area(s) concerned, and 3) any further outreach assistance provided after the initial contact.

6.2 The Liaison shall attend Environmental Protection Commission (EPC) meetings and DNR client contact meetings as necessary, and other meetings as requested by DNR in order to remain informed on DNR environmental issues impacting clientele.

Deliverable(s):

- a) Attend EPC and client contact meetings as necessary and other meetings as scheduled.
- b) List all meetings attended in reports submitted per Article VII, 7.4.

6.3 To ensure proficiency in technical and regulatory issues applicable to the Liaison's clientele, the Liaison shall attend, as necessary, educational training courses, conferences, workshops, and on-site visits.

Deliverable(s):

- a) The Liaison shall submit a training plan no later than August 1st of each state fiscal year for DNR review and recommendation.

6.4 The Liaison shall review DNR proposed administrative rules to determine the rule's impact to clientele. After reviewing the rules, the Liaison shall:

- a) Provide comments to DNR on all rules impacting the Liaison's clientele;
- b) Assist in completing regulatory or economic impact analysis, when requested by DNR; and
- c) Provide outreach to the clientele after coordinating with the DNR.

Deliverable(s):

- a) Before the end of public comment period(s) for DNR rules, the Liaison shall provide written comments and/or analysis assistance regarding rules that impact the Liaison's clientele.
- b) The Liaison shall coordinate with the DNR regarding outreach that might need to be done within thirty (30) days of publication of the proposed rule or DNR request.

6.5 The Liaison shall act as an ombudsman for small business stationary air pollution sources as required by Section 507a of the Clean Air Act Amendments of 1990.

Deliverable(s):

- a) The Liaison shall comply with Article VII, 7.3 when fulfilling requests.

6.6 The Liaison shall meet with the DNR and other business assistance providers as applicable to determine joint collaboration projects, evaluate the outcomes, and identify concerns.

Deliverable(s):

- a) The Liaison shall meet with the DNR and other business assistance providers to discuss collaboration efforts as needed.

6.7 The Liaison shall assist DNR, as requested, by providing outreach and marketing assistance to specific clientele sectors.

Deliverable(s):

- a) Once it has been requested that the Liaison assist in outreach of identified DNR priorities, the Liaison shall meet with the respective DNR program area(s) to develop outreach strategies and to establish and implement the marketing format.
- b) The Liaison shall provide the respective DNR program area(s) a copy of all materials created for outreach/marketing for their approval prior to the materials being disseminated.

6.8 The Liaison shall assist the DNR-Pollution Prevention Services (P2) with programs that provide technical assistance to small businesses and increase the opportunities to promote voluntary compliance and pollution prevention to these businesses. Programs may include, but are not limited to Hospitals for a Healthy Environment (H2E), Food Processors, and the Region VII Pollution Prevention Roundtable.

Deliverable(s):

- a) The Liaison shall attend meetings and conferences as requested by the DNR-Pollution Prevention Services (P2) Program. The Liaison shall participate in projects as jointly determined.

6.9 The Liaison shall work with the DNR-Brownfields Program as requested. The Liaison's duties may include, but are not limited to outreach and education efforts that support the marketing, utilization and collaborative partnerships of the DNR-Brownfields program.. Targeted audiences may include trade associations, local units of government, building and construction industry, and developers.

Deliverable(s):

- a) When requested by the DNR-Brownfields Program, the Liaison shall attend meetings and participate in projects as jointly determined.

6.10 The Liaison shall work on other program specific projects as applicable if agreed upon by the DNR and the Liaison.

Deliverable(s):

- a) When requested by a DNR program area, the Liaison shall attend meetings and participate in projects as jointly determined.

Special Projects

These special projects shall be completed by the Liaison during the Agreement period:

6.11 NESHAP Implementation. The Liaison shall work with the DNR-Air Quality Bureau, as requested, on projects related to Area Source NESHAP Implementation. The Liaison's duties shall include, but are not limited to providing outreach, marketing assistance, and workshop logistics.

Deliverable(s):

- a) Once the DNR-Air Quality Bureau has requested the Liaison's assistance, the Liaison shall attend any meetings as invited and as scheduled by the DNR-Air Quality Bureau to develop strategies and to establish and implement timelines.
- b) In accordance with Article IX, 9.5, the Liaison shall provide the DNR –Air Quality a copy of all materials created for DNR-Air Quality Bureau approval prior to the materials being disseminated.

6.12 2009/2010 Environmental Conference. The Liaison shall provide assistance in the planning and conducting of the 2009 and/or 2010 Environmental Conference. As requested by the DNR, the Liaison's duties shall include:

- a) Assist with the identification and prioritizing of the agenda;
- b) Attend workgroup planning meetings and participate in the development of a conference agenda;
- c) Assist with contacting conference speakers and sponsors;
- d) Assist with the logistical arrangements for the 2009 and/or 2010 Environmental Conference;
- e) Coordinate Conference Marketing and materials as necessary;
- f) Provide logistical support as needed during the 2009 and/or 2010 Environmental Conference; and
- g) Provide additional assistance as requested by DNR.

Deliverables:

- a) The Liaison shall submit a draft version of all materials, including agenda and speaker/sponsor names and topics to the DNR for consultation prior to release.
- b) When requested by the DNR, the Liaison shall provide additional assistance as jointly determined.
- c) The Liaison shall provide a final report on the Conference during the first triennial report of the SFY, as per Section 7.5 (November 15, 2009 and November 15, 2010). The report shall include, but is not limited to:
 - 1) The number of attendees, including an estimation of the number of small businesses in attendance;
 - 2) A summary of the work being performed by the Liaison while assisting with the planning of the 2009 and/or 2010 Environmental Conference.
 - 3) Attachments of all final versions of marketing/materials created by the Liaison for the Conference; and
 - 4) Overall summary of work completed/performed by the Liaison while assisting in conducting of the 2009 and/or 2010 Environmental Conference.

6.13 PM2.5 Outreach. The Liaison shall assist the DNR in identifying and providing education and outreach as directed and requested by DNR, and in accordance with Article IX, 9.5, to small businesses regarding reducing PM2.5 background levels.

Deliverables:

- a) Attend meetings as requested and submit brief written summaries of assistance provided per Article VII, 7.4.
- b) Provide education and outreach assistance when requested by DNR per 6.7.

6.14 Climate Change Assistance. If requested by the DNR, the Liaison shall provide outreach and education to small businesses on the risks of climate change and opportunities available for technical assistance or resources. If requested, outreach and education opportunities shall include:

- a) Collaborating with the DNR-Air Quality Bureau to market the 2010 requirement for minor sources to submit Greenhouse Gas (GHG) emissions;
- b) Provide assistance to the DNR-Air Quality Bureau in implementing ICCAC programs to small businesses; and
- c) Other opportunities for educational outreach as requested by the DNR and jointly determined.

Deliverable(s):

- a) When requested by the DNR, the Liaison shall attend meetings and participate in projects related to Climate Change as jointly determined.
- b) Submit brief written summaries of assistance provided per Article VII, 7.4.
- c) Provide education and outreach assistance as requested by the DNR in accordance with Article VI, 6.7.

ARTICLE VII SESSIONS and GENERAL REPORTS

Working Sessions

7.1 The DNR and DED shall convene at least three times each state fiscal year to evaluate the Liaison's progress in implementing each item in Article VI.

7.2 Each DNR program area may request, at anytime, a working session to be scheduled between themselves and DED to discuss various items.

Reports

7.3 Reports of Complaints. The Liaison shall inform DNR within five (5) working days when any complaint has been received by the Liaison in connection with:

- 1) The implementation of the Clean Air Act, or
- 2) A DNR program area.

DNR shall have the right to request data on the complaint and the data shall be submitted to DNR within ten (10) working days of the request. Data submitted by DED shall include:

- a) A description of each complaint;
- b) DNR program area impacted, if applicable;
- c) DNR staff person contacted; and
- d) How each complaint was handled by DED.

7.4 DED shall submit to each DNR program area reports (via electronic format) according to the schedule set forth in Article VII, Section 7.5. The report shall include, but not be limited to, the following:

- a) Description of each SOW item deliverable(s) and the action taken by the Liaison to completed the scope of work,
- b) Training completed (if any),
- c) Time utilization report pursuant to Article VII, Section 7.6.

7.5 Report Schedule. Reports are due on or before the listed due dates.

Reporting Period	Reports Due
July 1-October 31, 2009	November 15, 2009
November 1, 2009-February 28, 2010	March 15, 2010
March 1-June 30, 2010	July 15, 2010
July 1-October 31, 2010	November 15, 2010
November 1, 2010-February 28, 2011	March 15, 2011
March 1-June 30, 2011	July 15, 2011

7.6 Budget Reporting. With each payment claim as set forth in Article XII, Section 12.5, DED shall submit to DNR-Budget and Finance Bureau an expenditure report. The expenditure report shall be included with the payment claim and shall summarize actual monthly and cumulative expenditures. At a minimum, the expenditure reports shall contain budget line item categories for personnel and benefits, travel and training, and other. Additional clarification, within fifteen (15) days of DNR’s request shall be submitted for any expenditure listed. An attachment shall be included with the expenditure report that provides a summary of staff time and salary and benefit expenditures in correlation to each scope of work item, by DNR program area. For scope of work items that are not program specific, the Liaison shall summarize expenditures by the DNR program area(s) assisted.

ARTICLE VIII AGREEMENT PLANNING

Six (6) months prior to the termination of this Agreement, DED and DNR shall meet to begin planning and negotiating a new 28E Agreement. Activities shall include:

- a) Review and revision as appropriate of the current 28E Agreement; and
- b) DNR program areas interested in being active participants in the next Agreement will provide scope of work ideas and help to develop a new Agreement.

The DNR shall be the party responsible for providing drafts and any amendments of the Agreement.

ARTICLE IX CONTRACTUAL MONITORING

9.1 DNR shall have the right to review and observe, at any time, completed work or work in progress. The “right to review” includes, but is not limited to, DNR attendance at workshops or training sessions and the ability to schedule an audit to examine paperwork, materials, etc. prepared pursuant to this Agreement.

9.2 All information generated by the terms and conditions of this Agreement shall become the property of the State of Iowa.

9.3 DED shall place the following statement on the cover page of all non-financial reports, or other informational material prepared pursuant to this Agreement. This statement shall not be necessary on any quarterly or annual status reports submitted to DNR pursuant to this Agreement, provided such reports are not also being used as part of a public information program.

- a) For documents containing policies and statements, the following language shall be used:

"The publication of this document has been funded in part by the Iowa Department of Natural Resources. Policies and statements in this publication are intended solely as guidance, cannot be used to bind the Iowa Department of Natural Resources and are not a substitute for reading applicable statutes and regulations."

- b) For documents that do not include policies and statements, the following language shall be used:

"The publication of this document has been funded in part by the Iowa Department of Natural Resources."

9.4 DED shall submit to DNR an original unbound copy of each non-financial document or report prepared under this Agreement by the deadlines specified in Article VII, Section 7.5.

9.5 Each written or electronic non-financial informational report, outreach document, advertisement, or material concerning the DNR or the Liaison program pursuant to Section 507 of the CAAA shall be submitted to the DNR for consultation prior to release.

9.6 Any new scope of work items requiring a contract or changes to this Agreement shall be established as an amendment to this Agreement, which has been approved in writing by both DNR and DED.

ARTICLE X DNR RESPONSIBILITIES

10.1 The DNR, as needed, shall consult with the Liaison regarding the Liaison's assistance in the development of written or electronic publications and informational materials for public distribution under this Agreement. DNR shall review the documents generated by DED in accordance with Article X, Section 10.2.

10.2 Within fifteen (15) days of receipt, DNR shall review each written or electronic non-financial, informational or outreach document or report submitted to DNR by the Liaison. DNR shall provide comments based on its review. DED shall address DNR's comments within fifteen (15) days of receipt.

10.3 DNR will inform the Liaison in writing of policy changes that may impact small businesses.

10.4 DNR shall provide the Liaison access to training videos, workshops, and site visits that would serve as a development tool for the Liaison.

10.5 DNR will prioritize compliance priorities and communicate to the Liaison when assistance is needed to provide advanced outreach to the Liaison's clientele.

10.6 DNR will inform the Liaison when program areas have been identified that may be within the scope of the Liaison's services.

10.7 The DNR shall provide the Liaison (as per Article X, 10.2) with an update to all complaints submitted by the Liaison (per Article VII, 7.3). Updates may be made via phone, electronic format, or in hard copy. The update(s) shall at a minimum include:

- a) Date the complaint was received from the Liaison;
- b) DNR staff person who is handling the complaint; and
- c) An update to any resolution made to date.

10.8 The DNR will work with the Liaison to schedule meetings/appointments, set up meeting rooms, and other items of logistics at the DNR offices as needed.

ARTICLE XI MANNER OF FINANCING

11.1 Duties to be performed by DED, as outlined in this Agreement, shall be financed by each of the following areas as specified below:

SFY 2010*	SFY 2011*
Air Quality –Title V: \$51,435.00 (NTE)	Air Quality –Title V: \$52,207.00 (NTE)
Pollution Prevention: \$ 6,000.00 (NTE)	Pollution Prevention: \$ 6,000.00 (NTE)
Brownfields: \$ 6,435.00 (NTE)	Brownfields: \$ 7,207.00 (NTE)

***NTE – Not to Exceed**

11.2 DED shall provide a funding match during the life of this Agreement, for the amount specified in Article XIII. DED match shall be expended at the same time as DNR funds.

11.3 DED shall deposit payments from DNR made under this Agreement into a special account that shall be used solely for the payment of activities outlined under this Agreement.

11.4 Allowable Costs. Allowable costs as specified in this Agreement are subject to the cost principles defined in Office of Management and Budget Circular A-21 as amended.

11.5 Unallowable Costs. The following costs are unallowable to DED under this Agreement:

- a) Legal expenses for the prosecution of claims against the Department, the state of Iowa, the Federal Government or any subdivision thereof;
- b) The difference in cost between first-class air accommodations and less-than-first-class air accommodations, unless less-than-first-class air accommodations are not reasonably available;
- c) Costs incurred prior to the effective date of the contract;
- d) Costs of preparing proposals for potential contracts;
- e) Any losses arising from uncollectible accounts and other claims, and related costs;
- f) Contributions to a contingency reserve or any similar provision for unforeseen events;
- g) Contributions and donations;
- h) Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities;
- i) Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations; and
- j) Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

ARTICLE XII CONDITIONS OF PAYMENT

12.1 Payments shall be made following receipt of an internal expenditure transfer (IET) request from DED as set forth in Article XIII, for satisfactory completion of work outlined in

this Agreement provided that DED has complied with the terms of this Agreement and DNR does not dispute the payment amount.

12.2 The Agreement total payment shall not exceed \$129,284.00 from July 1, 2009, through June 30, 2011. The Agreement total payment per state fiscal year shall be in accordance with Article XIII. Unexpended funds from one state fiscal year shall not be carried forward by DED to any other state fiscal year.

12.3 All contracted duties and activities shall be performed regardless of DED exceeding the payment amount per state fiscal year. No further reimbursement shall be available without DNR approval.

12.4 The final IET request shall be due to the DNR within 30 days of expiration of this Agreement, unless an extension is requested by DED and granted by DNR. Payment of the final IET shall be withheld until receipt and acceptance by DNR of DED's final performance report, as set forth in Article VII, Section 7.5.

12.5 For each payment due under this agreement, DED shall submit to the DNR an IET and supporting documentation. Supporting documentation shall include, but is not limited to, a record of expenditures (as set forth in Article VII, Section 7.6).

- a) DNR shall not process the IET request until each program area has approved their record of expenditures from DED; and
- b) Each IET shall be submitted to DNR under the following schedule:

<u>Reporting Period</u>	<u>IET Due</u>
July 1-October 31, 2009	November 30, 2009
November 1, 2009-February 28, 2010	March 30, 2010
March 1-June 30, 2010	July 30, 2010
July 1-October 31, 2010	November 30, 2010
November 1, 2010-February 28, 2011	March 30, 2011
March 1-June 30, 2011	July 30, 2011

12.6 DNR shall not process payment for items of work or service which in the determination of DNR does not meet the specifications of this Agreement. If the item of work or service is resubmitted by a date agreed to by DNR and DED through an amendment to this Agreement and is determined by the Deputy Director to be satisfactorily completed according to the specifications of, then payment shall be processed.

ARTICLE XIII BUDGET

SFY 2010 Category	DNR – AQB Contributions*	DNR – Pollution Prevention Contributions*	DNR – Brownfields Contributions*	DED Match	Total**
Personnel/Benefits not to exceed	42,335.00	3,550.00	3,985.00	11,870.00	61,740.00
Travel & Training ^a	4,550.00	1,225.00	1,225.00	0.00	7,000.00
Other ^b	4,550.00	1,225.00	1,225.00	0.00	7,000.00
Total Costs	51,435.00	6,000.00	6,435.00	11,870.00	75,740.00

SFY 2011 Category	DNR – AQB Contributions*	DNR – Pollution Prevention Contributions*	DNR – Brownfields Contributions*	DED Match	Total**
Personnel/Benefits not to exceed	43,107.00	3,550.00	4,757.00	13,413.00	64,827.00
Travel & Training ^a	4550.00	1225.00	1225.00	0.00	7,000.00
Other^b	4550.00	1225.00	1225.00	0.00	7,000.00
Total Costs	52,207.00	6,000.00	7,207.00	13,413.00	78,827.00

*Costs are not to be exceeded for each DNR contribution source.

**Total can be exceeded as long as the DNR Contribution is not exceeded.

^aIncludes training courses, registration fees, and all travel.

^b Includes office supplies, advertising, printing, postage, professional services and rentals.

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. The Department shall have the right to terminate this Contract without penalty by giving sixty (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 the Department to appropriate funds sufficient to allow the Department 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 the Department 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; or

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 the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or

2.1.3 If the Department'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; or

2.1.4 If the Department'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 the Department's ability to fulfill any of its obligations under this Contract.

2.2 Immediate Termination by DNR. The Department 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 The Department 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;

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 the Department to declare the Contractor in default of its obligations under this Contract.

2.3.1 The Contractor fails to perform, to the Department'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 The Department 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 the Department 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, The Department shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Department's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Department 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, the Department 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 the Department 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 the Department, the Department 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 the Department 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 The Department under this Contract in the event of termination. However, the Department 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 in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

2.6.4 Any taxes that may be owed by the Contractor 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 the Department, 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 thirty (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 resulting there from, any other matters the Department may require.

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

2.7.3 Comply with the Department'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 the Department, 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 the Department any payments made by the Department 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 the Department, become the Department'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 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 of Iowa or any agency, division or department of the State. Neither the Contractor nor its employees shall be considered employees of the Department for federal or state tax purposes. The Department 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 4 CONFLICT OF INTEREST

4.1 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.

4.2 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:

4.2.1 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.

4.2.2 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.

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

4.3 If the activity creating a conflict of interest is in progress when the term of this Contract begins or is described in paragraph 4.2.1 or 4.2.2 above, then Contractor shall immediately cease the activity. During the term of this Contract, Contractor shall not enter into any activity described in paragraph 4.2.3 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 4.2.3 and are in progress when the term of this Contract begins.

Section 5 AMENDMENTS

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

Section 6 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 the 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 of Iowa. If more than one of the parties to this contract are administrative departments, commissions or boards of the state government, then the provisions of Iowa Code section 679A.19 shall apply in the case of any disputes between the those parties.

Section 7 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 8 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 9 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 10 REPRESENTATIONS AND WARRANTIES

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 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.

10.8 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.

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

Section 11 CONFIDENTIALITY

11.1 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.

11.2 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.

11.3 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.

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

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

Section 12 PROPERTY, INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT

12.1 Title to Property. Title to all property furnished by the Department to Contractor to facilitate the performance of this Contract shall remain the sole property of the Department. 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, or otherwise. 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 Department, except as otherwise provided in this Contract.

12.2 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 or contractor 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 the Department. Contractor shall obtain the prior advance written approval from DNR prior to Contractor's use of the name, marks or intellectual property rights of the Department.

12.3 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.

12.4 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 Department. Contractor hereby irrevocably transfers, assigns and conveys to the Department 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 Department 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 Department 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 Department 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 Department 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 Department may, without limitation: (i) adapt, change, modify, edit or use the Deliverables as the Department 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.

12.5 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 Department'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 Department 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.

12.6 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 13 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 14 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 15 NOTICE

15.1 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 of this Contract..

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

15.2.1 At the time it is actually received; or

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

15.2.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

15.3 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 16 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 17 TIME IS OF THE ESSENCE

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

Section 18 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 five (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 19 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 20 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 21 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. It shall be the responsibility of the Contractor to prove that performance was delayed or impracticable within the meaning of this paragraph.

Section 22 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 23 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:

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

23.2 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.

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

23.4 The Department 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 the Department 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.

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

23.6 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.

23.7 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 21, "Delay or Impossibility of Performance," shall not be applicable.

Section 24 SELF-INSURANCE BY THE STATE OF IOWA

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

Section 25 INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the Department, 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 utilized or employed by the Contractor; the Contractor's performance or attempted performance of this Contract, including any agent 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 of Iowa; 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 26 EQUAL EMPLOYMENT PROVISIONS

The Contractor has read and understands the provisions in Attachment C-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 27 FEDERALLY-FUNDED AGREEMENTS

If this Contract is funded by federal monies, then the Contractor has read and understands the provisions of Attachment C-B, Additional Requirements for Federally-Funded Agreements, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

Section 28 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, understands, and agrees to abide by 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 policies are located on the DNR website under the Legal Services Program (<http://www.iowadnr.gov/legal/index.html>) and are identified by name. 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.

Section 29 IOWA CODE CHAPTER 28E REQUIREMENTS

29.1 This agreement is a joint or co-operative undertaking within the meaning of Iowa Code section 28E.12.

29.2 DNR is a public agency within the meaning of Iowa Code section 28E.2. The Contractor is a public agency within the meaning of Iowa Code section 28E.2.

29.3 Pursuant to the provisions of Iowa Code section 28E.8, this agreement has been filed with the secretary of state.

29.4 This agreement has been approved by the governing bodies of both parties to this Contract.

Attachment C-A Equal Employment Opportunity.

The Contractor agrees to the following:

A.1 The Contractor 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. The Contractor 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 the Contractor'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. The Contractor agrees to post notices, setting forth provisions of this nondiscrimination clause, in conspicuous places available to employees and applicants for employment.

A.2 The Contractor shall in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, 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 the Contractor's business.

A.3 The Contractor shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965, as amended, Iowa Executive Order 15 or 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. The Contractor shall furnish all information and reports requested by the state of Iowa or required by, or pursuant to, the rules and regulations thereof and shall permit access to payroll and employment records by the state of Iowa for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.

A.4 In the event of the Contractor'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 of Iowa 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.

A.5 The Contractor shall include the provisions of paragraphs 8.1 through 8.4 hereof in every subcontract, unless specifically exempted by approval of the state of Iowa, so that such provisions shall be binding on each subcontract. The Contractor shall take such action with respect to any subcontract as the state of Iowa may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the state of Iowa, the Contractor may request the state of Iowa to enter into such litigation to protect the interests of the state of Iowa.

- A.6** In accordance with the provisions of 541 Iowa Administrative Code chapter 4:
- The Contractor or any 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.
 - The Contractor or any subcontractor may be required to have on file a copy of the affirmative action program, containing goals and time specifications. These contractual provisions shall be fully enforced. Any breach of them shall be regarded as a material breach of the Contract.
 - Compliance with the provisions of Iowa Code section 19B.7 and all applicable rules of the department of management prior to the execution of the Contract shall be a condition of the Contract binding upon the Contractor or service provider, its successors, and assignees.
 - Failure to fulfill the nondiscrimination requirements of this Contract or any of the rules and orders may cause the Contract to be canceled, terminated, or suspended in whole or in part, and the Contractor or service provider may be declared ineligible for future state contracts in accordance with authorized procedure or the Contractor may be subject to other sanctions as provided by law or rule.
 - The Contractor 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.
 - The Contractor shall be able to demonstrate to the satisfaction of the department of management or the DNR that its affirmative action program is productive.
 - The Contractor may be required to submit reports as requested by the department of management. The department of management may request other relevant information from a contractor at any time.
 - The department of management may undertake a compliance review of the Contractor, 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.

Attachment C-B

Additional Requirements for Federally-funded Agreements

B.1 Suspension and Debarment. The Contractor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

B.2 Lobbying Restrictions. The Contractor 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.

B.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. The Contractor 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.

B.4 Certified Audits. Local governments and non-profit subrecipient 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 the Department 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 the Department. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Department 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 Department. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships.

B.5 Drug Free Work Place. The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.