

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

ITEM

15

DECISION

TOPIC

Contract - University of Northern Iowa for Small Business Assistance Program: Iowa Air Emissions Assistance Program (IAEAP)

Recommendations:

Commission approval is requested for a one year-service contract with the University of Northern Iowa of Cedar Falls, IA. The contract will begin on July 1, 2009 and terminate on June 30, 2010. The total amount of this contract shall not exceed \$573,000. This contract is an Iowa Code Chapter 28E agreement.

Funding Source:

This contract will be funded through cost reimbursable payments funded solely by Title V program fees. 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 technical assistance program.

Purpose:

The parties propose to enter into this Contract for the purpose of retaining UNI to sustain a small business assistance program pursuant to Section 507 of the Clean Air Act Amendments of 1990 and to outline the activities and projects related to providing various aspects of technical assistance to Iowa's small businesses. Particular emphasis is placed on assisting small businesses with air permitting requirements, emission estimations, and determination of regulatory status and compliance requirements.

Contractor Selection Process:

University of Northern Iowa was chosen for this project because it has been demonstrated through the current and previous intergovernmental agreements that IAEAP is an effective assistance provider to Iowa's small businesses. It is also specified in the 1992 Iowa State Implementation Plan (SIP) with EPA that the University of Northern Iowa will be the small business technical assistance provider.

The DNR is allowed to contract with the University of Northern Iowa 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 2010-7230-01

With

UNIVERSITY OF NORTHERN IOWA

Agreement Title: Small Business Assistance Program Pursuant to Section 507 of the Clean Air Act Amendments of 1990: Iowa Air Emissions Assistance Program (IAEAP)

Agreement Amount: not to exceed \$573,000.00

Time of Performance: July 1, 2009 to June 30, 2010

Agreement Manager Christina Iiams
DNR-Air Quality Bureau
7900 Hickman Rd, Suite 1
Urbandale, IA 50322

Issue Payment to: University of Northern Iowa
ATTN: Cashier
Office of Business Operations
Cedar Falls, Iowa 50614-0008
Federal Employer ID# 42-6004333

The University of Northern Iowa 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.

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

UNIVERSITY OF NORTHERN IOWA

By: _____
Grants and Contracts Administrator Date

DEPARTMENT OF NATURAL RESOURCES

By: _____
Deputy Director Date

This Agreement was approved, as required by Subsection 455B.105 (6) of the Code of Iowa, by the Environmental Protection Commission on _____, 2009.

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SPECIAL CONDITIONS

ARTICLE I AUTHORITY

1.1 This Agreement, which is a joint or co-operative undertaking within the meaning of Iowa Code section 28E.1, is made and entered into between the Iowa Department of Natural Resources (Department or DNR) and the University of Northern Iowa (UNI). UNI's Iowa Waste Reduction Center (IWRC) shall be responsible for the duties, technical reporting, and activities required under this Agreement. This Agreement and Attachments shall constitute the entire agreement between UNI and the DNR with respect to the subject matter herein.

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

ARTICLE II STATEMENT OF PURPOSE

This Agreement is entered into for the purpose of creating and sustaining a small business assistance program pursuant to Section 507 of the Clean Air Act Amendments of 1990 (hereinafter CAAA). Activities and projects as outlined in this Agreement shall relate only to the duties as specified in Section 507 of the CAAA.

ARTICLE III TIME OF PERFORMANCE

This Agreement shall be effective on July 1, 2009. Performance by UNI 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, 2010, with the exception of the specific reports named in this document that are due on or before August 7, 2010.

ARTICLE IV DESIGNATION OF OFFICIALS

4.1 DNR –The Deputy Director of the Department shall be the official authorized to execute any changes in terms, conditions, or amounts specified in this Agreement. The Division Administrator and the Chief of the Air Quality Bureau, are designated by the Deputy Director to negotiate, on behalf of the Department, and subject to the approval of the Deputy Director, any changes to this Agreement.

- a) The DNR Agreement Manager shall be responsible for receiving all documents from UNI and shall then disseminate the documents to the respective DNR program areas. The DNR Agreement Manager may also assist in logistics planning for working sessions and meetings as necessary.

4.2 UNI – The Grants and Contract Administrator of UNI shall be the official authorized to execute any changes in terms, conditions, or amounts specified in this Agreement. The IWRC Program Manager, shall be the principal contact person and be responsible for programmatic and technical matters related to the Agreement.

4.3 The above officials shall represent their respective agencies in all matters necessary to the successful completion of this Agreement. In the event that one party proposes a change in the individuals designated, the other party shall be notified in writing no later than ten (10) working days prior to the proposed effective date of the change.

4.4 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 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, DNR Air Quality Bureau Chief (or designee), UNI Grant and Contracts Administrator, IWRC Director, and IAEAP Manager along with the DNR Agreement Manager 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 for the duties of the parties as defined in Attachment A and Attachment B of this Agreement.

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

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

5.4 No new legal or administrative entity is created by this Agreement.

ARTICLE VI UNI SCOPE OF WORK

The duties of UNI are listed in Attachment A.

ARTICLE VII DUTIES OF DNR

The duties of DNR are listed in Attachment B.

ARTICLE VIII GENERAL CONDITIONS

General conditions governing this Agreement are listed in Attachment C.

ARTICLE IX REPORTING

Reports required in Attachment A of this Agreement shall be submitted via electronic format per the following reporting schedules:

9.1 Monthly reports. UNI shall submit to the DNR Agreement Manager written reports on a monthly basis describing the work activities for the month preceding each report, according to the schedule set forth in Article IX, 9.2. The report shall include, but not be limited to, the following:

- a) Client Assistance Summary;
- b) Staff training completed (if any);
- c) Client Evaluation Summaries;
- d) Continuing Projects;
- e) Upcoming Activities;
- f) Equipment Inventory (as applicable); and
- e) Summary of work being performed, or that was completed, by the additional FTE (Section I/A/b).

9.2 Monthly Report Schedule. Monthly reports are due on or before the listed due dates.

<u>Reporting Period</u>	<u>Reports Due</u>
July 1-31, 2009	August 15, 2009
August 1-31, 2009	September 15, 2009
September 1-30, 2009	October 15, 2009
October 1-31, 2009	November 15, 2009
November 1-30, 2009	December 15, 2009
December 1-31, 2009	January 15, 2010
January 1-31, 2010	February 15, 2010
February 1-28, 2010	March 15, 2010
March 1-31, 2010	April 15, 2010
April 1-30, 2010	May 15, 2010
May 1-31, 2010	June 15, 2010
June 1-30, 2010	July 15, 2010

9.3 Final Report. UNI shall submit to the DNR Agreement Manager by July 30, 2010, a written report of work activities completed during the Agreement period. The report shall include, but is not limited to the following items:

- a) Client Assistance Summary,
- b) Client Evaluation Summaries,
- c) Staff training and meeting attendance,
- d) Website tally regarding the number of hits received, and
- e) Distribution tally of publication(s); and
- f) Equipment Inventory (as applicable).

9.4 Special Reports. Special reports shall be provided to the DNR via electronic format no later than the date established in Attachment A of this Agreement.

ARTICLE X. BUDGET

Category	Totals
Personnel/Benefits not to exceed	\$ 468,886.00
Travel/Training	\$ 22,000.00
Supplies	\$ 8,145.00
Equipment	\$ 0.00
PE Contractual	\$ 20,460.00
Other Direct Costs	\$ 11,065.00
Total Direct Costs	\$ 530,556.00
Indirect Costs	\$ 42,444.00
Total Project Costs not to exceed	\$ 573,000.00

ARTICLE XI MANNER OF FINANCING

11.1 Duties to be performed by UNI, as outlined in Attachment A of this Agreement, shall be financed solely by Title V fees.

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

11.3 Unallowable Costs. The following costs are unallowable to UNI under this Agreement:

- a) Legal expenses for the prosecution of claims against the DNR, 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 Agreement;
- d) Costs of preparing proposals for potential Agreements;
- e) Any losses arising from uncollectable accounts and other claims, and related costs;
- f) Contributions and donations;
- g) Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities;
- h) Costs resulting from violations of or failure to comply with Federal, State and local laws and regulations; and
- i) 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 Payment to UNI shall not exceed \$573,000.00. UNI shall receive payment only for actual costs incurred and invoiced for the satisfactory completion of work outlined in this Agreement. Payment for each expenditure category designated as "not to exceed" shall not exceed the amounts specified in Article X. Actual expenditures in the other budget categories may exceed budgeted amounts by 10% of the applicable category total without DNR approval.

12.2 All contracted duties and activities shall be performed regardless of UNI exceeding the total payment amount.

12.3 Invoices. For each payment due under this Agreement, UNI shall submit a signed original invoice and one (1) electronic version of the invoice and expenditure report to the DNR Agreement Manager.

- a) The expenditure report shall be included with the invoice and shall itemize actual expenses (as per Attachment A/I/B/2), provide an invoice period total, and provide an aggregate total of all invoices submitted during the Agreement period. The "other" category shall further list costs according to UNI's expenditure object descriptions (<http://access.uni.edu/reports/memfis/expobj.pdf>) that make up the category. Additional clarification, within fifteen (15) days of DNR's request shall be submitted for any expenditure listed.

b) Each claim shall be submitted according to the following schedule:

<u>Accounting Period Ending</u>	<u>Invoice Due no later than</u>
July 31, 2009	September 15, 2009
August 31, 2009	October 15, 2009
September 30, 2009	November 15, 2009
October 31, 2009	December 15, 2009
November 30, 2009	January 15, 2010
December 31, 2009	February 15, 2010
January 31, 2010	March 15, 2010
February 28, 2010	April 15, 2010
March 31, 2010	May 15, 2010
April 30, 2010	June 15, 2010
May 31, 2010	July 15, 2010
June 30, 2010	August 7, 2010

No claim shall be allowed by the Department of Revenue and Finance when such claim is presented after the lapse of three months from its accrual (Section 421.38, Code of Iowa, special provisions of law excepting).

12.4 Final Invoice. The final invoice shall be due August 7, 2010. Payment of the final invoice shall be withheld until receipt and acceptance by DNR of all work products required by UNI, including the final performance report.

12.5 Late Work Products. If UNI is unable to meet a deadline as identified in Section IV of this Agreement, UNI shall notify the DNR no later than ten (10) days after the deadline. UNI shall submit a plan for completing the work products that includes when and how the work product will be completed. DNR shall then approve in writing the submitted plan, and amend the Agreement as necessary, prior to processing payment.

12.6 Non-payment. DNR shall not process payment for items of work or service that, in the determination of the DNR, does not meet the specifications in Attachment A. If the item of work or service is resubmitted by a date agreed to by DNR and UNI through an amendment to this Agreement and is determined by the DNR's Deputy Director to be satisfactorily completed, according to the specifications in Attachment A, payment shall be processed.

ARTICLE XIII EQUIPMENT

13.1 UNI shall submit to the DNR, in accordance to Article IX, Section 9.1 f, a monthly report which itemizes all equipment purchases subject to Attachment C General Conditions, Section 12. Equipment purchased by the DNR for use by UNI shall be included on the monthly equipment inventory report.

ARTICLE XIV CONTRACTUAL MONITORING

14.1 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. The "right to review" does not pertain to information which has been obtained by the IWRC while acting according to the provisions of Iowa Code section 455B, Division IV, Part 9. Information obtained pursuant to Iowa Code chapter 455B, Division IV, Part 9, shall be confidential pursuant to the provisions of Iowa Code section 455B.484A.

14.2 UNI shall place the following statement on the cover page of all non-financial reports, including compliance assistance tools, 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.

The following language shall be included on all documents:

"This (document or tool) is intended solely as guidance, cannot be used to bind the Iowa Department of Natural Resources and is not a substitute for reading applicable statutes and regulations."

Any air quality compliance assistance tools funded in whole or in part by the DNR shall contain the following language:

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

14.3 Prior to distribution, UNI shall obtain DNR approval of any air quality compliance assistance tools funded by this Agreement, to ensure the accuracy and consistency of air quality compliance assistance tools. UNI shall also provide DNR the opportunity to review and comment on other air quality compliance assistance tools developed outside the scope of this contract. "Compliance assistance tool" shall include, but shall not be limited to, any of the following items that are developed or distributed by IWRC and used to assist small businesses with compliance of federal and/or Iowa air quality statutes, rules, or programs.

- a) Plain language guides or guidance sheets pursuant to Section II/A/2;
- b) Fact sheets or other explanatory documents that state or explain any aspect of the federal or Iowa air quality statutes, rules, or programs;
- c) Training documents or manuals that state or explain any aspect of the federal or Iowa air quality statutes, rules, or programs; and
- d) Computer applications or programs.

Assistance efforts and correspondence to specific businesses shall not be considered a compliance assistance tool.

14.4 UNI shall address any comments DNR may have on any financial, non-financial report or other work product within fifteen (15) days.

14.5 No document involving the small business assistance program created under the scope of this contract and the SBAP work plan shall be withheld from the DNR by UNI.

Attachment A UNI Scope of Work

SECTION I. General Provisions

A. Personnel

- 1. Personnel Commitment.** UNI represents that it has or will acquire all personnel required for the performance of the work specified under this Agreement. Projects or activities not in accordance with Attachment A shall not be conducted with the resources provided for in this Agreement unless written approval is granted by the DNR in advance. Sufficient personnel shall be employed to perform the services of this Agreement during the period of performance.
 - a)** UNI shall employ five (5) full time equivalent (FTE) positions under this Agreement and shall account for their time in accordance with the requirements of Section I/A/4. These five (5) FTE positions shall be devoted to fulfilling the requirements of this Agreement. At least three and one-half (3.5) of the five FTE positions shall be "professional staff" positions. The "professional staff" positions shall include "Waste Reduction Specialist", and "Program Manager."
 - b)** UNI shall employ one (1) additional full time equivalent (FTE) "professional staff" position for the period of July 1, 2009 to June 30, 2010. Requirements and definitions for this position shall be in accordance with the requirements of Section I/A/1a. The one (1) additional staff member shall work only on items specified in Section III/A/3 and III/A/4.
- 2. Personnel Qualification.** All of the work and services required hereunder shall be performed by UNI and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.
- 3. Training.** All professional staff shall maintain familiarity with relevant air quality permitting, emission inventory and compliance procedures, techniques, and technologies by routinely completing training courses.
 - a)** UNI shall submit to DNR a training plan for all professional staff. The training plan shall be submitted on an annual basis (as per Section IV) for DNR review and recommendation.
 - b)** UNI professional staff and the subcontracted Professional Engineer (PE) shall receive training from DNR as required in writing by the DNR.
- 4. Personnel report.** UNI shall submit, within 30 days of expiration of this Agreement, a report to the DNR summarizing how staff members' time was utilized. This Personnel Activity Report shall summarize each staff's percent of time and salary amounts for work performed under UNI's IAEAP contract from July 1, 2009 through June 30, 2010.
- 5. Personnel Changes.** UNI shall submit, no later than ten (10) working days from the date of change, a report containing the following information:
 - a)** Changes in personnel; including staff member's name, position before/after the changes, personnel and benefit amounts, and effective date of the changes;
 - b)** A new employee background summary, including name of the employee and a description of their education and experience;
 - c)** A special training schedule to be used for training new employees; and

- d) Identification of work products being affected by the change and how and when the work products will be completed.
- 6. **Personnel plan.** By January 15, 2010, UNI shall submit to DNR a staffing plan for the period of July 1, 2010 through June 30, 2011. This plan should document current utilization of staff time and propose and explain any changes to the current utilization.
- 7. **Subcontractors.** UNI shall subcontract with a third party for the work or services of a Professional Engineer (PE) in accordance with the requirements of this article and Attachment C General Conditions, Section 23. The PE shall be responsible for reviewing all construction permit applications completed by UNI. The PE shall be a licensed professional engineer according to the terms of Iowa Code chapter 542B.
 - a) Shall UNI no longer use the third party as identified in the document *Shoff Consulting Engineers – Agreement for Professional Engineering Services for Preparation of IaDNR Air Quality Construction Permits*, dated July 30, 2008, UNI shall submit to the DNR a request for approval to subcontract with a PE. The request shall be submitted to the DNR no later than July 15, 2009, and shall include all professional credentials, previous experience and other relevant information regarding the PE.
 - b) UNI shall submit, no later than July 31, 2009, a draft copy of the subcontract for DNR to review. The subcontract shall include, at a minimum, the following:
 - 1) The legal names of the parties entering into the subcontract;
 - 2) Time of performance;
 - 3) Services to be provided by the PE;
 - 4) Training to be completed or work items to be passed on to the PE by UNI;
 - 5) Monetary amounts to be paid per hour or per permit review;
 - 6) The following statement about the purpose of the subcontract:
“The purpose of this contract is to allow UNI to submit construction permit applications to DNR that have been prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1.”; and
 - 7) The same General Conditions as are identified in this Agreement.
 - c) The DNR shall review and approve in writing the above-mentioned submittals before the subcontract may be executed. If for any reason DNR does not approve the submission or any part thereof, then the subcontract shall be terminated and a new submission shall be submitted by UNI no later than September 1, 2009. A copy of the signed contract between UNI & the PE should be submitted to DNR within two weeks of being signed.

B. Fiscal Reporting

- 1. **Budget.** By January 15, 2010, UNI shall submit to the DNR a draft salary and non-salary itemized budget for the period of July 1, 2010 through June 30, 2011. UNI shall use the current Agreement’s responsibilities and line items, as provided in Section I/B/2, to assist in establishing the draft budget. Any changes to the current work duties/responsibilities should include a written justification for the proposed item. If requested by the DNR, UNI shall include a written justification for the proposed budget items.

- 2. Expenditure Reports.** UNI shall report expenditures per Article XII of this Agreement. At minimum, the expenditure reports shall contain the following line item descriptions. UNI may incorporate additional sub items as are reflected in their actual accounting practices.

Item	Expenditure Category	OVERALL BUDGET TOTAL
1	Personnel	468,886.00
2	Travel/Training	22,000.00
3	Supplies (Total)	8,145.00
4	Equipment (Total)	0.00
5	Contractual (Total)	20,460.00
6	Other (Total)	11,065.00
6a	Facility Charges	
6b	Telecommunications	
6c	Postage	
6d	Printing	
6e	Shipping	
6f	Internet/Cable	
6g	General Services	
6h	Lease/Rent – Non Inst.	
6i	Other Professional Services	
6j	Miscellaneous other	
	Total Direct Costs	530,556.00
7	Indirect charges	42,444.00
	Total Project Costs	573,000.00

C. Data Management

1. UNI shall develop and maintain, for a minimum of three (3) years from the last date of modification, a database of small businesses contacted by UNI. The database shall include, but not be limited to, the following:
- Company name;
 - Company address; and
 - Company phone number.
- This database shall be used by UNI to collect summary statistics for the purposes of the reporting activities required by this Agreement. If requested by the DNR, facility information as maintained in the database shall be provided to the DNR within twenty-four (24) hours, unless both DNR and UNI agree that Iowa Code section 455B.484A is applicable.
2. UNI shall establish and operate a toll-free telephone line to provide free assistance to small business stationary sources. Repairs to the toll free-line are the responsibility of UNI.

D. Information Technology

1. **Web Site.** UNI shall maintain a web-site that describes services and assistance provided by the Iowa Air Emissions Assistance Program (IAEAP) and provides small business stationary sources with information on their obligations under CAA. UNI

shall ensure that the web-site and any links remain functional; the web-site shall be reviewed, at a minimum, on a quarterly basis and updated as needed, or as requested by DNR.

E. Meetings

1. UNI shall coordinate with DNR regarding participating in any DNR task forces and workgroups that may have any relevant impact on small business stationary sources. UNI shall attend meetings and events as jointly determined.
2. Meetings, at least three times annually, shall be held with UNI and the DNR to provide updates on items pertaining to small businesses. Representatives of each agency shall be present. UNI shall be prepared to report and discuss the status of work products contained in this Agreement.
3. UNI shall meet with the DNR Emissions Inventory staff no later than November 30, 2009.
 - a) UNI shall assist the DNR Emissions Inventory Lead Worker in coordinating the meeting and the agenda.
 - b) During this meeting UNI and DNR will, at a minimum, review and as necessary update the SOP that was created in January 2007 (last updated November 2008) and identify concerns.
4. UNI, including the subcontracted Professional Engineer, shall meet with the DNR Construction Permitting staff no later than June 30, 2010.
 - a) UNI shall assist the DNR Construction Permitting staff in coordinating the meeting and the agenda.
 - b) During this meeting UNI and DNR will, at a minimum, review a current procedure/policy and identify areas of concern.
5. UNI shall attend scheduled meetings and events to inform small business stationary sources of applicable requirements. Coordination shall be jointly determined by UNI and the DNR within two weeks of a request for participation.

F. Initial Contract Review

By March 15, 2010, UNI shall submit to DNR comments and changes proposed to the draft Agreement, for the period of July 1, 2010 through June 30, 2011. Review comments shall include any proposed deletions, revisions, and additions. Justification shall be provided for any change in the draft Agreement.

G. Final Contract Review

By April 30, 2010, UNI shall submit to DNR any comments regarding the final draft Agreement.

H. Intergovernmental Cooperation

1. UNI shall collaborate, as needed, with the DNR–Air Quality Bureau, DNR-Pollution Prevention Services (P2), and the small business assistance Liaison of DED to develop and implement joint collaboration projects, evaluate the outcomes, and identify concerns.
2. In order to assure uniform adoption of emissions inventory and construction permit application procedures UNI shall:

- a) Use the inventory and application forms and data entry formats employed by DNR; and
 - b) Participate in the development of public workshops and other educational projects, as needed.
3. **Compliance Advisory Panel.** Once the Compliance Advisory Panel (CAP) is functional, UNI shall provide assistance to the CAP as is required pursuant to section 507(e) of the federal Clean Air Act Amendments of 1990, 42 U.S.C. § 7661f.

SECTION II. Ongoing Work Product Provisions

A. Program Development

1. As necessary or requested by the DNR, UNI shall provide written comment during the rule development and promulgation of DNR air quality rules with emphasis on impacts to small business stationary sources. Written comments shall be provided within the time frame requested by the DNR or, in the case of proposed rules, no later than the day public comment closes.
2. UNI shall coordinate with DNR to develop plain language guides or guidance sheets upon publication of final rules that may have a significant impact on small business stationary sources. UNI must comply with the following during the development of all plain language guides or guidance sheets:
 - a) Must be in accordance with the requirements of Article XIV, Section 14.2;
 - b) DNR and UNI shall meet, as necessary, to develop a format and outreach strategy; and
 - c) All plain language guides or guidance sheets shall be reviewed and approved by DNR prior to UNI distribution, as required by Article XIV, Section 14.3.

B. Compliance

1. UNI shall provide mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs and workshops as needed to encourage lawful cooperation among such sources, and other persons to further compliance with the federal Clean Air Act (CAA).
2. UNI shall provide mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.
3. UNI shall inform small business stationary sources of their obligations under the CAA, and shall provide on-site audits upon request or shall refer such a source to qualified auditors.
4. UNI shall ensure small business stationary sources receive notice of their rights under CAA in such a manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods, and any relevant or applicable proposed or final state or federal regulation or standard.
5. UNI shall assist DNR in the consideration of requests from small business stationary sources for the modification of any work practice or technological method of compliance, or the schedule of milestones for implementing such work practice or method of compliance preceding any applicable date, based on technological and financial capability of any such small business stationary source. Assistance shall include UNI communicating to the DNR any requests for modifications and shall participate in meetings, as requested.

C. Construction Permitting

1. In a timely and efficient manner and in accordance with the provisions of 567 IAC Chapters 20-33, UNI shall provide assistance to small business stationary sources for the following:
 - a) Determining applicable requirements and receiving construction permits and permits by rule;
 - b) Completing exemption justification documents for the small unit exemption; and
 - c) Determining applicability of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP).
2. UNI shall create a cover letter for applicants to include with each permit application being submitted to the DNR. The cover letter shall, at a minimum:
 - a) Explain the purpose of the requested modification or describe the new project; and
 - b) Be signed by the UNI staff member who prepared the application.

D. Emission Inventory

1. UNI shall submit Minor Source Emission Inventory Questionnaires (MSEIQs) for the 2008 calendar year to the DNR by September 1, 2009. The MSEIQs shall be submitted in accordance with the Standard Operating Procedures (SOP) created by the DNR and UNI (revised November 25, 2008).
2. UNI shall complete the following while providing assistance to the DNR and facilities with MSEIQs.
 - a) Provide one-on-one assistance to all small business stationary sources (as defined in Section 507 of the CAA) that request assistance between January 1 and May 15, 2010, provided that the source responds to UNI IAEAP staff's request for information in a timely fashion;
 - b) Complete all MSEIQs using SPARS Web;
 - c) Complete at least one (1) mailing offering assistance with the MSEIQ;
 - d) Conduct at least two (2) workshops offering assistance with the MSEIQ by April 30, 2010, unless jointly deemed unnecessary. As per Article XIV, Section 14.3, prior to distribution UNI shall obtain DNR approval of any air quality compliance assistance tools funded by this Agreement, to ensure accuracy and consistency; and
 - e) Provide site visits to all small business stationary sources required to complete a MSEIQ, if they request a visit.
3. All new UNI staff working with MSEIQs must schedule individual training with DNR MSEIQ staff to review SPARS Web and Standard Operating Procedures.

SECTION III. Special Work Product Provisions

A. Topic Specific Projects

1. **Compliance Assistance Tools Distribution.** UNI shall continue to provide compliance assistance tools as requested by the facility or the DNR. UNI shall coordinate efforts with the DNR. Compliance assistance tools to be provided shall include:
 - a) **Grain Potential to Emit Calculator – 2nd version.** To allow facilities to enter information for multiple facilities.
 - b) **Paint Plus Program – 2nd version.** To allow facilities to enter multiple paint booths into the program.Should additional updates be required of the compliance assistance tools, UNI shall receive DNR review and approval prior to UNI distribution.
2. **Dry Cleaners.** UNI shall assist dry cleaning facilities in complying with any National Emission Standards for Hazardous Air Pollutants (NESHAP) that impact the dry cleaning sector. Assistance shall include:
 - a) Create an updated version of the current Dry Cleaner Compliance Calendar. As requested by DNR, UNI shall coordinate efforts with the DNR and meet to review documents being published. DNR review and approval of the dry cleaner compliance calendar shall be received prior to UNI distribution.
 - b) Continue to distribute the dry cleaner compliance calendar.
3. **NESHAPs.** UNI shall coordinate with the DNR to evaluate the impact of new Area Source NESHAPs (NESHAPs) on existing Iowa small businesses, and assist those businesses in understanding and complying with NESHAPs. If approved in advance by the DNR for each NESHAP, the coordination shall include, but is not limited to:
 - a) **Needs Assessment.** UNI shall coordinate with the DNR to establish whether a needs assessment is appropriate. If appropriate, the needs assessment shall consist of any or all of the following:
 - 1) A mailing list of potentially affected sources;
 - 2) An e-mail distribution list of potentially affected sources; and/or
 - 3) A database of potentially affected sources.DNR review and approval of the needs assessment shall be received prior to UNI commencing work on the assessment.
 - b) **Compliance Assistance Tools.** UNI shall coordinate with the DNR regarding the development of necessary compliance assistance tools. As per Article XIV, Section 14.3, prior to distribution UNI shall obtain DNR approval of any air quality compliance assistance tools funded by this Agreement, to ensure accuracy and consistency.
 - c) **Outreach.** UNI shall coordinate efforts with the DNR to provide education to Iowa small businesses for the following:
 - 1) Paint Stripping and Miscellaneous Surface Coating Operations Rule (6H);
 - 2) Gasoline Bulk Plant Rule (6B);
 - 3) Plating and Polishing Rule (6W);
 - 4) Nine Metal Fabrication and Finishing Source Rule (6X); and
 - 5) Others as developed and jointly deemed outreach is necessary.

- 4. Gas Bulk Plant Calendars.** UNI shall assist gasoline bulk plants in complying with the Area Source NESHAP for Gasoline Bulk Plants (6B). Assistance shall include:
- a)** By March 1, 2010, create a two year Gasoline Bulk Plant compliance calendar that can be distributed to impacted small businesses.
 - b)** Conduct at least two (2) workshops by April 30, 2010, that will provide assistance to gasoline bulk plants in completing the new permit templates. As needed, assistance with NESHAP notification and recordkeeping requirements will also be provided.
 - 1)** UNI shall seek the assistance of the DNR, the Petroleum Marketers and Convenience Stores of Iowa (PMCI), the Agribusiness Association of Iowa (AAI), and the Iowa Department of Economic Development – Small Business Environmental Liaison (Liaison) with workshop logistics and costs. DNR staff will attend the workshops and provide permit completion assistance to workshop attendees.
 - c)** As requested by DNR, UNI shall coordinate efforts with the DNR and meet to review documents being published. DNR review and approval of all compliance assistance tools to ensure accuracy and consistency shall be received prior to UNI distribution.

SECTION IV. UNI Work Products

Product	Reference	Due Date
Personnel Changes	Section I/A/5	Within 10 days
Distribute Compliance Assistance Tools	Section III/A/1	Ongoing
Request for PE Subcontractor	Section I/A/7a	July 15, 2009
Draft subcontract	Section I/A/7b	July 31, 2009
Executed subcontract	Section I/A/7c	2 weeks after signed
July Monthly Report	Article IX/9.1 & 9.2	August 15, 2009
2008 MSEIQs	Section II/D/1	September 1, 2009
August Monthly Report	Article IX/9.1 & 9.2	September 15, 2009
July Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	September 15, 2009
September Monthly Report	Article IX/9.1 & 9.2	October 15, 2009
August Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	October 15, 2009
October Monthly Report	Article IX/9.1 & 9.2	November 15, 2009
September Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	November 15, 2009
Emission Inventory Mtg	Section I/E/3	November 30, 2009
November Monthly Report	Article IX/9.1 & 9.2	December 15, 2009
October Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	December 15, 2009
December Monthly Report	Article IX/9.1 & 9.2	January 15, 2010
Budget	Section I/B/1	January 15, 2010
Personnel Plan	Section I/A/6	January 15, 2010
Proposed SFY 2011 training plans	Section I/A/3a	January 15, 2010
November Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	January 15, 2010
January Monthly Report	Article IX/9.1 & 9.2	February 15, 2010
December Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	February 15, 2010
Gas Bulk Plant Compliance Calendar	Section III/A/4a	March 1, 2010
Initial Contract Review	Section I/F	March 15, 2010
February Monthly Report	Article IX/9.1 & 9.2	March 15, 2010
January Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	March 15, 2010
March Monthly Report	Article IX/9.1 & 9.2	April 15, 2010
February Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	April 15, 2010
Final Contract Review	Section I/G	April 30, 2010
MSEIQ Workshops (as agreed upon)	Section II/D/2d	April 30, 2010
Gas Bulk Plant Workshops (as agreed upon)	Section III/A/4b	April 30, 2010
April Monthly Report	Article IX/9.1 & 9.2	May 15, 2010
March Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	May 15, 2010
May Monthly Report	Article IX/9.1 & 9.2	June 15, 2010
April Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	June 15, 2010
Construction Permit Mtg.	Section I/E/4	June 30, 2010
Dry Cleaner Calendar Updated	Section III/A/2	June 30, 2010
June Monthly Report	Article IX/9.1 & 9.2	July 15, 2010
May Invoice & Expenditure Report	Article XII/12.3(b) & Section I/B/2	July 15, 2010
Staff Time Report	Section I/A/4	July 30, 2010
Final Report	Article IX/9.3	July 30, 2010
Final Invoice & Expenditure Report	Article XII/12.4 & Section I/B/2	August 7, 2010

Attachment B Duties of DNR

A. Review of UNI

- 1. Review of Work Product** Within 15 days of receipt, DNR shall review each non-financial, informational document or report submitted by UNI. DNR shall provide comments based on its review. Failure of DNR to provide comments within the allotted time constitutes approval by DNR.
- 2. Training Plan Recommendations.** By February 15, 2010, DNR shall provide UNI with any recommendations to the training plan as submitted. DNR shall provide written justification in conjunction with all recommendations.
- 3. Initial Draft Agreement.** By February 15, 2010, DNR shall submit to UNI the initial draft Agreement for the period of July 1, 2010 through June 30, 2011. DNR shall provide written justification for any changes to the Agreement.
- 4. Final Draft Agreement.** By April 15, 2010, DNR shall submit to UNI the final draft Agreement for the period of July 1, 2010 through June 30, 2011.
- 5. Contract negotiations.** Annually, if requested by UNI and/or the DNR, the two parties shall meet to discuss final changes to the Agreement.

B. Other Duties

- 1. Permit Review.** DNR shall review applications and issue construction permits for all relevant items submitted by facilities receiving assistance from UNI.
- 2. Technical Assistance.** Upon request from UNI, DNR shall provide technical assistance as needed.
- 3. Monthly Payment.** Monthly payments shall be made no later than sixty (60) days after receipt and approval by the DNR Agreement Manager of invoices from UNI.
- 4. Final Payment.** Payment of the final invoice shall be made no later than sixty (60) days after receipt and approval by the DNR Agreement Manager of the invoice. The DNR shall withhold final payment until:
 - a) Receipt and acceptance of UNI's final performance report; and
 - b) Receipt and acceptance of all work products as required through this Agreement.
- 5. Training.** DNR shall provide UNI with access to training videos, workshops, and site visits that would serve as a development tool for UNI.
- 6.** DNR shall accommodate UNI with workspace, staff accessibility, and resources should UNI decide to work in the DNR office on Air Quality projects. UNI IAEAP staff shall contact the Agreement Manager to set up the logistics of working in the DNR office.

C. Intergovernmental Cooperation

- 1. Program development.** To assure uniform adoption of emissions inventory and construction permit application procedures DNR shall:
 - a) Provide UNI with inventory and application forms and data entry formats employed by DNR; and
 - b) Participate in the development of public workshops and other educational projects, as deemed necessary.

- 2. Program changes.** In addition to the assistance and cooperation noted regarding specific issues above, the DNR shall make every effort to keep UNI informed of state and federal developments, which may affect the small business program.
- 3. Joint Collaboration Projects.** The DNR shall collaborate, as needed, with UNI and the small business assistance Liaison of DED to develop and implement joint collaboration projects, evaluate the outcomes, and identify concerns.

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 11.2.1 or 11.2.2 above, then Contractor shall immediately cease the activity. During the term of this Contract, Contractor shall not enter into any activity described in paragraph 11.2.3 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 11.2.3 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.