ATTACHMENT 6 – DRAFT AGREEMENT

IOWA DEPARTMENT OF TRANSPORTATION
Standard Agreement Terms and Conditions for a
National Electric Vehicle Infrastructure (NEVI) Project

This Agreement is between the State of Iowa, acting through its Department of Transportation (Iowa DOT) and [full legal name of the awardee including its address – can also include a d/b/a] ("Awardee").

AWARDEE INFORMATION				
Company				Federal Tax ID
Street Address		City	State	Zip Code
Contact Name	E-mail Address		Phone	Fax

RECITALS

1. The purpose of this Agreement is to provide funding to the Awardee to acquire, construct, install, operate, maintain, and own electric vehicle (EV) charging stations using Federal Highway Administration (FHWA) National Electric Vehicle Infrastructure funds. The Awardee shall operate and maintain the EV charging stations for 5 years from the date Iowa DOT issues a Notice to Proceed to Task 4.
2. All applicable requirements of Title 23 United States Code (U.S.C.) and 2 Code of Federal Regulations (CFR) Part 200 apply to the administration of these funds, which include, but are not limited to: 23 CFR 680, FHWA Federal Form 1273, the Davis-Bacon Act, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, the National Environmental Policy Act of 1969 (NEPA), and the Build America, Buy America Act. In addition to these requirements, the Awardee must comply with all other standards and requirements that may be required by federal, state, and local laws.
3. Awardee represents that it is duly qualified and agrees to perform all services described in this Agreement to the satisfaction of the State.
4. Awardee certifies by signature on this Agreement, under pain of penalties for false certification, that the Awardee has complied with Iowa Code Section 452A.17(1.a.8) as amended, if applicable, and Iowa Code Section 91C.5 (Public Registration Number), if applicable.

DRAFT

AGREEMENT TERMS

1 Term of Agreement, Survival of Terms, and Incorporation of Exhibits

1.1 Effective Date. This Agreement will be effective on [Spell out full date (e.g., August 1, 2016)], or the date the State obtains all required signatures, whichever is later. No payments will be made to Awardee until this Agreement is fully executed. Awardee must not begin work under this Agreement until this Agreement is fully executed and Awardee has been notified by the State's Authorized Representative to begin the work.

1.2 Expiration Date. This Agreement will expire no later than [Spell out full date, which shall be 7 years from the Effective Date], which is 7-years from the Effective Date, or when all obligations have been fulfilled satisfactorily, whichever occurs first. If required, the Awardee can request, in writing, a no-cost time extension from the State. The request shall include an explanation for the time delays and need for time extension. The State has the authority to approve or deny any such request.

1.3 Exhibits. It is agreed that the following documents are made a part hereof and together with this instrument constitute the Agreement. This Agreement contains all of the terms and conditions agreed upon by the parties hereto.

- Exhibit A: Notice of Funding Opportunity
- Exhibit B: Technical Application Form
- Exhibit C: Cost Proposal Form
- Exhibit D: Technical Requirements
- Exhibit E: Scope of Work
- Exhibit F: Executed Site Host Agreement
- Exhibit G: Letter of Credit
- Exhibit H: Invoice Template
- Exhibit I: FHWA Form 1273
- Exhibit J Standard Title VI/Non-Discrimination Assurance Form
- Exhibit K: Predetermined Wage Rate IA22 – 28.0

2 Awardee's Duties

2.1 Awardee shall perform the duties specified in the Exhibits listed above, which are attached and incorporated into this Agreement.

2.2 Awardee shall comply with all requirements and regulations specified in the Exhibits listed above, which are attached and incorporated into this Agreement.

2.3 Awardee shall submit required reports per Exhibit E. If a required report is past due, payments will not be made until the Awardee has submitted the required report.

2.4 Awardee shall maintain separate accounts for this Project in accordance with generally accepted accounting principles. Accounts must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions. In addition, accounts must be sufficient to allow for the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the federal statutes, regulations, and the terms and conditions of the federal award.

2.5 Awardee shall maintain all records for the Project separately and shall make them available to Iowa DOT for review in a timely manner, if requested.

2.6 Awardee shall procure all necessary permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incident to the due and lawful prosecution of the Agreement.

2.7 Awardee is presumed to be familiar with all laws, ordinances, and regulations that may, in any manner, affect those engaged or employed upon the work, or materials or equipment used in or upon the work, or that may in any way affect the conduct of the work. Awardee shall so conduct the work such that conflict with any such laws, ordinances, or regulations will be avoided, and the Awardee shall save harmless Iowa DOT and its representatives against any claims arising from violation thereof.

3 Time

3.1 Awardee must comply with all the time requirements described in this Agreement. In the performance of this Agreement, time is of the essence. If additional time is required to complete a Task, the Awardee must submit a request for a time extension, in writing, to Iowa DOT providing details as to why additional time is required. Iowa DOT reserves the right to ask for additional information and approve or deny time extensions at Iowa DOT's discretion.

4 Consideration and Reimbursement

4.1 Consideration. The State will reimburse for all services performed by Awardee under this Agreement as follows:

DRAFT

4.1.1 Reimbursement. Awardee will be reimbursed according to Exhibit C, Submitted Cost Proposal, and in alignment with the table below. If actual expenses are less than the costs included in Exhibit C, the Awardee will be reimbursed for no more than their Requested Reimbursement Percentage (%) of eligible costs for both capital and operations and maintenance (O&M) costs. All O&M Reimbursements shall be capped at $200,000 over the 5-year O&M period, regardless of the Requested Reimbursement Percentage.

Payment Number	Deliverables Required for Payment
Capital Payment 1	Completion of Tasks 1-3 and 5
O&M Payment 1	Completion of Tasks 4 and 5 after year 1 of O&M
O&M Payment 2	Completion of Tasks 4 and 5 after year 2 of O&M
O&M Payment 3	Completion of Tasks 4 and 5 after year 3 of O&M
O&M Payment 4	Completion of Tasks 4 and 5 after year 4 of O&M
O&M Payment 5	Completion of Tasks 4, 5, and 6 after year 5 of O&M

4.1.2 Total Obligation. The total obligation of the State for all capital reimbursements to Awardee under this Agreement will not exceed $[ ] or [ ] percent of the total incurred eligible capital costs.
The State's total obligation for all O&M reimbursements to Awardee under this Agreement will not exceed $[ ] or [ ] percent of the total incurred eligible O&M costs.

4.1.3 Matching Funds. Awardee shall provide the Applicant Cost Share in Exhibit C, which shall be no less than 20 percent of the total Project Costs. Awardee is responsible for all costs that exceed the Total Obligation.

4.1.4 Eligible Costs. Awardees shall be reimbursed for Eligible Costs according to Exhibit C and are deemed eligible according to 23 CFR 680 and federal, state, and local laws.

4.1.5 Ineligible Costs. Awardee shall not be reimbursed for costs incurred prior to execution of this Agreement; costs deemed ineligible per 23 CFR 680, federal, state, or local laws; costs that exceed the Total Obligation; or costs incurred for work that does not meet the requirements of this Agreement at the sole discretion of Iowa DOT.

4.1.6 Withholding. Iowa DOT will withhold 40 percent of the actual costs incurred for the Maximum Total Capital Reimbursement Amount due, as detailed in Exhibit C. Of this withholding, 20 percent of the original withholding amount will be released on an annual basis at the time of Annual O&M Payments, if all performance requirements and obligations of the Agreement are met.

4.1.7 Letter of Credit. Awardee shall provide a Letter of Credit in the amount of 60 percent of the Maximum Total Project Reimbursement, per the requirements of the Agreement. After each successful year of operations and maintenance, the total amount of the Letter of Credit can be reduced by 20 percent of the original amount following notification from Iowa DOT. Iowa DOT reserves the right to determine if successful O&M has been met and has sole discretion to provide such notification.

4.1.8 Performance Deductions. If Awardee does not meet the required 97 percent uptime per this Agreement, the following performance deductions will be subtracted from that year's O&M payment: $1,000 will be deducted for every percentage point, or fraction thereof, that the 97 percent uptime is not met on a per-port basis, per the NEVI Rule. If there is no remaining O&M payment for the deduction to be subtracted from, the amount will be deducted from the remaining withholding. Once a Performance Deduction occurs, those funds cannot be recouped and are permanently subtracted from the Total Obligation.

4.1.9 Program Income. For the purposes of program income or revenue earned from the operation of an EV charging station, all revenues received from operation of the EV charging facility shall only be used for:

(i) Debt service with respect to the EV charging station project, including funding of reasonable reserves and debt service on refinancing;

(ii) A reasonable return on investment of any private person financing the EV charging station project, as determined by the State or other direct recipient.

DRAFT

(iii) Any costs necessary for the improvement and proper operation and maintenance of the EV charging station, including reconstruction, resurfacing, restoration, and rehabilitation;
(iv) If the EV charging station is subject to a public-private partnership agreement, payments that the party holding the right to the revenues owes to the other party under the public-private partnership agreement; and
(v) Any other purpose for which federal funds may be obligated under Title 23 U.S.C.

4.1.10 Reasonable Return on Investment. Awardee shall not make more than a Reasonable Return on Investment on the Project. Reasonable Return on Investment on the project is defined as no more than 15 percent annual profit on the Project. This Profit is defined as the remainder of all revenue received from the operation of the Project and reimbursements (Total Revenue) after all eligible expenses (reimbursable or non-reimbursable) have been deducted. For this calculation only, the Total Capital Costs of the Project shall be applied as an expense divided equally between the first 5 years of O&M.

$$Profit\ \% = \frac{(Revenue\ from\ Operations + Reimbursements) - (Eligible\ Expenses + \frac{Total\ Capital\ Costs}{5})}{Eligible\ Expenses + \frac{Total\ Capital\ Costs}{5}} \times 100\%$$

Revenue: Revenue received from the operation of the Project and Reimbursements
Expense: All eligible expenses (reimbursable or non-reimbursable) and 20 percent of Total Capital Costs

Any Profit over 15 percent must be returned to Iowa DOT. Awardee shall provide a letter signed by a certified public accountant (CPA) with each invoice stating the profit amount earned. If more than 15 percent profit was earned, the difference will be subtracted from the amount owed to the Awardee. If this amount exceeds the final payment, the Awardee shall return the required amount to Iowa DOT in a means determined by Iowa DOT. Iowa DOT may ask the Awardee to provide documentation as to the amount of profit earned.

4.2 Payment

4.2.1 Invoices. Awardee will submit invoices for payment by [describe method]. Exhibit H, which is attached and incorporated into this Agreement, is the form Awardee will use to submit invoices. The State's Authorized Representative, as named in this Agreement, will review each invoice against the approved Exhibit C, Cost Proposal, expenditures to-date, including proof of expenditures, and the required report before approving payment. The State will pay Awardee promptly after Awardee presents an itemized invoice for the services performed and the State's Authorized Representative accepts the invoiced services. Invoices will be submitted timely and no later than 90 days after the completion of tasks detailed in 4.1.1, Reimbursement.

4.2.2 All Invoices Subject to Audit. All invoices are subject to audit, at the State and FHWA's discretion. Audits will be conducted using the cost principles and procedures set forth in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

4.2.3 State's Payment Requirements. State will make undisputed payments no later than 45 days after receiving Awardee's invoices and required reports for services performed. If an invoice is incorrect, defective, or otherwise improper, State will notify Awardee within 10 days of discovering the error. After State receives the corrected invoice, State will pay Awardee within 45 days of receipt of such invoice.

4.2.4 Prompt Payment to Subcontractors. Awardee shall comply with all federal and state prompt payment requirements, including the following:

4.2.4.1 Awardee shall pay each subcontractor promptly. Any delay or postponement of payment among the parties may take place only for good cause, with written notification to the subcontractor. A payment to a subcontractor for satisfactory performance of the subcontractor's work, excluding subcontractor retainage, shall be made by the Awardee no later than one of the following, as applicable:

- 7 calendar days after the Awardee receives payment for the subcontractor's work.

DRAFT

- 7 calendar days after the Awardee could have received payment for the subcontractor's work, if the reason for nonpayment is not the subcontractor's fault.

4.2.4.2 The Awardee may withhold up to 5 percent of each progress estimate on work performed by subcontractors as subcontractor retainage.

4.2.4.3 Subcontractor retainage shall be payable by the Awardee within 30 calendar days after satisfactory completion of the work by the subcontractor. Subcontractor's work is completed satisfactorily when all requirements called for in the subcontract have been accomplished and required documentation has been provided by the subcontractor. Non-bonded subcontractors may be required to submit proof of payment for all material bills and wages to the Awardee before the Awardee is required to pay the subcontractor retainage.

4.2.5 Unexpended Funds. Any funds that remain at the end of the Project shall revert to Iowa DOT's NEVI Formula Funding Program.

4.2.6 Repayment of Funds. Awardee shall repay any and all funds received as a result of this Agreement in the event of default or unlawful use of funds. Iowa DOT may request for the repayment of funds from the Awardee, or Iowa DOT may make a claim against the Letter of Credit provided to the Department, at the Department's sole discretion.

4.2.7 Closeout. Awardee shall submit all required reports, documents, and invoices per Exhibit E before final payment will be made by the State and the Project will be closed out.

4.3 Contracting Requirements. All contracts, subcontracts, and agreements between Awardee and third parties must contain all applicable provisions of this Agreement, and copies shall be provided to Iowa DOT within 30 days of execution of said contracts, subcontracts, and agreements. Except for the furnishing and transportation of materials, no portion of a contract let through Iowa DOT shall be sublet, assigned, or otherwise disposed of except with Iowa DOT's written authorization. Where a subcontract has been authorized, the subcontractor shall be responsible to complete that portion of the contract with its own organization. On contracts involving federal aid, the agreement between the Awardee and subcontractor shall be in writing, and Form FHWA-1273 and the most recent Iowa predetermined wage rates shall be attached physically to each such agreement.

5 Conditions of Payment. All services provided by Awardee under this Agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. Awardee will not receive payment for work the State finds to be unsatisfactory or performed in violation of federal, state, or local law.

6 Authorized Representatives

6.1 The State's Authorized Representative is:
[name, title, address, telephone number, email], or his/her successor. The State's Authorized Representative has the responsibility to monitor Awardee's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

6.2 Awardee's Authorized Representative is:
[name, title, address, telephone number, email]. If Awardee's Authorized Representative changes at any time during this Agreement, Awardee will notify the State immediately.

7 Assignment Amendments, Waiver, and Agreement Complete

7.1 Assignment. Awardee may neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

DRAFT

7.2 Amendments. Any amendments to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.

7.3 Waiver. If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or the State's right to subsequently enforce it.

7.4 Agreement Complete. This Agreement contains all negotiations and agreements between the State and Awardee. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

7.5 Electronic Records and Signatures. The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.

7.6 Certification. By signing this Agreement, the Awardee certifies that it is not suspended or debarred from receiving federal or state awards.

8 Indemnification, Liability, and Insurance

8.1 Indemnification. Awardee shall defend, indemnify, and hold harmless the State of Iowa, Iowa DOT, and its officers and employees from and against any and all losses, claims, or causes of action, including attorney's fees, accruing or resulting from any and all claims by subcontractors, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all losses, claims or causes of action, including attorney's fees, accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Awardee or Awardee's agents or employees in the performance of this Agreement, including the operation of the EV charging station contemplated herein.

8.2 This clause will not be construed to bar any legal remedies Awardee may have for the State's failure to fulfill its obligations under this Agreement.

8.3 Certificate of Insurance. The Awardee's certificate of liability and property damage insurance described in Article 1107.02 shall be filed with Iowa DOT on or before the execution of the Agreement and shall be maintained throughout the prosecution of the work and until final acceptance and completion of the Agreement. A separate verification shall be required for agreements awarded on the basis of joint bids.

8.3.1 Insurance Coverage. It shall be the Awardee's responsibility to have liability insurance covering all of the construction operations and O&M incident to contract completion and the Awardee must provide a "Certificate of Insurance" to Iowa DOT at the time of execution of the contract. The certificate shall identify the insurance company firm name and address, Awardee name, policy period, type of policy, limits of coverage, and scope of work covered (single contract or statewide). This requirement shall apply with equal force, whether the work is performed by persons employed directly by the Awardee, including a subcontractor, persons employed by a subcontractor, or by an independent contractor.

8.3.1.1 In addition to the above, Iowa DOT shall be included as an insured party, or a separate owner's protective policy shall be filed showing Iowa DOT as an insured party.

8.3.1.2 The liability insurance shall be written by an insurance company (or companies) qualified to do business in Iowa. For independent contractors engaged solely in the transportation of materials, the minimum coverage provided by such insurance shall be not less than that required by Chapter 325A, Code of Iowa, for such truck operators or contract carriers as defined therein. For all other awardees, contractors, subcontractors, independent contractors, and Iowa DOT, the minimum coverage by such insurance shall be as follows:

DRAFT

General liability, including: Independent Contractors, Contractual Liability, Products and Completed Operations

BODILY INJURY
$500,000 Each Occurrence
$500,000 Aggregate
PROPERTY DAMAGE
$250,000 Each Occurrence
$250,000 Aggregate
or
BODILY INJURY AND PROPERTY DAMAGE – COMBINED SINGLE LIMIT*
$750,000 Each Occurrence
$750,000 Aggregate

*A comprehensive Catastrophe Liability Policy (Umbrella) can be used to aid in achieving the minimum required limits.

8.3.1.3 Failure on the part of the Awardee to comply with the requirements of this article will be considered sufficient cause to suspend the work, withhold estimates, and deny the Awardee from receiving further contract awards, as provided in Article 1103.01

9 Government Data Practices.

9.1 Data Request. Agreements with the State of Iowa are part of the public domain, subject to the requirements and limitations of the Iowa Open Records Act (Iowa Code Chapter 22). To the extent the Awardee is accumulating data or other information protected from disclosure by statute or third-party contract, the Awardee must comply with those requirements.

9.2 Records. Awardee shall maintain books, records, documents, and other evidence pertaining to all costs and expenses incurred and revenues received under this Agreement in sufficient detail to reflect all costs, direct and indirect, of labor, materials, equipment, supplies, services, and other costs and expenses of whatever nature, for which payment is claimed under this Agreement. The Awardee shall maintain books, records, and documents in sufficient detail to demonstrate compliance with the Agreement and shall maintain these materials for a period of 5 years beyond the end date of the Agreement or December 31, 2032, whichever is later. Records shall be retained beyond the prescribed period if any litigation or audit is begun or if a claim is instituted involving the Agreement covered by the records. In these instances, the records shall be retained until the litigation, audit, or claim has been resolved.

9.3 Access to Records/Inspections. Awardee shall permit and allow Iowa DOT, its representatives, representatives of Treasury, FHWA, and/or Iowa's Auditor of State to access and examine, audit and/or copy the following, wherever located: any plans and work details pertaining to the Agreement; all of the Awardee's books, records, policies, client files, and account records; all other documentation or materials related to this Agreement; and any facility used to carry out the Project. Awardee shall provide proper facilities for making such examination and/or inspection of the above-mentioned records and documentation. Awardee shall not impose a charge for audit or examination of the Awardee's information and facilities.

10 Safety, Health, Pollution, and Sanitation. In the performance of the Agreement, the Awardee shall comply with all applicable laws, rules, regulations, and ordinances governing safety, health, pollution, sanitation, noise control, and disposal of waste materials. Awardee shall also make available such additional safeguards, safety devices, protective equipment, and take such actions as are reasonably necessary to protect the life and health of employees and the public. Violations of properly promulgated laws, rules, regulations, and ordinances reported to the State's Authorized Representative by responsible agencies may result in the issuance of a suspension order until such time as the violation is corrected.

DRAFT

11 Workers Compensation. The Awardee's employees and agents will not be considered State employees. Any claims that may arise on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12 Publicity and Endorsement

12.1 Publicity. Awardee shall notify the State of any publicity regarding the subject matter of this Agreement and allow the State to determine if it wants to be identified as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For the purposes of this provision, publicity includes notices, informational pamphlets, press releases, and similar public notices prepared by or for the Awardee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.

12.2 Endorsement. The Awardee must not claim that the State endorses its products or services.

13 Governing Law, Jurisdiction, and Venue

13.1 Venue. This Agreement shall be interpreted in accordance with the laws of the state of Iowa, and any action relating to this Agreement shall only be commenced in the Iowa District Court for Story County or the United States District Court for the Southern District of Iowa.

13.2 Notice of Proceedings. Awardee shall notify Iowa DOT within 30 days of the initiation of any claims, lawsuits, or proceedings brought against the Awardee.

13.3 Notices to Iowa DOT. In the event the Awardee becomes aware of any material alteration in the Project, initiation of any investigation or proceeding involving the Project, or any other similar occurrence, the Awardee shall notify Iowa DOT promptly.

14 Default.

14.1 Events of Default. The following shall constitute Events of Default under this Agreement:

14.1.1 Material Misrepresentation. If at any time any representation, warranty, or statement made or furnished to Iowa DOT by, or on behalf of, the Awardee in connection with this Agreement or to induce Iowa DOT to make an award to the Awardee shall be determined by Iowa DOT to be incorrect, false, misleading or erroneous in any material respect when made or furnished and shall not have been remedied to Iowa DOT's satisfaction within 30 days after written notice by Iowa DOT is given to the Awardee.

14.1.2 Noncompliance. If there is a failure by the Awardee to comply with any of the covenants, terms, or conditions contained in this Agreement.

14.1.3 Misspending. If the Awardee expends grant proceeds for purposes not described in the Proposal, this Agreement, or as authorized by Iowa DOT.

14.1.4 Lack of Capacity. If the Awardee demonstrates a lack of capacity to carry out the approved activities and services in a timely manner and with the funds awarded, at the sole discretion of Iowa DOT.

14.1.5 Abandonment. If the Awardee abandons any activities or services assisted under this Agreement.

14.1.6 Failure to Comply with Laws. If the Awardee has failed to verify compliance with any state or federal laws, rules, regulations, guidance, or orders.

14.2 Notice of Default. Iowa DOT shall issue a written notice of default providing therein a 15-day period in which the Awardee shall have an opportunity to cure, provided that cure is possible and feasible.

14.3 Remedies upon Default. If the default remains after the opportunity to cure, Iowa DOT shall have the right, in addition to any rights and remedies available by law, to do one or more of the following:

14.3.1 Reduce Payment. Reduce the level of funds the Awardee would otherwise be entitled to receive under this Agreement, including making a claim against the Letter of Credit provided to the Department, up to the full amount of the Letter of Credit. Iowa DOT shall have sole discretion to determine the amount of the claim.

DRAFT

14.3.2 Repayment. Require immediate repayment of up to the full amount of funds disbursed to the Awardee under this Agreement, including making a claim against the Letter of Credit provided to the Department, up to the full amount of the Letter of Credit. Iowa DOT shall have sole discretion to determine the amount of the claim.

14.3.3 Conditional Payments. Refuse or condition any future disbursements upon conditions specified in writing by Iowa DOT.

15 Termination; Suspension.

15.1 Termination by the State. The State may terminate this Agreement at any time, with or without cause, upon written notice to the Awardee. Upon termination, the Awardee will be entitled to payment, determined on a pro rata basis, for services performed satisfactorily.

15.2 Termination for Cause. The State may immediately terminate this Agreement if the State finds there has been a failure to comply with the provisions of this Agreement, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that Awardee has been convicted of a criminal offense relating to a State agreement, or that the purposes for which the funds were awarded have not been or will not be fulfilled. The State may take action to protect the interests of the state of Iowa, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

15.3 Procedures upon Termination.

15.3.1 Notice. Iowa DOT shall provide written notice to the Awardee of the decision to terminate, the reason(s) for the termination, and the effective date of the termination. If there is a partial termination due to a reduction in funding, the notice will set forth the change in funding and the changes in the approved budget. The Awardee shall not incur new obligations beyond the effective date and shall cancel as many outstanding obligations as possible. Iowa DOT's share of non-cancellable obligations, which Iowa DOT determines were incurred properly prior to notice of cancellation, will be allowable costs, subject to this Agreement.

15.3.2 Rights in Products. All finished and unfinished documents, data, reports, or other material prepared by the Awardee under this Agreement shall, at Iowa DOT's option, become the property of Iowa DOT.

15.3.3 Return of Funds. Any costs paid previously by Iowa DOT, which are subsequently determined to be unallowable through audit, monitoring, or closeout procedures, shall be returned to Iowa DOT within 30 days of the disallowance.

16 Data Disclosure. Awardee consents to disclosure of its social security number, federal employer tax identification number, and/or Iowa tax identification number, already provided to the State, to federal and state tax agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws that could result in action requiring the Awardee to file state tax returns and pay delinquent state tax liabilities, if any.

17 Fund Use Prohibited. Awardee will not use any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, that is disqualified or debarred from entering into or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, subcontractor, or equipment or material supplier. This restriction does not prevent the Awardee from using these funds to pay any party who might be disqualified or debarred after the Awardee's contract award on this Project.

18 Limitation. Under this Agreement, the State is only responsible for receiving and disbursing funds. Nothing in this Agreement will be construed to make the State a principal, co-principal, partner, or joint venturer with respect to the Project(s) covered herein. The State may provide technical advice and assistance as requested by the Awardee; however, the Awardee will remain responsible for providing direction to its contractors and

DRAFT

consultants and for administering its contracts with such entities. Awardee's consultants and contractors are not intended to be third party beneficiaries of this Agreement.

AWARDEE

The Awardee certifies that the appropriate person(s) have executed the Agreement on behalf of the Awardee as required by applicable articles, bylaws, resolutions, or ordinances.

By:_____

Title:_____

Date:_____

IOWA DEPARTMENT OF TRANSPORTATION

By:_____
(with delegated authority)

Title:_____

Date:_____

DRAFT

EXHBIT J: STANDARD TITLE VI / NON-DISCRIMINATION ASSURANCES

DRAFT

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

The _____ (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the United States Department of Transportation (DOT), through the **Federal Highway Administration (FHWA)**, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

> *"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the* ***FHWA****.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973) by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted **Federal Highway Program**:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

DRAFT

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all **Federal Highway Programs** and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

   "*The _____, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.*"

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

   a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
   b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

   a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
   b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal

DRAFT

financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, _____ also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the **FHWA** access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the **FHWA**. You must keep records, reports, and submit the material for review upon request to **FHWA**, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

_____ gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the **Federal Highway Program**. This ASSURANCE is binding on **Iowa**, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the **Federal Highway Program**. The person (s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

_____

(Name of Recipient)

by_____

(*Signature of Authorized Official*)

DATED_____

DRAFT

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Highway Administration**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration** to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration** may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration** may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

DRAFT

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the Department of Transportation as authorized by law and upon the condition that the _____ will accept title to the lands and maintain the project constructed thereon in accordance with laws of the state of Iowa, the Regulations for the Administration of **Federal Highway Program,** and the policies and procedures prescribed by the **Federal Highway Administration** of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the _____ all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto _____ and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the _____, its successors and assigns.

The _____, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the _____ will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

DRAFT

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the _____ pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

   1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, _____ will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the _____ will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the _____ and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

DRAFT

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/ agreements entered into by _____ pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, _____ will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, _____ will there upon revert to and vest in and become the absolute property of _____ and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

DRAFT

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq*.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq*.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

DRAFT