

**RESOLUTION 1815**

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE IOWA DEPARTMENT OF NATURAL RESOURCES AND THE CITY OF WEST BRANCH ACCEPTING THE TERMS OF A DERELICT BUILDING GRANT FOR THE AMOUNT OF \$50,960.**

**WHEREAS**, the property known as 325 E. Green Street was purchased in 1989 by Croell Redi-mix, a cement company operated on a four-acre parcel and while planning a plant expansion at that site, the City proposed a land swap; and

**WHEREAS**, Instead of having this industrial use expand in this transitional area where a historic downtown and a well-establish neighborhood exist and would have been negatively impacted, the City is pursuing other redevelopment options; and

**WHEREAS**, the derelict building grant program is intended to assist small communities improve the attractive and appearance of their jurisdiction by providing financial assistance to address derelict buildings; and

**WHEREAS**, this grant is in the form of 50% reimbursement for deconstruction activities of which removing the derelict structures and concrete removal from the 325 E. Green site would apply; and

**WHEREAS**, it is now necessary for the City Council to accept the aforementioned Grant and the terms within the Derelict Building Grant; and

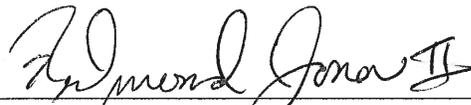
**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of West Branch that the Agreement between the Iowa Department of Natural Resources and the City of West Branch Accepting the Derelict Building Grant for an Amount of \$50,960 is approved.

\* \* \* \* \*

**PASSED AND APPROVED** this 10th day of June, 2019

  
\_\_\_\_\_  
Roger Laughlin, Mayor

Attest:

  
\_\_\_\_\_  
Redmond Jones II, City Administrator / City Clerk

**DERELICT BUILDING GRANT PROGRAM  
AGREEMENT NUMBER – 20-G550-04DB**

**Between**

**IOWA DEPARTMENT OF NATURAL RESOURCES**

**And**

**CITY OF WEST BRANCH, IOWA**

IN WITNESS THEREOF, the parties hereto have executed this Agreement.

**DEPARTMENT OF NATURAL RESOURCES**

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

Bruce Trautman, Acting Director

**CITY OF WEST BRANCH, IOWA**

By: Roger Laughlin \_\_\_\_\_ Date: 6-10-19 \_\_\_\_\_

Roger Laughlin, Mayor

**DERELICT BUILDING GRANT PROGRAM**  
**PROJECT AGREEMENT**  
**IOWA DEPARTMENT OF NATURAL RESOURCES**

**Grantee:** City of West Branch, Iowa

**Agreement Number:** 20-G550-04DB

**Agreement Title:** Derelict Building Grant Program

**Grant Amount:** Not To Exceed \$50,960.00

**Grantee Project Officer:** Name: Redmond Jones III  
Phone: 319-643-5888 Ext. 15  
Email: [rjonesii@westbranchiowa.org](mailto:rjonesii@westbranchiowa.org)

**DNR Project Officer:** Scott Flagg  
[scott.flagg@dnr.iowa.gov](mailto:scott.flagg@dnr.iowa.gov)  
515-725-8318

**Distribution Copies:** Copy One - IDNR  
Copy Two - Grantee

**Term of Agreement:** July 1, 2019 – September 15, 2019

**Submit All Claims and Reports To:** Scott Flagg  
Land Quality Bureau  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034

**Issue Payment To:** City of West Branch  
110 N Poplar Street  
PO Box 218  
West Branch Iowa 52358

## SPECIAL CONDITIONS AND GENERAL CONDITIONS

The Grantee shall deliver all information and complete all tasks detailed in the Special Conditions. The rights and obligations of the parties to this Agreement shall be subject to and governed by the Special Conditions, the General Conditions, and the Appendices. To the extent of any inconsistency between the Special Conditions, the General Conditions, and the Appendices and any specifications or other conditions that are made a part of this Agreement by reference or otherwise, the provisions of the Special Conditions and the General Conditions shall control. To the extent of any inconsistency between the Special Conditions and the General Conditions, the provisions of the Special Conditions shall control.

### SPECIAL CONDITIONS

#### **ARTICLE I. IDENTIFICATION OF PARTIES, PROJECT, AND PROJECT AREA**

This Agreement is by and between the City of West Branch (hereinafter referred to as the Grantee) and the Iowa Department of Natural Resources (hereinafter referred to as the Department) for the purpose of hiring a licensed contractor for abating asbestos and hiring a licensed contractor to deconstruct the buildings at 325 E. Green Street in West Branch, Iowa (hereinafter referred to as the Project).

#### **ARTICLE II. DESIGNATION OF OFFICIALS**

- 3.1 **Department.** The DNR Project Officer shall negotiate on behalf of the Department and, subject to the approval of the Department, make any changes to this Agreement.
- 2.2 **Grantee.** The Grantee Project Officer is authorized to execute any changes in the terms, conditions, or amounts specified in this Agreement.
- 2.3 **Key Agreement Personnel.**  
Scott Flagg, Iowa Department of Natural Resources, 515-725-8318  
Redmond Jones III, Grantee Project Officer, 319-643-5888 Ext. 15

#### **ARTICLE III. TERM OF AGREEMENT**

- 3.1 **Term of Agreement.** The Agreement remains open for the *Term of Agreement* as stated on the title page of this Agreement. The Agreement and all obligations of the Department contained herein may be terminated upon the occurrence of one of the following: a) the Agreement is terminated under *Section 11* of the General Conditions; or b) if there has been no disbursement of Derelict Building Grant Program funds within three (3) months immediately following the announcement of Environmental Protection Commission approval, unless an extension is requested in writing by the Grantee and approved by the Department.

- 3.2 **Acknowledgement of Grantee's Repayment Obligation in the Event of Termination for Cause.** By entering this Agreement with the Department, the Grantee is agreeing to complete the project described in Special Condition Article IV of this Agreement pursuant to the time-line and requirements established in that Article, as well as in accordance with all other requirements of this Agreement. By signing this Agreement, Grantee recognizes and agrees that in the unlikely and unexpected failure of Grantee to complete the project as defined herein or to otherwise comply with the terms of this Agreement, the Agreement may be terminated for cause pursuant to Section 11 of the General Conditions of this Agreement. While it is not anticipated by any party to this Agreement that termination will be necessary, in the event that the Agreement is terminated for cause, the Grantee recognizes and agrees that the Grantee may be required to repay **all** funds disbursed to Grantee by the Department under this Agreement.

#### **ARTICLE IV. SCOPE OF WORK**

- 4.1 **Project Description.** The Grantee shall:

1. Retain the services of an Iowa licensed asbestos contractor to abate asbestos from the targeted building.
2. Retain the services of an Iowa licensed contractor to deconstruct the targeted building.

- 4.2 **Permitting and Quality Assurance.** The Grantee shall ensure that the certified asbestos contractor conducts the inspection and testing activities and/or conducts all asbestos abatement activities in accordance with federal and state laws and regulations, including but not limited to:

1. Title 29 Code of Federal Regulations Section 1910.1001, General Industry Standard for Asbestos.
2. Title 29 Code of Federal Regulations Section 1926.1101, Construction Industry Standard for Asbestos.
3. Title 29 Code of Federal Regulations Section 1910.134, General Industry Standard for Respiratory Protection.
4. Title 29 Code of Federal Regulations Section 1910.2, Access to Employee Exposure and Medical Records.
5. Title 29 Code of Federal Regulations Section 1910.1200, Hazard Communication Rule.
6. Title 40 Code of Federal Regulations Part 61 Subpart A and Subpart M (revised Subpart B), National Emissions Standard of Hazardous Air Pollutants.
7. Iowa Administrative Code Section 530 Chapter 81& 82, Asbestos Control Procedures.
8. Title 49 Code of Federal Regulations Part 171-180, Department of Transportation, Transportation of Hazardous Waste.

- 4.2.1. The most recent edition of any relevant regulations, standard, document or code shall be in effect. Where conflict among the requirements or with these Specifications exists, the most stringent requirements shall be utilized.
- 4.3 **Required Submittals.** Grantees are required to submit the following items to the individuals listed on the front page of this Agreement pursuant to the time line listed herein. Any questions concerning submittals or deadlines should be directed to the DNR Project Officer.
1. Prepare and submit the Notification of Demolition and Renovation form (see attachment) no later than 10 days prior to selected start date for asbestos abatement to:  
  
**Air Quality Bureau  
ATTN: Tom Wuehr  
7900 Hickman Rd., Suite 1  
Windsor Heights, IA 50324**
  2. Provide final documentation report upon completion of project. See section 4.6 for a breakdown of what needs to be included in the final report.
- 4.4 **On-Site Actions/Activities.** The Grantee shall assist the Department to promote and share the information gained from this Project to and with other public and private sector entities. Any information obtained or learned as a result of this Project is public information. While completing the Project, and following Project completion if necessary, Grantees shall:
1. Secure the target building and surrounding areas, protect the surrounding properties, and perform air monitoring of the site in accordance with applicable Federal and Iowa laws and regulations.
  2. Asbestos Containing Material (ACM) will be handled and transported per Federal and Iowa regulations and disposed of at a permitted sanitary landfill.
  3. Conduct abatement operations to ensure minimum interference with roads, streets, sidewalks, walkways, and other adjacent occupied and used facilities.
  4. Conduct renovation operations to ensure minimum interference with roads, streets, sidewalks, walkways, and other adjacent occupied and used facilities.
  5. Provide temporary barricades and other protection required to prevent injury to workers and damage to salvageable materials.
  6. Provide protection to ensure safe passage of workers around the renovation area.
  7. Provide and maintain shoring, bracing, and structural supports as required to preserve stability and prevent movement, settlement, or collapse of construction.
  8. Comply with all applicable federal, state, and local regulations concerning hauling, disposal of materials and mitigating noise and dust on-site.

9. If materials suspected of containing hazardous materials (e.g. asbestos, lead, etc.) are encountered, do not disturb; the contractor must immediately notify Grantee.
10. Sort and organize salvaged materials as they are removed from the structure.
11. Except for items or materials indicated to be recycled, reused, or salvaged, remove demolished materials from Project site and comply with all applicable federal, state, and local regulations regarding proper disposal at a permitted facility.
12. Do not burn or allow materials to accumulate on-site.
13. Clean adjacent structures and improvements of dust, dirt, and debris caused by renovation operations. Return adjacent and adjoining areas to condition existing before renovation operations began.

4.5 **Milestones.** The Grantee shall accomplish the activities listed in the Project Milestones table below by the assigned date. If a milestone amendment is required, the Grantee must contact the Department in writing and receive approval of Milestone changes in writing.

#### PROJECT MILESTONES

Deliverables	Task Milestone Date
Complete asbestos abatement per applicable codes, and with appropriate notifications for such work	August 1, 2019
Complete deconstruction activities	September 1 , 2019
Provide final documentation report (see required contents of Final Report in section 4.6).	September 15, 2019

4.6 **Final Report.** As part of the Final Documentation the following information, as collected over the full term of the Agreement, shall be provided:

1. A Summary of the Project in terms of the process used and the projected impacts on City of West Branch resulting from deconstruction of this derelict structure.
2. The dimension of each structure deconstructed including the number of floors and type of materials of which the building was composed.
3. Color, digital photos that document the Project throughout its timeline.
4. The total weight of ACM delivered, with landfill scale tickets, to a permitted sanitary landfill and landfill name(s).
5. Provide copy of asbestos inspection report.
6. The total weight of materials delivered, with landfill scale tickets, to a permitted sanitary landfill and landfill name(s).including ACM if encountered.
7. A list of re-use markets that were used for this project and material types diverted, with scale tickets including support letters from any business or individual who accepted or took material from the project site that includes the type of material, total weight, and reuse method.

8. Provide a final site summary.

The Department reserves the right to publish, in whole or in part, the final report once submitted to the Department. Written and oral releases are considered to be within the context of publication rights so reserved by the Department.

4.7 **Project Budget.** Funding amounts for the Project shall be shared as outlined below. The Department's share shall not exceed the *Agreement Amount* indicated on the title page of this Agreement. To claim Iowa Brownfield Redevelopment Program funds, the Grantee shall follow the procedures of that program, separate from this Agreement.

ITEM	DNR AWARD	LOCAL MATCH	TOTAL COST
Asbestos Abatement	\$960.00	---	\$960.00
Building Deconstruction	\$25,000.00	\$100,000.00	\$125,000.00
TOTAL	\$25,960.00	\$100,000.00	\$125,960.00

4.8 **Estimated Deconstruction Cost Share Incentive.** For every additional 10% of landfill diversion by weight above 30% that is documented upon completion of the Project, Grantee cost share is reduced by 5% and the grant award amount will increase accordingly. The maximum grant award for deconstruction activities for this project shall not exceed \$50,960.00. *All deconstruction projects, at a minimum, must achieve a landfill diversion rate of 30% of the structure by weight to receive any reimbursement for deconstruction costs.*

<b>Landfill Diversion By Weight for 325 E. Green Street</b>	<b>Applicant Cost Share</b>	<b>LOCAL MATCH</b>	<b>DNR AWARD</b>
31%-40% Diversion	45%	\$95,000.00	\$30,960.00
41%-50% Diversion	40%	\$90,000.00	\$35,960.00
51%-60% Diversion	35%	\$85,000.00	\$40,960.00
61%-70% Diversion	30%	\$80,000.00	\$45,960.00
71%-100% Diversion	25%	\$75,000.00	\$50,960.00

4.9 Costs exceeding the grant award amount shall be the responsibility of Grantee.

4.10 Ten percent (10%) of reimbursement will be withheld until the Final Documentation Report required under Special Condition section 4.6 and 4.7 is received and approved by the Department. Upon notification of Final Documentation Report approval, the Grantee can submit a final claim for payment of withheld funds. Grantee may submit Final Documentation Report and claims (see Claim Procedure 4.12) at the same time, and if all documents are approved the 10% withholding requirement may be waived at the discretion of the Department.

4.11 **Claim Procedure.** In order to be reimbursed for Project expenses, the Grantee shall submit:

1. One (1) signed original (using non-black ink) of the Grant Expense Sheet detailing expenditures – provided by the Department.
2. Invoices or copy of paid receipts or checks for items for which reimbursement is requested must be attached to the Grant Expense Sheet.

4.12 Grant Expense Sheets must be submitted within ninety (90) days of the date of the oldest attached invoice. It is recommended that the Grantee submit Grant Expense Sheets as expenses are incurred

4.13 Claims shall be made only on items relating to the activities outlined in Section 4.5, Milestones of this Agreement.

4.14 No costs for which funds will be used can be incurred before the beginning date or after the ending date of the *Time of Performance*.

4.15 **Funding.** The Department will process claim vouchers for payment within thirty (30) working days provided that:

1. The Grant Expense Sheet is correctly completed;

2. All required documentation is attached;
3. All Project actions for which Grantee is seeking reimbursement have been conducted and completed to the satisfaction of the Department. This includes that Grantee is, and has been, operating in full compliance with all local, state, and federal laws, as well as the requirements of this Agreement.
4. The Grantee is accomplishing *Project Milestones* identified in *Article IV* to the satisfaction of the Department. If any of these conditions are not met, the Department will notify the Grantee of the deficiencies and the Department may return the canceled Grant Expense Sheet to the Grantee. A new Grant Expense Sheet may be submitted to the Department for payment once Agreement requirements are met.

## **ARTICLE V. REVIEW OF WORK**

The Department or its advisors shall have the right to review and observe at any time, completed work or work in progress on the Project.

- 5.1 Milestone activities must be met by the assigned date. If amending the assigned date(s) is required, prior written Department approval must be received. Failure to accomplish milestones by the assigned dates may result in withholding of grant funds or termination of this agreement pursuant to Section 11 of the General Terms of this Agreement.
- 5.2 Ninety (90) days after the end of the Term of Agreement the Department shall deobligate any unused award monies from the Project.

## **ARTICLE VI. INSURANCE**

- 6.1 The Grantee agrees to indemnify and hold harmless the state of Iowa and 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 Agreement; any negligent, intentional or wrongful act or omission of the Grantee of any agent or subcontractor utilized or employed by the Grantee; the Grantee's performance or attempted performance of this Agreement, including any agent or subcontractor utilized or employed by the Grantee; any failure by the Grantee to comply with the State, Local and Federal Law Compliance Requirements provision of this Agreement; any failure by the Grantee 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 Grantee to conduct business in the state; any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or any failure by the Grantee to adhere to any confidentiality provisions of this Agreement.

- 6.2 The Grantee shall submit to the Department a copy of the Grantee's Certificate of Insurance and a written statement to attest that the Grantee holds an adequate level of insurance to insure against general liability, property damage, workers compensation and employer liability.
- 6.3 The Department or its advisors shall have access for the purpose of examination of any insurance policy and associated records regarding insurance coverage as it relates to this Agreement.
- 6.4 The Grantee shall maintain an adequate level of insurance for the period set forth under *Term of Agreement*.

## **GENERAL CONDITIONS**

### **SECTION 1. AGREEMENT NEGOTIATION**

The Grantee hereby agrees, upon commencement of Agreement negotiations, or after signature of the Agreement by both the Grantee and the Department, to attend an Agreement consultation meeting at the Department's office, if so requested by the Department. If the Grantee fails to attend the Agreement consultation meeting the Department shall be free to terminate the Agreement negotiations or the signed Agreement, whichever applies, by the described method in *Section 11* of the General Conditions.

### **SECTION 2. ENTIRE AGREEMENT**

This Agreement with all attachments and references constitutes the entire Agreement between the Department and the Grantee with respect to the subject matter hereof, and the Grantee acknowledges that it is entering into the Agreement solely on the basis of the terms and conditions herein contained and not in reliance upon any representative statement, inducement or promise, whether oral or written, not contained herein.

### **SECTION 3. AMENDMENT**

The Department or the Grantee may initiate an amendment to this Agreement. Any amendment is effective only if in writing and agreed to by the Department and the Grantee. The amendment shall be effective as of the date it is agreed upon, unless otherwise specified in the amendment.

### **SECTION 4. AVAILABILITY OF DATA**

All information and data obtained by the Grantee in connection with the Agreement shall be made available to the Department. Such information and data shall become the property of the Department except that which is necessary for the patent or copyright purposes of the Grantee.

### **SECTION 5. ASSUMPTION OF RISK AND LIABILITIES**

The Grantee shall assume all risks and liabilities in connection with the performance of the Agreement and shall be responsible for all claims, demands, action or causes of action of whatever nature or character arising out of or by reason of the execution or performance of the work provided for herein, except to the extent caused by the State of Iowa. The Grantee shall indemnify and hold harmless the Department, its employees, agents or representatives, and the State of Iowa from all claims, demands, actions or causes of actions, arising out of or by reason of the execution or performance of the work provided for herein, and shall be responsible for all attorney fees, costs and expenses incurred by the Department, its employees, agents or representatives and the State of Iowa, except to the extent caused by the State of Iowa.

#### **SECTION 6. TRANSFER OF WORK**

The Grantee shall not transfer or assign any part or portion of the work on the Agreement without the prior written consent of the Department.

#### **SECTION 7. REVIEW OF WORK**

The Department shall have the right to review and observe, at any time, completed work or work in progress on the Agreement.

#### **SECTION 8. LOCAL, STATE AND FEDERAL LAW COMPLIANCE REQUIREMENTS**

The Grantee shall comply with all local, state, and federal statutes, ordinances, and rules or other requirements applicable to the establishment and operation of the Grantee's facility.

#### **SECTION 9. ACCOUNTS AND RECORDS**

- 9.1 The Grantee agrees to maintain books, documents, and other records pertaining to all costs and expenses incurred and revenues acquired during this Agreement to the extent and in such detail as will properly reflect all costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed. The Grantee shall be prepared to support charges for salaries and wages by time, attendance and payroll records.
- 9.2 The Department, State Auditor, or any of their duly appointed representatives, shall have access for the purpose of audit and examination to any books, documents, papers and records of the Grantee which are pertinent at all reasonable times during the period of retention provided for in Sections 9.3, 9.4, and 9.5 below and shall have the right to make copies of excerpts or make other transcriptions thereof, subject to the provisions of 199 Iowa Administrative Code Section 1.9 and Iowa Code Chapter 22.
- 9.3 All records in the possession of the Grantee pertaining to this Agreement shall be retained by the Grantee for the period of five (5) years beyond the ending date set forth under *Term of Agreement*.

- 9.4 Records relating to any litigation or claim arising out of the performance of this Agreement, or costs or expenses of this Agreement to which exception has been taken as a result of inspection or audit, shall be retained by the Grantee until such litigation, claim, or exception has been finally settled or until five years from the ending date of *Term of Agreement* has expired, whichever occurs later.
- 9.5 The Grantee, in maintaining Agreement expenditure accounts and records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from any administrative reviews and audits by the United States or by the State of Iowa or by the Grantee. Such adjustments shall be set forth in the financial reports filed with the Department.

## **SECTION 10. UNALLOWABLE COSTS**

The following costs are unallowable under this Agreement:

1. Legal expenses for the prosecution of claims against the Department, the State of Iowa, the Federal Government, or any subdivision thereof;
2. The difference in costs between first class air accommodations and less than first class air accommodations, unless less than first class air accommodations are not available;
3. Costs incurred prior to the effective date of the Agreement;
4. Costs of preparing proposals for potential contracts;
5. Bad debts (any losses arising from uncollectible accounts and other claims and related costs);
6. Contingencies (contributions to a contingency reserve or any similar provision for unforeseen events);
7. Contributions or donations;
8. Entertainment (costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities);
9. Fines and penalties (costs relating from violations of, or failure to comply with federal, state and local laws and regulations);
10. Other financial costs (interest on borrowings -- however represented, bond discounts, costs of financing and refinancing operations, and legal and professional fees paid in connection therewith);
11. Insurance premiums and other costs associated with insuring items purchased using loan funds;
12. Office equipment such as furniture and computers, etc.

## **SECTION 11. TERMINATION OF AGREEMENT**

- 11.1 Termination for Cause. The Department may terminate this Agreement in whole or in part, at any time before the expiration date, whenever the Department has determined that the Grantee has materially failed to comply with the conditions of the Agreement. The Department shall promptly notify the Grantee in writing of the determination and reasons for the termination, together with the effective date.

- 11.1.1 In the event of Termination for Cause, the Department retains the right to cease all payments or reimbursements to the Grantee and the right to seek recovery of all funds provided to the Grantee prior to the date of termination. In the event of Termination for Cause under this subparagraph, the Department shall provide to the Grantee a Demand Letter establishing the grounds for Termination, notifying the Grantee that no additional funds will be provided to the Grantee (if applicable), and establishing the time frame for repayment of funds (if applicable). Grantee agrees that should it receive a Demand Letter pursuant to this subparagraph, it will comply with the terms therein and further agrees that any and all legal fees incurred by the Department for recovery of funds after Termination will be the responsibility of the Grantee.
- 11.2 Termination for Convenience - The Department or Grantee may terminate the Agreement in whole or in part when both parties agree that the continuation of the Agreement would not produce beneficial results commensurate with the future expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. The Grantee shall prepare and deliver to the Department copies of a final report, within sixty (60) days, summarizing the work performed and the results obtained to date, together with such information and items which, if the Agreement had been completed, would have been required to be furnished to the Department.

## **SECTION 12. COPYRIGHTS AND USE OF DATA**

- 12.1 The term "subject data" as used herein includes research data and reports, writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature which are specified to be delivered under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to Agreement administration.
- 12.2 The Grantee shall be considered the author of all original subject data.
- 12.3 The State may duplicate, use and disclose in any manner for any authorized State activity, and may allow others to do so, all subject matter deliverable under this Agreement.
- 12.4 In the event the Grantee secures a copyright, the Grantee agrees to and does hereby loan to the State, its officers, agents and employees acting within the scope of their official duties, a royalty-free, non-exclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so for use by the State, its division, instrumentalities and local subdivisions, all subject data now or hereafter covered by copyright. If such subject data is not originated in the performance of this Agreement, such license shall be only to the extent that the Grantee, its employees or any individual or concern employed or assigned by the Grantee to originate and prepare such data under this Agreement, now has, or prior to completion of final settlement of this Agreement may acquire,

the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

- 12.5 The Grantee shall exert all reasonable efforts to advise the Department at the time of delivery of the subject data furnished under this Agreement of all invasions of the rights contained in this Section.
- 12.6 The Grantee shall report to the Department promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Grantee with respect to all subject data delivered under this Agreement. On receipt of this information, the parties hereto agree to confer to determine future uses to be made of the subject data.

### **SECTION 13. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

- 13.1 The Grantee agrees to report to the Department promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Grantee has knowledge.
- 13.2 In the event of any claim or suit against the Department, the State of Iowa, their employees, agents, or representatives, or the United States, on account of an alleged patent or copyright infringement arising out of the work or services performed hereunder, the Grantee agrees to furnish the Department, upon request, all evidence and information in the possession of the Grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Department except where the Grantee has agreed to indemnify the Department.

### **SECTION 14. EQUIPMENT**

- 14.1 Definition - For loans and cooperative agreements to other than state and local governments, the term "equipment" means nonexpendable tangible personal property to be used in the performance of the Agreement, having an acquisition cost of five-hundred (\$500) dollars or more, and a useful life expectancy of greater than two (2) years. A borrower may use its own definition of equipment provided that such definition would at least include all articles of equipment as defined in this paragraph.
- 14.2 Definition - For loans and cooperative agreements to state and local governments, the term "equipment" means nonexpendable tangible personal property to be used in the performance of the Agreement, having an acquisition cost of five-thousand (\$5,000) dollars or more, and a useful life expectancy of greater than one (1) year. A borrower may use its own definition of equipment provided that such definition would at least include all articles of equipment as defined in this paragraph.

- 14.3 The Grantee shall provide the Department with the original invoice(s) of property purchased. Such purchased property must correspond with approved Agreement items.
- 14.4 The Grantee will keep an inventory of the property in their jurisdiction. Inventories must include the following property characteristics: a) the serial number if applicable; b) the Agreement Number (if acquisition occurred as part of the Agreement); c) its description; d) the date of acquisition; e) invoice number, if purchased; f) the original purchase price; and g) the physical location of the property.
- 14.5 The Grantee shall maintain adequate levels of insurance and a control system to insure adequate safeguards to prevent loss, damage or theft to the property. Any loss, damage, or theft of property shall be investigated, fully documented and reported to the Department within sixty (60) calendar days of the occurrence.
- 14.6 The Grantee shall implement maintenance procedures to keep all property in good condition. Maintenance costs in excess of one-half (1/2) the estimated current fair market value of property or equipment shall require prior Department approval.

#### **SECTION 15. ASSIGNMENT OF INTEREST**

Neither the Agreement nor any interest therein nor claim thereunder shall be assigned or transferred by the Grantee to any other party or parties. Attempted assignment may be considered, at the option of the Department, to be a cause for termination within the meanings of Section 11.1 of the General Conditions.

#### **SECTION 16. PERSONNEL**

- 16.1 Selection - The Grantee represents that it has, or will secure, all personnel required in performing the work and services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Department.
- 16.2 Qualification - All of the work and services required hereunder will be performed by the Grantee or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.
- 16.3 Change of Key Personnel - Any individual specified by name under the article Key Personnel within the Special Conditions herein is considered essential to the work and services to be performed. If for any reason substitution for a specified individual becomes necessary, the Grantee shall provide immediate written notification of such to the Department. The Grantee shall provide the name and resume of qualifications for the replacement individual. Any replacement shall be subject to the approval of the Department.

#### **SECTION 17. EFFECT OF INVALIDITY**

If any of the provisions herein shall be in conflict with the laws of the State of Iowa, or shall be declared to be invalid by any court of record in this state, such invalidity shall be construed to affect only such portions as are declared invalid or in conflict with the law and such remaining portions of the Agreement shall remain in effect and shall be construed as if such invalid or conflicting portions were not contained herein.

## **SECTION 18. LITIGATION**

- 18.1 The Grantee agrees to pay the cost of any litigation arising from failure of the Grantee to comply with the conditions or terms of this Agreement or resulting from the negligence or incompetence of the Grantee. In carrying out the provisions of the Agreement or in exercising any power or authority otherwise, it is understood that in such matters the Department acts for the State.
- 18.2 The venue for any cause of action based upon this Agreement by either party to this Agreement shall be in Polk County, Iowa, and the law of the State of Iowa shall apply.

## **SECTION 19. ASSURANCE**

- 19.1 The Grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age, political belief, or handicap, in its employment practices. Such employment practices may include, but are not limited to, recruitment, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.
- 19.2 The Grantee will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or representative of the Grantee's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 19.3 The Grantee will comply with all relevant provisions of the Iowa Civil Rights Act and Iowa Code 19B.7, Iowa Executive Order #15 of 1973, and Title VI of the Civil Rights Act of 1964 (PL 88-352). The Grantee shall furnish all information and reports requested by the department and will permit access to its payroll and employment records by the Department or the Department's grantor agency for purposes of investigation to ascertain compliance with this nondiscrimination clause consistent with Iowa Code Chapter 22. The Grantee may be required to make available upon request its Affirmative Action Program containing goals and time deadline. Any breach of the above provisions shall be regarded as a material breach of Agreement and justification for termination for cause.
- 19.4 In the event of the Grantee's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated or suspended in whole or in part and the Grantee may be declared ineligible for further action, and

such sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act, Chapter 216, Code of Iowa, as heretofore and hereinafter amended, or as otherwise provided by law.

#### **SECTION 20. CONTINGENT FEES**

The Grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Grantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Grantee, any fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **SECTION 21. OFFICERS NOT TO BENEFIT**

No officer or employee of the State shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested; or have any interest, direct or indirect, in this Agreement or the proceeds thereof.