AGREEMENT FOR PROFESSIONAL SERVICES 2020 IA

LAND USE STUDY

COUNCIL BLUFFS, IA and BOLTON & MENK, INC.

This Agreement, made this _____ day of February, 2020, by and between the CITY OF COUNCIL BLUFFS 209 Pearl Street, Council Bluffs, IA 51503, ("CLIENT"), and BOLTON & MENK, INC., 309 E 5th Street, Ste 202, Des Moines, IA 50309, ("CONSULTANT").

WITNESS, whereas the CLIENT requires professional services in conjunction with the LAND USE STUDY ("Project") and whereas the CONSULTANT agrees to furnish the various professional services required by the CLIENT.

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties hereto, it is agreed:

SECTION I - CONSULTANT'S SERVICES

A. The CONSULTANT agrees to perform the various Basic Services in connection with the proposed project as described in Exhibit I.

B. Upon mutual agreement of the parties, Additional Services may be authorized as described in Paragraph IV.B.

SECTION II - THE CLIENT'S RESPONSIBILITIES

A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section III of this Agreement.

B. The CLIENT shall place any and all previously acquired information in its custody at the disposal of the CONSULTANT for its use. Such information shall include but shall not be limited boundary surveys, topographic surveys, preliminary sketch plan layouts, building plans, soil surveys, abstracts, deed descriptions, tile maps and layouts, aerial photos, utility agreements, environmental reviews, and zoning limitations. The CONSULTANT may rely upon the accuracy and sufficiency of all such information in performing services unless otherwise instructed, in writing, by CLIENT.

C. The CLIENT will guarantee access to and make all provisions for entry upon public portions of the project and reasonable efforts to provide access to private portions and pertinent adjoining properties.

D. The CLIENT will give prompt notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the proposed project.

E. The CLIENT shall designate a liaison person to act as the CLIENT'S representative with respect to services to be rendered under this Agreement. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define the CLIENT'S policies with respect to the project and CONSULTANT'S services.

F. The CONSULTANT'S services do not include legal, insurance counseling, accounting, independent cost estimating, financial advisory or "municipal advisor" (as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 and the municipal advisor registration rules issued by the SEC) professional services and the CLIENT shall provide such services as may be required for completion of the Project described in this Agreement.

G. The CLIENT will obtain any and all regulatory permits required for the proper and legal execution of the Project. CONSULTANT will assist CLIENT with permit preparation and documentation to the extent described in Exhibit I.

H. The CLIENT may hire, at its discretion, when requested by the CONSULTANT, an independent test company to perform laboratory and material testing services, and soil investigation that can be justified for the proper design and construction of the Project. The CONSULTANT shall assist the CLIENT in selecting a testing company. Payment for testing services shall be made directly to the testing company by the CLIENT and is not part of this Agreement. If CLIENT elects not to hire an independent test company, CLIENT shall provide CONSULTANT with guidance and direction on completing those aspects of design and construction that require additional testing data.

(Remainder of this page intentionally left blank)

SECTION III - COMPENSATION FOR SERVICES

A. FEES.

1. The CLIENT will compensate the CONSULTANT in accordance with the following Schedule of Fees for the time spent in performance of Agreement services. Total cost of services shall not exceed $123,800.00 without the prior consent of CLIENT.

2. Rates and charges do not include sales tax. If such taxes are imposed and become applicable after the date of this Agreement CLIENT agrees to pay any applicable sales taxes.

3. The rates in the Schedule of Fees include labor, general business and other normal and customary expenses associated with operating a professional business. Unless otherwise agreed in writing, the above rates include vehicle and personal expenses, mileage, telephone, survey stakes and routine expendable supplies; and no separate charges will be made for these activities and materials.

4. Additional services as outlined in Section I.B will vary depending upon project conditions and will be billed on an hourly basis at the rate described in Section III.A.2.

5. Expenses required to complete the agreed scope of services or identified in Paragraph III.A.6 will be invoiced separately, and include but are not limited to large quantities of prints; extra report copies; out-sourced graphics and photographic reproductions; document recording fees; special field and traffic control equipment rental; outside professional and technical assistance; geotechnical services; and other items of this general nature required by the CONSULTANT to fulfill the terms of this Agreement.

B. PAYMENTS AND RECORDS

1. The payment to the CONSULTANT will be made by the CLIENT upon billing at intervals not more often than monthly at the herein rates and terms.

2. If CLIENT fails to make any payment due CONSULTANT for undisputed services and expenses within 45 days after date of the CONSULTANT'S invoice, a service charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance.

3. In addition to the service charges described in preceding paragraph , if the CLIENT fails to make payment for undisputed services and expenses within 60 days after the date of the invoice, the CONSULANT may, upon giving seven days' written notice to CLIENT, suspend services and withhold project deliverables due under this Agreement until CONSULTANT has been paid in full all past due amounts for undisputed services, expenses and charges, without waiving any claim or right against the CLIENT and without incurring liability whatsoever to the CLIENT.

4. Documents Retention. The CONSULTANT will maintain records that reflect all revenues, costs incurred and services provided in the performance of the Agreement. The CONSULTANT will also agree that the CLIENT, State, or their duly authorized representatives may, at any time during normal business hours and as often as reasonably necessary, have

access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices of the CONSULTANT which are relevant to the contract for a period of six years.

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SECTION IV - GENERAL

A. STANDARD OF CARE

Professional services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing under similar conditions. No warranty, express or implied, is made.

The CONSULTANT shall be responsible for the professional quality and technical accuracy of all services furnished by the CONSULTANT under this Agreement, except for that work provided by CLIENT. The CONSULTANT shall, without additional compensation, correct or revise any error or deficiencies in his work. Approval of the CLIENT of any such work shall not in any way relieve the CONSULTANT of responsibility for the technical accuracy of said services. The CLIENT'S review, approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

B. CHANGE IN PROJECT SCOPE

In the event the CLIENT changes or is required to change the scope or duration of the project from that described in Exhibit I, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to additional compensation at the applicable hourly rates. To the fullest extent practical, the CONSULTANT shall give notice to the CLIENT of any Additional Services, prior to furnishing such Additional Services. The CONSULTANT shall furnish an estimate of additional cost, prior to authorization of the changed scope of work and Agreement will be revised in writing.

C. LIMITATION OF LIABILITY

1. The CONSULTANT agrees to indemnify and save harmless the CLIENT, its officers, agents, and employees from and against any and all claims including reasonable attorneys' fees and defense costs arising out of but only to the extent caused by the negligent acts, errors, or omissions of the CONSULTANT, its officers, agents, and employees in the execution of the services specified in this Agreement.

2. In recognition of the relative risks and benefits of the project to both the CLIENT and CONSULTANT, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of the CONSULTANT and their sub-consultants to the CLIENT and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the ENGINEER and their sub-consultants to all those named shall not exceed $2,000,000.00. Such claims and causes include negligence, professional errors or omissions, strict liability, breach of contract or warranty.

3. To the fullest extent permitted by law, CLIENT and CONSULTANT waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, from any cause or causes. CLIENT waives all claims against individuals involved in the

services provided under this Agreement and agrees to limit all claims to the CONSULTANT's corporate entity.

5. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the CONSULTANT. The CONSULTANT'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services provided hereunder.

D. INSURANCE

1. The CONSULTANT shall maintain insurance to protect the CONSULTANT from claims under Worker's Compensation Acts; claims due to personal injury or death of any employees or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for which the CONSULTANT is legally liable. The amounts and extent of such insurance are indicated in following Paragraphs IV.D. 2 through 7.

2. The CONSULTANT agrees to maintain, at CONSULTANT'S expense a commercial general liability (CGL) and excess or umbrella general liability insurance policy or policies insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT'S general business activities. The general liability coverage shall provide limits of not less than $2,000,000 per occurrence and not less than $2,000,000 general aggregate. Coverage shall include Premises and Operations Bodily Injury and Property Damage; Personal and Advertising Injury; Blanket Contractual Liability; Products and Completed Operations Liability.

3. The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, a single limit or combined limit automobile liability insurance and excess or umbrella liability policy or policies insuring owned, non-owned and hired vehicles used by CONSULTANT under this Agreement. The automobile liability coverages shall provide limits of not less than $1,000,000 per accident for property damage, $2,000,000 for bodily injuries, death and damages to any one person and $2,000,000 for total bodily injury, death and damage claims arising from one accident.

4. CLIENT shall be named Additional Insured for the above CGL and Auto liability policies.

5. The CONSULTANT agrees to maintain, at the CONSULTANT'S expense, statutory worker's compensation coverage (but not less than $100,000 each accident) together with Coverage B, Employer's Liability limits of not less than $500,000 for Bodily Injury by Disease per employee, $500,000.00 for Bodily Injury by Disease aggregate and $500,000 for Bodily Injury by Accident.

6. The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, Professional Liability Insurance coverage insuring CONSULTANT against damages for legal liability arising from a negligent act, error or omission in the performance of professional services required by this agreement during the period of CONSULTANT'S services and for three years following date of final completion of its services. The professional liability insurance coverage shall provide limits of not less than $2,000,000 per claim and an annual aggregate of not less than $2,000,000 on a claims-made basis.

7. Prior to commencement of this Agreement, CONSULTANT will provide the CLIENT with certificates of insurance, showing evidence of required coverages. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement for any reason except non-payment of premium, until at least 30 days prior written notice has been given to the Certificate Holder, and at least 10 days prior written notice in the case of non-payment of premium

E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of Exhibit I or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since the CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of the CLIENT and the CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. The CLIENT acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.

F. USE OF ELECTRONIC/DIGITAL DATA

1. Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a project deliverable for this AGREEMENT or except as otherwise explicitly provided in this AGREEMENT, all electronic/digital data developed by the CONSULTANT as part of the Project is acknowledged to be an internal working document for the CONSULTANT'S purposes solely and any such information provided to the CLIENT shall be on an "AS IS" basis strictly for the convenience of the CLIENT without any warranties of any kind. As such, the CLIENT is advised and acknowledges that use of such information may require substantial modification and independent verification by the CLIENT (or its designees).

2. Provision of electronic/digital data, whether required by this Agreement or provided as a convenience to the Client, does not include any license of software or other systems necessary to read, use or reproduce the information. It is the responsibility of the CLIENT to verify compatibility with its system and long-term stability of media. CLIENT shall indemnify and hold harmless CONSULTANT and its Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from third party use or any adaptation or distribution of electronic/digital data provided under this AGREEMENT, unless such third party use and adaptation or distribution is explicitly authorized by this AGREEMENT.

G. REUSE OF DOCUMENTS

1. Reports, Drawings and Specifications and all other documents (including electronic and digital versions of any documents) prepared or furnished by CONSULTANT pursuant to this AGREEMENT are instruments of service in respect to the Project and CONSULTANT shall retain an ownership interest therein. Upon payment of all fees owed to the CONSULTANT, the CLIENT shall acquire an unlimited license in all identified deliverables (including Reports, Plans and Specifications) for any reasonable use relative to the Project and the general

operations of the CLIENT. Such limited license to Owner shall not create any rights in third parties.

2. CLIENT may make and disseminate, without limit, copies for use, information and reference in connection with the Project and all other purposes of the CLIENT. However, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any reuse by CLIENT or, any other entity acting under the request or direction of the CLIENT, without written verification or adaptation by CONSULTANT for such reuse will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT and CLIENT shall indemnify and hold harmless CONSULTANT from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from such reuse.

H. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT'S employees and subconsultants any information obtained from CLIENT not previously in the public domain or not otherwise previously known to or generated by CONSULTANT. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of CONSULTANT; or is furnished to CONSULTANT by a third party who is under no obligation to keep such information confidential; or is information for which the CONSULTANT is required to provide by law or authority with proper jurisdiction; or is information upon which the CONSULTANT must rely for defense of any claim or legal action.

I. PERIOD OF AGREEMENT

This Agreement will remain in effect for the longer of a period of two (2) years or until such other expressly identified completion date, after which time the Agreement may be extended upon mutual agreement of both parties.

J. TERMINATION

This Agreement may be terminated:

1. For cause, by either party upon 7 days written notice in the event of substantial failure by other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. For termination by CONSULTANT, cause includes, but is not limited to, failure by CLIENT to pay undisputed amounts owed to CONSULTANT within 120 days of invoice and delay or suspension of CONSULTANT's services by for more than 120 days for reasons beyond CONSULTANT'S cause; or,

2. For convenience by CLIENT upon 7 days written notice to CONSULTANT.

3. Notwithstanding, the foregoing, this Agreement will not terminate under paragraph IV.K if the party receiving such notice immediately commences correction of any substantial failure and cures same within 10 days of receipt of the notice.

4. In the event of termination by CLIENT for convenience or by CONSULTANT for cause, the CLIENT shall be obligated to the CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Agreement. CONSULTANT shall deliver and

CLIENT shall have, at its sole risk, right of use of any completed or partially completed deliverables, subject to provisions of Paragraph IV. H.

5. In event of termination by CLIENT for cause and in addition to any other remedies available to CLIENT, CONSULTANT shall deliver to CLIENT and CLIENT shall have right of use of any completed or partially completed deliverables, in accordance with the provisions of Paragraph IV.H. CLIENT shall compensate CONSULTANT for all undisputed amounts owed CONSULTANT as of date of termination.

K. INDEPENDENT CONTRACTOR

Nothing in the Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the CONSULTANT or any of its employees as the agent, representative, or employee of the CLIENT for any purpose or in any manner whatsoever. The CONSULTANT is to be and shall remain an independent contractor with respect to all services performed under the Agreement.

L. CONTINGENT FEE

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Agreement.

M. NON-DISCRIMINATION

The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein. **The CONSULTANT is an Equal Opportunity Employer** and it is the policy of the CONSULTANT that all employees, persons seeking employment, subcontractors, subconsultants and vendors are treated without regard to their race, religion, sex, color, national origin, disability, age, sexual orientation, marital status, public assistance status or any other characteristic protected by federal, state or local law.

In addition to the foregoing, the requirements of attached Appendix "A" and attached "Title IV and EEO Certificate of Compliance" are made a part of this Agreement and every subcontract made by CONSULTANT pursuant to this Agreement for the Project.

N. ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement without the prior written consent of the other party.

O. SURVIVAL

All obligations, representations and provisions made in or given in Section IV and Documents Retention clause of this Agreement will survive the completion of all services of the CONSULTANT under this Agreement or the termination of this Agreement for any reason.

P. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Q. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Iowa and venued in courts of Iowa; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the project is located.

R. DISPUTE RESOLUTION

CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall then be submitted to mediation using a neutral from the American Arbitration Association Construction Industry roster. If mediation is unsuccessful in resolving the dispute, then either party may seek to have the dispute resolved by bringing an action in a court of competent jurisdiction.

S. CONFLICT OF INTEREST

The CONSULTANT certifies that it does not presently have an interest in real estate, development proposals or have a client with development proposals or real estate interests which are located in the City of Council Bluffs or which will directly benefit or be affected by the Project. Furthermore, the CONSULTANT agrees that it will not acquire interest in any real estate or development proposals, or accept a contract with any client owning real estate or having a development proposal in the City of Council Bluffs or which will be directly affected or benefitted by the Project without first notifying and discussing said interest or contract with the CLIENT.

SECTION V - SIGNATURES

THIS INSTRUMENT embodies the whole agreement of the parties, there being no promises, terms, conditions or obligation referring to the subject matter other than contained herein. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their behalf.

CLIENT: City of Council Bluffs	CONSULTANT: Bolton & Menk, Inc.
X Signature	 X Signature
Date	1/30/2020 Date
Matthew J. Walsh, Mayor Name, Title	Jim Harbaugh, PLA , Principal-in-Charge Name, Title

Project: ***Land Use Study***
City of Council Bluffs, Iowa
City Project No. FY

TITLE VI & EEO CERTIFICATE OF COMPLIANCE

I. Contract Clauses Incorporated by Reference

A. Equal Opportunity Clause

The undersigned agrees that the Equal Opportunity Clause, prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin, codified as 41 CRF 60-1.4, is incorporated by reference in each nonexempt contract or purchase order which is presently existing or which may be entered into hereafter, between the undersigned and the Contractor.

B. Affirmative Action for Disabled Veterans of the Vietnam Era

The undersigned agrees that the Affirmative Action Clause relating to the employment and advancement of disabled veterans and veterans of the Vietnam Era, codified as 41 CFR 60-250.4, is incorporated by reference in each nonexempt contract which is presently existing or which may be entered into hereafter, between the undersigned and the Contractor.

C. Affirmative Action for Handicapped Workers

The undersigned agrees that the Affirmative Action Clause relating to the employment of qualified handicapped employees and applicants for employment, codified as 41 CFR 60-741.4, is incorporated by reference in each nonexempt contract which is presently existing or which may be entered into hereafter, between the undersigned and the Contractor.

D. Title VI – 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 shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "B" of the Regulations.

3. Solicitations for Subcontracts, Including Procurement 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 procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

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

5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the City of Council Bluffs shall impose such contract sanctions as it, the Iowa Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

a. withholding of payments to the contractor under the contract until the contractor complies; and/or,
b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Contractor shall include the provisions of Paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City of Council Bluffs or the Iowa Department of Transportation to enter into such litigation to protect the interests of the City of Council Bluffs or the Iowa Department of Transportation; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

II. Affirmative Action Programs

A. Equal Employment Opportunity

The undersigned agrees that if it has 50 or more employees and (1) has a subcontract of $10,000 or more; or (2) has Government bills of lading which can reasonably be expected to total $10,000 or more in any 12-month period; or (3) serves as a depository of Government funds in any amount; or (4) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, it will develop a written affirmative action compliance program for each of its establishments within 120 days from the commencement of this contract.

B. Affirmative Action for Disabled Veterans of the Vietnam Era

Project: ***Land Use Study***
City of Council Bluffs, Iowa
City Project No. FY

The undersigned agrees that if it holds a contract of $10,000 or more and if it has 50 or more employees, it will prepare and maintain an affirmative action program at each establishment, setting forth its policies, practices, and procedures relating to the employment and advancement of disabled veterans and veterans of the Vietnam Era, in accordance with the provisions of 41 CFR 60-250.6. This program may be integrated into or kept separate from other affirmative action programs of the undersigned, but must be prepared within 120 days of commencement of this contract.

C. Affirmative Action for Handicapped Workers

The undersigned agrees that if it holds a contract of $10,000 or more and if it has 50 or more employees, it will prepare and maintain an affirmative action program at each establishment, setting forth its policies, practices, and procedures relating to the employment and advancement of handicapped workers in accordance with the provisions of 41 CFR 60-741.5. This program may be integrated into or kept separate from other affirmative action programs of the undersigned, but must be prepared within 120 days of commencement of this contract.

III. Standard Form 100 (EEO-1) Reports

If the undersigned is (1) not exempt from the provisions of the Equal Opportunity Clause; (2) has 50 or more employees; (3) is a prime contractor or first tier subcontractor; and (4) has a contract, subcontract or purchase order amounting to $10,000 or more or serves as a depository of Government funds in any amount or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes, the undersigned agrees that it will file with the appropriate Federal agency a complete and accurate report on Standard Form 100 (EEO-1) within 30 days after the signing of this certificate or the award of any such purchase order (unless such a report has been filed in the last 12 months).

IV. Certificates of Nonsegregated Facilities

In accordance with 41 CFR 60-1.8 the undersigned certifies that it does not and will not maintain any facilities it provides for its employees in a segregated manner, or permit its employees to perform their services at any location under its control where segregated facilities are maintained; and that the undersigned will obtain a similar certification prior to the award of any non-exempt subcontract.

Full Legal Name of Company:_____

By: Name (Print) _____ Signature:_____

Title:_____ Date:_____

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City Project No. FY

NONDISCRIMINATION IN EMPLOYMENT CLAUSE

In accordance with the affirmative action program of the City of Council Bluffs, Iowa, and Executive Order 11246 as amended, all contracts entered into on behalf of the City shall agree:

"During the performance of the contract, the contractor agrees as follows:
(1) The contractor will not discriminate against any employee or applicant for employment because of the age, race, creed, color, sex, national origin, religion, or disability. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, creed, color, sex, national origin, religion, or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; raise of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, sex, national origin, religion or disability.

(3) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor unions or workers' representative of the contractor's commitments under this nondiscrimination in employment clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246, the rules, regulations, and relevant orders of the Secretary of Labor, Title 7 of the Civil Rights Act of 1964, Chapter 601A of the Iowa Code and Chapter 8.39 of the Council Bluffs Municipal Code.

(5) The contractor will furnish all information and reports required by the laws cited in the previous section, and will permit access to his/her books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with the laws as specified in the previous section.

(6) Any bidder or prospective contractor or subcontractor shall submit their written policy on work place harassment, including a plan for educating management and personnel on how to prevent, detect and correct situations that may reflect such hostile and harassing actions. Any

bidder or prospective contractor or subcontractor shall submit a copy of their policy regarding equal opportunity for employment, and a copy of their affirmative action plan.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part, and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 or by rule, regulation or order or as otherwise provided by law.

(8) The contractor shall include the provisions of the nondiscrimination in employment clause from beginning through paragraph (8) in every subcontract or purchase order, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the contracting agency or Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or a vendor as a result of such direction, the contractor may request the United States and/or the contracting agency to enter into such litigation to protect the interests of the United States and/or the contracting agency."

APPENDIX "A"

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

1. Compliance with Regulations: The Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "B" of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant 's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Council Bluffs, the Iowa Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the City of Council Bluffs shall impose such contract sanctions as it, the Iowa Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

a. withholding of payments to the Consultant under the contract until the Consultant complies; and/or,
b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Consultant shall include the provisions of Paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event an consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the City of Council Bluffs or the Iowa Department of Transportation to enter into such litigation to protect the interests of the City of Council Bluffs or the Iowa Department of Transportation; and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.