



Roll Call Number

20-1459

Agenda Item Number

52

Date September 14, 2020

APPROVAL OF AMENDMENT TO LOWER FOURMILE CREEK GREENWAY
MANAGEMENT AND MAINTENANCE CHAPTER 28E AGREEMENT BETWEEN CITY OF DES
MOINES AND POLK COUNTY CONSERVATION BOARD

WHEREAS, on November 6, 2017, by Roll Call No. 17-1901, the City Council approved the Lower Fourmile Creek Greenway Master Plan, which included development of a management and maintenance agreement for the oversight of the entire greenway; and

WHEREAS, on July 25, 2019 by Roll Call No. 19-1121, the Des Moines City Council approved the Lower Fourmile Creek Greenway Management and Maintenance Chapter 28E Agreement Between City of Des Moines and Polk County Conservation Board (PCCB); and

WHEREAS, the Agreement provides that the City, in cooperation with PCCB, will develop a plan for removal of all non-city utilities, including roads, lights, and signage when the City determines that such utilities are no longer servicing the residents in a safe manner prior to transfer of such property to Polk County for management by PCCB; and

WHEREAS, the parties are still in the process of developing such plan but have identified the roads to be removed, which could be removed as of the date of this Amendment as no longer servicing the residents and those roads which could be removed at a future date when such roads are no longer servicing the residents in a safe manner; and

WHEREAS, on April 27, 2020, by Roll Call No. 20-0722, the City Council approved programming of funds for FY21 through FY23 for Road removal within the Greenway in the amount of up to \$1,200,000 (\$700,000 in FY 21, \$100,000 in FY 2022, and \$400,000 in FY 2023) and approved the Capital Improvement Budget for FY 21 which included \$700,000 for Road removal; and

WHEREAS, PCCB plans to begin removal of roadways and restoration work on properties owned by Polk County within the Greenway beginning in Fall 2020 and has offered to perform removal and restoration work on adjacent or nearby City owned properties within the Greenway as part of such PCCB project; and

WHEREAS, the City will reimburse PCCB for the bid costs of such road removal; and

WHEREAS, the City Council and PCCB believe that cost savings will result and that it is in the best interest of both entities if the roads are demolished and restored in compliance with the Master Plan by PCCB in conjunction with PCCB projects within the Greenway in lieu of the City performing such removal and restoration.



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NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the above described Amendment to Lower Fourmile Creek Greenway Management and Maintenance Chapter 28E Agreement Between the City of Des Moines and Polk County Conservation Board, a copy of which is on file in the City Clerk's Office, is hereby approved and the Mayor is authorized and directed to sign said Amendment on behalf of the City and the City Clerk is directed to attest to his signature.

(Council Communication No. 20- 383)

Moved by Gatto to adopt.

Approved as to Form:

/s/ Ann DiDonato
Ann DiDonato
Assistant City attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL (7).

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED
J. M. Franklin Cownie Mayor

Signature of P. Kay Cmelik

City Clerk

AMENDMENT
TO LOWER FOURMILE CREEK GREENWAY MANAGEMENT AND MAINTENANCE
CHAPTER 28E AGREEMENT
BETWEEN
THE CITY OF DES MOINES
AND
THE POLK COUNTY CONSERVATION BOARD

THIS AMENDMENT TO 28E AGREEMENT by and between the City of Des Moines, (“ City”) and Polk County Conservation Board (“PCCB”), is entered into on this 14th day of Sept, ,2020, to that Lower Fourmile Creek Greenway Management and Maintenance Chapter 28E Agreement Between the City of Des Moines and the Polk County Conservation Board, dated July 25, 2019 (hereafter Agreement”).

WHEREAS, on July 25, 2019 by Roll Call No. 19-1121, the Des Moines City Council approved the Lower Fourmile Creek Greenway Management and Maintenance Chapter 28E Agreement Between City of Des Moines and Polk County Conservation Board which provides in part that the City will acquire properties within the Greenway to be transferred to Polk County for management by PCCB; and

WHEREAS, Section 4 of Attachment C of the Agreement provides that the City, in cooperation with PCCB, will develop a plan for removal of all non-city utilities, including roads, lights, and signage when the City determines that such utilities are no longer servicing the residents in a safe manner prior to transfer of such property; and

WHEREAS, the parties are still in the process of developing such plan but have identified the roads to be removed, as listed in **Exhibit A (“the Roads”)**, which could be removed as of the date of this Amendment as no longer servicing the residents in a safe manner and those roads which could be removed at a future date when such roads are no longer servicing the residents in a safe manner; and

WHEREAS, on April 27, 2020, by Roll Call No. 20-0722, the City Council approved programming of funds for FY21 through FY23 for Road removal within the Greenway in the amount of up to \$1,200,000 (\$700,000 in FY 21, \$100,000 in FY 2022, and \$400,000 in FY 2023) and approved the Capital Improvement Budget for FY 21 which included \$700,000 for Road removal; and

WHEREAS, PCCB plans to begin removal of roadways and restoration work on properties owned by Polk County within the Greenway beginning in Fall 2020 and has offered to perform removal and restoration work on adjacent or nearby City owned properties within the Greenway as part of such PCCB project; and

WHEREAS, the City and PCCB believe that cost savings will result and that it is in the best interest of both entities if the Roads are demolished and restored in compliance with the Master Plan by PCCB in conjunction with PCCB projects within the Greenway in lieu of the City performing such removal and restoration.

NOW THEREFORE, the PCCB and the City (hereafter jointly referred to as "the parties") do hereby agree as follows:

1. This Amendment shall be effective upon its approval and execution by both parties and in effect until December 31, 2023.
2. PCCB will annually propose to the City Manager, beginning on the date of this Amendment, the Roads or segments of Roads to be removed during the following year and to be retained for future trail connections to the City's Gay Lea Wilson Trail. Such PCCB proposal is subject to the approval of the City Manager, or his/her designee, who has the authority to agree to such proposal by PCCB or to modify it. The City Manager, or his designee, will take into consideration City staff recommendations from the Parks and Recreation, Public Works, Police and Fire Departments and the Real estate division of the Engineering Department.

3. PCCB agrees and acknowledges that the removal of the Roads requires vacation of such right-of-way pursuant to the requirements of the Iowa Code and City approval through the City's street Right of Way vacation process. PCCB acknowledges that, in order for a Road vacation to proceed, among other requirements, the City must own all adjacent property. It is the intention of the parties that such property will be conveyed to PCCB by a separate agreement. PCCB agrees to initiate such vacation process by making application for such vacation to the City's Community Development Department requesting such vacation.

4. The Des Moines City Council shall not be obligated to vacate any of the Roads and all vacations and removal of utilities shall be at the sole discretion of the City Council. Except for utility poles as provided in Section 5 below, no utilities will be vacated. All utilities will remain in place.

5. After vacation of the Roads by enactment of a vacation ordinance by the Des Moines City Council and publication of such ordinance as provided by law, the City agrees that PCCB may commence demolition and removal of the identified roadway and incidental items from such vacated Roads at a time mutually agreed upon between the City Parks and Recreation Director and the PCCB Deputy Director. Removal of utility poles and signs will be coordinated with the City's Engineering/Traffic & Transportation Division and MidAmerican Energy. PCCB agrees to restore the grounds by grading and planting consistent with the Lower Fourmile Greenway Master Plan ("Master Plan"). The removal and restoration plans must receive the written approval of the Parks and Recreation Director prior to the beginning of the removal work for each Road or segment thereof.

6. PCCB agrees to perform the removal and restoration work in compliance with, including making all publications and holding all hearings as required by Iowa Code Chapters 38, 331 and 350 for the award of public improvement construction contracts and shall hold a public hearing regarding approval of: (1) the plans and specifications, form of contract documents and the Engineer's estimate of the cost for the improvements and bid security; (2) the designation of the lowest responsible, responsive bidder and cost; (3) bid acceptance; and (4) award of the contract for the removal and restoration work/project.

7. PCCB will provide a detail of the cost that are the City's responsibility, either through bid tabulations or other mutually agreed to calculation prior to bid and at award. The City will not be responsible for costs in excess of Council approved funding.

8. PCCB agrees that the City will not be responsible for the costs of removal and restoration of any Roads unless PCCB has received the prior written approval of the Parks and Recreation Director of such costs prior to the award of bid by PCCB.

9. PCCB will require the general contractor to obtain, and to maintain in continuous effect, the insurance coverages described in **Attachment 1** and the performance, maintenance, and payment bond as specified in the contract documents.

10. PCCB will be responsible for payments for all permits, fees, and costs, providing qualified personnel and inspection testing, processing progress payment requests, and withholding therefrom the 5% retainage required pursuant to Iowa Code Chapter 573.

11. PCCB will be required to review and consider contractor requests for time extensions.

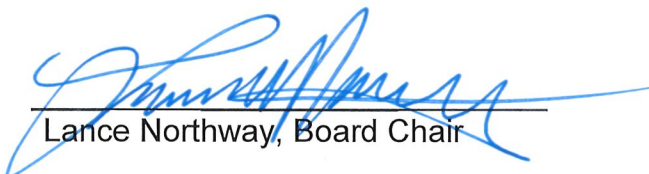
12. Upon completion of the removal and restoration of the Roads and approval of such work by the Parks and Recreation Director, the City agrees to reimburse PCCB for the cost of such work in the amount not to exceed the Council approved funding. Payments shall be made within 30 days of receipt of the invoice and supporting documentation

13. The parties shall approve this Amendment by resolution of their respective board or council, which shall authorize the execution of this Amendment. This Amendment will then be filed in, and become effective when filed in the Office of the Iowa Secretary of State in accordance with Chapter 28E of the Code of Iowa (2020).

Except as so amended, the Agreement shall remain in full force and effect.

POLK COUNTY CONSERVATION BOARD

CITY OF DES MOINES


Lance Northway, Board Chair


T. M. Franklin Cownie, Mayor

ATTEST: Katie Stoklasa
Katie Stoklasa, Board Clerk

ATTEST: P. Kay Cmelik
P. Kay Cmelik, City Clerk

APPROVED AS TO FORM:
Ann DiDonato
Ann DiDonato, Assistant City Attorney

STATE OF IOWA)
)SS
COUNTY OF POLK)

On this 9 day of SEPTEMBER, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared **LANCE NORTHWAY and KATIE STOKLASA**, to me personally known, and who, being by me duly sworn did state that they are the Board Chair and Board Clerk, respectively, of **POLK COUNTY CONSERVATION BOARD**, and that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of Polk County Conservation Board, by authority of its Board, as contained in the Resolution adopted by the Board under Roll Call No. 20-0907 on the 9 day of SEPTEMBER, 2020, and that LANCE NORTHWAY and KATIE STOKLASA acknowledged the execution of the instrument to be the voluntary act and deed of Polk County Conservation Board, by it and by them voluntarily executed.

Katie Stoklasa
Notary Public in and for the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)



On this 14th day of Sept, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared **T.M. FRANKLIN COWNIE and P. KAY CMELIK**, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of **CITY OF DES MOINES, IOWA**, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 20- 1459 of City Council on the 14th day of Sept, 2020, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Sandi L. Deery
Notary Public in the State of Iowa

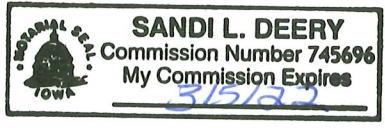

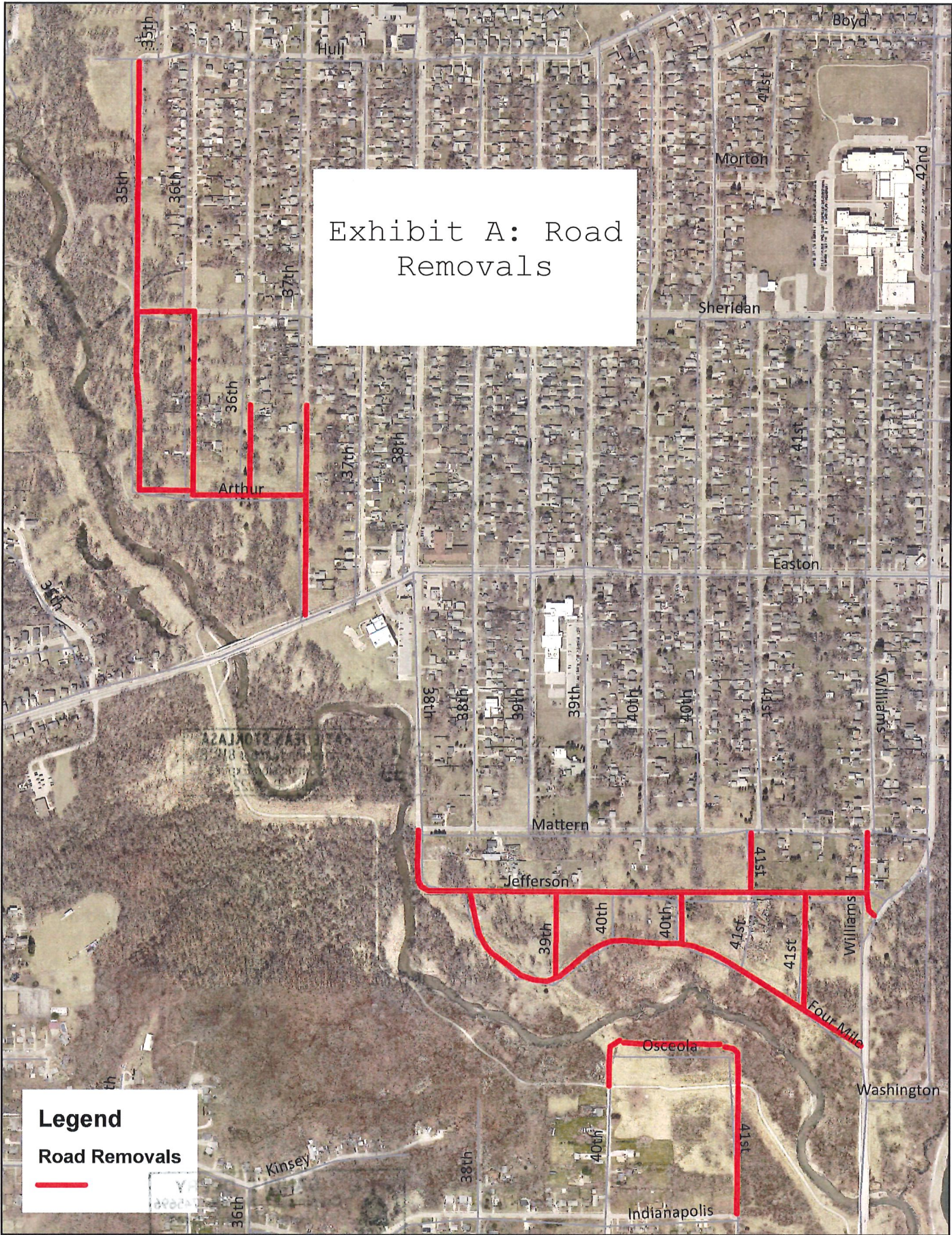


Exhibit A: Road Removals

Legend
Road Removals




ATTACHMENT 1

CITY OF DES MOINES, IOWA STANDARD – MAJOR (Requirements for PCCB Contractors)

INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term “CITY” shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf. The term “PCCB” shall mean the Polk County Conservation Board including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The CONTRACTOR shall purchase and maintain insurance to protect the CONTRACTOR and CITY throughout the duration of this Contract. Said insurance shall be provided by insurance companies “admitted” or “non-admitted” to do business in the State of Iowa having no less than an A. M. Best Rating of “B+.” All policies shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Contract execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

- A. COMMERCIAL GENERAL LIABILITY INSURANCE: Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). ***Waiver of Subrogation in favor of the CITY and the PCCB is required as per paragraph 2.H. below.***

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form.

- B. AUTOMOBILE LIABILITY INSURANCE: Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit covering Bodily Injury and Property Damage. Coverage shall include all owned, non-owned, and hired vehicles. If the CONTRACTOR’S business does not own any vehicles, coverage is required on non-owned and hired vehicles. Policy shall include Contractual Liability coverage. ***Waiver of Subrogation in favor of the CITY and the PCCB is required as per paragraph 2.H. below.***

- C. UMBRELLA/EXCESS LIABILITY INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including a ***Waiver of Subrogation in favor of the CITY and the PCCB is required as per paragraph 2.H. below.***
- D. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: As required by State of Iowa Workers' Compensation Law, the CONTRACTOR shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the CONTRACTOR is not required to purchase Workers' Compensation Insurance, the CONTRACTOR shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.H. below.***
- E. ADDITIONAL INSURED ENDORSEMENT: The General Liability Insurance policy shall include the CITY as an Additional Insured. The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their ISO/non-ISO equivalents. The CONTRACTOR'S insurance shall be primary to that of the CITY and the PCCB and noncontributory to any other insurance or similar coverage available to the CITY or the PCCB whether the other available coverage is primary, contributing or excess.
- F. GOVERNMENTAL IMMUNITY ENDORSEMENT: The General Liability Insurance policy shall include the CITY Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

CITY OF DES MOINES, IOWA

GOVERNMENTAL IMMUNITIES ENDORSEMENT

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa and Polk County Conservation Board as Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa or the Polk County Conservation Board under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
3. Assertion of Government Immunity. The City of Des Moines, Iowa and the Polk County Conservation Board shall, individually, be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa or the Polk County Conservation Board.

4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa or the Polk County Conservation Board under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa or the Polk County Conservation Board.
 5. No Other Change in Policy. The insurance carrier, the City of Des Moines, Iowa and the Polk County Conservation Board agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.
- G. CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The General Liability Insurance policy shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. ***Written notifications shall be sent to: City of Des Moines, Risk Management, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***
- H. WAIVER OF SUBROGATION:** To the fullest extent permitted by law, CONTRACTOR hereby releases the CITY and the PCCB from and against any and all liability or responsibility to the CONTRACTOR or anyone claiming through or under the CONTRACTOR by way of subrogation or otherwise for any loss without regard to the fault of the CITY or the PCCB or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Contract. The CONTRACTOR'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY and the PCCB including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.
- I. PROOF OF INSURANCE:** The CONTRACTOR shall provide the following proof of insurance to the CITY:
- Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through H above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Contract under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
 - A copy of the Cancellation and Nonrenewal Notification Endorsement or its equivalent as required in paragraph 2.G. above.
 - Copies of Additional Insured Endorsements ISO CG 20 26 07 04 and ISO CG 20 37 07 04 or their equivalents as required in paragraph 2.E. above.
- Mail Certificates of Insurance to: City of Des Moines, Risk Management, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***
- J. AGENTS AND SUBCONTRACTORS:** The CONTRACTOR shall require all its agents and subcontractors who perform work and/or services on behalf of the CONTRACTOR to purchase and maintain the types of insurance customary to the industry or trade related to the services being provided.

3. INDEMNIFICATION REQUIREMENTS

To the fullest extent permitted by law, CONTRACTOR agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY and the PCCB against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY or the PCCB by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONTRACTOR'S work or services under this Agreement, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR.

CONTRACTOR'S obligation to indemnify the CITY and the PCCB contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

Neither the CITY or the PCCB shall be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONTRACTOR arising out of or in any way connected or associated with CONTRACTOR'S work, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR, except to the extent caused by or resulting from the negligent act of the CITY or the PCCB, respectively.

CONTRACTOR expressly assumes responsibility for any and all damage caused to CITY or PCCB property arising out of or in any way connected or associated with CONTRACTOR'S work or services under this Contract, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR.

CONTRACTOR shall ensure that its activities on CITY or PCCB property will be performed and supervised by adequately trained and qualified personnel and CONTRACTOR will observe all applicable safety rules.