

**January 5, 2015**



**To: Mayor Bemrich and City Council**

**From: David Fierke, City Manager**

**Subject: Contract awarding a \$90,000 Grant for the development of the River Master Plan within the City's Comprehensive Plan**

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**ACTION: For vote Monday, January 12, 2015**

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**Brief History**

In November 2014, the City Council approved a contract with Houseal Lavigne Associates to complete a Comprehensive Plan for the City. The Comprehensive Plan will have strong public participation, and will use this participation and other considerations to identify goals for a number of topics relative to Fort Dodge. Now that efforts are beginning to develop the Comprehensive Plan the City has received a final contract for **the remaining funds to be put towards the Plan. Enclosed for the Council's review** is a grant agreement in the amount of up to \$90,000 between the City of Fort Dodge and Iowa DNR for the development of a River Master Plan, which will be incorporated as a component of the overall Comprehensive Plan. To specifically address the River Master Plan portion of the Comprehensive Plan, Houseal Lavigne is sub-consulting with Snyder Associates, as agreed upon in the initial Comprehensive Plan Contract.

**Analysis of Issue**

The City of Fort Dodge has begun efforts to the develop a Comprehensive Plan that will use public input and a steering committee to direct the vision for the City of Fort Dodge relative to a variety of topic areas (including, but not limited to housing, economic development, infrastructure, downtown, etc.). It was determined that, among the various topics, the Comprehensive Plan process should also address the riverfront. Iowa DNR provides grant funds specifically for riverfront planning. In pursuing these funds the scope of work for the river portion of the plan evolved to benefit the City in planning not only for its specific waterways, but also those waterways that impact the City from a regional standpoint. Webster County Conservation was also brought in as a partner on this effort, as a number of recreational resources, such as trails and water trails are a shared responsibility of the City and County. A scope of work was drawn up for the River Master Plan, as laid out in the attached contract, with a special focus on planning for the Des Moines River and Lizard Creek corridors throughout Webster County. The City is being awarded \$90,000 to complete said scope of work.

## *Scope of Work*

The Scope of Work per the enclosed contract was included in the contract agreed upon by the City of Fort Dodge and Houseal Lavigne. The scope includes 5 main tasks (see the attached contract for more detailed steps relative to each task):

1. Review and assemble data, plans, documents and state water trail/trail/public lands context and priorities

This task will require Houseal Lavigne to look at all existing conditions relative to the Des Moines River and Lizard Creek. They will delve into existing planning documents at the City, County and State levels; relative land use documents and zoning policies; and more. Further, Houseal Lavigne will conduct applicable staff interviews regarding the identified waterways at the City, County and State levels. On top of to using data to model areas with high quality resources and habitats, Houseal Lavigne will create a geodatabase of the information collected, conduct a technical review of promising trail/water trail corridors and connections, and draft a two page summary of this review of existing conditions.

2. Public Listening

A steering committee has been recruited for the River Master Plan portion of the Comprehensive Plan. Houseal Lavigne will facilitate this committee in a number of meetings and open houses. Houseal Lavigne will also facilitate public meetings to obtain input from various stakeholders and any public interested. Houseal Lavigne will work within the meetings to understand and/or build consensus on issues and opportunities relative the Des Moines River and Lizard Creek. An analysis report will be created based on the public input.

3. Existing Conditions and Recommendations Report

This task will require Houseal Lavigne to convene with downtown business owners and SSMID for ideas and concerns related to land use and downtown connections to the riverfront. Further steering committee meetings will take place, and an existing conditions/recommendations report will be provided for review by the committee.

4. Vision & Goals

Using the public input, Houseal Lavigne will facilitate with the steering committees to develop vision and goals for the river, trails and green space corridors throughout Webster County. The visioning will also brainstorm branding. Houseal Lavigne will test the vision with citizens to ensure consensus. In this task the Vision & Goals will be finalized and submitted in a document for review by Iowa DNR, Webster County and other water trail communities.

5. Master Plan

This task will require that a visually attractive, conceptual level master plan will be drafted, which will be incorporated or referenced **as part of the City's** Comprehensive Plan. The plan should have concept level estimates of cost for built infrastructure, explore funding sources and address land uses,

infrastructure, water trails, etc. The steering committee will provide feedback on the draft.

### **Budget Impact**

The total contract with Houseal Lavigne was approved at a not-to-exceed amount of \$190,000. This grant award is for \$90,000; therefore, the overall funding for development of the Comprehensive Plan has been compiled as follows (\$5,000 of these funds will remain in the Comprehensive Plan fund for contingencies):

<b>Source</b>	<b>Amount</b>
<b>City</b>	
Water Utility	\$10,000
Stormwater Utility	\$10,000
Sewer Utility	\$10,000
Parks (hotel/motel)	\$10,000
Permit Surcharge	\$15,000
<b>SSMID</b>	\$10,000
<b>Grants</b>	
Community Foundation	\$20,000
Deardorf	\$5,000
Smeltzer	\$5,000
Iowa DNR	\$90,000
<b>DART</b>	\$10,000
<b>TOTAL</b>	<b>\$195,000</b>

### **Strategic Plan Impact**

The following initiative from the FY14 Strategic Plan will progress upon the development of the River Master Plan as a component to the City's Comprehensive Plan:

- Resurrect the River Front Master Plan

### **Impact on Existing Plans**

Among review of other existing County and State plans, all City plans relative to the riverfront will be reviewed, including (but not limited to) the 1999 Riverfront Master Plan and the 2008 Downtown Plan.

### **Committee Review / Recommendation**

A River Plan steering committee has been formed to develop the River Master Plan portion of the Comprehensive Plan.

**Staff Conclusions / Recommendations**

Staff recommends approving the resolution to authorize the execution of the contract for a grant award from Iowa DNR in the amount of \$90,000 in order to develop the River Master Plan portion of the City’s Comprehensive Plan.

**Alternatives**

Deny approval; therefore, denying the funds for the development of the River Master Plan.

**Implementation and Accountability**

The Business Affairs, Community Growth & Engineering Department, along with Webster County Conservation, will work with Houseal Lavigne and Iowa DNR in the development of the River Master Plan and Comprehensive Plan.

Signed



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Carissa Miller  
Senior Planner

Approved



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David R. Fierke  
City Manager

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION OF A GRANT AWARD CONTRACT WITH THE IOWA DEPARTMENT OF NATURAL RESOURCES FOR THE DEVELOPMENT OF A RIVER MASTER PLAN AS A PART OF THE CITY'S COMPREHENSIVE PLAN**

**WHEREAS**, the City of Fort Dodge has identified the need to develop a Comprehensive Plan;

**WHEREAS**, a portion of said Comprehensive Plan, named the River Master Plan, will plan for the Des Moines River and Lizard Creek corridors of Webster County;

**WHEREAS**, the Iowa Department of Natural Resources has awarded the City \$90,000 to complete a River Master Plan as a part of the proposed Comprehensive Plan;

**WHEREAS**, the City of Fort Dodge has an approved agreement with Houseal Lavigne Associates to complete the scope of work as laid out in the proposed Grant Award Contract.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT DODGE, IOWA:**

1. That the Mayor and City Clerk are authorized to execute the Grant Award Contract with the Iowa Department of Natural Resources, which awards the City \$90,000 to complete a River Master Plan for Webster County.
2. That the Department of Business Affairs and Community Growth is authorized to conduct and supervise the activities as described in said Grant Award Contract.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by the City Council of the City of Fort Dodge, Iowa.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Other: \_\_\_\_\_

CITY OF FORT DODGE, IOWA

By: \_\_\_\_\_  
Matt Bemrich, Mayor

ATTEST:

\_\_\_\_\_  
Jeff Nemmers, City Clerk

**IOWA DEPARTMENT OF NATURAL RESOURCES  
CONTRACT NUMBER 15CRDLWBNHOOG-0002**

**Between**

**IOWA DEPARTMENT OF NATURAL RESOURCES  
And  
THE CITY OF FORT DODGE, IOWA**

This Contract was approved by the Natural Resource Commission on Dec. 11, 2014.

IN WITNESS THEREOF, the parties hereto have entered into this Contract on the day and year last specified below.

**DEPARTMENT OF NATURAL RESOURCES**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bruce Trautman, Deputy Director

**CITY OF FORT DODGE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Fierke, City Manager

<b>For DNR use only:</b>	
1. Retain the original contract in the project file and send a hardcopy with the first invoice.	
2. a) Fax contract to 515-281-8895 (check one box below before faxing)	
OR	
b) Email scanned copy to your Division's Contract Rep:	
<b>DIVISION</b>	<b>DIVISION CONTRACT REP</b>
<input type="checkbox"/> Conservation & Recreation	Kim.Rasler@dnr.iowa.gov
<input type="checkbox"/> Director's Office	Karen.Fynaardt@dnr.iowa.gov
<input type="checkbox"/> Environmental Services	Jerah.Sheets@dnr.iowa.gov
<input type="checkbox"/> Management Services	Jennifer.StJohn@dnr.iowa.gov
If you do not have faxing or scanning/emailing capabilities, you may mail a copy of the contract to IA DNR, Wallace State Office Building, Attention: (your respective bureau's contract rep), 502 East 9 <sup>th</sup> Street, Des Moines, IA 50319.	

## INTERGOVERNMENTAL SERVICES - SPECIAL CONDITIONS

This Contract is entered into between the Iowa Department of Natural Resources (DNR) and the City of Fort Dodge (CFD or contractor). The parties agree as follows:

### Section 1 IDENTITY OF THE PARTIES

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**1.1 Parties.** DNR is authorized to enter into this Contract. DNR's address is: Wallace State Office Building, 502 East 9<sup>th</sup> Street, Des Moines, Iowa 50319.

CFD is a municipal corporation organized under the laws of the State of Iowa. The Contractor's address is: 819 1<sup>st</sup> Avenue South, Fort Dodge, IA 50501.

**1.2 Project Managers.** Each party has designated a Project Manager, who shall be responsible for oversight and negotiation of any contract modifications, as follows:

**DNR Project Manager:** Nate Hoogeveen  
River Programs Coordinator  
Land and Waters Bureau  
502 East 9<sup>th</sup> Street, Des Moines, IA 50319  
Phone: 515-205-2486  
Fax: 515-725-8895  
Email: nate.hoogeveen@dnr.iowa.gov

**Contractor Project Manager 1:** Dave Fierke  
City Manager of Fort Dodge  
819 1<sup>st</sup> Avenue South  
Fort Dodge, IA 50501  
Phone: 515-573-7144  
Fax: 515-573-5751  
Email: dfierke@fortdodgeiowa.org

### Section 2 STATEMENT OF PURPOSE

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**2.1 Background.** CFD, with assistance from the IDNR, Webster County Conservation Board (WCCB), and American Rivers, are creating a collaborative master plan for the management of the greenspaces and water trail within Webster County.

**2.2 Purpose.** The river master plan for Webster County and Fort Dodge will establish a long-term plan for the management of public areas and the Des Moines River and Lizard Creek Water Trails, as well as visions for future development of public greenspaces, trails, and an urban waterfront area. The project area is defined as lands and waters within the boundaries of Webster County, with special focus on the river corridors of the Des Moines River and Lizard Creek. Special attention will be given to the urban waterfronts within the city limits of Fort Dodge and river and trail connections. Improve recreation, enhanced natural resources conservation, and improve quality of life for the citizens of Webster County and the State of Iowa are guiding principles for this plan. DNR's participation ensures that decisions regarding the trails and water trails are made in accordance with DNR's objectives in the 2010 water trails

plan and that other natural resource priorities are considered. CFD or its subcontractors will lead the county-wide planning effort described here in conjunction with the comprehensive city master plan happening within the city limits of Fort Dodge. Because numerous and related trail, water trail, and greenway connections happen outside city limits, collaboration with WCCB and DNR will be paramount to achieving the deliverables described in Section 5.

**Section 3 DURATION OF CONTRACT**

**3.1 Term of Contract.** The term of this Contract shall be Jan. 1, 2015 through June 15, 2016 unless terminated earlier in accordance with the Termination section of this Contract. However, this Contract shall not begin until it has been signed by both parties.

**3.2 Approval of Contract.** If the amount of compensation to be paid by DNR according to the terms of this Contract is equal to or greater than \$25,000.00, then performance shall not commence unless this Contract has been approved by the Natural Resource Commission.

**3.3 Extension.** DNR shall have the sole option to extend this Contract for subsequent periods, adding up to no more than six years total from the beginning date of the Original Contract, by executing a signed amendment prior to the expiration of this Contract.

**Section 4 DEFINITIONS**

“Deliverables” shall mean services to be provided by, or on behalf of, the Contractor pursuant to this Contract. Deliverables shall include everything produced by the Contractor that is related to the Tasks, such as reports, meetings, documentation, designs, copy, artwork, data, information, graphics, images, processes, techniques, materials, plans, papers, forms, studies, modifications, content, concepts, and all other tangible and intangible works, materials and property of every kind and nature that are related to the Deliverables.

“Task Milestone Date” shall mean a deadline for accomplishing a Task required by this Contract.

**Section 5 STATEMENT OF WORK**

**5.1 Statement of Work.** Contractors shall perform the following tasks. Contractors shall complete obligations under this Contract by the Task Milestone Dates set out in the following table:

Obligation	Task Milestone Date
<p><b>Task 1:</b> Conduct a review of Data, Plans, Documents, and State Water Trail/Trail/Public Lands Context and Priorities.</p> <p><b>Description:</b>                      A. Review Iowa DNR Water Trail Plan, Development Manual, CFD's 1999 Riverfront Master Plan, west-end downtown district past planning, and current planning documents and worksheets provided by DNR and Iowa DOT statewide plans and priorities (Trails Plan 2000 and ongoing Iowa Bicycle and Pedestrian Long-</p>	<p>No later than April 30, 2015</p>

<p>Range Plan).</p> <p>B. Review and document current land uses and zoning in Webster County, Fort Dodge, Kalo/Coalville, and Lehigh. This will set the stage for considering what future land uses should be and what future policy changes may be needed such as changes in zoning districts. Review permitted uses of zoning districts and consider which districts would be appropriate if amendments to zoning policy are needed in the future.</p> <p>C. Conduct interviews with DNR Water Trails staff, city staff, and WCCB staff regarding existing plans at the city and county levels identifying issues and opportunities the plan should address. Review management approaches on city and public lands, and maintenance/management approaches at various facilities within the potential green space corridor, to determine opportunities and constraints for yet-to-be defined development and conservation initiatives. Submit report of input to all project partners, including American Rivers, 1101 14<sup>th</sup> Street NW, Suite 1400, Washington, DC 20005.</p> <p>D. Gather relevant existing local-regional plans and/or cooperative agreements among relevant entities including: Inventory of city-owned lands, land cover, zoning and designations, and pollution, source water protection plans, water accesses, water features, water hazards, existing trail or trail plans, and other elements that may affect recreational development, open space restorations, or land protection visions.</p> <p>E. Order countywide valley-top-to-valley-top corridor cultural review (Office of State Archaeologist is familiar with study area criteria) for study area segment, and fish/wildlife species review within same corridor from DNR. Use this data to model areas likely to contain high quality resources and habitats that may be easily avoided in development, and to establish conservation, interpretation, or protection priorities.</p> <p>F. Develop geodatabase similar to water trails example (provided), including parcel information, public land ownership, all water trails and possible surface trail corridor routes, existing land management and species protection goals, recreational use and economic spending data (ISU CARD) land-cover, special zoning river migration information, species of interest, cultural information,</p>	
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<p>water access/segment data collected by WCCB staff, and land acquisition priorities by any land managers. Submit geodatabase to CFD, DNR Water Trails, and WCCB staff and other involved consultants.</p> <p>G. Conduct a technical review of promising trail/water trail corridors and connections, with a focus on surface trails (hard and soft trails), especially those that connect water access, parks, and other green spaces. Care should be taken to minimize segmentation of wildlife corridors and intersecting existing wildlife areas. Consider factors such as existing protections, technical/cost feasibility, and significance (vista points, destinations, etc.).</p> <p>H. <b>Deliverables:</b> Two page summary of task one items, with supporting presentation maps for interagency team review and next phase public outreach. Mapping should show potential broad corridors for possible trail development, water trails, and trailheads intended for landowners to understand what could be considered.</p>	
<p><b>Task 2: Public Listening</b></p> <p><b>Description:</b></p> <p>A. Recruit two steering committees: 1) Webster County River, Trail, and Green Space Steering Committee and 2) Fort Dodge Urban Waterfront Steering Committee, or reasonable combination thereof. The former will consist of key city and county staff, elected leaders, DNR Wildlife and Parks staff, economic development interests, community service organizations, recreational enthusiasts, key museum/local attraction staff, tourism officials, land managers, law enforcement and emergency management, and others with a stake in the future of the river, trail, and greenway corridors. The latter will have some members in common with the Webster County River, Trail, and Green Space Steering Committee, but will also include local business owners, neighborhood association members, park staff, and others identified in CFD staff interviews.</p> <p>B. Convene Steering Committee kick-off meetings, facilitated to discuss listening efforts, ideas, and goals to bring to the table.</p> <p>C. Hold a Webster County River, Trail, and Green Space Steering Committee open house, located in Fort Dodge with a county-wide invitation, to determine the citizenry's future demands, perceptions, ideas, and concerns related to streams, green space, and trails in Webster County.</p>	<p>No later than June 30, 2015</p>

<p>D. Hold two landowner open houses to hear ideas and concerns: one north of Fort Dodge and one south of Fort Dodge. Landowners adjacent to the rivers, public areas, CFD’s waterfront parcels, or existing or potential broad trail corridor areas will be consulted. This will be done in conjunction with the process and public meetings that will be held to develop future land use. Identify landowners (with addresses) that are willing to help solve problems for law enforcement staging on property, report dumping problems, and otherwise collaborate with law enforcement. Surveys or verbal comments will be collected at the end of each meeting.</p> <p>E. Conduct supplemental listening and communication. Support meeting-based listening with web, phone, and paper surveys for issues with potential for controversy. Targeted social media and traditional media communication will be used for broader awareness at key points. Paper versions of surveys will be made available at WCCB headquarters and City Hall. Contractors shall coordinate with American Rivers for advisement on controversial issues.</p> <p>F. Water Trail Classification consensus building. Hold a facilitated joint steering committee meeting to present known information about river segments, calling out challenging conditions, access spacing, hazards, scenery (with photos), and other factors affecting Water Trail Experience Classification existing conditions. Apply input from members of both steering committees to apply future goals for various segments (hazard reductions, new or improved accesses or facilities, accesses removed, maintenance increased, conservation plans, etc.).</p> <p>G. Write an analysis report identifying themes, concerns, items that need to be addressed in planning, land use and zoning, or further listening recommendations if serious threats to future projects are identified.</p> <p>H. Update geodatabase with public land manager and law enforcement/emergency management recommendations (from American Rivers report). Convene each steering committee or hold a joint steering committee meeting to review feedback.</p> <p><b>Deliverable:</b> Submit analysis / initial issues report and updated geodatabase to CFD, WCCB, DNR Water Trails staff, and American Rivers.</p>	
<p><b>Task 3: Existing Conditions and Recommendations Report</b> <b>Description:</b></p>	<p>No later than Dec. 31, 2015</p>

<p>A. Convene a meeting of downtown owners (and particularly “west end” business owners) for ideas and concerns related to land use and downtown connections to the waterfront.</p> <p>B. Meet with the Downtown Self-Supported Municipal Improvement District for ideas on land use and connections to the waterfront.</p> <p>C. Identify extent of area outside of the river channel proper that will be included in the land use and zoning analyses, recognizing that future state for land uses and zoning can have a significant impact on the success of the riverfront recommendations. For example, if a goal is to make the riverfront a destination and hub of activity, then appropriate residential densities are needed to support that. In addition, considering the physical connection of the riverfront to downtown is important.</p> <p>D. Facilitate three (3) Urban Waterfront Steering Committee meetings to discuss riverfront master plan elements, trail planning, land use, and open space planning within city limits. This shall be one of the focus groups to be conducted during the city’s Comprehensive Plan effort and coordinated as a chapter of the Plan. The groups should also explore connections with out-of-city limits destinations, shared facilities, land protections, and management of city lands that may influence the Fort Dodge Comprehensive Plan. Use similar process described below under heading “E” to develop in-river-channel vision for the community based on Water Trail Experience Classification criteria.</p> <p>E. Deliver Existing Conditions/Recommendations Report to both steering committees for review. The report should consist of recommended draft surface trail/bike route corridors linking parks and other public spaces, water trail usage classifications, early infrastructure project recommendations for design and construction, and potential goals, visions, and rough estimates of project costs, and funding sources for public and agency vetting. The vetting is particularly important as a majority of the recommendations must be implementable. Therefore, more than a listing of funding sources must be addressed with the plan. The ability and willingness for local funds to be allocated to recommended projects, in conjunction with grant opportunities, must be evaluated for the 20-year life of the Fort Dodge Comprehensive Plan and the countywide Trails, Water Trails, and</p>	
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<p>Greenspace Plan. Recommend goals and strategies for conservation, protection, or other public land use strategies.</p> <p><b>Deliverable:</b> Supply the updated geodatabase with corridor recommendations supplied to CFD, DNR Water Trails, WCCB staff, and American Rivers.</p>	
<p><b>Task 4: Vision &amp; Goals</b></p> <p><b>Description:</b></p> <p>A. Facilitate with steering committees to develop vision and goals for River, Trails, and Green Space corridors, land uses, and other physical improvements that tie into identity concepts (such as art, signage, building design, aesthetics, conservation planning, etc.) throughout Webster County. Categories may include but need not be limited to conservation, recreational facility development, management, and future marketing. Brainstorm which elements are doable in the near term, mid-range, and long term, considering permit issues, available funding, and other constraints, and enthusiasm/impact for the idea. Constrain brainstorming by practicalities, such as existing goals and capacities of the land managers where improvements are proposed.</p> <p>B. Based on vision, facilitate brainstorming on unified naming or branding for combined River, Trail, and Green Space components that will set the area apart and can be used marketing impact well into the future.</p> <p>C. Test vision elements with citizens, soliciting feedback via Web-based and/or paper surveys available at City Hall or WCCB headquarters.</p> <p>D. Finalize Vision and Goals and review with Webster County River, Trail, and Green Space Steering Committee and Fort Dodge Urban Waterfront Steering Committee.</p> <p><b>Deliverable:</b> Submit Vision and Goals document for endorsement to DNR, WCCB, and other water trail communities.</p>	<p>No later than April 1, 2016</p>
<p><b>Task 5: Master Plan</b></p> <p><b>Description:</b></p> <p>A. Draft a visually attractive, conceptual level master plan for the Webster County River, Trail, and Green Space, with distinct chapters or elements pertaining to the Fort Dodge Urban</p>	<p>No later than June 1, 2016</p>

<p>Waterfront that can readily be incorporated or referenced as part of the City's Comprehensive Plan. Plan(s) should have concept level estimate of cost for built infrastructure. Explore funding sources, considering bonding capacity and grants. Plans should address land uses, infrastructure, Water Trail Experience Classifications, and reference any planned conservation elements developed by or in collaboration with the steering committees.</p> <p>B. Solicit feedback from both steering committees on drafts. Present plan elements to WCCB and City Council workshop. Finalize plan with approval from WCCB and CFD.</p> <p>C. <b>Deliverables:</b> Print a supply of 200 hardcopies of the Webster County River, Trail, and Green Space Master Plan to distribute among project partners. Contractor will provide 50 hardcopies of the City Comprehensive Plan and 200 hardcopies of the Riverfront chapter brochure for distribution among project partners. Supply PDF digital versions of documents to Iowa DNR.</p>	
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**5.2 Non-Exclusive Rights.** This Contract is not exclusive. DNR reserves the right to select other contractors to provide services similar or identical to the Statement of Work described in this Contract during the term of this Contract.

**5.3 Stop Services.** In addition to its other remedies described herein, DNR shall have the right at any time during the Contract term to direct the services of Contractor fully or partially suspended or stopped, if the Deliverables fail to conform to applicable specifications and requirements in this Contract. DNR shall give Contractor written notice of a stop work directive. DNR shall provide to Contractor the reasons for the stop work directive.

**5.4 Industry Standards.** Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the relevant industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

**5.5 Amendments to Statement of Work – Change Order Procedure.** Modifications, deletions and additions may be made to a Statement of Work at any time during the term of this Contract by mutual written consent of the parties. Any amendment to a Statement of Work shall be called a Change Order, and the following procedures shall be followed:

**5.5.1 Written Request.** DNR shall specify in writing the desired modifications to the same degree of specificity as in the original Statement of Work.

**5.5.2 The Contractor's Response.** The Contractor shall submit to DNR a time and cost estimate for the requested Change Order within five business days of receiving the Change Order request.

**5.5.3 Acceptance of the Contractor Estimate.** If DNR accepts the estimate presented by the Contractor within five business days of receiving the Contractor's

response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.

- 5.5.4 Adjustment to Compensation.** The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract and that such Change Order may require approval of the Natural Resource or Environmental Protection Commission.

## **Section 6      MONITORING AND REVIEW**

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**6.1 Task Milestone Dates.** Contractor shall complete its obligations under this Contract by the Task Milestone Dates set out in Section 5.1.

Failure by Contractor to complete the above-designated portions of its obligations by the Task Milestone Dates set out herein shall constitute material breach of this Contract by Contractor and shall be grounds for DNR to immediately terminate this Contract for cause.

**6.2 Review Meetings.** Commencing with beginning performance of this Contract, the Project Managers shall meet quarterly to discuss progress made by the Contractor during the performance of this Contract. The meetings shall occur, either in person or by telephone conference call, at the following times: Every second Thursday, quarterly, at 10 a.m. or as otherwise agreed to at the kickoff meeting. Meetings may be postponed only on a case-by-case basis by mutual written agreement of the parties.

**6.3 Status Reports.** Prior to each review meeting, the Contractor Project Manager shall provide a status report listing:

- Accomplishments during the previous period,
- Activities planned for the upcoming period,
- Tasks completed or Deliverables produced during the previous period,
- An updated schedule of upcoming Deliverables, and
- Any problems or concerns encountered since the last meeting.

At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that shall facilitate problem resolution.

**6.4 DNR right to review and observe.** DNR shall have the right to review and observe, at any time, completed work or work in progress. Contractor shall allow the State of Iowa or DNR, without cost, to inspect its facilities and books and records relating to invoicing and time records for the purpose of monitoring and evaluating performance of this Contract.

## **Section 7      COMPENSATION**

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**7.1 Source of Funding.** The source of funding for this Contract is Water Trails/Low-Head Dam RIF Appropriation.

**7.2 Not-to-exceed total amount of Contract.** Payment for the work performed by Contractors according to the terms of this Contract shall not exceed \$90,000.00. Payment shall be for satisfactory completion of the Statement of Work outlined in this Contract, provided that Contractors have complied with the terms of this Contract.

**7.3 Retained Amount.** DNR shall retain ten percent (10%) of the compensation associated with this Contract to secure the Contractors' performance under this Contract. The Retained Amount shall be payable only upon DNR's issuance of a written Final Notice of Acceptance.

**7.4 Final Notice Acceptance.** If DNR concludes, in its sole discretion, that all the Tasks required by the Statement of Work have been timely completed and all Deliverables required by this Contract have been satisfactorily completed and delivered, and that the implementation of the Statement of Work is completed and successfully deployed, then DNR shall issue a written Final Notice of Acceptance.

**7.5 Budget.** The budget for this Contract shall be as follows:

<b>Task</b>	<b>Amount of compensation allotted to Task</b>
<b>Task 1:</b> Review and Assembly of Data, Plans, Documents and State Water Trail /Trail/Public Lands Context and Priorities	Not to exceed \$17,000.00
<b>Task 2:</b> Public Listening	Not to exceed \$20,000.00
<b>Task 3:</b> Existing Conditions and Recommendations Report	Not to exceed \$18,000.00
<b>Task 4:</b> Vision & Goals	Not to exceed \$15,000.00
<b>Task 5:</b> Master Plan	Not to exceed \$20,000.00
<b>Total</b>	<b>Not to exceed \$90,000.00</b>

**7.6 Submission of Invoices.** Invoices shall be submitted to DNR according to the following schedule:

<b>Task Milestone Date</b>	<b>Amount Due</b>	<b>Invoice Due No Later Than</b>
<b>Task 1:</b> April 30, 2015	Not to exceed \$17,000.00	May 30, 2015
<b>Task 2:</b> June 30, 2015	Not to exceed \$20,000.00	July 31, 2015
<b>Task 3:</b> Dec. 31, 2015	Not to exceed \$18,000.00	January 31, 2016
<b>Task 4:</b> April 1, 2016	Not to exceed \$15,000.00	April 1, 2016

<b>Task 5: June 1, 2016</b>	Not to exceed \$20,000.00	June 30, 2016
<b>Total</b>	<b>Not to exceed \$90,000.00</b>	

Each invoice shall itemize the work performed pursuant to the Contract. Each invoice shall comply with all applicable rules concerning payment of such claims and shall contain appropriate documentation necessary to support the fees or charges included in the invoice. DNR shall have the right to dispute any invoice item submitted for payment and to withhold payment of any disputed amount if DNR reasonably believes the invoice is inaccurate or incorrect in any way. Original invoices shall be submitted to:

Iowa Department of Natural Resources  
 Attention: Nate Hoogeveen  
 502 East 9<sup>th</sup> Street  
 Des Moines, IA 50319

**7.7 Payment of Invoices.** DNR shall pay approved invoices in arrears and in conformance with Iowa Code section 8A.514. Unless otherwise agreed to in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State of Iowa for any services provided by or on behalf of the Contractor under this Contract. Payment will be issued to:

City of Fort Dodge  
 Attention: Dave Fierke  
 819 1st Avenue South  
 Fort Dodge, IA 50501

**7.8 No advance payment.** No advance payments shall be made for any Deliverables provided by Contractor pursuant to this Contract.

**7.9 Delay of Payment Due to Contractor’s Failure.** If DNR determines that the Contractor has failed to perform or deliver any service or product required by this Contract, then the Contractor shall not be entitled to any compensation, or any further compensation if compensation has already occurred, under this Contract until such service or product is performed or delivered. DNR shall withhold that portion of the invoice amount which represents payment for the task or Deliverable that was not completed, delivered and successfully deployed.

**7.10 Erroneous Payments and Credits.** Contractor shall promptly re-pay or refund to DNR the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Contractor or notification by DNR of the overpayment or erroneous payment.

**7.11 Set-off Against Sums Owed by Contractor.** In the event that Contractor owes DNR or the State of Iowa (“State”) any sum (including any State taxes in arrears) under the terms of this Contract, any other Contract, pursuant to a judgment, or pursuant to any law, DNR may set off

such sum against any sum invoiced to DNR by Contractor. This may be done in DNR's sole discretion unless otherwise required by law.

**7.12 Reimbursable Expenses.** There shall be no reimbursable expenses associated with this Contract separate from the compensation referred to in this section, unless agreed to by both parties in an amendment to this Contract or in a Change Order executed by both parties. Unless otherwise specifically provided for in this Contract, Contractor shall be solely responsible for all its costs and expenses, including travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other costs and expenses of the Contractor.

**7.13 Stop Services.** In addition to its other remedies described herein, DNR shall have the right at any time during the Contract term to direct the services of the Contractor fully or partially suspended or stopped, if the Deliverables or services fail to conform to applicable specifications and requirements under this Contract. DNR shall give Contractor the reasons for the stop work directive.

**7.14 Final Payment.** Before final payment or a termination settlement under this Contract, the Contractor shall execute and deliver to DNR a release of all claims against DNR arising under, or by virtue of, this Contract except claims which are specifically exempted by the Contractor. Unless otherwise provided in this Contract, by state law or otherwise expressly agreed to by the parties to the Contract, final payment under a settlement upon termination of this Contract shall not constitute a waiver of DNR's claims against the Contractor, or the Contractor's sureties under this Contract or applicable performance and payment bonds.

## INTERGOVERNMENTAL SERVICES - GENERAL CONDITIONS

### **Section 1 COMPLIANCE WITH THE LAW**

The Contractor, and its employees and agents, shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as suppliers. The Contractor, and its employees and agents shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. Contractor represents and warrants that it has complied with all federal, state, foreign and local laws applicable to the performance of its obligations under this Contract.

### **Section 2 TERMINATION**

**2.1 Termination Due to Lack of Funds or Change in Law.** DNR shall have the right to terminate this Contract without penalty by giving sixty (60) days written notice to the Contractor as a result of any of the following:

**2.1.1** The legislature or governor fail to appropriate funds sufficient to allow the parties to either meet their obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or if funds anticipated for the continued fulfillment of the Contract are, at any time, not forthcoming or are insufficient, either through the failure of the parties to appropriate funds or funding from a federal source is reduced or discontinued for any reason, or through discontinuance or material alteration of the program for which funds were provided; or

**2.1.2** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the parties to make any payment hereunder are insufficient or unavailable for any other reason; or

**2.1.3** If either party's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

**2.1.4** If either party's duties, programs or responsibilities are modified or materially altered; or

**2.1.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects either party's ability to fulfill any of its obligations under this Contract.

**2.2 Immediate Termination by DNR.** DNR may terminate this Contract for any of the following reasons effective immediately without advance notice and without penalty:

**2.2.1** In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

**2.2.2** DNR determines that the actions, or failure to act, of the Contractor, and its agents and employees have caused, or reasonably could cause, any person's life, health or safety to be jeopardized;

**2.2.3** The Contractor fails to comply with confidentiality laws or provisions;

**2.3 Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for DNR to declare the Contractor in default of its obligations under this Contract.

**2.3.1** The Contractor fails to perform, to DNR's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;

**2.3.2** DNR determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

**2.3.3** The Contractor fails to make substantial and timely progress toward performance of the Contract;

**2.3.4** The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;

**2.3.5** The Contractor has engaged in conduct that has or may expose the State or DNR to liability, as determined in DNR's sole discretion;

**2.3.6** The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or the Contractor has misappropriated a trade secret, or

**2.3.7** Contractor fails to comply with any of the Task Milestone dates contained in this Contract.

**2.4 Notice of Default.** If there is a default event caused by the Contractor, DNR shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in DNR's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, DNR may either:

**2.4.1** Immediately terminate the Contract without additional written notice; or,

**2.4.2** Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

**2.5 Termination upon Notice.** Following thirty (30) days written notice, DNR may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to DNR up to and including the date of termination.

**2.6 Remedies of the Contractor in Event of Termination by DNR.** In the event of termination of this Contract for any reason by DNR, DNR shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which DNR is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to DNR under this Contract in the event of termination. However, DNR shall not be liable for any of the following costs:

**2.6.1** The payment of unemployment compensation to the Contractor's employees;

**2.6.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

**2.6.3** Any costs incurred by the Contractor, including, but not limited to, startup costs, overhead or other costs not directly associated with the performance of the Contract;

**2.6.4** Any taxes that may be owed by the Contractor not directly in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**2.7 The Contractor's Termination Duties.** The Contractor upon receipt of notice of termination or upon request of DNR, shall:

**2.7.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, and conclusions resulting there from, any other matters DNR may require.

**2.7.2** Immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor.

**2.7.3** Comply with DNR's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

**2.7.4** Cooperate in good faith with DNR, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

**2.7.5** Immediately return to DNR any payments made by DNR for services that were not rendered by the Contractor.

**2.8 Rights in incomplete products.** In the event the Contract is terminated, all finished or unfinished documents, data, reports, or other materials prepared by the Contractor under this Contract shall, at the option of DNR, become DNR's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other material.

### **Section 3 INDEPENDENT CONTRACTOR**

The status of the Contractor shall be that of an independent contractor. Neither the Contractor nor its employees shall be considered employees of DNR. DNR will not withhold taxes on behalf

of the Contractor. Contractor shall be responsible for payment of all taxes in connection with any income earned from performing this Contract.

**Section 4 CONFLICT OF INTEREST**

**4.1** The Contractor covenants that the Contractor presently has no interest and shall not acquire any interest, direct and indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

**4.2** During the term of this Contract, Contractor shall not provide services that would create a conflict of interest with the Contractor's duties set out in this Contract. In determining whether a particular activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

**4.2.1** The activity involves the use of the state's or DNR's time, facilities, equipment, and supplies or other evidences of employment for purposes other than the performance of Contractor's obligations under this Contract.

**4.2.2** The activity involves the receipt of, promise of, or acceptance of money or other consideration by Contractor from anyone other than the state or DNR for the performance of any acts that Contractor is required or expected to perform as a part of Contractor's performance under this Contract.

**4.2.3** The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of DNR.

**4.3** If the activity creating a conflict of interest is in progress when the term of this Contract begins or is described in paragraph 4.2.1 or 4.2.2 above, then Contractor shall immediately cease the activity. During the term of this Contract, Contractor shall not enter into any activity described in paragraph 4.2.3 or which constitutes any other unacceptable conflict of interest. Contractor shall immediately disclose to DNR the existence of any conflict of interest, including conflicts of interest which are described in paragraph 4.2.3 and are in progress when the term of this Contract begins.

**Section 5 AMENDMENTS**

This Contract may be amended only by written mutual consent of the parties.

**Section 6 CHOICE OF LAW AND FORUM**

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to DNR or the State of Iowa.

Notwithstanding the above, in the event the Contractor is a state-level agency in Iowa and the dispute cannot be resolved after reasonable negotiation, the parties shall, pursuant to Iowa Code section 679A.19, submit the dispute to a board of arbitration of three members. The board of arbitration shall be composed of one member appointed by the Contractor, one member appointed by DNR and one member appointed by the governor. The decision of the arbitration board shall be final.

**Section 7 SEVERABILITY**

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

**Section 8 ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between DNR and the Contractor with respect to the subject matter hereof, and the Contractor acknowledges that it is entering into the Contract solely on the basis of the terms and conditions herein contained and not in reliance upon any representation, statement, inducement or promise, whether oral or written, not contained herein. This Contract supersedes all prior contracts and agreements between DNR and the Contractor for the services provided in connection with this Contract.

**Section 9 ASSIGNMENT AND DELEGATION**

This Contract may not be assigned, transferred or conveyed, in whole or in part, without the prior written consent of the other party. For the purpose of construing this provision, a transfer of a controlling interest in the Contractor shall be considered an assignment.

**Section 10 REPRESENTATIONS AND WARRANTIES**

**10.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law.**

All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to DNR, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

**10.2 Concepts, Materials, and Works Produced.** Contractor represents and warrants that all the concepts, materials and deliverables produced, or provided to DNR pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and work product produced under this Contract. The Contractor represents and warrants that the concepts, materials and work product produced under this Contract, and DNR's use of same, and the exercise by DNR of the rights granted by this Contract, shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and

work product produced under this Contract will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute any software, the materials owned by the Contractor and any other materials, work product produced under this Contract and methodologies used in connection with providing the services contemplated by this Contract.

**10.3 Professional Practices.** The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

**10.4 Conformity with Contractual Requirements.** The Contractor represents and warrants that the work product produced under this Contract will appear and operate in conformance with the terms and conditions of this Contract.

**10.5 Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to DNR.

**10.6 Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that DNR will not have any obligations with respect thereto.

**10.7 Title to Property.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to DNR is good and that transfer of title or license to DNR is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

**10.8 Industry Standards.** The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the applicable industry standards in the performance of this Contract.

**10.9 Technology Updates.** The Contractor represents warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

## **Section 11 CONFIDENTIALITY**

**11.1 Access to Confidential Data.** The Contractor's employees and agents may have access to confidential data maintained by DNR to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by DNR. The Contractor shall provide to DNR a written description of its policies and procedures, if any exist, to safeguard confidential information. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents and employees to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of DNR at all times. Failure by the

Contractor to submit its confidentiality policies or to comply in any way with the requirements of this paragraph shall not affect Contractor's obligations to comply with other requirements herein. Nothing in this paragraph shall be construed to in any way affect the Contractor's obligations to comply with Iowa and DNR statutes and rules applicable to confidentiality, as well as DNR policies and procedures regarding confidentiality, including Department of Administrative Services (DAS) and DNR IT Security policies and procedures.

**11.2 No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of DNR, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of DNR. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of DNR.

**11.3 Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify DNR and cooperate with DNR in any lawful effort to protect the confidential information.

**11.4 Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to DNR any unauthorized disclosure of confidential information.

**11.5 Survives Termination.** The Contractor's obligation under this Contract regarding confidential materials and information shall survive termination of this Contract.

## **Section 12 PROPERTY, INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT**

**12.1 Title to Property.** Title to all property furnished by DNR to Contractor to facilitate the performance of this Contract shall remain the sole property of DNR. All such property shall be used by Contractor only for purposes of fulfilling its obligations under this Contract and shall be returned to DNR upon the earliest of completion, termination, or cancellation of this Contract or at DNR's request. Contractor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Contract, Contractor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Contractor, for which Contractor has been reimbursed or paid by DNR under this Contract, shall pass to and vest in the State, except as otherwise provided in this Contract.

**12.2 Care of Property.** Contractor shall be responsible for the proper custody and care of any DNR-owned property, including data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and DNR Property furnished for Contractor's use in connection with the performance of the contract. Contractor shall exercise its best efforts to prevent damage to all such property and shall, at DNR's request, restore damaged property to its condition prior to the damage at the sole expense of Contractor. Such restoration shall be complete when judged satisfactory by DNR. In the event such property cannot be restored to DNR's satisfaction, Contractor shall reimburse DNR for any loss or damage to such property caused by Contractor, or any agent, contractor or subcontractor employed or utilized by Contractor. Contractor shall not take any action that would impair the value of, or goodwill

associated with, the name, property and intellectual property rights of DNR and the State. Contractor shall obtain the prior advance written approval from DNR prior to Contractor's use of the name, marks or intellectual property rights of DNR or the State.

**12.3 Hardware and Equipment.** In the event that any hardware and other equipment owned by Contractor and used in connection with this Contract is subject to the security interest or a legal or equitable interest by a third party who is not a party to this Contract, Contractor shall insure in any such transactions that DNR shall be notified of a default occurring under the instrument and if Contractor does not cure the default within the time allowed, DNR may, in its sole discretion, cure the default by Contractor and assess or set off all costs associated with affecting cure, including the amount in default and reasonable attorneys fees against Contractor.

**12.4 Ownership of Deliverables and Intellectual Property.** Contractor agrees that the Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, such Deliverables, shall become and remain the sole and exclusive property of the DNR and the State. Contractor hereby irrevocably transfers, assigns and conveys to the DNR and the State all right, title and interest in and to such Deliverables and intellectual property rights and proprietary rights. Contractor shall take all actions as may be necessary or requested by the DNR to carry out and effect such transfer, assignment and conveyance. Contractor represents and warrants that the DNR and the State shall acquire good and clear title to such Deliverables, free from any claims, liens, security interests, encumbrances or other rights or interests of Contractor or of any third party. The DNR and the State shall have the right to obtain and hold copyrights, patents or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. Contractor shall assist the DNR and the State to obtain and secure copyrights, patents or other intellectual property rights, registrations or protections with respect to all such Deliverables in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to the DNR and the State all the right, title and interest in and to such Deliverables. Contractor also agrees to waive and not assert any moral rights it may have with regard to such Deliverables. The Contractor shall not retain any property interests or other rights in and to such Deliverables and shall not use such Deliverables, in whole or in part, for any purpose, without the prior written consent of the DNR and the payment of such royalties or other compensation as the DNR deems appropriate. As the owner of such Deliverables, the DNR and the State may, without limitation: (i) adapt, change, modify, edit or use the Deliverables as the DNR or the State sees fit, including in combination with the works of others, prepare derivative works based on the Deliverables, and publish, display and distribute throughout the world any Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium, and (ii) make, use, sell, license, sublicense, or lease the Deliverables and any intellectual property rights therein or related thereto without payment of additional compensation to Contractor.

**12.5 Further Assurances.** At the DNR's request, Contractor shall execute and deliver such instruments and take such other action as may be requested by the DNR to establish, perfect or protect the State's and the DNR's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances required by this Contract. Contractor shall execute any instruments, provide all facts known to it, and do all other things requested by the DNR (both during and after the term of this Contract) in order to vest more fully in the State and the DNR any and all ownership rights and intellectual property rights in and to the Deliverables. In the event the DNR is unable, after reasonable effort, to secure Contractor's signature on any letters, patent, copyright, or other analogous protection relating to the Deliverables, for any reason

whatsoever, Contractor hereby irrevocably designates and appoints the DNR, and its duly authorized officers, employees and agents, as Contractor's agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Contractor.

**12.6 Disputes.** In any dispute over ownership or licensing rights, Contractor shall have the burden of proving prior or independently developed rights by clear and convincing proof.

**Section 13      RESERVED.**

**Section 14      WAIVER**

Except as specifically provided for in a waiver signed by duly authorized representatives of DNR and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

**Section 15      NOTICE**

**15.1** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows in Section 1, Special Conditions, of this Contract.

**15.2** Each such notice shall be deemed to have been provided:

**15.2.1** At the time it is actually received; or,

**15.2.2** Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

**15.2.3** Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

**15.3** From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**Section 16      CUMULATIVE RIGHTS**

The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

**Section 17      TIME IS OF THE ESSENCE**

Time is of the essence with respect to the performance of the terms of this Contract.

**Section 18 RECORD RETENTION AND ACCESS**

The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to DNR throughout the term of this Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

**Section 19 RESERVED.**

**Section 20 OBLIGATIONS BEYOND CONTRACT TERM**

This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of DNR and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

**Section 21 DELAY OR IMPOSSIBILITY OF PERFORMANCE**

The Contractor shall not be in default under this Contract if performance is delayed or if Contractor may not reasonably perform the Contract due to an act of God, flood, fire or similar events. In each such case, the delay or impracticability must be beyond the reasonable control and anticipation of the Contractor, and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and this paragraph shall not be applicable. It shall be the responsibility of the Contractor to prove that performance was delayed or impracticable within the meaning of this paragraph.

**Section 22 SUPERSEDES FORMER CONTRACTS OR AGREEMENTS**

Unless this Contract is an amendment to a Contract entered into between DNR and Contractor and is designated as such, then this Contract supersedes all prior contracts or agreements between DNR and the Contractor for the services provided in connection with this Contract.

**Section 23 USE OF THIRD PARTIES AND SUBCONTRACTORS**

Contractor may not contract with third parties for the performance of any of Contractor's obligations under this Contract, unless and then only to the extent that the Special Conditions of this Contract specify otherwise. If the Special Conditions provide for a subcontractor or subcontractors, then the following conditions shall apply:

**23.1** All subcontracts shall be subject to prior approval by the DNR. The DNR's consent shall not be deemed in any way to provide for the incurrence of any obligation of DNR in addition to

the remuneration agreed upon in this Contract. Any subcontract to which DNR has consented shall be in writing and shall in no way alter the terms and conditions of this Contract.

**23.2** The Contractor may enter into subcontracts to complete the work required by this Contract provided that the Contractor remains responsible for all services performed under this Contract. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision, or liability under this Contract. The Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any subcontractor.

**23.3** All restrictions, obligations and responsibilities of the Contractor under this Contract also shall apply to the subcontractors.

**23.4** DNR shall have the right to request the removal of a subcontractor from the Contract for good cause. The Contractor shall indemnify, defend and hold harmless DNR and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's breach of any subcontract in which it enters, including Contractor's failure to pay any and all amounts due by Contractor to any subcontractor.

**23.5** Each subcontract shall contain provisions for DNR access to the subcontractor's books, documents, and records and for inspections of work, as required of Contractor herein.

**23.6** Any action of a subcontractor, which, if done by Contractor, would constitute a breach of this Contract, shall be deemed a breach by Contractor and have the same legal effect.

**23.7** If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and Section 21, "Delay of Impossibility of Performance," shall not be applicable.

**23.8** If the Contract is subject to the provisions of Iowa Code chapter 8F, then the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontract Contractor enters into pursuant to this Contract. Any compliance documentation, including but not limited to certification, received from any subcontractor shall be forwarded to DNR immediately.

**Section 24 SELF-INSURANCE BY THE STATE OF IOWA**

Pursuant to Iowa Code chapter 669, DNR and the State of Iowa are self-insured against all risks and hazards related to this Contract. No separate fund has been established to provide self-insurance, and the State of Iowa is not obligated to establish any such fund during the term of this Contract.

**Section 25 INDEMNIFICATION**

Only to the extent as may be allowable by law, the parties agree to indemnify and hold harmless one another for any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, related to or arising from any breach of this Contract; or any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor.

**Section 26 IMMUNITY FROM LIABILITY**

Every person who is a party to the Contract is hereby notified and agrees that the State, DNR, and all of their employees, agents, successors, and assigns are immune from liability and suit for Contractor's and subcontractors' activities involving third parties arising from the Contract.

**Section 27 NON-SUPPLANTING REQUIREMENT**

To the extent required by federal or state law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local, and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local, and other non-federal funds.

**Section 28 TAXES**

The State is exempt from federal excise tax, and no payment will be made for any taxes levied on Contractor's employees' wages. The State is exempt from state and local sales and use taxes on the Deliverables.

**Section 29 INFORMATION TECHNOLOGY SECURITY**

To the extent the Contractor uses information technology resources of the state of Iowa, the following terms and conditions shall apply:

**29.1** Contractor and all Contractor personnel shall comply with Iowa information technology security statutes, rules and policies.

**29.2** By signing this contract, the Contractor acknowledges that the Contractor has read and understands the provisions of the information technology security policies adopted by the Iowa Department of Administrative Services (DAS) and DNR in effect on the date of signing.

**29.3** The Contractor further agrees to read and abide by any revised DAS and DNR policies, posted on the respective agency websites, that come into effect during the term of this Contract.

**Section 30 EQUAL EMPLOYMENT PROVISIONS**

The Contractor has read and understands the provisions in Exhibit C, Equal Employment Opportunity, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

**Section 31 FEDERALLY-FUNDED AGREEMENTS**

If this Contract is funded by federal monies, then the Contractor has read and understands the provisions of Exhibit D, Additional Requirements for Federally-Funded Agreements, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

**EXHIBIT A**  
**Equal Employment Opportunity.**

The Contractor agrees to the following:

**1.** The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated, during employment, without regard to their race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability relates to a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor's business. Such action shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post notices, setting forth provisions of this nondiscrimination clause, in conspicuous places available to employees and applicants for employment.

**2.** The Contractor shall in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability is a bona fide occupation qualification reasonably necessary to the normal operation of the Contractor's business.

**3.** The Contractor shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965, as amended, Iowa Executive Order 15 of 1973, Chapter 19B, Code of Iowa, Federal Executive Order 11246 of 1965, as amended by Federal Executive Order 11376 of 1967, and Title VI of the Civil Rights Act of 1964, as amended. The Contractor shall furnish all information and reports requested by the State or required by, or pursuant to, the rules and regulations thereof and shall permit access to payroll and employment records by the State for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.

**4.** In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the aforesaid rules, regulations or requests, this Contract may be canceled, terminated or suspended in whole or in part. In addition, the State may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act of 1965, as amended, Chapter 216, Code of Iowa, or as otherwise provided by law.

**5.** The Contractor shall include the provisions of paragraphs 1 through 4 hereof in every subcontract, unless specifically exempted by approval of the State, so that such provisions shall be binding on each subcontract. The Contractor shall take such action with respect to any subcontract as the State may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or

is threatened with, litigation with a subcontractor or vendor as a result of such direction by the State, the Contractor may request the State to enter into such litigation to protect the interests of the State.

6. In accordance with the provisions of 541 Iowa Administrative Code chapter 4:
  - The Contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and State law, executive orders and rules of the department of management, which pertain to equal employment opportunity and affirmative action.
  - The Contractor or subcontractor may be required to have on file a copy of the affirmative action program, containing goals and time specifications. These contractual provisions shall be fully enforced. Any breach of them shall be regarded as a material breach of the Contract.
  - Compliance with the provisions of Iowa Code section 19B.7 and all applicable rules of the department of management prior to the execution of the Contract shall be a condition of the Contract binding upon the Contractor or service provider, its successors, and assignees.
  - Failure to fulfill the nondiscrimination requirements of this Contract or any of the rules and orders may cause the Contract to be canceled, terminated, or suspended in whole or in part, and the Contractor or service provider may be declared ineligible for future State contracts in accordance with authorized procedure or the Contractor may be subject to other sanctions as provided by law or rule.
  - The Contractor may be required to submit to the department of management or the DNR a copy of its affirmative action plan containing goals and time specifications.
  - The Contractor shall be able to demonstrate to the satisfaction of the department of management or the DNR that its affirmative action program is productive.
  - The Contractor may be required to submit reports as requested by the department of management. The department of management may request other relevant information from the Contractor at any time.
  - The department of management may undertake a compliance review of the Contractor, and the department of management may take action, as appropriate, to seek to terminate contracts or funding found to be in violation of the rules.

**EXHIBIT B**  
**Additional Requirements for Federally-funded Agreements**

**1. Suspension and Debarment.** Entities identified on the Excluded Parties List System at <http://www.epls.gov> are ineligible to enter into contracts with DNR.

Contractor shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)."

Contractor is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Contractor may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov) This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

**2. Lobbying Restrictions.** The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

**3. Pro-Children Act of 1994.** Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by federal grant, contract, loan or loan guarantee. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party. The Contractor certifies that it will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

**4. Certified Audits.** Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to DNR if either the schedule of findings and questioned costs or the summary

schedule of prior audit findings includes any audit findings related to federal awards provided by DNR. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to DNR that the audit was conducted in accordance with government auditing standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the DNR. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships.

**5. Drug Free Work Place.** The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.