

COUNCIL ACTION FORM

SUBJECT: IOWA DNR CONTRACT AGREEMENT FOR HEADWATERS OF THE SOUTH SKUNK RIVER WATERSHED MANAGEMENT AUTHORITY

BACKGROUND:

On July 31, 2018, Ames City Council approved a 28E intergovernmental agreement for creating the Headwaters of the South Skunk River Watershed Management Authority (WMA). **Story County, as the Fiscal Agent for the WMA, was the lead in applying for Iowa DNR grant funding to complete a Water Quality and Comprehensive Watershed Management Plan for the WMA. This application was approved by the Environmental Protection Commission on January 20, 2021, awarding a grant in an amount not to exceed \$100,000. Members of the 28E agreement are required to sign the grant contract agreement.** The term of this contract begins February 1, 2021 through December 31, 2022. A map of the WMA area is attached.

The City of Ames will support the Headwaters of the South Skunk River WMA by contributing a cash match of \$2,000 and an in-kind match of staff time equivalent to \$11,500 per year toward this effort. The in-kind staff time match will consist of administration time associated with water quality monitoring (\$8,700/year) and technical support (40 hours @ \$2,800/year) in the development of the watershed assessment.

The goal of this project is to develop a plan for the watershed. Funds will be used to hire a consultant to create a plan which includes identification of specific water quality improvement goals and conduct a watershed awareness and community engagement plan. Developing the plan will provide a watershed-wide resource that promotes local cooperation and aids in implementing future practices within the watershed.

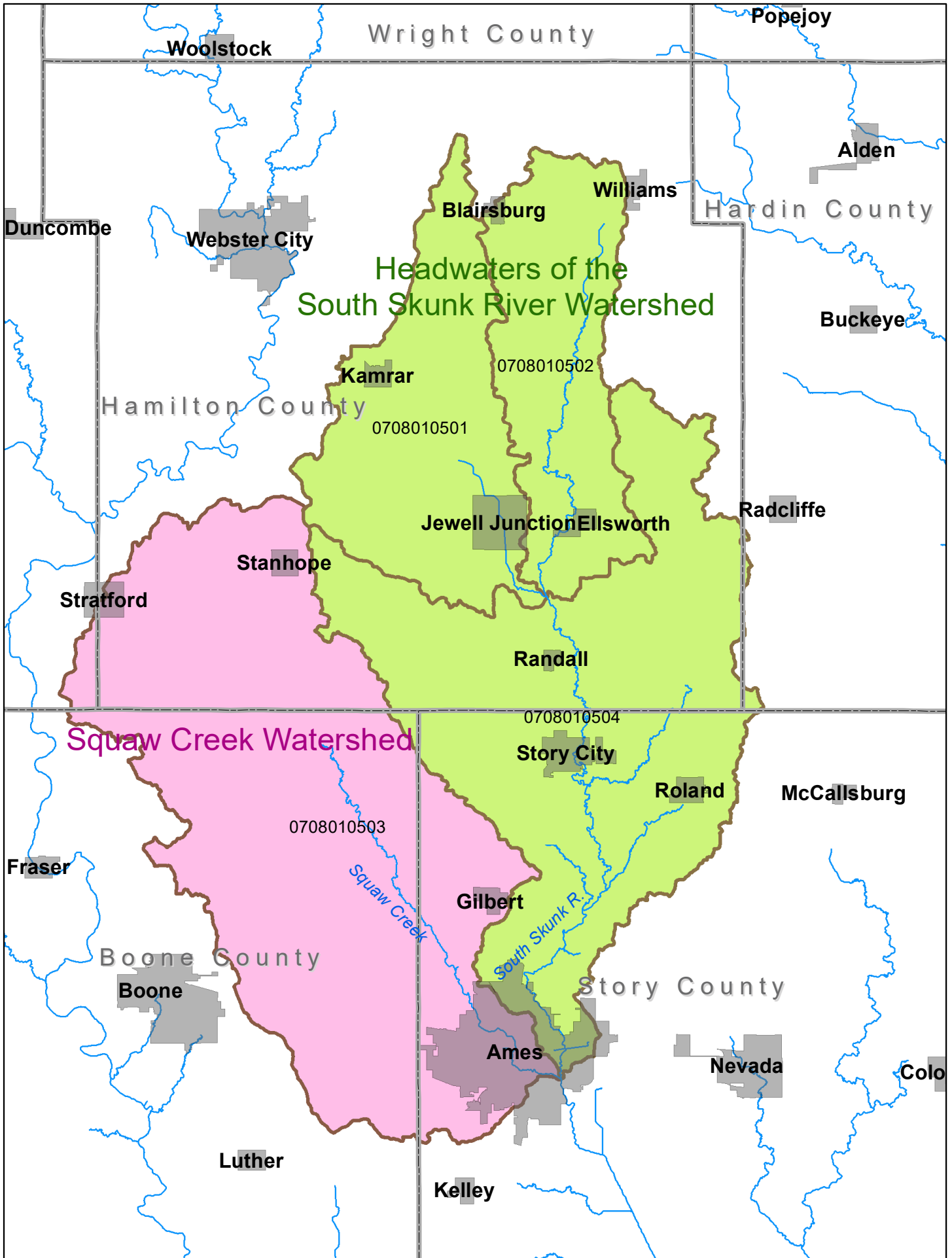
The specific tasks of the plan include collection and review of existing data, watershed resource inventory and assessment of issues, watershed action plan, education/ outreach plan and engagement campaign, final comprehensive watershed management plan, and final narrative report.

ALTERNATIVES:

1. Approve the contract agreement for the WMA to complete a Water Quality and Comprehensive Watershed Management Plan.
2. Do not approve the attached agreement.

CITY MANAGER'S RECOMMENDED ACTION:

Riverine flooding and water quality are important issues affecting the City of Ames. Watershed Management Authorities provide effective intergovernmental cooperation to link urban and rural interests together leading to long-term improvements in water quality and reductions in flooding. Creation of the Water Quality and Comprehensive Watershed Management Plan for the Headwaters of the South Skunk River WMA will play a key role in achieving those goals within the South Skunk River watershed upstream of and within our community. **Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.**



IOWA DEPARTMENT OF NATURAL RESOURCES
CONTRACT NUMBER 21-ESD-WQB-KAMEN-0001

Between
IOWA DEPARTMENT OF NATURAL RESOURCES
And

MEMBER ENTITIES OF THE HEADWATERS OF THE SOUTH SKUNK RIVER WATERSHED MANAGEMENT AUTHORITY

Amount: \$100,000

Purpose: To prepare a watershed management plan for the Headwaters of the South Skunk River

This Contract was approved by the [Environmental Protection Commission](#) on January 20, 2021

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: _____
[Kayla Lyon, Director](#)

HEADWATERS OF THE SOUTH SKUNK RIVER WATERSHED MANAGEMENT AUTHORITY THROUGH ITS MEMBER ENTITIES:

SIGNATURES PAGES OF THE ADDITIONAL PARTIERS TO FOLLOW:

For DNR use only:

1. Retain a signed copy of the Contract in the project file and send a hardcopy with 1st invoice to Budget & Finance.
2. Please do one of the following:
 - a. Email scanned copy to [Christina liams@dnr.iowa.gov](mailto:Christina.liams@dnr.iowa.gov);
 - b. Fax copy to 515-725-9501 (Attn: Christina liams); **OR**
 - c. Mail a copy of the contract to IOWA DNR, ATTN: Christina liams, 502 E 9th St, Des Moines IA 50319.

Story County

By this signature, Story County also acknowledges its role as the Fiscal Agent for the Headwaters of the South Skunk River Watershed Management Authority as described in Section 7.4 of the Special Conditions of this Contract.

By: _____ Date: _____
Linda Murken

Check one:

- Approved by its Board/ Council, at a meeting thereof, on ____ day of _____, 2020.
- Does not require separate approval.

CITY OF AMES

By: _____ Date: _____

Check one:

- Approved by its Board/ Council, at a meeting thereof, on ____ day of _____, 2020.
- Does not require separate Board/Council approval.

CITY OF STORY CITY

By: _____ Date: _____

Check one:

- Approved by its Board/ Council, at a meeting thereof, on ____ day of _____, 2020.
- Does not require separate Board/Council approval.

CITY OF ROLAND

By: _____ Date: _____

Check one:

- Approved by its Board/ Council, at a meeting thereof, on ____ day of _____, 2020.
- Does not require separate Board/Council approval.

CITY OF RANDALL

By: _____ Date: _____

Check one:

- Approved by its Board/ Council, at a meeting thereof, on ____ day of _____, 2020.
- Does not require separate Board/Council approval.

STORY COUNTY SOIL & WATER CONSERVATION DISTRICT

By: _____ Date: _____

Check one:

- Approved by its Board/ Council, at a meeting thereof, on ____ day of _____, 2020.
- Does not require separate Board/Council approval.

HAMILTON COUNTY SOIL & WATER CONSERVATION DISTRICT

By: _____ Date: _____

Check one:

- Approved by its Board/ Council, at a meeting thereof, on ____ day of _____, 2020.
- Does not require separate Board/Council approval.

INTERGOVERNMENTAL SERVICES - SPECIAL CONDITIONS

This Contract is entered into between the Iowa Department of Natural Resources (DNR) and the member entities of the [Headwaters of the South Skunk River Watershed Management Authority](#) as follows: City of Ames, Story County, Hamilton County Soil and Water Conservation District, Story County Soil and Water Conservation District, City of Story City, City of Roland, and City of Randall.

The parties agree as follows:

Section 1 IDENTITY OF THE PARTIES

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

Headwaters of the South Skunk River Watershed Management Authority (South Skunk WMA), an Iowa Code chapter 28E Organization formed pursuant to Iowa Code chapter 28E and authorized for funding under this Contract pursuant to Iowa Code section 466B.22, is organized under the laws of the State of Iowa and is registered with the Iowa Secretary of State.

Headwaters of the South Skunk River Management Authority Entities include the following:

Story County, a County Government, is organized under the laws of the State of Iowa. Contractor's address is 900 Sixth Street, Nevada, Iowa 50201. Story County shall serve as Fiscal Agent for this Contract, consistent with Section 7.4 of the Special Conditions of this Contract.

City of Ames, a Municipal Government, is organized under the laws of the State of Iowa. The Contractor's address is: 515 Clark Avenue Ames, Iowa 50010

City of Story City, a Municipal Government, is organized under the laws of the State of Iowa. The Contractor's address is: 504 Broad Street, Story City, Iowa 50248

City of Roland, a Municipal Government, is organized under the laws of the State of Iowa. The Contractor's address is: 202 East Ash Street/P.O. Box 288 Roland, Iowa 50236

City of Randall, a Municipal Government, is organized under the laws of the State of Iowa. The Contractor's address is: Box 36, Randall, Iowa 50231

Story County Soil and Water Conservation District, a legal subdivision of the State of Iowa, is organized under the laws of the State of Iowa. The Contractor's address is: 510 South 11th Street, Nevada, Iowa 50201

Hamilton County Soil and Water Conservation District, a legal subdivision of the State of Iowa, is organized under the laws of the State of Iowa. The Contractor's address is: 1921 Superior Street, Webster City, Iowa 50595-3145

Because the South Skunk WMA's 28E agreement did not create a new entity, the above entities are jointly referred to as "the Contractor" in this Contract.

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: [Kyle Ament](#)
[Central Iowa Basin Coordinator](#)
[Water Quality Bureau](#)
[502 E. 9th Street Des Moines, Iowa 50319](#)
Phone: [515-725-8389](#)

Email: kyle.ament@dnr.iowa.gov

Contractor Project Manager: [Michael Cox](#)
[Director – Story County Conservation](#)
[56461 180th St. Ames, Iowa](#)
Phone: [515-232-2516](tel:515-232-2516)
Email: mcox@storycountyiowa.gov

Section 2 STATEMENT OF PURPOSE

- 2.1 Background.** Pursuant to Iowa Code section 455B.103(5) and Iowa Code chapter 466B, subchapter II, the DNR awarded funding to the South Skunk WMA on December 3, 2020 to support its effort to develop a Water Quality and Comprehensive Watershed Management Plan (Plan) for the Headwaters of the South Skunk River watershed (Watershed).
- 2.2 Purpose.** The goal of this project is to develop a Plan for the Watershed. Funds will be used to hire a subcontractor to create a Plan which includes identification of specific water quality improvement goals and conduct a watershed awareness and community engagement plan. Developing the Plan will provide a Watershed-wide resource that will promote local cooperation and aid in implementing future practices within the Watershed.

Section 3 DURATION OF CONTRACT

- 3.1 Term of Contract.** The term of this Contract shall be [February 1, 2021](#) through [December 31, 2022](#), unless terminated earlier in accordance with the Termination section of this Contract. However, this Contract shall not begin until it has been signed by all applicable parties.
- 3.2 Approval of Contract.** If the amount of compensation to be paid by DNR according to the terms of this Contract is greater than \$25,000.00, then performance shall not commence unless by [January 20, 2021](#) this Contract has been approved by the [Environmental Protection Commission](#).

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.** Contractor shall perform the following tasks. The Contractor may subcontract work under this Contract, in accordance with Section 23, General Conditions of this Contract. Contractor shall complete its obligations under this Contract by the Task Milestone Dates set out in the following table and in a manner consistent with the Project’s description in the Contractor’s Proposal found in Exhibit A, which is attached to and by this reference made a part of this Contract.

Obligation	Task Milestone Date
Task 1: Existing Data Review and Collection Description: The Contractor will collect data on the existing conditions within the Watershed to provide a greater understanding of the issues and opportunities	No later than November 30, 2021
Task 2: Watershed Resource Inventory and Assessment of Issues Description: The Contractor will create various data sets and maps (wetlands, floodplains, BMPs, soils, recreational areas, critical habitats, land use, etc.) to aid in the analysis. This information will help the Contractor prioritize areas to focus conservation efforts and	No later than January 31, 2022

quantify the estimated benefits. These existing conditions, along with previous monitoring data, will serve as baseline data to measure the success of the project.	
Task 3: Watershed Action Plan Description: Contractor shall develop and action plan with specific goals, objectives, and action steps which are sustainable for at least 20 years and will include measures to abate significant water quality and flooding problems in the Watershed.	No later than April 30, 2022
Task 4: Education and Outreach Plan and Engagement Campaign Description: Contractor will create, implement, and assess a water quality improvement and community engagement campaign in parallel with Plan development.	No later than May 31, 2022
Task 5: Final Comprehensive Watershed Management Plan Description: Using the resources gathered and created in Tasks 1-4, Contractor will prepare the Plan. The Plan shall conform to the proposal details in Exhibit A and shall outline the planning process, provide a summary of watershed assessment and data, and provide the implementation of Tasks 3 and 4 of this Contract, along with applicable guidance, with a 20-year implementation strategy. The Contractor shall submit a written draft of the Plan to DNR for approval. After approval, Contractor shall present the Watershed Plan to member policy makers and ask for adoption	No later than October 31, 2022
Task 6: Final Narrative Report Description: Contract shall prepare a final report which includes a narrative of the process used to create the Watershed Plan, including what activities took place, successes and obstacles (if and how they were overcome), and a final financial statement. Specific to the requirements of Section 319 funding, the final report shall contain, at a minimum, the following information: <ul style="list-style-type: none"> • The total federal Section 319 and 604(b) funds expended by the project; • A summary of other funds expended by the project; • A summary of accomplishments and objectives of the project during the term of the Contract; • A comparison of actual accomplishments to the objectives established for the project in accordance with the work plan; • If the project objectives were not met, an explanation as to why; and • All other reporting requirements as specified by Section 319 rules, regulations, and guidance. 	No later than November 30, 2022

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.

5.1 Amendments to Statement of Work. Modifications, deletions and additions may be made to the Statement of Work contained in this Contract at any time during the term of this Contract by mutual written consent of the

parties in an Amendment to the Contract. The following procedures shall be followed for Amendments to the Statement of Work when those changes require additional work to be performed by the Contractor:

- 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 estimate and an estimated budget for the requested change within five (5) business days of receiving the change request. The Contractor shall decide, in its sole discretion, whether to provide the requested services.
- 5.5.3 Acceptance of the Contractor Estimate.** If DNR accepts the time estimate and estimated budget presented by the Contractor within five business days of receiving the Contractor's response, then the parties may amend the Contract, and the Contractor shall agree to perform the modified services subject to the time estimate and estimated budget included in the Contractor response. The parties shall agree to a beginning date for the Amendment. The Contractor shall not begin work prior to the time an Amendment is signed by both parties.
- 5.5.4 Adjustment to Compensation.** The parties acknowledge that a request for a change in the Statement of Work contained in 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 request shall require an Amendment to the Contract and approval of the Environmental Protection Commission.

Section 6 MONITORING AND REVIEW

- 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. 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

7.1 Source of Funding. The source of funding for this Contract is \$100,000 from Clean Water Act sections 604(b) and Section 319 funding. The Authority to enter into this Contract is an U.S. Environmental Protection Agency (EPA) approved work plan and Iowa Code section 455B.103.

7.2 Not-to-exceed total amount of Contract. Payment for the work performed by Contractor according to the terms of this Contract shall not exceed \$100,000. Payment shall be for satisfactory completion of the Statement of Work outlined in this Contract, provided that Contractor has complied with the terms of this Contract.

7.3 Budget and Submission of Invoices. The budget for this Contract and the submission of invoices shall be:

Task Milestone Date	Amount of Compensation Allotted to Task	Invoice Due No Later Than
Task 1 : Existing Data Review and Collection	Not to exceed \$15,000	December 31, 2021
Task 2: Watershed Resource Inventory and Assessment of Issues	Not to exceed \$15,000	February 28, 2022
Task 3: Watershed Action Plan	Not to exceed \$15,000	May 31, 2022
Task 4: Education and Outreach Plan and Engagement Campaign	Not to exceed \$15,000	June 30, 2022
Task 5: Final Comprehensive Watershed Management Plan	Not to exceed \$30,000	November 30, 2022
Task 6: Final Narrative Report	Not to exceed \$10,000	December 31, 2022
Total	Not to exceed \$100,000	

Invoices shall contain the DNR Contract Number found on the first page of this Contract. The invoices shall itemize the work performed pursuant to the Contract, and shall specify the amount of payment requested for each Task during the period covered by the invoice. 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. No invoice shall request payment for work occurring in more than one fiscal year. 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: Kyle Ament
 502 E. 9th Street
 Des Moines, Iowa 50319
 DNR Contract Number: (21-ESD-WQB-KAMEN-0001)

7.4 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. All payments made by DNR under this Contract shall be made to the Contractor through the fiscal agent of the South Skunk WMA, Story County, pursuant to a contract or agreement that shall be entered into between the South Skunk WMA and Story County. Story County is a separate governmental entity that has appropriately responded to a risk assessment form that meets federal requirements for grant recipients. The sole purpose for participation of Story County in this Contract shall be to act as a fiscal agent to the Contractor for this Contract to ensure compliance with section B.4 of Attachment D of this Contract. Payment will be issued to the Contractor, through the South Skunk WMA's fiscal agent, as follows:

Attention: Story County Conservation Board
 56461 180th St.
 Ames, Iowa 50010

DNR Contract Number: (21-ESD-WQB-KAMEN-0001)

- 7.5 No advance payment.** No advance payments shall be made for any Deliverables provided by Contractor pursuant to this Contract.
- 7.6 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.
- 7.7 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.
- 7.8 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.
- 7.9 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.
- 7.10 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.

Section 8 CONTRACTOR PROPOSAL

The Contractor's Proposal submitted to the DNR on November 6, 2020 is hereby incorporated by reference into this Contract by Exhibit A. The Contractor agrees to conform to the work proposed in its proposal as represented by this Contract.

Section 9 REQUEST FOR PROPOSAL

The Request for Proposal, in the form of an application solicitation, issued by the DNR on September 3, 2020 is hereby incorporated by reference into this Contract by Exhibit B. The Contractor was selected through a multi-agency review process of its response to the Request for Proposals. The methods of that review are outlined in Exhibit B.

Section 10 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 11 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

Contractor's Proposal Dated November 6, 2020

The Contractor's Proposal submitted to the DNR on November 6, 2020, is hereby incorporated by reference into this Contract by this Exhibit. Due to the size of the Proposal, the language of the Proposal is not included in in this Exhibit and is instead available in its entirety by contacting the DNR Project Manager described in Section 1 of the Special Conditions of the Contract.

Exhibit B

DNR's Request for Proposals Issued September 3, 2020

The Request for Proposal issued by the DNR on September 3, 2020 is hereby incorporated by reference into this Contract by this Exhibit. Due to the size of the RFP, the language of the RFP is not included in this Exhibit and is instead available in its entirety by contacting the DNR Project Manager described in Section 1 of the Special Conditions of the Contract.

Exhibit C
Equal Employment Opportunity.

The Contractor agrees to the following:

A.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.

A.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.

A.3 The Contractor shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965, as amended, Iowa Executive Order 15 or 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 of Iowa or required by, or pursuant to, the rules and regulations thereof and shall permit access to payroll and employment records by the state of Iowa for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.

A.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 of Iowa 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.

A.5 The Contractor shall include the provisions of paragraphs 8.1 through 8.4 hereof in every subcontract, unless specifically exempted by approval of the state of Iowa, so that such provisions shall be binding on each subcontract. The Contractor shall take such action with respect to any subcontract as the state of Iowa 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 of Iowa, the Contractor may request the state of Iowa to enter into such litigation to protect the interests of the state of Iowa.

A.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 a 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 D
Additional Requirements for Federally-funded Agreements

B.1 Suspension and Debarment. The Contractor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

B.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.

B.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.

B.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.

B.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.

B.6 The Contractor shall comply with all applicable federal requirements, including but not limited to 2 CFR Chapter I, Chapter II, Part 200, et al. (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule); and including but not limited to EPA general terms and conditions which may be found at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2018>

This section shall be in addition to, and not in place of, Section 31 of the General Conditions of this Contract.

B.7 Outreach Signage Requirements. If the 319 award includes an outreach component, the recipient agrees to provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA logo. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication. Instructions for contacting OPA are available at:
<http://www2.epa.gov/stylebook/using-epa-seal-and-logo>

The EPA Logo will be displayed meeting the following specifications:

http://www.epa.gov/ogd/tc/epa_logo_seal_specifications_for_infrastructure_grants.pdf

If the physical design of the sign allows, it should also include the following text: "This project has been funded by the United States Environmental Protection Agency" or "This cooperative project has been funded in part by the United States Environmental Protection Agency" Exceptions to including the EPA logo may be made by the Regional 319 Coordinator on recommendation by the State.

B.8 Announcements. The grant recipient agrees that announcements through the web or print materials for workshop, conference, demonstration days or other events as part of a project funded by a 319 assistance agreement shall contain a statement that the materials or conference has been funded by the United States Environmental protection Agency.

B.9 Public or Media Events. The Recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

B.10 Limited English Proficiency Communities. To increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

B.11 MBE/WBE reporting. The Contractor agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis.

B.12 Operation and Maintenance of Management Practices. Contractor shall assure continued proper operation and maintenance of all nonpoint source management practices that have been implemented for projects funded under this agreement. Such practices shall be operated and maintained for an appropriate number of years in accordance with commonly accepted standards. The Contractor shall include a provision in every applicable sub-agreement (sub-grant or contract) awarded under this grant requiring that the management practices for the project be properly operated and maintained. Likewise, the sub-agreement shall assure that similar provisions are included in any sub-agreements that are awarded by sub-recipient.

To the extent of any inconsistency between the Special Conditions and the General Conditions, the Special Conditions shall control.

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 attorney's 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 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 14 NOTICE

14.1 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.

14.2 Each such notice shall be deemed to have been provided:

21.2.1 At the time it is actually received; or,

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

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

14.3 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 15 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 16 TIME IS OF THE ESSENCE

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

Section 17 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 18 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 19 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 20 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 21 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:

- 21.1** 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.
- 21.2** 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.
- 21.3** All restrictions, obligations and responsibilities of the Contractor under this Contract also shall apply to the subcontractors.
- 21.4** 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.

- 21.5** 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.
- 21.6** 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.
- 21.7** 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.
- 21.8** 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 22 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 23 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 24 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 25 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 26 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 27 INFORMATION TECHNOLOGY SECURITY

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

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

27.2 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 Office of the Chief Information Officer (OCIO) and DNR in effect on the date of signing.

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

Section 28 NONDISCRIMINATION IN EMPLOYMENT

The parties, their employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The parties, their employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers. Upon the State's written request, each party shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under 11 Iowa Administrative Code chapter 121.

The parties, their employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event either contracts with third parties for the performance of any of its obligations under this Contract, that party shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Section 29 USE OF FEDERAL FUNDING

This provision is applicable only if federal funds constitute a part of the payment to be rendered under this Contract. The parties shall comply with all applicable federal requirements, including but not limited to 2 CFR Chapter I, Chapter II, Part 200, et al. (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule) and EPA general terms and conditions which may be found at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2018>