

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

15

DECISION

TOPIC

Contract – University Hygienic Lab (UHL) – Staffing Contract

Recommendation:

The Department requests Commission approval of a contract in an amount not to exceed \$216,000 with the University of Iowa Hygienic Laboratory for DNR staff support in 2009.

Funding Source:

Funding for this contract comes from the Environment First Infrastructure funds and REAP funds.

Purpose:

The purpose of this contract is to provide professional staff support to two programs within the Department of Natural Resources. Two positions will be located in the Geographic Information Section to provide on-going support for activities related to watershed planning and assessment required under the legislatively mandated watershed initiative program. One staff position will be located in the Conservation and Recreation Division to assist with REAP assemblies, the HUSH program, and the Nature Store.

Scope of Work:

Geographic Information Section:	Not to exceed \$150,000
Communication Bureau:	Not to exceed \$50,000
Facilities and Administrative costs:	Not to exceed \$16,000
Total	Not to exceed \$216,000

5.1.2 Geographic Information Section. The UHL shall provide two full time staff persons in Iowa City to work with Department staff. These individuals shall be responsible for the development of Geographic Information System (GIS) databases and the analytical assessment of GIS databases under the direction of the Supervisor of the Geographic Information Section. The UHL also shall provide administrative mechanisms to facilitate travel, staff development and training.

5.1.3 Communication Bureau. The UHL shall provide one full time staff position in Des Moines to work with the Department staff on the Resource Enhancement and Protection Program (REAP) (50%), the Help Us Stop Hunger Program (HUSH) (25%), the Nature Store (20%), and related (5%) programs. The individual shall work under the direction of the Department REAP coordinator and shall be responsible for planning, coordinating, implementing, and evaluating REAP assemblies. The individual also shall assist with

communications regarding the HUSH program and assisting with the Nature Store. The UHL also shall provide administrative mechanisms to facilitate travel, staff development and training. The Contractor also shall provide administrative mechanisms to facilitate travel, staff development and training.

Chris Ensminger, GIS Section Supervisor (Environmental Program Supervisor)
GIS Section, Bureau
Environmental Services Division

5/22/2009

IOWA DEPARTMENT OF NATURAL RESOURCES

CONTRACT NUMBER 10-03HA-01

Between

IOWA DEPARTMENT OF NATURAL RESOURCES

And

THE UNIVERSITY OF IOWA

**Contract Title: DNR Staff Support
July 1, 2009, through June 30, 2010**

This Contract was approved by the Environmental Protection Commission on June 16, 2009.

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

Contractor:

By: _____
Twila Fisher Reighley, Asst. VP for Research:

DEPARTMENT OF NATURAL RESOURCES

By: _____
Patricia Lee Boddy, Deputy Director

Date: _____

Date: _____

Fed Tax I.D. Number: 426004813

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SPECIAL CONDITIONS

This Contract is entered is between the Iowa Department of Natural Resources (DNR) and The University of Iowa (Contractor). 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.

The University of Iowa (Contractor), a State of Iowa educational institution, is organized under the laws of the State of Iowa and authorized to do business in the State of Iowa. The Contractor's address is: 2 Gilmore Hall, Iowa City, Iowa 52242.

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 Contact: Chris Ensminger
DNR Geographic Information Section
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
(515) 281-4216
Chris.Ensminger@dnr.iowa.gov

University Technical Contact: Michael D. Wichman
University Hygienic Laboratory
102 Oakdale Campus, H101 OH
Iowa City, IA 52242
(319) 335-4500
mwichman@uhl.uiowa.edu

University Administrative Contact: Wendy Beaver, Sr. Associate Director
Sponsored Programs
The University of Iowa
2 Gilmore Hall
Iowa City, IA 52242
319/335-2123
wendy-beaver@uiowa.edu

Section 2 **STATEMENT OF PURPOSE**

The parties have entered into this contract for the purpose of retaining the Contractor to provide staff support to the DNR for the following programs:

- Geographic Information Section
- Conservation and Recreation Division

Section 3 **DURATION OF CONTRACT**

3.1 Term of Contract. The term of this Contract shall be **July 1, 2009, through June 30, 2010**, unless terminated earlier in accordance with the Termination section of this Contract. However, the term of this Contract shall not begin unless and until this Contract 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 (twenty five thousand dollars), then performance shall not commence unless by June 16, 2009, this Contract has been approved by the Environmental Protection Commission.

3.3 Renewal. The parties shall have the option to renew and extend this Contract for subsequent periods, adding up to no more than 6 years total, by executing a signed Contract 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 the tasks set out in this Contract and 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.

Section 5 STATEMENT OF WORK

5.1 Statement of Work. Contractor shall perform the following tasks:

Task 1: Provide DNR with the staff positions for the areas listed below. Each staff position shall be responsible for completing tasks listed.

5.1.1 Geographic Information Section. The UHL shall provide two full time staff persons in Iowa City to work with Department staff. These individuals shall be responsible for the development of Geographic Information System (GIS) databases and the analytical assessment of GIS databases under the direction of the Supervisor of the Geographic Information Section. The UHL also shall provide administrative mechanisms to facilitate travel, staff development and training.

5.1.2 Conservation and Recreation Division. The UHL shall provide one full time staff position in Des Moines to work with the Department staff on the Resource Enhancement and Protection Program (REAP) (50%), the Help Us Stop Hunger Program¹ (HUSH) (25%), the Nature Store (20%), and related (5%) programs. The individual shall work under the direction of the Department REAP coordinator and shall be responsible for planning, coordinating, implementing, and evaluating REAP assemblies. The individual also shall assist with communications regarding the HUSH program and assisting with the Nature Store. The UHL also shall provide administrative mechanisms to facilitate travel, staff development and training. The Contractor also

¹ Help Us Stop Hunger (HUSH) is a DNR program where deer hunters may donate deer to meat lockers in Iowa.

shall provide administrative mechanisms to facilitate travel, staff development and training.

5.2 Final Notice of Acceptance. If all the Tasks required by the Statement of Work have been timely completed consistent with the timeframes identified therein and all deliverables and services required by this Contract have been completed and delivered, and implementation of the Statement of Work is completed and successfully deployed, then DNR shall issue a written Final Notice of Acceptance within 30 days.

5.3 Non-Exclusive Rights. This Contract is not exclusive. DNR reserves the right to select other Contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

5.4 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 or services 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 and pay the Contractor for any and all work performed prior to the issuance of the stop work directive.

5.5 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 environmental laboratory 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.

5.6 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:

5.6.1 Written Request. DNR shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.

5.6.2 The Contractor's Response. The Contractor shall submit to DNR a time estimate and an estimated budget for the requested Change Order within five (5) business days of receiving the Change Order Request, if Contractor decides, in its sole discretion, to provide the services in the requested Change Order.

5.6.3 Acceptance of the Contractor Estimate. If DNR accepts the time estimate and estimated budget presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall

perform the modified services subject to time estimate and estimated budget included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract, with a begin date agreed to by the parties.

5.6.4 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 Resources or Environmental Protection Commission.

Section 6 MONITORING AND REVIEW

6.1 Task Milestone Dates. Contractor shall use its best efforts to complete its obligations under this Contract by the Task Milestone Dates set out in the following table:

Obligation	Task Milestone Date
Task 1: Provide staffing to the DNR for GIS and Communications support. Inform DNR supervisors of any problems, conflicts, or issues with the support staff.	Ongoing obligation throughout term of Contract,. Information shall be provided to DNR as needed or as UHL becomes aware of any problems, conflicts or issues.

Contractor shall notify DNR within 5 working days upon discovery of any delay in any of the above-designated portions of its obligations. Contractor and DNR shall discuss updated Task Milestone Dates. If the parties are unable to mutually agree to updated Task Milestone Dates within 30 days of DNR's receipt of notice of a delay, DNR may terminate this Contract for cause.

6.2 Review Meetings. Individuals working under this contract shall meet with DNR representatives periodically to discuss progress toward accomplishing the Statement of Work. The meetings shall occur in person at the offices assigned to the staff position in this contract.

6.3 Status Reports. No written reports shall be required as part of this contract.

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, within normal business hours and upon prior written notification to Contractor, to inspect its facilities and books and records relating to invoicing 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 shall be as follows: (1) for the for the Geographic Information Section, from monies appropriated to DNR for the purpose of providing local watershed managers with geographic information system data for their use in developing, monitoring, and displaying results of their watershed work,

from the environmental first fund created in Iowa Code section 8.57A; and (2) for the Conservation and Recreation Division, from division management funds.

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 \$. 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. The budget for this Contract shall be as follows:

Position	Amount of compensation allotted to Position (includes travel and training as approved by IDNR)
Geographic Information Section	Not to exceed \$150,000.00
Conservation and Recreation Division	Not to exceed \$50,000.00
Facilities and Administrative Costs 8%	Not to exceed \$16,000.00
Total	Not to exceed \$216,000.00

7.4 Submission of Invoices. Invoices shall be submitted to monthly to DNR. Invoices are due within thirty (30) days following the end of the month.

Each invoice shall comply with all applicable rules concerning payment of such claims Each invoice shall be itemized as per the line item budget categories in the budget contained in this Contract. 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. Invoices should be sent to:

Chris Ensminger
 DNR Geographic Information Section
 Wallace State Office Building
 502 East 9th Street
 Des Moines, Iowa 50319

7.5 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.

DNR will pay Contractor within sixty (60) days following receipt of invoices. Payment will be issued to:

University of Iowa

Hygienic Laboratory- Accounts Receivable
102 Oakdale Campus, H101 OH
Iowa City, IA 52242

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

7.7 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 for that service or product, 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.

7.8 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.

7.9 Final Payment. 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 either party's claims against the other party under this contract or applicable performance and payment bonds.

GENERAL CONDITIONS

Section 8 COMPLIANCE WITH THE LAW

The Contractor, its employees, agents, and subcontractors 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 subcontractors or suppliers. The Contractor, its employees, agents and subcontractors 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. The Contractor may be required to submit its affirmative action plan to DNR of Management to comply with the requirements of 541 IAC, Sec 4. Contractor represents that it shall comply with all federal, state and local laws applicable to the performance of its obligations under this Contract.

Section 9 TERMINATION

9.1 Termination Due to Lack of Funds or Change in Law. DNR shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:

9.1.1 The legislature or governor fail in the sole opinion of DNR to appropriate funds sufficient to allow DNR to either meet its 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 DNR 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,

9.1.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by DNR to make any payment hereunder are insufficient or unavailable for any other reason as determined by DNR in its sole discretion; or

9.1.3 If DNR'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

9.1.4 If DNR's duties, programs or responsibilities are modified or materially altered; or

9.1.5 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 DNR's ability to fulfill any of its obligations under this Contract.

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

9.2.1 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;

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

9.2.3 The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

9.3 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.

9.3.1 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;

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

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

- 9.3.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or DNR reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 9.3.5 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;
- 9.3.6 The Contractor has engaged in conduct that has or may expose the State or DNR to liability, as determined in DNR's sole discretion;
- 9.3.7 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
- 9.3.8 Contractor fails to comply with any of the Task Milestone Dates contained in this Contract in section 6.1.

9.4 Notice of Default. If there is a default event caused by the Contractor, then DNR shall provide thirty (30) days' 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:

- 9.4.1 Immediately terminate the Contract without additional written notice; or,
- 9.4.2 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

9.5 Termination upon Notice. Following thirty (30) days' written notice, either party may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the other party. Following termination upon notice by DNR, 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.

9.6 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:

- 9.6.1 The payment of unemployment compensation to the Contractor's employees;
- 9.6.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

9.6.3 Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract, unless specifically agreed to in this Contract;

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

9.7 The Contractor's Termination Duties. The Contractor upon receipt of notice of termination by DNR, shall:

9.7.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report (excluding the final invoice) 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.

9.7.2 Immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor under this Contract.

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

9.7.4 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.

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

9.8 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 10 INDEPENDENT CONTRACTOR

The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not by reason of this Contract employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Contractor nor its employees shall be considered employees of DNR or the State of Iowa for federal or state tax purposes by reason of this Contract. DNR will not withhold taxes on behalf of the Contractor. Contractor shall be responsible for payment of all applicable taxes in connection with any income earned from performing this Contract.

Section 11 CONFLICT OF INTEREST

11.1 With the exception of other contracts between DNR and the Contractor, the Contractor represents to the best of its knowledge that it 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.

11.2 During the term of this Contract, Contractor shall not provide services that would create a conflict of interest, as defined by Iowa Code chapter 68B,,with the Contractor's duties set out in this Contract. DNR acknowledges that the Contractor has an internal conflict of interest committee to review conflicts of interest pursuant to Iowa Code Chapter 68B. The parties further acknowledge that DNR may request, on a case-by-case basis, an opinion regarding a potential conflict of interest from the Iowa Campaign Ethics and Finance Board. 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, situations where the activity involves the receipt of, promise of, or acceptance of money or other consideration by Contractor from anyone other than 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.

11.3 During the term of this Contract, Contractor shall not enter into any activity described in paragraph 11.2 or which constitutes any unacceptable conflict of interest. Contractor shall immediately disclose to DNR the existence of any conflict of interest, which are described in paragraph 11.2 and are in progress when the term of this Contract begins.

Section 12 **AMENDMENTS**

This contract may be amended or renewed only by written mutual consent of the parties.

Section 13 **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. The parties shall comply with the provisions of Iowa Code section 679A.19 regarding disputes between government agencies. 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 Divison, Des Moines, Iowa, wherever jurisdiction is appropriate. No provision of this Contract shall 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, Contractor, or the State of Iowa.

Section 14 **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 15 **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 16 **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 17 **REPRESENTATIONS**

17.1 Construction of Representations Expressed in this Contract with Representations Implied by Law. All representations 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 representation or whether the representation 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 representation provided by law, including without limitation, representations which arise through course of dealing or usage of trade. The representations expressed in this Contract are intended to modify the representations implied by law only to the extent that they expand the representations 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.

17.2 Concepts, Materials, and Works Produced. Contractor represents that all the concepts, materials and Works 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 to the best of its knowledge that the concepts, materials and work product produced under 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 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.

17.3 Professional Practices. The Contractor represents 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.

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

17.5 Authority to Enter into Contract. The Contractor represents 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.

17.6 Obligations Owed to Third Parties. The Contractor represents 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.

17.7 Title to Property. The Contractor represents that title to any property assigned, conveyed or licensed to DNR associated with this Contract 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.

17.8 Industry Standards. The Contractor represents 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.

17.9 Technology Updates. The Contractor represents that it shall continually use and integrate to the best of its ability the most current and up-to-date technology commercially available.

Section 18 PROPERTY, INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT

18.1 Rights in Data for Public Work Products. Contractor shall presume that all work products, or subject data generated or collected as directed by the Contract shall be public information unless otherwise designated in writing by the DNR. Unless expressly contradicted in the Special Conditions, it is expected that the work products developed or produced in connection with this Contract will be made publicly available and will become public information and Sections 18.2 through 18.4 will not be applicable. In the event the Special Conditions specify that the work products will not be made publicly available, then General Conditions 18.2 through 18.4 will apply

18.2 Rights in Data for Non-public Work Products. DNR shall be and shall remain the owner of all data and records provided to the Contractor. The Contractor will not use DNR's data and records for any purpose other than providing services under the Contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed to third parties or commercially exploited by or on behalf of the Contractor.

18.3 Ownership of Work Product. DNR shall own all work products developed or produced in connection with this Contract. The Contractor shall give DNR all assistance reasonably requested by DNR to perfect DNR's ownership of all work produced under this Contract, including the execution and delivery of documents assigning title to DNR work produced under this Contract. All applicable rights to patents, copyrights, trademarks, trade secrets and other property rights in the work produced under this Contract shall be the property of DNR. DNR shall grant the Contractor a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work produced under this Contract for the purposes of complying with this contract or any relevant provision of state or federal law.

18.4 Copyrights and Use of Data

18.4.1 The term "subject data" used in this clause includes writing, technical reports, sound recordings, magnetic recordings, computer programs, computerized databases, databases in hard copy, pictorial reproductions, plans, drawings, including engineering or manufacturing drawings, specifications, or other graphical representations, and works of any similar specifications, or other graphical representations, and works of any similar nature (whether or not copyrighted) which the Contractor submits or which DNR specifies to be delivered under this Contract or which the Contractor develops or produces and DNR pays for under this Contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

18.4.2 Except as may otherwise be provided in this Contract, when publications, films, or similar materials are developed directly from a project supported by DNR, the Contractor is free to arrange for copyright without approval. The Contractor agrees to and does hereby grant to DNR, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Department purposes to publish, translate, reproduce, deliver, perform, dispose of and to authorize others so to do, all subject data, or copyrightable material based on such data, covered by copyright now or in the future.

18.4.3 The Contractor shall not include in the subject data any copyrighted matter without the written approval of the Director, unless the Contractor provides DNR with the written permission of the copyrighted owner for DNR to use the copyrighted matter in the manner provided for in subsection 16.2 above.

18.4.4 Nothing contained herein shall imply a license to DNR under any patent or be construed as affecting the scope of any license or other rights.

18.4.5 Unless otherwise limited below, DNR may, without additional compensation to the Contractor, duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all subject data.

18.4.6 Notwithstanding any provisions of this Contract concerning inspection and acceptance, DNR shall have the right at any time to modify, remove, obliterate, or ignore any marking restricting disclosure of subject data if the marking is not authorized by the terms of this Contract.

18.4.7 Data need not be furnished for standard commercial items or services which are normally sold, or have been sold, or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed or investigated under this contract if, in lieu thereof, identification of source and characteristics (including performance specifications, when necessary) sufficient to enable DNR to procure the part or practice the process, or acquire an adequate substitute, are furnished.

18.4.8 In addition to any data specified elsewhere in this contract to be furnished to DNR, the recipient shall retain and, upon written request of the Director at any time during project performance or within two years after project performance is completed, deliver any subject data not previously delivered.

18.4.9 The Contractor shall exert all reasonable effort to advise the Director of DNR, at the time of delivery of the subject data furnished under this contract, of all invasions of the right-of-privacy contained therein and of all portions of such

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.

21.3 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 22 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 23 TIME IS OF THE ESSENCE

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

Section 24 RECORD RETENTION AND ACCESS

In accordance with OMB Circular A-133, in the performance of services under this Contract, the Contractor shall be considered as a vendor and is not subject to the A-133 audit requirements or compliance with the federal cost principles of OMB Circular A-21. Payments to Contractor hereunder shall not be considered as Federal awards.

Section 25 SOLICITATION

The Contractor represents that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

Section 26 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 27 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 28 SUPERCEDES 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 29 USE OF THIRD PARTIES AND SUBCONTRACTORS

The inclusion of subcontractor costs in Contractor's proposed budget and DNR's subsequent approval of the budget shall constitute approval to subcontract with those subcontractors. DNR shall have the right to review the subcontracts upon request. Contractor may not contract with additional third parties for the performance of any of Contractor's obligations under this Contract without prior approval of the DNR.

Section 30 SELF-INSURANCE BY THE STATE OF IOWA

Pursuant to and to the extent permitted by Iowa Code Chapter 669, DNR, Contractor, and the State of Iowa are self-insured against 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 31 LIABILITY

Each party shall be responsible for its own negligent acts or omissions and those of its employees, agents, and officers, to the extent permitted by Iowa Code Chapter 669.

Section 32 EQUAL EMPLOYMENT PROVISIONS

The Contractor has read and understands the provisions in Attachment A, 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 33 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 Contractor has read and understands the provisions in Attachment B, 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.

Attachment A

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.

Attachment B

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 and its subcontractors 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 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.