

Habitat and Public Access Program Agreement

Agreement Number {Agreement Number}

This Agreement is entered into between the Iowa Department of Natural Resources (DNR) and {Cooperator} (Cooperator). The parties agree as follows:

Section 1 IDENTITY OF THE PARTIES AND LAND

1.1 Parties. DNR is authorized to enter into this Agreement. DNR's address is: Wallace State Office Building, 502 E 9th St, Des Moines IA 50319.

Cooperator {is/are} a private landowner{s} with authority to enter into this Agreement, and pictured in the aerial photo attached, and incorporated as Exhibit A, is the subject of this Agreement.

1.2 Land. The subject of this Agreement shall be real property under the ownership and control of the Cooperator (Property), officially described as the following:

{Legal description of the area: location & size}

An aerial photo of the Property is attached and incorporated as Exhibit A.

The portion of the Property upon which Wildlife habitat improvements shall be developed (Improved Property) is officially described as the following:

{Legal description of the area: location & size}

An aerial photo of the Property showing the Improved Property area is attached and incorporated as Exhibit B.

1.3 Contact. The DNR's project manager for this site is:

{NAME
ADDRESS
PHONE
NUMBER EMAIL}

The Cooperator's point-of-contact for this site is:

{NAME
ADDRESS
PHONE
NUMBER EMAIL}

Section 2 STATEMENT OF PURPOSE

2.1 Statutory Authority. DNR enters into this Cooperative Agreement based on statutory authority provided in Iowa Code section 483A.3B(3).

2.2 Background. The DNR applied for and received a grant from the U.S. Department of Agriculture to create a voluntary public access and habitat incentive program. These monies, in conjunction with wildlife

habitat fees, are to be used to create, manage, and enhance wildlife habitat on private lands in exchange for allowing public access for hunting.

2.3 Purpose. The DNR's purpose in entering into this Agreement is to provide financial and technical assistance to private landowners who agree to establish, improve, or restore wildlife habitat on private land and allow public access for hunting for all seasons between September 1 and May 31. The Cooperator's purpose in entering into this Agreement is to allow public hunting for all seasons between September 1 and May 31 on designated portions of their property in exchange for receiving financial and technical assistance from the DNR to establish, improve, or restore wildlife habitat. DNR shall provide financial assistance for this work by contracting either with the Cooperator or a third party to provide the wildlife habitat improvements.

Section 3 DURATION OF AGREEMENT

3.1 Term of Agreement. The term of this Agreement shall be {date} through {date}, unless terminated earlier in accordance with the Termination section of this Agreement. However, the Agreement shall not begin until signed by both parties.

Section 4 COVENANTS OF THE PARTIES

In exchange for the consideration described herein the parties agree to the following responsibilities and obligations:

4.1 Cooperator's Duties. During the term of the Agreement, the Cooperator shall perform the following tasks:

Task 1: Allow the public to use, and not interfere with the use of thereby, the Property as a public access hunting area. This access shall be allowed during all lawful hunting season dates and times each year between September 1, {year} and May 31, {year}.

Task 2: Allow and not interfere with the posting of public access areas for the Property by the DNR and its employees, agents or contractors.

Task 3: Allow and not interfere with the creation and maintenance of wildlife habitat improvements by the DNR and its employees, agents and contractors on the Improved Property, as described in Section 4.2.

Task 4: Allow without interference DNR law enforcement personnel to patrol the Property and enforce applicable laws and regulations.

Task 5: Cooperator may deny a hunter's access to the Property if the hunter engages in behavior that reasonably threatens the health, safety or property of the Cooperator and his family.

4.2 DNR's Duties. During the term of the Agreement, the DNR shall perform the following tasks:

Task 1: Post and maintain signs designating the Property as a public access hunting area. Post and maintain signs designating access areas and boundaries, including signs stipulating "No Hunting in Standing Crops" at the landowner's discretion.

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Task 2: Make, or cause to be made, the following wildlife habitat improvements on the Improved Property. Without any financial contribution from the landowner: *{describe the wildlife habitat improvements or reference and incorporate an attachment with plans or descriptions of the proposed wildlife habitat improvements.}* DNR shall endeavor to make or cause these improvements to be made by *{date}*; however, DNR shall be authorized to make or cause these improvements to be made throughout the term of the Agreement, provided such work does not interfere with the public's use of the Property as a public hunting area.

Task 3: Perform, or cause to be performed, maintenance of the improvements described in Task 2 on the Improved Property.

Task 4: Remove, or caused to be removed, all noxious weeds from the Improved Property; the DNR shall be required to perform this task only after the wildlife habitat improvements described in Task 2 have been made.

- 4.3 Access to the Property and Improved Property.** During the term of the Agreement, the DNR, its agents, and contractors shall have the rights of access to the Property and Improved Property to conduct activities described herein and to monitor the Cooperator's compliance with its obligations described in this Agreement. If the Cooperator unreasonably denies such access, the DNR may obtain an order from the Iowa District Court in the county or counties in which the Property or Improved Property is located as needed to enable the DNR to carry out its obligations under this Agreement.
- 4.4 Monitoring and Habitat Review.** The DNR shall monitor the wildlife habitat area after all wildlife habitat improvements have been made to ensure that no changes, modifications, or destruction has occurred to the improvements on the Improved Property.
- 4.5 Enforcement.** Failure by either party to comply with the requirements of this Section shall constitute a material breach of this Agreement and shall be grounds for the other party to immediately terminate this Agreement for Cause and seek the appropriate remedy.

Section 5 COMPENSATION

- 5.1 DNR Source of Funding.** DNR's source of funding for this Agreement is the federal Voluntary Public Access and Habitat Incentive grant and wildlife habitat fees.
- 5.2 Payments.** All habitat improvement work performed on the Improved Property shall adhere to the standard rates issued by the U.S. Department of Agriculture. No financial payments shall be made to the Cooperator pursuant to this Agreement, unless the Cooperator personally performs habitat construction pursuant to a separate service contract with the DNR.

Section 6 GENERAL CONDITIONS

- 6.1 Amendments.** This Agreement may be amended only by written mutual consent of the parties.
- 6.2 Assignment.** This Agreement may not be assigned, transferred, or conveyed, in whole or in part, without the prior written consent of the other party.
- 6.3 Integration.** This Agreement constitutes the entire agreement between the parties, and the Cooperator acknowledges that it is entering into the Agreement solely on the basis of the terms and conditions

herein contained and not in reliance upon any representations, statement, inducement or promise, whether oral or written, not contained herein.

6.4 DNR Termination. DNR shall have the right without penalty to terminate this Agreement upon 60 days written notice to the Cooperator as a result of any of the following: (1) adequate funds are not appropriated or granted to allow the DNR to operate as required and to fulfill its obligations under this Agreement or funds are de-appropriated; (2) if the DNR's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; (3) if the DNR's duties, programs or responsibilities are modified or materially altered; or (4) 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 the DNR's ability to fulfill any of its obligations under this Agreement. DNR shall have the right without penalty to terminate this Agreement immediately upon written notice to the Cooperator in the event the Cooperator defaults on or violates any provision of this Agreement.

6.5 Cooperator Termination.

6.5.1 The Cooperator may terminate this Agreement prior to the termination date described in Section 3 of this Agreement by providing 60 days written notice to the DNR. In such an event, the Cooperator shall be subject to the penalties described in section 6.6.

6.5.2 The Cooperator shall have the right without penalty to terminate this Agreement immediately upon written notice to the DNR if the DNR materially breaches any provision of this Agreement.

6.6 Penalties for Cooperator's Early Termination or Breach of the Agreement. Upon Cooperator's breach as described in section 4.5 or Cooperator's early termination of the Agreement described in Section 6.5.1, the Cooperator shall reimburse the Department a pro-rated amount of the value of wildlife habitat improvement work completed on the Improved Property divided by the entire Agreement period times the unfulfilled years of the Agreement, *e.g.*, $(Total\ Dollars \div Total\ years) \times Unfulfilled\ Years = pro-rated\ amount\ owed$, plus any early termination penalties the DNR may be required to pay a contractor performing the wildlife habitat improvement work on the Improved Property.

6.7 Indemnification. The Cooperator agrees to indemnify and hold harmless the State of Iowa and the DNR, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the DNR, related to or arising from the Cooperator's acts. Indemnification obligation of the Cooperator shall survive termination of this Agreement.

6.8 Immunity from Liability. Every person who is a party to the Agreement is hereby notified and agrees that the State, the DNR, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Cooperator's and/or its subcontractors' activities involving third parties arising from the Agreement or their use of the Property or Improved Property.

6.9 Liability Protection. Nothing in this Agreement alters or waives the liability protection afforded to private landowners opening their lands up to public recreation under Iowa Code chapter 461C. Access under this Agreement shall not constitute a "charge" as defined in Iowa Code section 461C.2. As

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stipulated in Iowa Code section 461C.4, landowners who participate in this program do not, by opening up their lands to public recreation, do any of the following:

- 6.8.1 Extend any assurance that the premises are safe for any purpose;
- 6.8.2 Confer upon such person the legal status of an invitee or licensee to whom the duty of care is owed;
- 6.8.3 Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

6.10 Compliance with Laws. The parties shall comply with all laws in the performance of this Agreement.

6.11 Severability. If any provision of this Agreement 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 Agreement.

6.12 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 Agreement 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 Agreement, unless stated otherwise in this Agreement, 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.

6.13 Notice. 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; or by Federal Express, courier or other similar and reliable carrier, and shall be addressed to each party as set forth in Section 1 of this Agreement. 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.

6.14 Supersedes Former Contracts or Agreements. This Agreement supersedes all prior contracts or agreements between the DNR and the Cooperator for the services provided in connection with this Agreement.

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

6.16 Additional Provisions. The parties agree that if an Addendum, Rider, or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

6.17 Delay or Impossibility of Performance. Neither party shall not be in default under this Agreement if performance is delayed or made impossible by an act of God, flood, fire, or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the party. If delay results from a subcontractor's conduct, negligence or failure to perform, the party shall not be excused from compliance with the terms and obligations of this Agreement.

Section 7 EXECUTION

In consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement, which represents the entire Agreement between the parties, and have caused their duly authorized representatives to execute this Agreement.

DEPARTMENT OF NATURAL RESOURCES:

By: _____ Date: _____
Deputy Director

COOPERATOR:

By: _____ Date: _____
Cooperator Signatory

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