

ROUTINE SERVICES - SPECIAL CONDITIONS

This Contract is entered into between the Iowa Department of Natural Resources (DNR) and Northeast Iowa RC&D, Inc. (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.

Contractor is organized under the laws of the State of Iowa and is registered with the Iowa Secretary of State. The Contractor's address is:

Northeast Iowa RC&D, Inc.
101 East Greene Street
Post Office Box 916
Postville, Iowa 52162-0916

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:

Tivon Feeley
DNR – Forest Health Program Leader
Wallace State Office Building
502 East Ninth Street
Des Moines, IA 50319
Phone: 515-281-4915
Fax: 515-281-6794
Email: Tivon.feeley@dnr.iowa.gov

Contractor Project Manager

Lora Friest
101 East Greene Street,
Postville, Iowa 52162
Phone: 563-864-7112
Email: lora.friest@northeastiowarcd.org

Section 2 STATEMENT OF PURPOSE

2.1 Background. Gypsy moth is an European insect species that was introduced into the New England States over 100 years ago as an experiment to help provide silk to the textile industries. This exotic insect escaped and continues to spread west and has now established itself in Iowa. Establishment of gypsy moths in Iowa will affect the survival of our mature and oldest trees. The larvae of the insects feed on over 500 host species during the summer removing the trees' ability to create food. Repeated defoliation will deplete the stored reservoirs of nutrients the tree has, thus leading to the decline and potential death of the tree.

During the 2010 trapping season a total of 2,260 male gypsy moths were captured, the highest capture in Iowa's history. A total of 158,000 polygon acres were treated with pheromone flakes in 2011 to control the gypsy moth population. The total gypsy moth

IOWA DEPARTMENT OF NATURAL RESOURCES
CONTRACT NUMBER 15CRDFRBTFEEL-0004

Between

IOWA DEPARTMENT OF NATURAL RESOURCES
And
NORTHEAST IOWA RC&D, INC.

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

DEPARTMENT OF NATURAL RESOURCES

By: Kelley Myers
Kelley Myers, Division Administrator

Date: 4-20-15

NORTHEAST IOWA RC&D, INC.

By: _____
Lora Friest

Date: _____

For DNR use only:

1. Retain the original contract in the project file and send a hardcopy with the first invoice.
2. a) Fax contract to 515-725-8201 (check one box below before faxing)
OR
b) Email scanned copy to your Division's Contract Rep:

DIVISION	DIVISION CONTRACT REP
<input type="checkbox"/> Conservation & Recreation	Kim.Rasler@dnr.iowa.gov
<input type="checkbox"/> Director's Office	Karen.Fynaardt@dnr.iowa.gov
<input type="checkbox"/> Environmental Services	Jerah.Sheets@dnr.iowa.gov

If you do not have faxing or scanning/emailing capabilities, you may mail a copy of the contract to IA DNR, Wallace State Office Building, Attention: (your respective bureau's contract rep), 502 East 9th Street, Des Moines, IA 50319.

capture in 2011 was back down to 478 male moths. The total gypsy moth capture in 2012 was further reduced to 225 male moths. However, the number moved slightly higher to 269 male moths in 2013. Without continued trapping, DNR cannot detect any early established populations and start treatment options before the population causes significant damage to Iowa's forests. Iowa has joined the USDA National Program called the Gypsy Moth Slow the Spread Foundation and APHIS PPQ that targets Iowa as the next state to have gypsy moth establishment. This year, the Gypsy Moth Slow the Spread Foundation provided DNR grant funds to trap targeted areas to assist the state in monitoring for gypsy moth establishment.

2.2 Purpose. The parties have entered into this Contract for the purpose of retaining the Contractor to provide placement of 627 gypsy moth pheromone traps at designated locations in Allamakee, Buchanan, Clayton, Delaware, Dubuque, Fayette, and Winneshiek counties. The placement of the traps shall commence on May 1, 2015 and shall be completed by July 1, 2015. Contractor shall return all of the traps and equipment by October 31, 2015. In addition, the Contractor shall document the 25% match as required by the Gypsy Moth Slow the Spread Foundation, in an acceptable accounting format and provide a report of completion of the 25% match to the DNR by October 31, 2015.

Section 3 DURATION OF CONTRACT

3.1 Term of Contract. The term of this Contract shall be May 1, 2015 through December 31, 2015, unless terminated earlier in accordance with the Termination section of this Contract. However, this Contract shall not begin until it has been signed by both parties.

3.2 Reserved

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

Section 4 DEFINITIONS

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

"Task Milestone Date" shall mean the deadline for accomplishing a Task required by this Contract.

Section 5 STATEMENT OF WORK

The Contractor will ensure that pheromone-baited, male-focused, gypsy moth traps will be placed by the Contractor in Allamakee, Buchanan, Clayton, Delaware, Dubuque, Fayette, and Winneshiek counties. Necessary equipment and geo-referenced maps with identified trap target areas will be provided to the Contractor. DNR will require the placement of 627 gypsy moth pheromone traps at designated locations. Traps must be placed on United States Department of Agriculture (USDA) recommended trees. It is anticipated that Contractor will need to employ two trappers for this project. Placement of traps shall

commence on May 1, 2015 and must be completed by July 1, 2015. Contractor will be required to download data on a weekly basis regarding gypsy moth populations. Trappers will retrieve and return all gypsy moth traps, with captured moths, to DNR at locations designated by DNR by October 31, 2015. All gypsy moth data information shall also be provided to DNR on that date. Final invoicing can be sent on or after October 31, 2015 after the quality control sampling by DNR indicates that at least 95% of the traps were correctly placed, data recorded as mandated, accurate data obtained and all traps and equipment returned to DNR. In addition, the Contractor shall document the 25% match as required by the Gypsy Moth Slow the Spread Foundation, in an acceptable accounting format and provide a report of completion of the 25% match to the DNR by October 31, 2015.

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

Obligation	Task Milestone Date
<p>Task 1: Required Trap Training Description: Contractor shall ensure that all of its trappers on this project attend required training to become familiar with the equipment.</p>	<p>On May 30, 2015</p>
<p>Task 2: Completed Trap Placement Description: Contractor shall complete placement of gypsy moth traps in USDA Defined Locations.</p>	<p>Commence on May 30, 2015 and be completed by July 1, 2015</p>
<p>Task 3: Collect Data, Retrieve Traps Placed, provide DNR with 25% match documentation. Description: Contractor shall collect data on a weekly basis and complete hardcopy trap data sheets. Contractor shall retrieve gypsy moth traps that were placed in defined areas and return all traps with moths to DNR Forestry. All gypsy moth data information shall also be provided to DNR. In addition, the Contractor shall document the 25% match as required by the Gypsy Moth Slow the Spread Foundation, in an acceptable accounting format and provide a report of completion of the 25% match to the DNR.</p>	<p>No later than October 31, 2015</p>

5.2 Non-Exclusive Rights. This Contract is not exclusive. DNR reserves the right to select other contractors to provide services similar or identical to the Statement of Work described in this Contract during the term of this Contract.

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

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

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

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

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

5.5.3 Acceptance of the Contractor Estimate. If DNR accepts the estimate presented by the Contractor within five business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.

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

5.6 Reserved.

5.7 Reserved.

Section 6 MONITORING AND REVIEW

6.1 Performance. Contractor shall complete its obligations under this Contract by at the intervals or by the dates described 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. Termination of the contract qualifies as disqualification standards, the Contract shall not contract within the State of Iowa as determined by DNR.

6.2 Review Meetings. The DNR may request a meeting with the Contractor for the purpose of reviewing work under the Contract at any time during the term of this Contract. The Contractor shall make every effort to attend such a meeting and address the issues presented at the meeting.

6.3 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 to, without cost, 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 from DNR's USDA-APHIS-PPQ Grant Agreement, pursuant to Iowa Code section 456A.24(13).

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 \$16,302. 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 Retained Amount. DNR shall retain 10% of the compensation associated with this Contract to secure the Contractor's performance under this Contract. The retained amount shall be payable only upon DNR's issuance of a written Final Notice of Acceptance.

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

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

Task	Amount Due
<p>Task 1: Required Trap Training Description: Required training for all trappers to become familiar with the equipment.</p>	\$7,336
<p>Task 2: Completed Trap Placement of 624 gypsy moth traps Description: Complete placement of gypsy moth traps in USDA Defined Locations.</p>	\$7,336
<p>Task 3: Collect Data, Retrieve Traps Placed, provide DNR with 25% match documentation. Description: Contractor shall collect data on a weekly basis and complete hardcopy trap data sheets. Contractor shall retrieve gypsy moth traps that were placed in defined areas and return all traps with moths to DNR Forestry. All gypsy moth data information shall also be provided to DNR. In addition, the Contractor shall document the 25% match as required by the Gypsy Moth Slow the Spread Foundation, in an acceptable accounting format and provide a report of completion of the 25% match to the DNR.</p>	\$1,630
<p>Total not to exceed</p>	\$16,302

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

Task Milestone Date	Amount Due	Invoice Due No Later Than
Task 1: Required Trap Training Description: Required training for all trappers to become familiar with the equipment.	\$7,336	May 1, 2015
Task 2: Completed Trap Placement of 624 gypsy moth traps Description: Complete placement of gypsy moth traps in USDA Defined Locations.	\$7,336	July 1, 2015
Task 3: Collect Data, Retrieve Traps Placed, provide DNR with 25% match documentation. Description: Contractor shall collect data on a weekly basis and complete hardcopy trap data sheets. Contractor shall retrieve gypsy moth traps that were placed in defined areas and return all traps with moths to DNR Forestry. All gypsy moth data information shall also be provided to DNR. In addition, the Contractor shall document the 25% match as required by the Gypsy Moth Slow the Spread Foundation, in an acceptable accounting format and provide a report of completion of the 25% match to the DNR.	\$1,630	October 31, 2015
Total not to exceed	\$16,302	

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

Iowa Department of Natural Resources – Forestry Bureau
Attention: Tivon Feeley
Wallace State Office Building
502 East Ninth Street
Des Moines, IA 50319

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

Northeast Iowa RC&D, Inc.
101 East Greene Street
Post Office Box 916
Postville, Iowa 52162-0916

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

7.9 Delay of Payment Due to Contractor's Failure. If DNR determines that the Contractor has failed to perform or deliver any Deliverable 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 Deliverable is performed or delivered. DNR shall withhold that portion of the invoice amount which represents payment for the Deliverable that was not completed, delivered and successfully deployed.

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

7.11 Set-off Against Sums Owed by Contractor. In the event that Contractor owes DNR or the State any sum (including any State taxes in arrears) under the terms of this Contract, any other contract, pursuant to a judgment, or pursuant to any law, DNR may set off such sum against any sum invoiced to DNR by Contractor. This may be done in DNR's sole discretion unless otherwise required by law.

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

7.13 Stop Services. In addition to its other remedies described herein, DNR shall have the right at any time during the Contract term to direct the services of the Contractor fully or partially suspended or stopped, if the Deliverables fail to conform to applicable specifications

and requirements under this Contract. DNR shall give Contractor the reasons for the stop work directive.

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

**ROUTINE SERVICES CONTRACT
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 and Iowa Code chapter 8F. 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

The DNR may terminate this agreement, upon notice, without penalty and for any reason, upon 30 days notice to the Contractor. The DNR shall be liable to pay Contractor for services provided through the termination date of the Contract. In the event the DNR terminates this Contract, the Contractor upon receipt of notice of termination, shall cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs; immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor; 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; and immediately return to DNR any payments made by DNR for services that were not rendered by the Contractor.

Section 3 NON-APPROPRIATION

The parties agree that DNR shall have the right to terminate this Contract without penalty by giving 60 days written notice to the Contractor as a result of any of the following:

- 3.1 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;
- 3.2 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;
- 3.3 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;
- 3.4 If DNR's duties, programs or responsibilities are modified or materially altered; or
- 3.5 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.

Section 4 CONFLICT BETWEEN GENERAL AND SPECIAL CONDITIONS

If a General Condition conflicts with a Special Condition, they shall be construed, if possible, so that effect is given to both provisions. If the conflict between the provisions is irreconcilable, then the Special Condition shall prevail as an exception to the General Condition.

Section 5 INDEPENDENT CONTRACTOR

The status of the Contractor shall be that of an independent contractor. The Contractor, and its employees and agents performing under this Contract are not 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 for federal or State tax purposes. 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 6 CONFLICT OF INTEREST

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 and that Contractor shall not provide services that would create a conflict of interest with the Contractor's duties provided for in this Contract.

Section 7 AMENDMENTS

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

Section 8 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.

Section 9 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 10 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 11 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 12 JOINT AND SEVERAL LIABILITY

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, then all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default activities and obligations.

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

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 or by receipted hand delivery which shall be addressed to each party as set forth in the Special Conditions of this Contract. Notice shall be deemed to have been provided at the time it is actually received.

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 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 years following the date of final payment or completion of any required audit, whichever is later, and the Contractor shall permit DNR, its designee or oversight agency to access and examine, audit, excerpt and transcribe any directly pertinent books, records and documents relating to this Contract, without charge. Records to be maintained include both financial records and service records.

Section 17 SOLICITATION

The Contractor warrants 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 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 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 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 19, "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 INDEMNIFICATION; LIABILITY

The Contractor agrees to indemnify and hold harmless the State of Iowa and DNR, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, related to or arising from: any breach of this Contract; any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor; the Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor; any failure by the Contractor to comply with the Compliance with the Law provision of this Contract; any failure by the Contractor to make all reports, payments and withholdings required by federal and State law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa; any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or any failure by the Contractor to adhere to the confidentiality provisions of this Contract. Every person who is a party to the Contract 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 Contractor's and/or subcontractors' activities involving third parties arising from the Contract.

Section 23 EQUAL EMPLOYMENT PROVISIONS

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. The Contractor shall be familiar with the

provisions of 541 Iowa Administrative Code chapter 4, and shall comply with them, as applicable.

Section 24 **FEDERALLY-FUNDED AGREEMENTS**

This Contract may be funded, in whole or in part, with federal funds. As such, the Contractor has read and understands the provisions of Attachment A, 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.

Section 25 **RESERVED**

Section 26 **NON-SUPPLANTING REQUIREMENT.**

To the extent required by State or federal 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 27 **CERTIFICATION REGARDING SALES AND USE TAX.**

By executing this Contract, the Contractor certifies that it is either (a) registered with the Iowa Department of Revenue, collects, and remits sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code section 423.1. The Contractor also acknowledges that the DNR may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the DNR or its representative filing for damages for breach of contract.

Section 28 **TAXES.**

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

Attachment A
Additional Requirements for Federally-funded Agreements

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

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

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

A.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.

A.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.

A.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 DNR. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships.

A.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.

