

PROFESSIONAL SERVICES CONTRACT  
SELECTION MEMO April 21, 2017

Title of RFP. Formal Request for Proposal (RFP) for "State of Iowa's Programmatic Archaeological Review for CDBG-National Disaster Resiliency (CDBG-NDR) for Watershed Projects"

Purpose: IEDA sought proposals from bidders to assist the IEDA in completing Programmatic Archaeological Review in eight HUC-8 watersheds to assess the potential for federally funded project to affect cultural resources. The nature of the programmatic archaeological review is complex and will require a specialist with experience to complete

Date bid due April 5, 2017

Brief Description of the Selection Process:

IEDA issued a competitive request for proposal. The RFP was advertised on the TSB website, Iowa's Bid Opportunities and IEDA's websites and the RFP was sent to multiple vendors that the Authority believed had an interest or had performed similar work in other states Also past vendors that had performed similar work for the state were also solicited and encouraged to submit a proposal

Winning Bidder Recommendation of Review Team:

EarthView Environment, Inc.

Why the particular Contractor was selected:

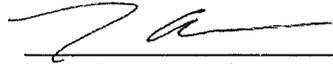
Since only a single bid was received the Authority reviewed past contracts of similar services and the services offered by the bidder were reasonable As IEDA had conducted a similar search for services in 2013, the analysis of those proposals informed the Cost Reasonableness Comparison for this Request for Proposals At that time, the average price per HUC 12 for both modeling and site specific review was \$32,925 96. The current proposal is requesting modeling and site review for 38 HUC 12s, therefore it is reasonable to assume that  $\$32,925 \times 38 = \$1,251,150$  is a reasonable cost to complete this work over a four-year period. Other State agencies were contacted and bids for similar services were comparable The vendor bid was in the amount of \$232,000 and met the reasonableness test.

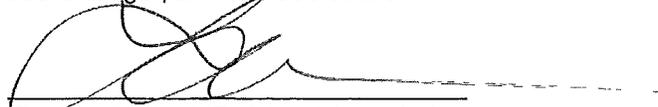
Evaluation of all vendors.

N/A

April 21, 2017 Proposed date for IEDA Board Approval if award is \$50,000 or greater

Approved By:   
Ann Schmid, Project Manager / Historic Preservation Specialist

Approved By:   
Leslie Leager, Division Coordinator

Approved By:   
Timothy Waddell, Division Administrator

## PROFESSIONAL SERVICES CONTRACT

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PARTIES IOWA ECONOMIC DEVELOPMENT AUTHORITY  
EarthView Environmental, Inc.

AGREEMENT NUMBER 13-NDRTA-020

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This Contract is entered is between the IOWA ECONOMIC DEVELOPMENT AUTHORITY (IEDA) and EarthView Environmental, Inc. (Contractor). The parties agree as follows

### **Section 1: IDENTITY OF THE PARTIES**

1.1 Parties IEDA is authorized to enter into this Contract IEDA's address is: 200 East Grand Avenue, Des Moines, IA 50309.

EarthView Environmental, Inc (Contractor), a S-Corporation is organized under the laws of the State of Iowa and is authorized to do business in the State of Iowa The Contractor's address is 310 Second St, Coralville, IA 52241

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

IEDA Project Manager. Ann Schmid, Division Coordinator  
200 East Grand Avenue, Des Moines IA 50309  
515.725.3071  
Ann.Schmid@iowaeda.com

Contractor Project Manager Joe Artz, Senior Geoarchaeologist and GIS Analyst  
310 Second St, Coralville, IA 52241  
319 358 2542  
EVE@EVEInc.consulting

### **Section 2: STATEMENT OF PURPOSE**

2.1 Background In January, IEDA was awarded a CDBG disaster recovery resiliency award by the federal U.S. Department of Housing and Urban Development (HUD) to implement its proposed Iowa Watershed Approach. Through the Iowa Watershed Approach (IWA), Iowans will work together to address factors that contribute to floods and nutrient flows. The IWA will accomplish six specific goals 1) reduce flood risk, 2) improve water quality, 3) increase resilience, 4) engage stakeholders through collaboration and outreach/education; 5) improve quality of life and health, especially for vulnerable populations, and 6) develop a program that is scalable and replicable throughout the Midwest and the United States.

For the purposes of this Contract, eight watersheds across Iowa will serve as project sites for the IWA These are. Upper Iowa River, Upper Wapsipinicon River, Middle Cedar River, Clear Creek, English River, North Raccoon River, West Nishnabotna River, and East Nishnabotna River. Each will leverage a watershed management authority, develop a hydrologic assessment and watershed plan, and implement water and soil conservation projects to reduce the magnitude of downstream flooding and to improve water quality during and after flood events. A copy of the application and more information about the HUD grant can be found here: <http://www.iowaeconomicdevelopment.com/Community/NDR>

2.2 Purpose Scope of work & deliverables include The completion of Archaeological Probability Modeling or Landscape Suitability Modeling (LSM) (essentially a Phase 1A or Desktop review similar to the LSM concept developed by Artz et al c 2000 incorporating similar variables, weighting and data sets used in

previous models implemented in the State of Iowa) for approximately 38 HUC-12 watersheds, located in the IWA eligible eight HUC-8 watersheds to assess potential impacts to cultural resources as they relate to the construction of water & soil conservation practices in those watersheds. The Archaeological modeling would then be used by IEDA recipients to help inform the best locations for proposed water and soil conservation practices, and once locations are selected, the consulting archaeologist would assist in determining when such practices would require further Phase 1 investigation.

### **Section 3: DURATION OF CONTRACT**

3.1 Term of Contract The term of this Contract shall be May 1, 2017 through April 30, 2020, unless terminated earlier in accordance with the Termination section of this Contract.

3.2 Approval of Contract If the amount of compensation to be paid by IEDA according to the terms of this Contract is equal to or greater than \$50,000.00 (fifty thousand dollars), then performance shall not commence unless by April 21, 2017 this Contract has been approved by the Economic Development Board

3.3 Renewal The contract will be automatically renewed for 1 year unless 90 days prior to the contract end date either party gives notice of its decision not to renew the contract. If no notice is given prior to 90 days of the contract end IEDA will initiate the contract renewal process. If the initial contract award amount of \$232,000 has not been incurred under by the end of the contract end date the balance of the funds are available to be included in the one year renewal

### **Section 4: DEFINITIONS**

4.1 "Acceptance" means that IEDA has determined that one or more Deliverables satisfy IEDA's Acceptance Tests. Final Acceptance means that the IEDA has determined that all Deliverables satisfy the Acceptance Criteria. "Non-acceptance" means that IEDA has determined that one or more Deliverables have not satisfied IEDA's Acceptance Criteria.

4.2 "Acceptance Criteria" means the specifications, goals, performance measures, testing results and/or other criteria designated by IEDA and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof

4.3 "Deliverables" means all of the goods, products, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Contractor (or any agent, contractor or subcontractor of Contractor) in connection with this Contract

4.4 "Contractor Proposal" means the proposal submitted by Contractor in response to the RFP

4.5 "RFP" means the Request for Proposal ("RFP") "State of Iowa's "State of Iowa's Programmatic Archaeological Review for CDBG-National Disaster Resiliency (CDBG-NDR) for Watershed Projects" issued by IEDA for general release on March 1, 2017 with bids due on April 5, 2017, RFP amendments and written responses to bidders' questions

### **Section 5: STATEMENT OF WORK**

5.1 Statement of Work. Contractor shall provide the professional services to IEDA as set forth in Exhibit A, Statement of Work

5.2 Final Notice of Acceptance If IEDA concludes, in its sole discretion, that all the tasks required by the Statement of Work met the requirements for Final Acceptance, then IEDA shall issue a written Final Notice of Acceptance

5.3 Non-Exclusive Rights This Contract is not exclusive. IEDA 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, IEDA 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 IEDA shall give Contractor written notice of a stop work directive IEDA shall provide to Contractor the reasons for 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 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

5.6 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 IEDA 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 IEDA a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.

5.6.3 Acceptance of the Contractor Estimate. If IEDA accepts the estimate presented by the Contractor within five (5) 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

5.6.4 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 IEDA or its Board.

5.7 Incorporation of Documents The following documents, and any amendments thereto existing on the date this Contract is signed by IEDA, are incorporated into this Contract by this reference:

(1) Exhibit A, Statement of Work and Budget

(2) Exhibit B, the Contractor's Proposal of April 5, 2017 submitted in response to the RFP, Due to its size, Exhibit B will not be attached to this Agreement, but will be kept on file at the Iowa Economic Development Authority. It shall, nevertheless, be considered an incorporated element of this Agreement

(3) Exhibit C, the Request for Proposal issued on March 1, 2017 by IEDA and written responses to bidders' question (collectively referred to as the RFP) Due to its size, Exhibit C will not be attached to this Agreement, but will be kept on file at the Iowa Economic Development Authority. It shall, nevertheless, be considered an incorporated element of this Agreement

(4) Attachment A, Additional Requirements for Federally-funded Agreements

5.8 Preference In the case of any inconsistency or conflict between the provisions of this document and the exhibit(s) described above, the following order of priority shall control.

(1) These Conditions, Sections 1-16;

(2) Attachment A, Additional Requirements for Federally-funded Agreements

(3) Exhibit A, Statement of Work and Budget

(4) Exhibit B, the Contractor's Proposal of April 5, 2017 submitted in response to the RFP,

(5) Exhibit C, the Request for Proposal issued on March 1, 2017 by IEDA and written responses to bidders' question (collectively referred to as the RFP)

## **Section 6: MONITORING AND REVIEW**

6.1 Schedule. Contractor shall complete its obligations and provide Deliverables under this Contract by the dates and according to the schedule described in Exhibit A, Statement of Work and Budget

Failure by Contractor to complete the above-designated portions of its obligations by dates set out and according to the schedule herein shall constitute material breach of this Contract by Contractor and shall be grounds for IEDA to immediately terminate this Contract for cause.

6.2 Review Meetings Commencing with beginning performance of this Contract, the Project Managers shall meet monthly to discuss progress made by the Contractor during the performance of this Contract. The meetings shall occur, either in person, by telephone conference call, or other telecommunications means, at a time to be determined by the parties. Meetings may be postponed only on a case-by-case basis by mutual agreement of the parties.

6.3 Status Reports Prior to each review meeting, each Project Manager shall provide a status report listing

- o Accomplishments during the previous period.
- o Activities planned for the upcoming period.
- o Tasks completed or deliverables produced during the previous period.
- o An updated schedule of upcoming deliverables
- o Any problems or concerns encountered since the last meeting
- o An explanation of any deviations from the financial and hourly expenditures contained in Contractor's proposal of April 5, 2017, attached hereto as Exhibit B

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

6.4 IEDA right to review and observe IEDA 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 IEDA, to inspect its facilities and books and records relating to invoicing and time records for the purpose of monitoring and evaluating performance of this Contract.

## **Section 7: COMPENSATION**

7.1 Source of Funding The source of funding for this Contract is the Community Development Block Grant Program Disaster Recovery - National Disaster Resilience, a Federal grant.

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 \$232,000. Payment shall be for satisfactory completion of the Statement of Work outlined in this Contract, provided that Contractor has complied with the terms of this Contract.

7.3 Retained Amount. IEDA shall retain ten percent (10%) of the compensation associated with this Contract to secure the Contractor's performance under this Contract. The Retained Amount shall be payable as specified in Exhibit A - Budget.

7.4 Final Notice Acceptance of Implementation of Statements of Work If IEDA concludes, in its sole discretion, that all the Tasks required by the Statement of Work have been timely completed and all deliverables and services 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 IEDA shall

issue a written Final Notice of Acceptance

7.5 Budget The budget for this Contract shall be as described in Exhibit A, Statement of Work and Budget

7.6 Submission of Invoices. Invoices shall be submitted to IEDA not more than monthly for services provided under this Contract. 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. IEDA shall have the right to dispute any invoice item submitted for payment and to withhold payment of any disputed amount if IEDA reasonably believes the invoice is inaccurate or incorrect in any way. Original invoices shall be submitted to IEDA's Project Manager described in Section 1.2.

7.7 Payment of Invoices. IEDA 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 the Contractor and sent to the Contractor's Project Manager described in Section 1.2.

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 IEDA determines that the Contractor has failed to perform or deliver any service or product required by this Contract, then the Contractor shall not be entitled to any compensation, or any further compensation if compensation has already occurred, under this Contract until such service or product is performed or delivered. IEDA shall withhold that portion of the invoice amount which represents payment for the task or deliverable that was not completed, delivered and successfully deployed.

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

7.11 Set-off Against Sums Owed by Contractor. In the event that Contractor owes IEDA or the State of Iowa ("State") any sum (including any State taxes in arrears) under the terms of this Contract, any other Contract, pursuant to a judgment, or pursuant to any law, IEDA may set off such sum against any sum invoiced to IEDA by Contractor. This may be done in IEDA'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. 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, IEDA shall have the right at any time during the Contract term to direct the services of the Contractor fully or partially suspended or stopped, if the deliverables or services fail to conform to applicable specifications and requirements under this Contract. IEDA 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 IEDA a release of all claims against IEDA 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 IEDA's

claims against the Contractor, or the Contractor's sureties under this Contract or applicable performance and payment bonds.

**Section 8: INSURANCE**

The Contract will require the successful Contractor to maintain insurance coverage(s) in accordance with the insurance provisions of the General Terms and Conditions and of the type and in the minimum amounts set forth below, unless otherwise required by the Agency

<i>Type of Insurance</i>	<i>LIMIT</i>	<i>AMOUNT</i>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	\$2 million \$1 Million \$1 Million \$1 Million
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence Aggregate	\$1 Million \$1 Million
Errors and Omissions Insurance	Each Occurrence	\$1 Million
Property Damage	Each Occurrence Aggregate	\$1 Million \$1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law

**Section 9: COMPLIANCE WITH THE LAW**

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

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

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in Sections 4.3 and 15.8, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

## **Section 10: TERMINATION**

10.1 Termination for Cause by IEDA IEDA may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in IEDA's notice of breach or any subsequent notice or correspondence delivered by IEDA to Contractor, provided that cure is feasible. In addition, IEDA may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

10.1.1 Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete,

10.1.2 Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

10.1.3 Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves,

10.1.4 Contractor terminates or suspends its business;

10.1.5 Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited,

10.1.6 Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract,

10.1.7 IEDA determines or believes the Contractor has engaged in conduct that. (a) has or may expose IEDA or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized,

10.1.8 Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret,

10.1.9 Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy, or

10.1.10 Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor.

a Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or filing an answer admitting the material allegations of a petition filed

against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts,

b Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets,

c Making an assignment for the benefit of creditors,

d Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract, or

e. Taking any action to authorize any of the foregoing

IEDA's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to IEDA, and IEDA shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise

10.2 Termination upon Notice Following thirty (30) days written notice, IEDA may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all

10.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, IEDA shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following.

10.3.1 The legislature or governor fails in the sole opinion of IEDA to appropriate funds sufficient to allow IEDA to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract, or

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

10.3.3 If IEDA'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

10.3.4 If IEDA's duties, programs or responsibilities are modified or materially altered; or

10.3.5 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 IEDA's ability to fulfill any of its obligations under this Contract.

IEDA shall provide Contractor with written notice of termination pursuant to this section

10.4 Limitation of the State's Payment Obligations In the event of termination of this Contract for any reason by either party (except for termination by IEDA pursuant to Section 10.1), IEDA shall pay only those amounts, if any, due and owing to Contractor hereunder for Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which IEDA is obligated to pay pursuant to this Contract, provided however, that in

the event IEDA terminates this Contract pursuant to Section 10.3, IEDA's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to IEDA and shall not be construed to require IEDA to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by IEDA in accordance with the terms of this Contract. IEDA shall not be liable, under any circumstances, for any of the following:

10.4.1 The payment of unemployment compensation to Contractor's employees;

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

10.4.3 Any costs incurred by 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,

10.4.4 Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract,

10.4.5 Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

10.5 Contractor's Termination Duties Upon receipt of notice of termination or upon request of IEDA, Contractor shall:

10.5.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as IEDA may require.

10.5.2 Immediately cease using and return to IEDA any property or materials, whether tangible or intangible, provided by IEDA to Contractor.

10.5.3 Cooperate in good faith with IEDA and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.

10.5.4 Immediately return to IEDA any payments made by IEDA for Deliverables that were not rendered or provided by Contractor.

10.5.5 Immediately deliver to IEDA any and all Deliverables for which IEDA has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

10.6 Termination for Cause by Contractor Contractor may only terminate this Contract for the breach by IEDA of any material term, condition or provision of this Contract, if such breach is not cured within sixty (60) days of IEDA's receipt of Contractor's written notice of breach.

10.7 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 IEDA, become IEDA'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 11: CONFIDENTIAL INFORMATION**

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

11.2 No Dissemination of Confidential information. No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of IEDA, either during the period of the Contract or thereafter. Any data supplied by IEDA to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of IEDA. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of IEDA. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

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

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

11.5 Survives Termination The Contractor's obligations under this section shall survive termination or expiration of this Contract.

## **Section 12: INDEMNIFICATION**

12.1 By the Contractor The Contractor agrees to indemnify and hold harmless the State, IEDA and its or their officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract), including but not limited to any claims related to, resulting from, or arising out of.

12.1.1 Any breach of this Contract,

12.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor,

12.1.3 The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor,

12.1.4 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,

12.1.5 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto)

infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party

12.2 Survives Termination Contractor's duties and obligations under this section shall survive the termination of this Contract and shall apply to all acts or omissions taken or made in connection with the performance of this Contract regardless of the date any potential claim is made or discovered by IEDA or any other Indemnified Party

### **Section 13: INTELLECTUAL PROPERTY**

13.1 Ownership and Assignment of Other Deliverables Contractor agrees that the State and IEDA shall become the sole and exclusive owners of all Deliverables Contractor hereby irrevocably assigns, transfers and conveys to the State and IEDA all right, title and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and IEDA shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of IEDA and the payment of such royalties or other compensation as IEDA deems appropriate. Unless otherwise requested by IEDA, upon completion or termination of this Contract, Contractor will immediately turn over to IEDA all Deliverables not previously delivered to IEDA, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of IEDA

13.2 Waiver To the extent any of Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

13.3 Further Assurances At IEDA's request, Contractor will execute and deliver such instruments and take such other action as may be requested by IEDA to establish, perfect or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 13.1

### **Section 14: WARRANTIES AND REPRESENTATIONS**

14.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law. Warranties made by the Contractor in this Contract, whether (a) this Contract specifically denominates the Contractor's promise as a warranty; or (b) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables to be provided, or by provision of samples to IEDA, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by the Contractor The provisions of this section apply during the term of this Contract and any extensions or renewals thereof

14.2 Contractor represents and warrants that (i) all Deliverables shall be wholly original with and prepared solely by Contractor, or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to IEDA hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to IEDA hereunder or under any license agreement related hereto without violating any rights of any third party, (ii) Contractor has not previously and will not grant any rights in any Deliverables to any

third party that are inconsistent with the rights granted to IEDA herein; and (iii) IEDA shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

14.3 Contractor represents and warrants that. (i) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (ii) IEDA's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables Contractor shall inform IEDA in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret If such a claim or cause of action arises or is likely to arise, then Contractor shall, at IEDA's request and at the Contractor's sole expense: (i) procure for IEDA the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation, (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to IEDA all fees, charges and any other amounts paid by IEDA with respect to such Deliverable In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section The foregoing remedies shall be in addition to and not exclusive of other remedies available to IEDA and shall survive termination of this Contract

14.4 Contractor represents and warrants that the Deliverables (in whole and in part) shall (i) be free from material Deficiencies, and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Special Conditions During the Warranty Period Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five (5) business days of receiving notice of such Deficiencies or failures from IEDA or within such other period as IEDA specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to IEDA's satisfaction, Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto.

The foregoing shall not constitute an exclusive remedy under this Contract, and IEDA shall be entitled to pursue any other available contractual, legal or equitable remedies Contractor shall be available at all reasonable times to assist IEDA with questions, problems and concerns about the Deliverables, to inform IEDA promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by IEDA, and provide IEDA with all necessary materials with respect to such repaired or corrected Deliverable

14.5 Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard So long as IEDA notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to IEDA, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse IEDA any fees or compensation paid to Contractor for the unsatisfactory services

14.6 Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise

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

### **Section 15: MISCELLANEOUS CONTRACT ADMINISTRATION**

15.1 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 employees or agents of the State or any agency, division or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of IEDA or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. IEDA will not withhold taxes on behalf of the Contractor (unless required by law)

15.2 Procurement Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

15.3 Non-Exclusive Rights. This Contract is not exclusive. IEDA reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the term of this Contract

15.4 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

15.5 Compliance with Iowa Code chapter 8F. If the Contract is subject to the provisions of Iowa Code chapter 8F, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to IEDA

15.6 Legislative Changes The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold IEDA liable in any manner for the resulting changes. IEDA shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair IEDA's right to terminate the Contract pursuant to the termination provisions

15.7 Third Party Beneficiaries There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor

15.8 Use of Third Parties IEDA acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify IEDA in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. IEDA reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor

remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. IEDA shall have the right to request the removal of a subcontractor from the Contract for good cause.

15.9 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 conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely 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 IEDA or the State of Iowa.

15.10 Assignment and Delegation. Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of IEDA. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of IEDA. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber, any payments that may or will be made to the Contractor under this Contract.

15.11 Amendments. This Contract may be amended in writing from time to time by mutual consent of the parties. Amendments to the General Terms for Services Contracts may appear in the Special Terms.

15.12 Headings or Captions. The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

15.13 Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

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

15.15 Supersedes Former Contracts or Agreements. This Contract supersedes all prior contracts or agreements between IEDA and the Contractor for the Deliverables to be provided in connection with this Contract.

15.16 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of IEDA 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.

15.17 Notice. Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Special Conditions. Each such notice shall be deemed to have been provided

15.17.1 At the time it is actually received, or,

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

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

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.

15.18 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.

15.19 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.

15.20 Time is of the Essence. Time is of the essence with respect to the Contractor's performance of the terms of this Contract. Contractor shall ensure that all personnel providing Deliverables to IEDA are responsive to IEDA's requirements and requests in all respects.

15.21 Authorization. Contractor represents and warrants that:

15.21.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

15.21.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

15.22 Successors in Interest. All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

15.23 Records Retention and Access. The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to IEDA throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall permit IEDA, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, IEDA reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements.

15.23.1 Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.

15.23.2 The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.

15.23.3 The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with IEDA.

15.23.4 The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.

15.24 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 IEDA 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 IEDA. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to IEDA 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 IEDA. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships. Contractor shall provide IEDA with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

15.25 Qualifications of Staff. The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Iowa Administrative Code.

15.26 Solicitation. The Contractor represents and 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.

15.27 Obligations Beyond Contract Term. This Contract shall remain in full force and effect to the end of the specified term or until terminated pursuant to this Contract. All obligations of IEDA and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the termination or expiration of this Contract.

15.28 Counterparts. The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

15.29 Delays or Impossibility of Performance. Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or

impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor, claims or court orders that restrict Contractor's ability to deliver the Deliverables contemplated by this Contract, strikes, labor unrest, or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by IEDA. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

15.30 Suspensions and Debarment. The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal Agency or agency. The Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contracts with the State of Iowa.

15.31 Conflict of Interest. Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and IEDA that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Contract. If a conflict of interest is proven to IEDA, IEDA may terminate this Contract, and the Contractor shall be liable for any excess costs to IEDA as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to IEDA.

15.32 Certification regarding sales and use tax. By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa 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 subsections 423.1(42) & (43). The Contractor also acknowledges that IEDA may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in IEDA or its representative filing for damages for breach of contract.

15.33 Right to Address the Board of Directors or Other Managing Entity. IEDA reserves the right to address the Contractor's board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. IEDA determines appropriateness.

15.34 Repayment Obligation. In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to IEDA for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

15.35 Further Assurances and Corrective Instruments The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract

15.36 Reporting Requirements If this Contract permits other State agencies and political subdivisions to make purchases off of the Contract, the Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a report to IEDA on a quarterly basis The report shall identify all of the State agencies and political subdivisions making purchases off of this Contract and the quantities purchased pursuant to the Contract during the reporting period

15.37 Immunity from Liability Every person who is a party to the Contract is hereby notified and agrees that the State, IEDA, 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 and arising from the Contract Pursuant to Iowa Code chapter 669, IEDA and the State of Iowa are self-insured against all risks and hazards related to this Contract No separate fund has been established to provide self-insurance, and the State of Iowa is not obligated to establish any such fund during the term of this Contract.

15.38 Public Records. The laws of the State require procurement records to be made public unless otherwise provided by law

15.39 Use of Name or Intellectual Property. Contractor agrees it will not use IEDA and/or State's name or any of their intellectual property, including but not limited to, any State, state agency, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of IEDA and/or the State

15.40 Taxes The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages The State is exempt from State and local sales and use taxes on the Deliverables

15.41 No Minimums Guaranteed The contract does not guarantee any minimum level of purchases or any minimum amount of compensation

15.42 Integration. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

15.43 Federal Funds 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.

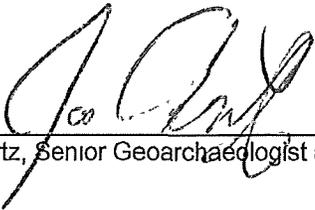
15.44 IOWAGRANTS GOV. The Authority reserves the right to require the Recipient to utilize the IowaGrants gov system to conduct business associated with this Contract

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**Section 16: EXECUTION**

IN WITNESS THEREOF, the parties hereto have executed this Contract on the date first stated in Section 3.1 Term of Contract

**FOR EarthView Environmental, Inc.:**

By  \_\_\_\_\_  
Joe Artz, Senior Geoarchaeologist and GIS Analyst

**FOR THE IOWA ECONOMIC DEVELOPMENT AUTHORITY:**

By  \_\_\_\_\_  
Deborah V. Durham, Director

**EXHIBIT A  
STATEMENT OF WORK AND BUDGET**

**I. STATEMENT OF WORK.**

**Work Plan**

**Scope of work & deliverables include:** The completion of Archaeological Probability Modeling or Landscape Suitability Modeling (LSM) (essentially a Phase 1A or Desktop review similar to the LSM concept developed by Artz et al.c 2000 incorporating similar variables, weighting and data sets used in previous models implemented in the State of Iowa) for up to 38 HUC-12 watersheds, located in the IWA eligible eight HUC-8 watersheds to assess potential impacts to cultural resources as they relate to the construction of water & soil conservation practices in those watersheds. The Archaeological modeling would then be used by IEDA recipients to help inform the best locations for proposed water and soil conservation practices, and once locations are selected, the consulting archaeologist would assist in determining when such practices would require further Phase 1 investigation.

**Proposed water & soil conservation practices include:** Channel Bank Stabilization, perennial cover/grass, oxbow restoration, floodplain restoration, small (.25 – 2 acre) and large (2 -5 acre) farm ponds, sediment detention basins, storm water detention basins, prairie STRIPS, Terraces, buffer strips, bioreactors, small and large wetlands, and saturated buffers. The exact location, combination, and number of these practices within the watershed will be determined by hydrologic assessments and watershed plans that will be occurring before or concurrent to the programmatic Environmental Assessments and the Programmatic Archaeological Review.

**Areas that will be included in the reviews:** The following HUC-8 and HUC-12 watersheds will be included.

- West Nishnabotna South Watersheds (HUC-8) and the following (HUC-12's).
  - South half of Mud Creek watershed (only the portion in Mills Co)
  - Willow-Slough Creek Watershed
  - Four watersheds to be determined
- East Nishnabotna South Watersheds (HUC-8) and the following (HUC-12's):
  - Mill Creek Watershed
  - Ledgewood Creek Watershed
- North Raccoon River watershed (HUC-8) and the following (HUC-12's).
  - Outlet Creek Watershed
  - Headwaters Creek Watershed
  - Two watersheds to be determined
- Lower Iowa English River watershed (HUC-8) and the following (HUC-12's)
  - Six watersheds to be determined
- Lower Iowa: Clear Creek watershed (HUC-8) and the following (HUC-12's)
  - Middle clear Creek Watershed
  - Upper clear Creek Watershed
- Upper Wapsipinicon River watersheds (HUC-8) and the following (HUC-12's).
  - Four watersheds to be determined
- Middle Cedar River watersheds (HUC-8) and the following (HUC-12's)
  - Hinkle watersheds
  - Mud Watershed
  - Opossum Watershed
  - Wildcat Creek
  - Six more to be determined
- Upper Iowa River (HUC-8) and the following (HUC-12's).
  - Four watersheds to be determined

**Watershed maps:** included at the end of this document. The HUC-8 watersheds have been already identified. Some of the HUC-12 watersheds within the HUC-8 watersheds have been identified. However, the unidentified HUC-12 watersheds will be identified during the environmental review process and communicated to the contractor.

**Programmatic Archaeological Review Responsibilities for NDR Watersheds:** included at the end of this document. The roles, duties and responsibilities of the selected Contractor, IEDA, partner entities, and the counties are outlined in this attachment.

**Programmatic Archaeological Modeling:** The programmatic archaeological modeling is intended to assist IEDA and IEDA's recipients of Federal Funds to evaluate the potential for cultural resources to be located within the areas of federal funded projects. This will be limited to the modeling of 38 HUC-12 areas as described above.

**Specific Site Review:** Once specific sites are identified within the previously modeled HUC-12, the consulting archaeologist will use the modeling data to make a recommendation as to if additional Phase 1 survey work is required in advance of construction. At this time, the exact number of individual sites is unknown, but anticipated to be as many as 700 sites spread out over the 38 HUC-12 areas. **PLEASE NOTE: The selected Contractor will not be eligible to bid on or conduct site specific Phase I investigations. Citation: 2 CFR 200.319(a) Competition.**

**Public hearings** will not be conducted in association with the preparation of programmatic archaeological modeling. The overall program hearings have already occurred. Final public comment will be coordinated through the responsible entities as environmental assessments are finalized and then later as specific sites are identified for construction. The contractor will not be involved in this process.

**Collaborative partners:** The contractor may work closely with project partners to complete the programmatic archaeological modeling: IEDA, University of Iowa Flood Center, Watershed Management Authorities, the Department of Natural Resources as well as the identified County Responsible Entities. IEDA and the County Responsible Entities would be available to assist in identifying potential cultural resources in the specific HUC-12 areas.

**Methodology of the review:** A majority of this work is expected to be accomplished through web research, discussions with project partners, and review of provided materials. Parallel to the programmatic archaeological modeling, the environmental review will be ongoing and, the Watershed Management Authorities will be forming and hydrologic assessments and watershed management plans will be completed.

**Format of the reviews:** contractors will propose their format for supplying the findings of the programmatic archaeological modeling. This modeling will include easily deciphered maps that differentiate between areas of lower probability and areas of high probability for projects to impact or affect cultural resources.

**Time frames:** estimated timeframe for work products as follows:

Summer 2017 - Probability Modeling on the most ready to proceed HUC 12s including:

- Lower Iowa Clear Creek watershed (HUC-8) and the following (HUC-12's):
  - Middle Clear Creek Watershed
  - Upper Clear Creek Watershed
- Middle Cedar River watersheds (HUC-8) and the following (HUC-12's):
  - Hinkle watersheds
  - Mud Watershed
  - Opossum Watershed
  - Wildcat Creek

Fall 2017 – Probability Modeling on ready to proceed HUC 12s including:

- East Nishnabotna South Watersheds (HUC-8) and the following (HUC-12's)

- Mill Creek Watershed
- Ledgewood Creek Watershed
- North Raccoon River watershed (HUC-8) and the following (HUC-12's)
  - Outlet Creek Watershed
  - Headwaters Creek Watershed

Winter 2017 – Site Specific Reviews for Raccoon River and Middle Cedar as sites are identified

Winter 2017 – Probability Modeling on ready to proceed HUC 12s including.

- North Raccoon River watershed (HUC-8) and the following (HUC-12's)
  - Two watersheds to be determined
- Middle Cedar River watersheds (HUC-8) and the following (HUC-12's)
  - Six Watersheds to be determined
- Upper Iowa River (HUC-8) and the following (HUC-12's)
  - Four Watersheds to be determined

Spring/Summer 2018 – Ongoing Site Specific Reviews for all probability modeled watersheds

Spring/Summer 2018 – Probability Modeling on ready to proceed HUC 12s including.

- West Nishnabotna South Watersheds (HUC-8) and the following (HUC-12's)
  - South half of Mud Creek watershed (only the portion in Mills Co)
  - Willow-Slough Creek Watershed.
  - Four watersheds to be determined
- Upper Wapsipinicon River watersheds (HUC-8) and the following (HUC-12's)
  - Four watersheds to be determined
- Lower Iowa English River watershed (HUC-8) and the following (HUC-12's)
  - Six watersheds to be determined

Fall 2018 – Spring 2021 Site Specific Reviews for all probability modeled watersheds.

Although these timeframes are somewhat flexible, the archaeological modeling and site specific reviews must be completed in a timely manner with little delay

**II. BUDGET.**

<b>Task or Deliverables*</b>	<b>Cost**</b>
The Fixed fee cost for probability modeling/LSM based on a total of approximately 38 identified HUC-12s	\$70,000
The fixed fee cost for site specific reviews based on modeling of approximately 700 sites	\$162,000
<b>NOT TO EXCEED TOTAL</b>	<b>\$232,000</b>
*contractor may seek compensation upon completion of modeling/LSM of each HUC-12 less 10% retainage	
*contractor may seek compensation upon completion of each site specific review less 10% retainage	
*contractor cannot submit invoices more often than monthly	
*retainage may be invoiced annually and upon contract completion	
**contractor may reallocate up to 10% between line items	

**EXHIBIT B**  
**EarthView Environmental, Inc.'s response dated April 5, 2017 to IEDA'S RFP**

Due to its size, Contractor's Response to IEDA's Proposal will not be attached to this Agreement, but will be kept on file at the Iowa Economic Development Authority. It shall, nevertheless, be considered an incorporated element of this Agreement.

**EXHIBIT C**  
**IEDA'S RFP dated March 1, 2017**

Due to its size, RFP will not be attached to this Agreement, but will be kept on file at the Iowa Economic Development Authority. It shall, nevertheless, be considered an incorporated element of this Agreement.

**Attachment A, General Provisions  
Community Development Block Grant Program  
October 4, 2016  
Additional Requirements for Federally-funded Agreements**

**1.0 AUDIT REQUIREMENTS.**

- (a) SINGLE AUDIT The Recipient shall ensure that an audit is performed in accordance with the Single Audit Act Amendment of 1996; OMB 2 CFR part 200, subpart E, and OMB 2 CFR part 200, subpart F, as applicable, and the Iowa CDBG Management Guide
- (b) ADDITIONAL AUDIT. As a condition of the grant to the Recipient, the Authority reserves the right to require the Recipient to submit to a post Project completion audit and review in addition to the audit required above.

**2.0 UNALLOWABLE COSTS.** If the Authority determines at any time, whether through monitoring, audit, closeout procedures or by other means or process, that the Recipient has expended funds which are unallowable, the Recipient will be notified of the questioned costs and given an opportunity to justify questioned costs prior to the Authority's final determination of the disallowance of costs. Appeals of any determinations will be handled in accordance with the provisions of Chapter 17A, Iowa Code. If it is the Authority's final determination that costs previously paid by the Authority are unallowable under the terms of the Contract, the expenditures will be disallowed and the Recipient shall repay to the Authority any and all disallowed costs. Real property under the Recipient's control in excess of \$25,000 and equipment that was acquired or improved in whole or in part with CDBG funds shall be used to meet one of the National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of the Agreement. If Recipient fails to use CDBG assisted real property that meets a National Objective during the five (5) year period the Recipient shall pay IEDA an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition or improvement to the real property.

**3.0 SUSPENSION.** When the Recipient has failed to comply with the Contract, award conditions or standards, the Authority may, on reasonable notice to the Recipient, suspend the Contract and withhold future payments, or prohibit the Recipient from incurring additional obligations of CDBG funds. Suspension may continue until the Recipient completes the corrective action as required by the Authority. The Authority may allow such necessary and proper costs which the Recipient could not reasonably avoid during the period of suspension provided the Authority concludes that such costs meet the provisions of HUD regulations issued pursuant to OMB 2 CFR part 200, subpart E.

**4.0 TERMINATION.**

- (a) FOR CAUSE. The Authority may terminate the Contract in whole, or in part, whenever the Authority determines that the Recipient has failed to comply with the terms and conditions of the Contract.
- (b) FOR CONVENIENCE. The Parties may terminate the Contract in whole, or in part, when all parties agree that the continuation of the Project would not produce beneficial results commensurate with the future disbursement of funds.
- (c) DUE TO REDUCTION OR TERMINATION OF CDBG FUNDING. At the discretion of the Authority, the Contract may be terminated in whole, or in part, if there is a reduction or termination of CDBG Federal block grant funds to the State.

**5.0 PROCEDURES UPON TERMINATION.**

- (a) NOTICE. The Authority shall provide written notice to the Recipient of the decision to terminate, the reason(s) for the termination, and the effective date of the termination. If there is a partial termination due to a reduction in funding, the notice will set forth the change in funding and the changes in the approved "Budget Activity". The Recipient shall not incur new obligations beyond the effective date and shall cancel as many outstanding obligations as possible. The Authority's share of noncancellable obligations which the Authority determines were properly incurred prior to notice of cancellation will be allowable costs.
- (b) RIGHTS IN PRODUCTS. All finished and unfinished documents, data, reports or other material prepared by the Recipient under the Contract shall, at the Authority's option, become the property of the Authority.

- (c) RETURN OF FUNDS The Recipient shall return to the Authority all unencumbered funds within one week of receipt of the notice of termination. Any costs previously paid by the Authority which are subsequently determined to be unallowable through audit, monitoring, or closeout procedures shall be returned to the Authority within thirty (30) days of the disallowance.

**6.0** ENFORCEMENT EXPENSES. The Recipient shall pay upon demand any and all reasonable fees and expenses of the Authority, including the fees and expenses of its attorneys, experts and agents, in connection with the exercise or enforcement of any of the rights of the Authority under this Contract.

**7.0** CONFLICT OF INTEREST.

- (a) GENERAL. Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, no persons identified in paragraph (b) below who exercise or have exercised any functions or responsibilities with respect to CDBG assisted activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities may obtain a personal or financial interest or benefit from a CDBG assisted activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter
- (b) PERSONS COVERED. The conflict of interest provisions described above apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the Recipient, or of any designated public agencies, or subrecipients which are receiving CDBG funds.
- (c) CONFLICTS OF INTEREST Chapter 68B, Code of Iowa, the "Iowa Public Officials Act", shall be adhered to by the Recipient, its officials and employees.

**8.0** USE OF DEBARRED, SUSPENDED, OR INELIGIBLE CONTRACTORS OR SUBRECIPIENTS. CDBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the service of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement ineligible status under the provisions of 24 CFR Part 24 or any applicable law or regulation of the Department of Labor

**9.0** CIVIL RIGHTS.

- (a) DISCRIMINATION IN EMPLOYMENT The Recipient shall not discriminate against any qualified employee or applicant for employment because of race, color, religion, sex, national origin, age, sexual orientation, gender identity, familial status, physical or mental disability. The Recipient may take affirmative action to ensure that applicants are employed and that employees are treated without regard to their race, color, religion, sex, national origin, age, sexual orientation, familial status, gender identity, or physical or mental disability. Such action shall include, but may not be limited to, the following: employment, upgrading, promotion, demotion or transfers; recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation; and selection for training, including an apprenticeship. The Recipient agrees to post notices setting forth the provisions of the nondiscrimination clause in conspicuous places so as to be available to employees. Upon the State's written request, the Recipient shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121
- (b) CONSIDERATION FOR EMPLOYMENT The Recipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, sexual orientation, gender identity, physical or mental disability, or familial status.
- (c) SOLICITATION AND ADVERTISEMENT. The Recipient shall list all suitable employment openings in the State Employment Service local offices
- (d) CIVIL RIGHTS COMPLIANCE IN EMPLOYMENT. The Recipient shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965 as amended, Chapter 19B 7 and Chapter 216, Code of Iowa, Federal Executive Order 11246, as amended; Title VI of the U S Civil Rights Act of 1964 as amended (42 U.S.C. Section 2000d et seq.), the Fair Labor Standards Act (29 U.S.C. Section 201 et seq.); The Americans with Disabilities Act, as applicable, (P L 101 336, 42 U S C 12101-12213); Section 504 of the Rehabilitation Act of 1973 as amended (29 U S C Section 794), and the Age Discrimination Act of 1975 as amended (42 U.S.C. Section 6101 et seq.) The Recipient will furnish all information and reports requested by the State of

Iowa or required by or pursuant to the rules and regulations thereof and will permit access to payroll and employment records by the State of Iowa to investigate compliance with these rules and regulations.

- (e) CERTIFICATION REGARDING GOVERNMENT-WIDE RESTRICTION ON LOBBYING The Recipient certifies, to the best of his or her knowledge and belief, that:
- (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding any Federal contract, making any Federal grant, making any Federal loan, entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement
  - (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Federal Lobbying" in accordance with its instruction
  - (iii) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly
  - (iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure
- (f) PROGRAM NONDISCRIMINATION The Recipient shall conform with requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and HUD regulations issued pursuant thereto contained in 24 CFR Part 1. No person in the United States shall, on the basis of race, color, national origin, sex or religion or religious affiliation, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available through this Contract. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et. seq.) or with respect to an otherwise qualified individual with a disability as provided in the Americans with Disabilities Act, as applicable, (P.L. 101-336, 42 U.S.C. 12101-12213) or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) shall also apply to any such program or Project.
- (g) FAIR HOUSING The Recipient shall comply with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), generally known as the Fair Housing Act, and with HUD regulations found at 24 CFR Part 107, issued in compliance with Federal Executive Order 11063, as amended by Federal Executive Order 12259. The recipient shall also comply with Section 109, Title I of the Housing and Community Development Act of 1974, as amended.
- (h) SECTION 3 COMPLIANCE The Recipient shall comply with provisions for training, employment, and contracting in accordance with 24 CFR part 135, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):
- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
  - B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract

certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations

C The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

D The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

- (i) NONCOMPLIANCE WITH THE CIVIL RIGHTS LAWS In the event of the Recipient'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 either wholly or in part. In addition, the State of Iowa may take further action, imposing other sanctions and invoking additional remedies as provided by the Iowa Civil Rights Act of 1965 (Chapter 216, Code of Iowa) or as otherwise provided by law.
- (j) INCLUSION IN SUBCONTRACTS The Recipient will include the provisions of the preceding paragraphs of Section 14 in every subcontract unless exempt by the State of Iowa, and said provisions will be binding on each subcontractor. The Recipient will 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. In the event the Recipient becomes involved in or is threatened by litigation with a subcontractor or vendor as a result of such direction by the State of Iowa, the Recipient may request the State of Iowa to enter into such litigation to protect the interests of the State of Iowa.

**10.0 POLITICAL ACTIVITY.** No portion of program funds shall be used for any partisan political activity or to further the election or defeat of any candidate for public office. Neither the program nor the funds provided therefore, nor the personnel employed in the administration of this Contract, shall be in any way or to any extent engaged in the conduct of political activities in contravention of The Hatch Act (5 U.S.C. 15).

**11.0 LIMIT ON RECOVERY OF CAPITAL COSTS.** The Recipient will not attempt to recover any capital costs of public improvements assisted in whole or part under this Contract by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (i) funds received under this Contract are used to pay the

proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under Title I of the Housing and Community Development Act of 1974, as amended, or (ii) for purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not persons of very low income, the Recipient has certified to the Authority that it lacks sufficient funds received under Title I of the Housing and Community Development Act of 1974, as amended, to comply with the requirements of clause (i) above

**12.0 FEDERAL GOVERNMENT RIGHTS.** If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

**13.0 IOWA ECONOMIC DEVELOPMENT AUTHORITY FRAUD AND WASTE POLICY.** The Authority has zero tolerance for the commission or concealment of acts of fraud, waste, or abuse. Allegations of such acts will be investigated and pursued to their logical conclusion, including legal action where warranted

Iowa Economic Development Authority  
 Community Development Block Grant (CDBG) Program  
 Contract Amendment

Contractor:	Impact 7G
Contract Number	13-NDRTA-020
Contract Amendment Number	One (1)
Amendment Effective Date	September 11, 2018

The Iowa Economic Development Authority (IEDA) hereby amends the above referenced Community Development Block Grant (CDBG) Program contract by modifying the STATEMENT OF WORK AND BUDGET and increasing the budget by adding \$21,950 for the 12 additional sub-watersheds which were allowed for but not identified in the original RFP and contract, and create suitability maps the original 28 sub-watersheds and the additional 12 sub-watersheds.

The contract by and between the Iowa Economic Development Authority ("Department or IEDA") and Impact 7G ("Contractor") is modified as of the date shown above as follows:

**MODIFICATION 1 - Compensation:**

"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 ~~\$232,000~~ \$253,950. 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."

**MODIFICATION 2 - STATEMENT OF WORK AND BUDGET:**

"Contractor shall conduct 12 additional sub-watersheds BMP Implementation Areas LANDMASS modeling covering all or parts of the additional 12 HUC-12s for CDBG-National Disaster Resiliency for Watershed Projects and shall create suitability maps the original 28 sub-watersheds and the additional 12 sub-watersheds as follows

**I. STATEMENT OF WORK.**

**Work Plan modification.** In addition to the previously identified work activities the following is incorporated into the original Statement of Work.

**Make suitability maps for the 28 original HUCs sub-watersheds and the additional 12 HUCs sub-watersheds that show quarter sections where suitability is 50% or higher.**

**The expanded 12 additional sub-watersheds BMP Implementation Areas LANDMASS modeling covering all or parts of 12 HUC-12s.**

<i><b>Watershed Project</b></i>	<i><b>Original Sub-watersheds</b></i>	<i><b>Additional Sub-watershed(s)</b></i>
Clear Creek	Upper Clear Creek, Middle Clear Creek, and Lower Clear Creek	None
English River	Headwaters of the North English River, Middle North English River, and Gitter Creek	Devil's Run
East Nishnabotna River	Ledgewood Creek and Mill Creek	Fisher Creek (partial)
West Nishnabotna River	Mud Creek, Willow Slough, and Deer Creek	Lower Indian Creek, White Cloud, Spring Branch (partial), and Lower Walnut Creek (partial)
Middle Cedar River	Spring Creek, Pratt Creek, Bear Creek, and Wolf Creek	Rogers Park, Pratt Creek, and Fourmile Creek

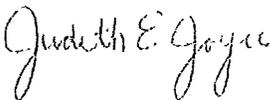
As with the original assessments, the revised BMP Implementation Areas LANDMASS modeling will include the previous and newly identified areas associated with (1) English River and Clear Creek Watershed projects, (2) East and West Nishnabotna River Watershed projects; (3) Middle Cedar Watershed Project, (4) North Raccoon River Watershed Project; and (5) Upper Iowa River and Upper Wapsipinicon River Watershed projects

**II. BUDGET.**

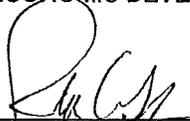
Task or Deliverables*	Cost**
The Fixed fee cost for probability modeling/LSM based on a total of approximately <del>38</del> <u>26</u> identified HUC-12s	\$70,000
The fixed fee cost for site specific reviews based on modeling of approximately 700 sites.	\$162,000
<u>LANDMASS modeling for 12 additional BMP Implementation Areas covering all or parts of 12 HUC-12s. Create maps for the 12 areas that show quarter sections where suitability is 50% or higher</u>	
<u>Make suitability maps for the 28 original HUCs that show quarter sections where suitability is 50% or higher.</u>	\$21,950
<b>NOT TO EXCEED TOTAL</b>	<b>\$232,000</b> <b>253,950</b>
*contractor may seek compensation upon completion of modeling/LSM of each HUC-12 less 10% retainage	
*contractor may seek compensation upon completion of each site specific review less 10% retainage	
*contractor may seek compensation upon completion of quarter section suitability map of each HUC-12 less 10% retainage	
*contractor cannot submit invoices more often than monthly.	
*retainage may be invoiced annually and upon contract completion	
**contractor may reallocate up to 10% between line items"	

Except as otherwise revised above, the terms, provisions, and conditions of the Contract remain unchanged and are in full force and effect.

CONTRACTOR:

BY:   
Judith E. Joyce, Principal

IOWA ECONOMIC DEVELOPMENT AUTHORITY

BY:   
Deborah V. Durham, Director