IOWA DEPARTMENT OF NATURAL RESOURCES
CONTRACT NUMBER CRDLWBMBALM-0008

Between
IOWA DEPARTMENT OF NATURAL RESOURCES
And
THE CITY OF COUNCIL BLUFFS, IOWA

This Cooperative Agreement was approved by the Natural Resource Commission on November 14, 2019.

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

DEPARTMENT OF NATURAL RESOURCES

By: _____ Date: _____

Kayla Lyon, Director

CITY OF COUNCIL BLUFFS

By: _____ Date: _____

Matt Walsh, Mayor

For DNR use only:

1. Retain the original contract in the project file and send a hardcopy with the first invoice.

2. a) Fax contract to 515-725-8202 (check one box below before faxing)

OR

b) Email scanned copy to your Division's Contract Rep:

	DIVISION	DIVISION CONTRACT REP
☐	Conservation & Recreation	Kim.Rasler@dnr.iowa.gov
☐	Director's Office	Karen.Fynaardt@dnr.iowa.gov
☐	Environmental Services	Jerah.Sheets@dnr.iowa.gov
☐	Management Services	Jennifer.StJohn@dnr.iowa.gov

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

COOPERATIVE AGREEMENT - SPECIAL CONDITIONS

This Cooperative Agreement is entered into between the Iowa Department of Natural Resources (DNR) and The City of Council Bluffs (Contractor or City). The parties agree as follows:

Section 1 IDENTITY OF THE PARTIES

1.1 Parties. DNR is authorized to enter into this Contract. DNR's address is: Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. The City of Council Bluffs, a municipality is organized under the laws of the State of Iowa. The Contractor's address is: 209 Pearl Street, Council Bluffs, Iowa 51503.

1.2 Project Managers. Each party has designated a Project Manager, who shall be responsible for oversight and negotiation of any contract modifications, as follows:

DNR Contract Manager:
Michelle Balmer, Lake Restoration Program
502 E. 9th St., Des Moines, IA 50319
Phone: 515-725-8448
Email: michelle.balmer@dnr.iowa.gov

DNR Project Manager:
George Antoniou, Lake Restoration Program Coordinator
502 E. 9th St., Des Moines, IA 50319
Phone: 515-725-8449
Email: george.antoniou@dnr.iowa.gov

City of Council Bluffs Project Manager:
Matthew S. Cox, P.E., Public Works Director/City Engineer
209 Pearl Street, Council Bluffs, IA 51503
Phone: 712-890-5926
Email: mcox@councilbluffs-ia.gov

Section 2 STATEMENT OF PURPOSE

2.1 Statutory Authority. DNR enters into this Cooperative Agreement based on statutory authority provided in Iowa Code Section 456A.24.

2.2 Background. Lake Manawa is a 785 acre natural oxbow lake located on the historic Missouri River floodplain with a watershed to lake ratio of 3:1. The DNR contracted with Tetra Tech, Inc. in 2009 to provide a diagnostic feasibility study for Lake Manawa as part of DNR Lake Restoration Program planning activities. This study included specifics on a suite of water quality improvement efforts, one of which is planned dredging. The dredging project is a vital component of an overall water quality improvement project, as it would create additional depth and volume at Lake Manawa, both important to achieving long-term water quality goals. Historic lake dredging work deepened significant portions of the lake, and in 2016 an additional 500,000 cubic yards of material was removed. The resulting maximum lake depth is 22.5 feet; however large expanses of the lake still average between 6 to 7 feet of water.

The Tetra Tech study also prioritized areas of the lake to conduct dredging activities based upon potential effect of dredging on the overall lake seepage and quality of material. The unique quality of the sand material provides an opportunity to recycle it for other uses such as levee or other construction projects. The DNR and City met from December 2016 through May 2018 to discuss the feasibility of entering into a future joint dredging project at Lake Manawa to achieve water quality improvement objectives and produce material usable for City of Council Bluffs levee construction; and, in July of 2018 entered into a Memorandum of Understanding to obtain additional information related to feasibility and cost associated with dredging sand material from Lake Manawa (Memorandum of Understanding attached as Exhibit A of this contract).

2.3 Purpose. The DNR's and City of Council Bluff's purpose of entering into this Cooperative Agreement is to remove 500,000 cubic yards of material from Lake Manawa and temporarily stockpile on state property. The DNR's other purpose for entering into this Cooperative Agreement is to have the City remove the material from state property and return the stockpile area to pre-dredge conditions. The City of Council Bluffs other purpose for entering into this Cooperative Agreement is to use the stockpiled material for planned levee projects.

Section 3 DURATION OF COOPERATIVE AGREEMENT

3.1 Term of Cooperative Agreement. The term of this Cooperative Agreement shall be November 14, 2019 through December 31, 2023, unless terminated earlier in accordance with the Termination section of this Cooperative Agreement. However, this Cooperative Agreement shall not begin until it has been signed by both parties.

3.2 Approval of Cooperative Agreement. If the amount of compensation to be paid by DNR according to the terms of this Cooperative Agreement is equal to or greater than $25,000.00, or if this Cooperative Agreement is entered into pursuant to Iowa Code chapter 28E, then performance shall not commence unless by November 14, 2019, this Cooperative Agreement has been approved by the Natural Resource Commission.

Section 4 DEFINITIONS

"Contractor" shall mean The City of Council Bluffs (the City).

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

"Task Milestone Date" shall mean a deadline for accomplishing a Task required by this Cooperative Agreement.

Section 5 STATEMENT OF WORK – RESPONSIBILITIES OF THE PARTIES

5.1 The responsibilities of the City of Council Bluffs shall be to perform the following tasks by the Task Milestone Dates set out in the following table**:**

Obligation	Task Milestone Date
Task 1: Dredging and Stockpiling of Material **Description:** The City shall reimburse DNR for removal of 500,000 cubic yards of sediment from Lake Manawa and stockpiling the material on state property. Detailed plans for this Task are attached as Exhibit B and Exhibit C of this contract.	No later than November 15, 2020
Task 2: Material Removal **Description**: The City shall remove the 500,000 cubic yards of stockpiled material from state property between the dates of November 15, 2020 and December 31, 2023. The City shall be responsible for securing all necessary permits, certificates, and licenses required to transport the material from state land to point of use and restore site as nearly as possible to its original condition.	No later than December 31, 2023

5.2 The responsibilities of DNR shall be to perform the following tasks by the Task Milestone Dates set out in the following table:

Obligation	Task Milestone Date
Task 1: Dredging and Stockpiling of Material **Description:** DNR shall remove 500,000 cubic yards of sediment from Lake Manawa and stockpile the material into a single stockpile on state property. Detailed plans for this Task are attached as Exhibit B of this contract. DNR shall stockpile material that contains sands with total fines comprising 12% or less and 3% or less organics, as measured by dried weight. Fines are defined as any material passing the #200 sieve as determined by sieve analysis conforming C136. Material will be tested by the Contractor approximately	No later than November 15, 2020

every 10,000 cubic yards, or at a more frequent interval as determined by the DNR field engineer if Contractor's testing determines a wide variance in testing results. Contractor may only test of material at a less frequent interval by joint written agreement between the DNR and the City. Details for material specifications are attached as Exhibit C of this contract and provided under [SECTION 02482 DREDGING, PART 2 PRODUCTS, 2.01 MATERIAL].	
Task 2: Material Removal **Description**: The DNR shall grant the City access to the stockpile area and allow the City to conduct activities related to removal of the stockpiled material through issuance of a Sovereign Lands Permit to the City.	No later than November 15, 2020

Section 6 MONITORING AND REVIEW

6.1 Task Milestone Dates. The parties agree to complete their respective obligations under this Cooperative Agreement by the Task Milestone Dates set out in Section 5.1.

Failure by either party to complete the above-designated portions of its obligations by the Task Milestone Dates set out herein shall constitute material breach of this Cooperative Agreement and shall be grounds for the other party to immediately terminate this Cooperative Agreement for cause.

6.2 Review Meetings. Commencing with beginning performance of this Cooperative Agreement, the Project Managers shall meet quarterly to discuss progress made during the performance of this Cooperative Agreement. The meetings shall occur, either in person or by telephone conference call**.** Meetings may be postponed only on a case-by-case basis by mutual written agreement of the parties.

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

- Accomplishments during the previous period,
- Activities planned for the upcoming period,
- Tasks completed or Deliverables produced during the previous period,
- An updated schedule of upcoming Deliverables,
- Any problems or concerns encountered since the last meeting, and
- (Fill in any other items that should be included in reports)

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

6.4 DNR right to review and observe. Each party shall have the right to review and observe, at any time, completed work or work in progress. Each party agrees to provide access, upon request and without cost to the other party, to inspect its facilities and books and records relating to invoicing and time records for the purpose of monitoring and evaluating performance of this Cooperative Agreement.

Section 7 COMPENSATION Sources of Funding. DNR's source of funding for this Cooperative Agreement is Iowa Code Chapter 456A.24 Lake Restoration Plan and Report, also known as the Lake Restoration Program.

7.1 Not-to-exceed total amount of Cooperative Agreement. DNR contribution for work performed according to the terms of this Cooperative Agreement shall not exceed **$4,035,000.00**. Payment by the City of Council Bluffs for work performed according to the terms of this Cooperative Agreement shall not exceed **$1,500,000.00**. Payment shall be for satisfactory completion of the Statement of Work outlined in this Cooperative Agreement, provided that the parties have complied with the terms of this Cooperative Agreement.

7.2 Budget. The budget for this Cooperative Agreement shall be as follows:

City of Council Bluffs Contribution

Total amount of City monetary contribution	Not to exceed $1,500,000.00
Total amount of City in-kind contribution	$0.00
Total amount of City contribution	Not to exceed $1,500,000.00

Contribution by the City to the DNR shall be 30% of dredge related expenditures incurred under DNR Engineering Project # 19-04-78-03. Dredge related expenditures shall be defined as bid tab items 1, 2, 3, 4, 5, and 6. Contribution by the City shall not exceed $3.00 per cubic yard ($1,500,000) of material stockpiled under Task 1 activities.

DNR Contribution

Total amount of DNR monetary contribution	Not to exceed $4,035,000.00
Total amount of DNR in-kind contribution	$0.00
Total amount of DNR contribution	Not to exceed $4,035,000.00

7.3 Submission of Invoices. For work performed by DNR, invoices shall be submitted to the City according to the following schedule:

Task Milestone Date	Amount Due	Invoice Due No Later Than:
Task 1: Dredging and Stockpiling of Material	Not to exceed $375,000.00	February 15, 2020
	Total requested reimbursement from the City for work performed by the DNR not to exceed $750,000.00	May 15, 2020
	Total requested reimbursement from the City for work performed by the DNR not to exceed $1,125,000.00	August 15, 2020
	Total requested reimbursement from the City for work performed by the DNR not to exceed $1,500,000.00	November 15, 2020

The invoices shall itemize the work performed pursuant to the Cooperative Agreement. 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. The party receiving the invoice shall have the right to dispute any invoice item submitted for payment and to withhold payment of any disputed amount if that party reasonably believes the invoice is inaccurate or incorrect in any way.

Original invoices to **the City** shall be submitted to:

Matthew S. Cox, P.E., Public Works Director/City Engineer
209 Pearl Street, Council Bluffs, IA 51503
Phone: 712-890-5926
Email: mcox@councilbluffs-ia.gov

7.4 Payment of Invoices. DNR shall pay approved invoices in arrears and in conformance with Iowa Code section 8A.514. If the other party is subject to the provisions of Iowa Code section 8A.514, then the other party shall pay approved invoices in arrears and in conformance with Iowa Code section 8A.514. Unless otherwise agreed to in writing by the parties, neither party shall be entitled to receive any other payment or compensation for any services provided under this Cooperative Agreement.

7.5 No advance payment. No advance payments shall be made for any Deliverables provided by the City pursuant to this Cooperative Agreement.

7.6 Delay of Payment. If either party determines that the other party has failed to perform or deliver any Deliverable required by this Cooperative Agreement, then compensation may be withheld until such Deliverable is performed or delivered according to the terms of this Cooperative Agreement.

COOPERATIVE AGREEMENT
GENERAL CONDITIONS WHEN OTHER PARTY IS A GOVERNMENTAL ENTITY

Section 1 COMPLIANCE WITH THE LAW

The parties shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as suppliers. The parties, and their employees and agents shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. The parties represents that they will comply with all federal, state, foreign and local laws applicable to their performance under this Contract.

Section 2 TERMINATION

2.1. Termination Due to Lack of Funds or Change in Law. DNR shall have the right to terminate this Contract without penalty by giving sixty (60) days written notice to the Contractor as a result of any of the following:

2.1.1 The legislature or governor fail in the sole opinion of DNR to appropriate funds sufficient to allow DNR to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or if funds anticipated for the continued fulfillment of the Contract are, at any time, not forthcoming or are insufficient, either through the failure of DNR to appropriate funds or funding from a federal source is reduced or discontinued for any reason, or through discontinuance or material alteration of the program for which funds were provided; or

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

2.1.3 If DNR's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

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

2.1.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects DNR's ability to fulfill any of its obligations under this Contract.

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

2.2.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

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

2.2.3 The Contractor fails to comply with confidentiality laws or provisions;

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

2.3. Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for DNR to declare the Contractor in default of its obligations under this Contract.

2.3.1 The Contractor fails to perform, to DNR's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;

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

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

2.3.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or DNR reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

2.3.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;

2.3.6 The Contractor has engaged in conduct that has or may expose the State or DNR to liability, as determined in DNR's sole discretion;

2.3.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or the Contractor has misappropriated a trade secret, or

2.3.8 Contractor fails to comply with any of the Task Milestone dates contained in this Contract.

2.4. Notice of Default. If there is a default event caused by the Contractor, DNR shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in DNR's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, DNR may either:

2.4.1 Immediately terminate the Contract without additional written notice; or,

2.4.2 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

2.5. Termination upon Notice. Following thirty (30) days written notice, DNR may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to DNR up to and including the date of termination.

2.6. Remedies of the Contractor in Event of Termination by DNR. In the event of termination of this Contract for any reason by DNR, DNR shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which DNR is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to DNR under this Contract in the event of termination. However, DNR shall not be liable for any of the following costs:

2.6.1 The payment of unemployment compensation to the Contractor's employees;

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

2.6.3 Any costs incurred by the Contractor, including, but not limited to, startup costs, overhead or other costs not directly associated with the performance of the Contract;

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

2.7. The Contractor's Termination Duties. The Contractor upon receipt of notice of termination or upon request of DNR, shall:

2.7.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, and conclusions resulting there from, or any other matters DNR may require.

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

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

2.7.4 Cooperate in good faith with DNR, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

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

2.8. Rights in incomplete products. In the event the Contract is terminated, all finished or unfinished documents, data, reports, or other materials prepared by the Contractor under this Contract shall, at the option of DNR, become DNR's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other material.

Section 3 INDEPENDENT CONTRACTOR

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

Section 4 CONFLICT OF INTEREST

The parties agree that they will comply with the provisions of the Iowa Code with respect to Conflicts of Interest.

Section 5 AMENDMENTS

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

Section 6 CHOICE OF LAW AND FORUM

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. If applicable, the parties shall comply with the provisions of Iowa Code section 679A.19 regarding disputes between government agencies of the State of Iowa. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. No provision of this Contract shall be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to DNR, Contractor, or the State of Iowa

Section 7 SEVERABILITY

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

Section 8 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties with respect to the subject matter hereof, and the parties acknowledge that they are entering into the Contract solely on the basis of the terms and conditions herein contained and not in reliance upon any representation, statement, inducement or promise, whether oral or written, not contained herein. This Contract supersedes all prior contracts and agreements between the parties for the services provided in connection with this Contract.

Section 9 ASSIGNMENT AND DELEGATION

This Contract may not be assigned, transferred or conveyed, in whole or in part, without the prior written consent of the other party. For the purpose of construing this provision, a transfer of a controlling interest in the Contractor shall be considered an assignment.

Section 10 CONFIDENTIALITY

The parties agree to comply with applicable Iowa law regarding confidentiality.

Section 11 WAIVER

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

Section 12 CUMULATIVE RIGHTS

The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

Section 13 TIME IS OF THE ESSENCE

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

Section 14 RECORD RETENTION AND ACCESS

The parties shall maintain books, records and documents according to their respective law with regard to records retention. All parties shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

Section 15 OBLIGATIONS BEYOND CONTRACT TERM

This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of DNR and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

Section 16 SUPERCEDES FORMER CONTRACTS OR AGREEMENTS

Unless this Contract is an amendment to a Contract entered into between the parties and is designated as such, then this Contract supersedes all prior contracts or agreements between the parties for the services provided in connection with this Contract.

Section 17 USE OF THIRD PARTIES AND SUBCONTRACTORS

Contractor may not contract with third parties for the performance of any of Contractor's obligations under this Contract, unless and then only to the extent that the Special Conditions of this Contract specify otherwise. If the Special Conditions provide for a subcontractor or subcontractors, then the following conditions shall apply:

17.1 All subcontracts shall be subject to prior approval by the DNR. The DNR's consent shall not be deemed in any way to provide for the incurrence of any obligation of DNR in addition to the remuneration agreed upon in this Contract. Any subcontract to which DNR has consented shall be in writing and shall in no way alter the terms and conditions of this Contract.

17.2 The Contractor may enter into subcontracts to complete the work required by this Contract provided that the Contractor remains responsible for all services performed under this Contract. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision, or liability under this Contract. The Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any subcontractor.

17.3 All restrictions, obligations and responsibilities of the Contractor under this Contract also shall apply to the subcontractors.

17.4 DNR shall have the right to request the removal of a subcontractor from the Contract for good cause. The Contractor shall indemnify, defend and hold harmless DNR and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's breach of any subcontract in which it enters, including Contractor's failure to pay any and all amounts due by Contractor to any subcontractor.

17.5 Each subcontract shall contain provisions for DNR access to the subcontractor's books, documents, and records and for inspections of work, as required of Contractor herein.

17.6 Any action of a subcontractor, which, if done by Contractor, would constitute a breach of this Contract, shall be deemed a breach by Contractor and have the same legal effect.

17.7 If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default.

17.8 If the Contract is subject to the provisions of Iowa Code chapter 8F, then the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontract Contractor enters into pursuant to this Contract. Any compliance documentation, including but not limited to certification, received from any subcontractor shall be forwarded to DNR immediately.

Section 18 SELF-INSURANCE BY THE STATE OF IOWA

Pursuant to Iowa Code chapter 669, DNR and the State of Iowa are self-insured against all risks and hazards related to this Contract. No separate fund has been established to provide self-insurance, and the State of Iowa is not obligated to establish any such fund during the term of this Contract.

Section 19 IMMUNITY FROM LIABILITY

Every person who is a party to the Contract is hereby notified and agrees that the State, DNR, and all of their employees, agents, successors, and assigns are immune from liability and suit for Contractor's and subcontractors' activities involving third parties arising from the Contract.

Section 20 NON-SUPPLANTING REQUIREMENT

To the extent required by federal or state law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local, and other non-federal funds that would in the absence of such

federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local, and other non-federal funds.

Section 21 CERTIFICATION REGARDING SALES AND USE TAX

By executing this Contract, the Contractor certifies that it is either (a) registered with the Iowa Department of Revenue, collects and remits sales and use taxes as required by Iowa Code chapter 432; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code section 423.1. The Contractor also acknowledges that the DNR may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the DNR or its representatives filing action for damages for breach of contract.

Section 22 TAXES

The State of Iowa is exempt from federal excise tax, and no payment will be made for any taxes levied on Contractor's employees' wages. The State of Iowa is exempt from state and local sales and use taxes on the Deliverables.

Section 23 EQUAL EMPLOYMENT PROVISIONS

The Contractor has read and understands the provisions in Attachment A, Equal Employment Opportunity, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

Section 24 FEDERALLY-FUNDED AGREEMENTS

If this Contract is funded by federal monies, then the Contractor has read and understands the provisions of Attachment B, Additional Requirements for Federally-Funded Agreements, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

Section 25 INFORMATION TECHNOLOGY SECURITY

The Contractor and all Contractor personnel shall comply with Iowa information technology security statutes, rules and policies. By signing this contract, the Contractor acknowledges that the Contractor has read and understands the provisions of the information technology security policies adopted by the Iowa Department of Administrative Services (DAS) and DNR in effect on the date of signing. These policies are located on the respective agency websites at www.iowadnr.gov and http://das.iowa.gov/index.html. The Contractor further agrees to read and abide by any revised DAS and DNR policies, posted on the respective agency websites that come into effect during the term of this Contract.

Attachment A
Equal Employment Opportunity

The Contractor agrees to the following:

A.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated, during employment, without regard to their race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability relates to a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor's business. Such action shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post notices, setting forth provisions of this nondiscrimination clause, in conspicuous places available to employees and applicants for employment.

A.2 The Contractor shall in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability is a bona fide occupation qualification reasonably necessary to the normal operation of the Contractor's business.

A.3 The Contractor shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965, as amended, Iowa Executive Order 15 or 1973, Chapter 19B, Code of Iowa, Federal Executive Order 11246 of 1965, as amended by Federal Executive Order 11376 of 1967, and Title VI of the Civil Rights Act of 1964, as amended. The Contractor shall furnish all information and reports requested by the state of Iowa or required by, or pursuant to, the rules and regulations thereof and shall permit access to payroll and employment records by the state of Iowa for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.

A.4 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the aforesaid rules, regulations or requests, this Contract may be canceled, terminated or suspended in whole or in part. In addition, the state of Iowa may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act of 1965, as amended, Chapter 216, Code of Iowa, or as otherwise provided by law.

A.5 The Contractor shall include the provisions of paragraphs A.1 through A.4 hereof in every subcontract, unless specifically exempted by approval of the state of Iowa, so that such provisions shall be binding on each subcontract. The Contractor shall take such action with respect to any subcontract as the state of Iowa may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the state of Iowa, the Contractor may request the state of Iowa to enter into such litigation to protect the interests of the state of Iowa.

A.6 In accordance with the provisions of 541 Iowa Administrative Code chapter 4:

- The Contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and state law, executive orders and rules of the department of management, which pertain to equal employment opportunity and affirmative action.
- The Contractor or subcontractor may be required to have on file a copy of the affirmative action program, containing goals and time specifications. These contractual provisions shall be fully enforced. Any breach of them shall be regarded as a material breach of the Contract.

- Compliance with the provisions of Iowa Code section 19B.7 and all applicable rules of the department of management prior to the execution of the Contract shall be a condition of the Contract binding upon the Contractor or service provider, its successors, and assignees.
- Failure to fulfill the nondiscrimination requirements of this Contract or any of the rules and orders may cause the Contract to be canceled, terminated, or suspended in whole or in part, and the Contractor or service provider may be declared ineligible for future state contracts in accordance with authorized procedure or the Contractor may be subject to other sanctions as provided by law or rule.
- The Contractor may be required to submit to the department of management or the DNR a copy of its affirmative action plan containing goals and time specifications.
- The Contractor shall be able to demonstrate to the satisfaction of the department of management or the DNR that its affirmative action program is productive.
- The Contractor may be required to submit reports as requested by the department of management. The department of management may request other relevant information from a contractor at any time.
- The department of management may undertake a compliance review of the Contractor, and the department of management may take action, as appropriate, to seek to terminate contracts or funding found to be in violation of the rules.

Attachment B
Additional Requirements for Federally-funded Agreements

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

B.2 **Lobbying Restrictions.** The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

B.3 **Pro-Children Act of 1994.** Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party. The Contractor certifies that it will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

B.4 **Certified Audits.** Local governments and non-profit subrecipient entities that expend $500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to DNR if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by DNR. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to DNR that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the DNR. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships.

B.5 **Drug Free Work Place.** The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.

Exhibit A –

Memorandum of Understanding for Water Quality Management Plan Project,
Lake Manawa, Pottawattamie County, Iowa
Dated July 5, 2018

Exhibit B –

2019 LAKE MANAWA DREDGING - PHASE II, PLANSET, DNR Project No. 19-04-78-03

Exhibit C –

IOWA DEPARTMENT OF NATURAL RESOURCES, PROJECT MANUAL, DNR Project No. 19-04-78-03
LAKE MANAWA STATE PARK 2019 LAKE MANAWA DREDGING, POTTAWATTAMIE COUNTY, IOWA