

POLK COUNTY IOWA – CONTRACTS AND DECLARATIONS PAGE

Title of Contract: BR-6057 Bridge Deck Overlay with Rail Retrofit		Bid Proposal Number Bid 462-2223	Contract Number 006-2022
This Contract is entered into between Polk County Iowa (by and through its Procurement Division) and the Contractor named below (each a "Party", collectively "the Parties")			
Contractor's Name:			
Contract to Begin: August 23, 2022 or ten days after notice to proceed.	Date of Expiration: 60 working days.	Annual Extensions:	

IN WITNESS WHEREOF, this Contract has been executed by the Parties hereto

Contractor:

By (Authorized Signature)	Date Signed
Printed Name and Title of Person Signing	

Address

Polk County Iowa

By (Authorized Signature)	Date Signed
Printed Name and Title of Person Signing	

Address

1.1 Definitions

The following word shall be defined as set forth below:

“Acceptance” means that the County has determined that one or more Deliverables satisfy the County’s Acceptance Tests. Final Acceptance means that the County has determined that all Deliverables satisfy the County’s Acceptance Tests. Non-acceptance means that the County has determined that one or more Deliverables have not satisfied the County’s Acceptance Tests.

“Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the County and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

“Acceptance Tests” or “Acceptance Testing” mean the tests, reviews and other activities that are performed by or on behalf of County to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the County, as determined by the County in its sole discretion.

“Bid Proposal” or “Proposal” means the Contractor’s proposal submitted in response to the RFP.

“County” shall mean Polk County, Iowa government, and all of its departments, offices, boards, commissions, and subunits.

“Contract” means the collective documentation memorializing the terms of the agreement between the County and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s), the Special Terms, these General Terms for Services Contracts, any Special Contract Attachments, and all other attachments to the Contract Declarations & Execution Page(s).

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

“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.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“PCard” refers to the County payment method via purchasing card. Polk County is a member of the State of Iowa PCard Consortium administered by the State of Iowa DAS through US Bank.

“RFP” means the Request for Proposals or Request for Bids (and any Addenda thereto) identified on the Contracts Declarations and Execution Page(s) that was issued to solicit the Deliverables that are subject to the Contract.

“RFQ” means the Request for Qualifications identified in the bid documents and on the Contracts Declaration and Execution Page(s) that was issued to solicit the Deliverable that are subject to the Contract. If an RFQ procurement, the primary selection criteria is the qualifications of the respondent. In some cases, the qualifications may be the only determining factor.

“Special Contract Attachments” means any attachment to this Contract indicated on the Contract Declarations & Execution Page(s).

“Special Terms” means the Contract attachment entitled “Special Terms” that contains terms specific to this Contract, including but not limited to the Scope of Work, contract payment terms, and any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms for Services Contracts and the Special Terms, the Special Terms shall prevail.

“Specifications” means all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the RFP, and the Proposal. Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

1.2 Duration of Contract

The term of the Contract shall begin and end on the dates specified on the Contract Declarations & Execution Page(s), unless extended or terminated earlier in accordance with the termination provisions of this Contract. The County may, in its sole discretion, exercise any applicable extension by giving the Contractor written notice of the extension decision at least sixty (60) days prior to the expiration of the initial term or renewal term.

1.3 Scope of Work

The Contractor shall provide Deliverables that comply with and conform to the Specifications.

1.4 Compensation

1.4.1 Pricing

The Contractor will be compensated in accordance with the pricing submitted in its responsive, responsible proposal.

The Contractor shall submit, on the frequency of no less than monthly, an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The County shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The County shall pay all approved invoices within thirty (30) days from receipt of the invoice. If the contractor agrees, the County has the ability to make "PCard" payments in which the contractor will receive funds in 24-48 hours of the transaction. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the County for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

1.4.2 Withholding Payments

In addition to pursuing any other remedy provided herein or by law, the County may withhold compensation or payments to Contractor, in whole or in part, without penalty to the County or work stoppage by Contractor, in the event the County determines that:

1.4.2.1 Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or

1.4.2.2 Any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency.

No interest shall accrue or be paid to Contractor on any compensation or other amounts withheld or retained by the County under this Contract.

1.5 Termination

1.5.1 Immediate Termination by the County

The County may terminate this Contract for any of the following reasons effective immediately without advance notice:

1.5.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and 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;

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

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

1.5.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

1.5.2 Termination for Cause by the County

The County 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 the County's notice of breach or any subsequent notice or correspondence delivered by the County to Contractor, provided that cure is feasible. In addition, the County may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- 1.5.2.1** 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;
- 1.5.2.2** 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;
- 1.5.2.3** Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- 1.5.2.4** Contractor terminates or suspends its business;
- 1.5.2.5** 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;
- 1.5.2.6** Contractor has failed to comply with any applicable international, federal, state or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- 1.5.2.7** The County determines or believes the Contractor has engaged in conduct that:
(a) has or may expose the County to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- 1.5.2.8** 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;
- 1.5.2.9** Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- 1.5.2.10** 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:
 - 1.5.2.10.1** 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;

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

1.5.2.10.3 Making an assignment for the benefit of creditors;

1.5.2.10.4 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

1.5.2.10.5 Taking any action to authorize any of the foregoing. The County's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the County, and the County shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

1.5.3 Termination upon Notice

Following thirty (30) days written notice, the County 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.

1.5.4 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, the County shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

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

1.5.4.2 If the County'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

1.5.4.3 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the County's ability to fulfill any of its obligations under this Contract. The County shall provide Contractor with written notice of termination pursuant to this section.

1.5.5 Limitation of the County's Payment Obligations

In the event of termination of this Contract for any reason by either party (except for termination by the County pursuant to Section 1.5.2), the County 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 the County is obligated to pay pursuant to this Contract; provided however, that in the event the County terminates this Contract pursuant to Section 1.5.4, the county'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 1.5.5 in no way limits the rights or remedies available to the County and shall not be construed to require the County to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the County in accordance with the terms of this Contract. The County shall not be liable, under any circumstances, for any of the following:

- 1.5.5.1** The payment of unemployment compensation to Contractor's employees;
- 1.5.5.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- 1.5.5.3** 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;
- 1.5.5.4** 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;
- 1.5.5.5** 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.

1.5.6 Contractor's Termination Duties

Upon receipt of notice of termination or upon request of the County, Contractor shall:

- 1.5.6.1** 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 the County may require.
- 1.5.6.2** Immediately cease using and return to the County any property or materials, whether tangible or intangible, provided by the County to Contractor.
- 1.5.6.3** Cooperate in good faith with the County and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
- 1.5.6.4** Immediately return to the County any payments made by the County for Deliverables that were not rendered or provided by Contractor.
- 1.5.6.5** Immediately deliver to the County any and all Deliverables for which the County 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.

1.5.7 Termination for Cause by Contractor

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

1.6 Confidential Information

1.6.1 Access to Confidential Information

The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the County 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 the County. The Contractor shall provide to the County 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 the County at all times.

1.6.2 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 the County, either during the period of the Contract or thereafter. Any data supplied by the County to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the County. 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 the County. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

1.6.3 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 the County and cooperate with the County in any lawful effort to protect the confidential information.

1.6.4 Reporting of Unauthorized Disclosure

The Contractor shall immediately report to the County any unauthorized disclosure of confidential information.

If Contractor requests confidential treatment with respect to any information or material contained within its Bid Proposal and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. County may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and County determines the information or material is not confidential under Iowa or other applicable law, or if Contractor failed to properly request confidential treatment under the RFP, or if Contractor rescinds its request for confidential treatment.

1.6.5 Survives Termination

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

1.7 Indemnification

1.7.1 By the Contractor

The Contractor agrees to indemnify and hold harmless the County and its 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 County Attorney'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:

1.7.1.1 Any breach of this Contract;

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

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

1.7.1.4 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;

1.7.1.5 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.

1.7.2 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 the County or any other Indemnified Party.

1.8 Insurance

1.8.1 Insurance Requirements

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals thereof. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The County shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable. In naming the County as additional insured, Contractor shall use the following language: "POLK COUNTY GOVERNMENT, its Elected Officials, Employees, Agents, and Assigns."

1.8.2 Types and Amounts of Insurance Required [JE1]

Unless otherwise requested by the County in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified below:

Workers' Compensation and Employers' Liability. This insurance shall protect the Contractor against all claims under Iowa Workers' Compensation Law. The Contractor shall also be protected against claims for injury, disease, or death, or employees which for any reason, may not fall within the provisions of the Workers' Compensation Law. The insurance requirements shall not be less than the following:

1. Workers' Compensation – Statutory
2. Employers' Liability
 - a. **\$500,000 Per Accident**
 - b. **\$500,000 Disease, Policy Limit**
 - c. **\$500,000 Disease, Each Employee**

Commercial General Liability. This insurance shall be written in comprehensive form and shall protect the Contracting Authority against all claims arising from injuries to any person or damage to property of others arising out of any negligence of the Contractor.

The Contractor shall provide and maintain insurance coverage to protect the Contracting Authority against any and all claims for damages for personal injury, including accidental

death, as well as from claims under this contract, whether such operations be performed by the Contractor or any subcontractors, or by one directly or indirectly employed by the Contractor or any subcontractors.

The liability limits shall not be less than the following:

Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Products-Completed Operations Aggregate	\$ 2,000,000
Personal & Advertising Injury	\$ 2,000,000
Fire Damage (Any one Fire)	\$ 100,000
Medical Expenses (Any One Person)	\$ 5,000

Automobile Liability. This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for the operation of motor vehicles, whether they are owned, non-owned, or hired, by or on behalf of the Contractor.

The liability limits shall not be less than the following:

\$ 1,000,000 CSL (Combined Single Limit) per accident

Excess Liability Umbrella. The Contractor shall procure and maintain, during the life of this contract **\$1,000,000 Excess Liability Coverage (Umbrella)**. This coverage is over and above the underlying coverage of **\$1,000,000/\$2,000,000** General Liability, Automobile & Employers Liability.

Builders Risk Insurance. Contractor will purchase Builder's Risk Insurance in the amount of \$100,000 for all construction projects.

Subcontractors. The contractor shall require that any of its agents and / or subcontractors, who perform work and/or services pursuant to the provisions of this contract, meet the same insurance requirements as are required of the prime contractor.

Performance Bond. A bond for the faithful and timely completion of the entire proposal must be provided with a limit of 100 percent of the contract sum. **(when applicable).**

Liquor Liability. Comprehensive liquor liability coverage shall be purchased with limits not less than **\$1,000,000**. **This coverage is mandatory when the contractor/vendor will be serving alcohol for consumption.**

1.8.3 Certificates of Coverage

Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract and any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the County. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the County upon execution of this Contract. The certificates shall be subject to approval by the County. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the County. Approval of the insurance certificates by the County shall not relieve the Contractor of any obligation under this Contract.

1.8.4 Waiver of Subrogation Rights

The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the County. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the County.

1.9 Project Management & Reporting

1.9.1 Project Manager

At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the Deliverables being provided under this Contract.

1.9.2 Review Meetings

During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

1.9.3 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 will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

1.9.3.1 Any event not within the control of the Contractor or the County that accounts for the problem;

1.9.3.2 Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;

- 1.9.3.3** Damages incurred as a result of any party's failure to perform its obligations under this Contract; and
- 1.9.3.4** Any request or demand by one party that another party believes is not included within the terms of this Contract.

1.9.4 Problem Reporting Omissions

The County's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the County may have. The County's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance or damages under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

1.9.5 Change Order Procedure

The County may at any time request a modification to the Scope of Work using a change order. The following procedures for a change order shall be followed:

- 1.9.5.1** Written Request: The County shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.
- 1.9.5.2** The Contractor's Response: The Contractor shall submit to the County a firm cost proposal for the requested change order within five (5) business days of receiving the change order request. The change order will be market tested for fair and reasonable pricing and must be approved by the County Board of Supervisors.
- 1.9.5.3** Acceptance of the Contractor Estimate: If the County accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract.
- 1.9.5.4** Adjustment to Compensation: The parties acknowledge that a change order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

1.10 Intellectual Property

1.10.1 Ownership and Assignment of Other Deliverables

Contractor agrees that the County shall become the sole and exclusive owners of all Deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the County 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 County 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 the County and the payment of such royalties or other compensation as the County deems appropriate. Unless otherwise requested by County, upon completion or termination of this Contract, Contractor will immediately turn over to County all Deliverables not previously delivered to County, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of County.

1.10.2 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 County's rights in and to the Deliverables.

1.10.3 Further Assurances

At the County's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the County to establish, perfect or protect the County's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in this Contract.

1.11 Warranties

1.11.1 Construction of Warranties

Expressed in this Contract with Warranties Implied by Law Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) 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 the County, 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.

1.11.2 Contractor represents and warrants that: (1) 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 the County hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the County hereunder or under

any license agreement related hereto without violating any rights of any third party; (2) 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 the County herein; and (3) the County shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

1.11.3 Contractor represents and warrants that: (1) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (2) the County'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 the County in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation or 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 the County's request and at the Contractor's sole expense: (1) procure for the County the right or license to continue to use the Deliverable at issue; (2) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (3) 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 (4) accept the return of the Deliverable at issue and refund to the County all fees, charges and any other amounts paid by the County with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the County 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 the County and shall survive termination of this Contract.

1.11.4 Contractor represents and warrants that the Deliverables (in whole and in part) shall: (1) be free from material Deficiencies; and (2) 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 Terms and/or Specifications. 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 business days of receiving notice of such Deficiencies or failures from the County or within such other period as the County specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the

County'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 the County shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the County with questions, problems and concerns about the Deliverables, to inform the County 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 the County, and provide the County with all necessary materials with respect to such repaired or corrected Deliverable.

1.11.5 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 the County notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the County, 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 the County any fees or compensation paid to Contractor for the unsatisfactory services.

1.11.6 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.

1.11.7 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 the County will not have any obligations with respect thereto.

1.12 Acceptance Testing

Except as otherwise specified in the Scope of Work, all Deliverables shall be subject to the County's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be performed by Contractor with respect to any Deliverable, Contractor shall deliver a written notice to the County certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the County to conduct Acceptance Tests; provided, however, that Contractor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the County. At the County's request, Contractor shall assist the County in performing Acceptance Tests at no additional cost to the County. Within a reasonable period of time after the

County has completed its Acceptance Testing, the County shall provide Contractor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the County determines that a Deliverable satisfies its Acceptance Tests, the County shall provide Contractor with notice of Acceptance with respect to such Deliverable. If the County determines that a Deliverable fails to satisfy its Acceptance Tests, the County shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the County provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall correct and repair such Deliverable and submit it to the County within ten (10) days of Contractor's receipt of notice of Non-acceptance so that the County may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the County determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Contractor has attempted to correct or repair pursuant to this section, that such Deliverable fails to satisfy its Acceptance Tests, then the County shall have the continuing right, at its sole option, to:

- 1.12.1** Require Contractor to correct and repair such Deliverable within such period of time as the County may specify in a written notice to Contractor;
- 1.12.2** Refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable);
- 1.12.3** Accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the County's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the County to correct such Deficiencies; or
- 1.12.4** Terminate this Contract and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 1.5.1 of this Contract, the County may terminate this Contract pursuant to this section without providing Contractor with any notice or opportunity to cure. The County's right to exercise the foregoing rights and remedies, including termination of this Contract, shall remain in effect until Acceptance Tests are successfully completed to the County's satisfaction and the County has provided Contractor with written notice of Final Acceptance. If the County determines that all Deliverables satisfy its Acceptance Tests, the County shall provide Contractor with notice of Final Acceptance with respect to such Deliverables. Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the County's rights to enforce the terms of this Contract or require performance in the event Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable(s).

1.13 Contract Administration

1.13.1 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 County or any office, division or department of the County

simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the County for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The County will not withhold taxes on behalf of the Contractor (unless required by law).

1.13.2 Incorporation of Documents

To the extent this Contract arises out of an RFP/RFQ, the parties acknowledge that the Contract consists of these contract terms and conditions as well as the RFP and the Bid Proposal. The RFP and the Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by the Contractor to the provisions of the RFP shall be incorporated by reference into the Contract unless the County has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict between the Contract, the RFP and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP/RFQ; (3) the Bid Proposal.

1.13.3 Intent of References to Bid Documents

The references to the parties' obligations, which are contained in this Contract, are intended to supplement or clarify the obligations as stated in the RFP and the Bid Proposal. The failure of the parties to make reference to the terms of the RFP or the Bid Proposal in this Contract shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFP and the Contractor's Bid Proposal. The contractual obligations of the County cannot be implied from the Bid Proposal.

1.13.4 Compliance with the Law; Nondiscrimination in Employment

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 ordinances. 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). Upon the County's written request, the Contractor shall submit to the County a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies. 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 section 1.13.11, 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 County may cancel, terminate, or suspend, in whole or in part, this Contract. The County may further declare Contractor ineligible for future County 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.

1.13.5 Procurement

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

1.13.6 Non-Exclusive Rights

This Contract is not exclusive. The County 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.

1.13.7 Amendments

This Contract may be amended in writing from time to time by mutual consent of the parties.

1.13.8 Third Party Beneficiaries

There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the County and the Contractor.

1.13.9 Use of Third Parties

The County 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 the County in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The County 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. The County shall have the right to request the removal of a subcontractor from the Contract for good cause.

1.13.10 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 that may be available to the County.

1.13.11 Assignment and Delegation

Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the County. 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 the County. 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.

1.13.12 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.

1.13.13 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.

1.13.14 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.

1.13.15 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.

1.13.16 Supersedes Former Contracts or Agreements

This Contract supersedes all prior contracts or agreements between the County and the Contractor for the Deliverables to be provided in connection with this Contract.

1.13.17 Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of the County 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.

1.13.18 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 Contract Declarations & Execution Page(s) at the address specified on the forms. Each such notice shall be deemed to have been provided:

- 1.13.18.1** At the time it is actually received; or,
- 1.13.18.2** Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
- 1.13.18.3** 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.

1.13.19 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.

1.13.20 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.

1.13.21 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 the County are responsive to the County's requirements and requests in all respects.

1.13.22 Authorization

Contractor represents and warrants that:

- 1.13.22.1** It has the right, power and authority to enter into and perform its obligations under this Contract.
- 1.13.22.2** 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.

1.13.23 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.

1.13.24 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 the County 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 the County or any other authorized representative 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, the County reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures.

- 1.13.24.1** 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.
- 1.13.24.2** 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.
- 1.13.24.3** 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 the County.
- 1.13.24.4** The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.
- 1.13.24.5** The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

1.13.25 Audits or Examination of Records

- 1.13.25.1** Contractors that expend \$750,000 or more in a fiscal year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Single audits must be completed and the data collection form and reporting package must be submitted electronically to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after Contractor's receipt of the auditor's report(s), or nine months after the end of the audit period. The Contractor shall submit to the County one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Contractor shall also submit one (1) copy of the final audit report to the County within thirty (30) days after Contractor's receipt thereof, 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 the County. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.
- 1.13.25.2** If a Contractor is independently audited but is not required to submit the audit report per the criteria in subsection 1.13.25.1 above, the Contractor shall submit to the County one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Within fifteen (15) days following County's request, the Contractor shall also submit one (1) copy of the final audit report to the County.
- 1.13.25.3** The County may require, at any time and at its sole discretion, that recipients of non-federal and/or federal funds have an audit performed. The Contractor shall submit one (1) copy of the audit report to the County within thirty (30) days of its issuance, unless specific exemption is granted in writing by the County. The Contractor shall submit with the audit report a copy of the separate letter to management addressing non-material findings, if provided by the auditor. The Contractor may be required to comply with other prescribed compliance and review procedures.
- 1.13.25.4** The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the County.

1.13.26 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.

1.13.27 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.

1.13.28 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 the County 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.

1.13.29 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.

1.13.30 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 the County. 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.

1.13.31 Suspensions and Debarment

The Contractor certifies pursuant to 48 CFR Part 9 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 Agency or State 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 County.

1.13.32 Conflict of Interest

Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the County 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 chapter 68B shall apply to this Contract. If a conflict of interest is proven to the County, the County may terminate this Contract, and the Contractor shall be liable for any excess costs to the County 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 the County.

1.13.33 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(47) & (48). The Contractor also acknowledges that the County may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the County or its representative filing for damages for breach of contract.

1.13.34 Right to Address the Board of Directors or Other Managing Entity

The County 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. The County determines appropriateness.

1.13.35 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.

1.13.36 Immunity from Liability

Every person who is a party to the Contract is hereby notified and agrees that the County, 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.

1.13.37 Public Records

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

1.13.38 Use of Name or Intellectual Property

Contractor agrees it will not use the County's name or any of their intellectual property, including but not limited to, any County board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the County.

1.13.39 Taxes

The County is exempt from certain taxes and Contractor may request a letter from the County Auditor's Office related to the County's tax exempt status.

1.13.40 No Minimums no maximums Guaranteed

The contract does not guarantee any minimum nor maximum level of purchases or any minimum amount of compensation. Maximum amount of compensation may vary depending on the stated terms in the RFP/RFQ and/or bid documents.