

HCR Transfer Proposal

Date: January 2025

- The State of Iowa has **secured agreement from the Corps of Engineers to transfer the property and sublease the federal lands**
- Ownership of the real property improvements (buildings, golf course, etc.) and all equipment associated with the resort to be transferred to the county via Management Agreement and Property Disposal Agreements
 - **Federal land to be subleased at no cost** under favorable terms
 - **State lands to be leased at no cost** under favorable terms
 - Future **option to own state land** available when state can transfer federal lease to new owner
 - Property transfer also includes **transfer of ownership of all state-owned personal property** used to operate the resort
 - Property not deemed “zero value” **(vehicles) to be leased for \$1**
- The property transfer **includes a built in concessionaire contract** with the existing vendor (Achieva) to maintain and fully operate the facility
 - Concessionaire is paid through revenue generated by the facility – **no cost to the county**
 - Current **concessionaire contract to be assigned to County**
- **State funding (RIIF) of approximately \$4M will continue to be available for deferred maintenance projects** through June 30, 2026, with RIIF funds and projects to continue to be managed by the State
- State commits to remain responsible for the cost to restore the property to “green space” should the new owners default on federal sublease obligations to maintain the space as a resort – **no financial risk to the county should the resort fail in the future**
- Transferring the property to the county **puts local leaders in the drivers seat**, with virtually no liability or financial risk to Appanoose County taxpayers
- Should county choose to sell the property to a private party at some point in the future, **property tax revenues will be generated** (“Buildings on Leased Grounds” provisions of property tax)



Honey Creek Resort Binder Cover Sheet

Information included:

Tab 1, Page 3	Concessionaire Contract
Tab 2, Page 117	Amendments
Tab 3, Page 122	Management Agreement
Tab 4, Page 294	Lease Agreement
Tab 5, Page 301	Zero Value Declaration
Tab 6, Page 305	Inventory List (Including % to be deducted)
Tab 7, Page 311	Description of RIIF Funds
Tab 8, Page 314	FAQ's

TAB 1 –
Concessionaire
Contract


Iowa Department of Administrative Services

Contracts Declaration & Execution Page

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto

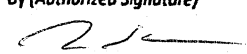
Title of Contract: Concessionaire Operations	Request for Proposal Number CP-RFP-0265-2023	Contract Number 23186
This Agreement is entered into between the State of Iowa (by and through its agency, the Department of Administrative Services) and the Contractor named below:		
State Agency's Name: Iowa Department of Administrative Services (DAS)		
Contractor's Name: Achieva Enterprises LLC		
Contract to Begin: April 14, 2023	Date of Expiration: April 13, 2029	3-year extensions: 3
The parties agree to comply with the terms and conditions and attachments which are by this reference made a part of the Agreement: Section 1 - Terms & ConditionsPage 2 Section 2 - Special Terms.....Page 27 Section 3 - Scope of Work.....Page 36 Section 4 - Pricing.....Page 43 Section 5 - Project Managers.....Page 44 Attachment 1 - Land Area Assignment (LAA).....Page 45 Attachment 2 - Land Area Assignment (LAA).....Page 46 Attachment 3 - Real Property Inventory.....Page 47 Attachment 4 - Real Property Inventory.....Page 48 Attachment 5 - Honey Creek Report Personal Property Assigned.....Page 49 Attachment 6 - Cottage Equipment/Item Minimum Inventory to be Maintained.....Page 50 Attachment 7 - Honey Creek Resort Operating and Maintenance Plan.....Page 51 Attachment 8 - Insurance.....Page 103 Attachment 9 - Resort Sponsorship to be Maintained.....Page 106 Attachment 10 - Honey Creek Resort - USACE Lease with Iowa DNR.....Page 109 Attachment 11 - Flood Management Plan.....Page 110 Attachment 12 - Contract Transition Requirements.....Page 111		

Contractor: Achieva Enterprises LLC

By (Authorized Signature)  Printed Name and Title of Person Signing Beth Henderson, President	Date Signed March 21, 2023
---	-------------------------------

Address
20187 495th S
Centerville, IA 52544

State of Iowa: Department of Administrative Services - Central Procurement

By (Authorized Signature)  Printed Name and Title of Person Signing Adam Steen, Director, Iowa Department of Administrative Services	Date Signed 3/21/23
--	------------------------

Address
1305 E Walnut ST
Des Moines, IA 50319

Iowa Department of Administrative Services

Contracts Declaration & Execution Page

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto

Title of Contract: Concessionaire Operations		Request for Proposal Number CP-RFP-0265-2023	Contract Number 23186
This Agreement is entered into between the State of Iowa (by and through its agency, the Department of Administrative Services) and the Contractor named below:			
State Agency's Name: Iowa Department of Administrative Services (DAS)			
Contractor's Name: Achieva Enterprises LLC			
Contract to Begin: April 14, 2023	Date of Expiration: April 13, 2029	3-year extensions: 3	
The parties agree to comply with the terms and conditions and attachments which are by this reference made a part of the Agreement: Section 1 - Terms & ConditionsPage 2 Section 2 - Special Terms.....Page 27 Section 3 - Scope of Work.....Page 36 Section 4 - Pricing.....Page 43 Section 5 – Project Managers.....Page 44 Attachment 1 - Land Area Assignment (LAA).....Page 45 Attachment 2 - Land Area Assignment (LAA).....Page 46 Attachment 3 - Real Property Inventory.....Page 47 Attachment 4 – Real Property Inventory.....Page 48 Attachment 5 - Honey Creek Report Personal Property Assigned.....Page 49 Attachment 6 – Cottage Equipment/Item Minimum Inventory to be Maintained.....Page 50 Attachment 7 – Honey Creek Resort Operating and Maintenance Plan.....Page 51 Attachment 8 – Insurance.....Page 103 Attachment 9 – Resort Sponsorship to be Maintained.....Page 106 Attachment 10 – Honey Creek Resort – USACE Lease with Iowa DNR.....Page 109 Attachment 11 – Flood Management Plan.....Page 110 Attachment 12 – Contract Transition Requirements.....Page 111			

Contractor: Achieva Enterprises LLC

By (Authorized Signature)	Date Signed
Printed Name and Title of Person Signing Beth Henderson, President	
Address 20187 495 th S Centerville, IA 52544	

State of Iowa: Department of Administrative Services – Central Procurement

By (Authorized Signature)	Date Signed
Printed Name and Title of Person Signing Adam Steen, Director, Iowa Department of Administrative Services	
Address 1305 E Walnut ST Des Moines, IA 50319	

SECTION 1 Terms & Conditions

1.1 Definitions

The following words shall be defined as set forth below:

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

“Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Agency 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 Agency to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.

“Agency” means the Iowa Department of Administrative Services (DAS).

“Annual Financial Report” means a report prepared each year by the Concessionaire, which includes the operating entity’s balance sheet, income statement, statement of cash flows and notes that are an integral part of such financial statements. This report shall be audited by an independent Certified Public Accountant.

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

“Capital Budget/Plan” means a plan that is submitted annually that outlines the Capital Improvements the Concessionaire is planning to complete in the coming year.

“Capital Improvement” means a Real Property Improvement or Personal Property purchase approved in advance by DAS and completed by the Concessionaire.

“Compensable Interest” means the balance, if any, on a depreciation schedule that results in the full depreciation by the end of the Initial Term of the Contract, for all approved Capital Improvements made by the Concessionaire to, or for State of Iowa Facilities or the Land Area Assignment. All Compensable Interest shall be fully amortized by the end of the initial Contract term and shall only be payable to the Concessionaire.

“Concessionaire” refers to the contractor operating the Honey Creek Resort under this contract. Contractor and Concessionaire are used interchangeably throughout this document.

“Concessionaire Personal Property” means personal property provided by the Concessionaire. Title to Concessionaire Personal Property is held by the Concessionaire. Concessionaire Personal Property does not include any personal property purchased throughout the term to replace or supplement Personal Property that was originally assigned at the start of the contract. Concessionaire Personal Property may be removed by Concessionaire following the expiration or any termination of this Contract.

“Contract” means the collective documentation memorializing the terms of the agreement between the State 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.

“DAS Personal Property” means personal property owned by the State of Iowa and assigned to the Concessionaire at the beginning of the Contract as well as all personal property purchased throughout the term that replaces the original DAS Personal Property assigned at the beginning. Personal Property includes, but not limited to, any equipment, furniture, vehicles, goods, fixtures or other tangible property necessary for operations that are not recognized as a real property or a Real Property Improvement.

“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.

“Environmental Condition” means any environmental condition or matter affecting HCR, the Land Area Assignment or the Real Property Improvements, including a condition relating to or arising or resulting from a failure to comply with any applicable law or the terms and conditions of a permit or from a release of Hazardous Substances into the Environment.

“Facilities” means real property and Real Property Improvements owned by the State of Iowa and provided to the Concessionaire.

“GAAP” means generally accepted accounting principles in the United States.

“Gross Receipts” means the total amount received, excluding sales tax, realized by or accruing to the Concessionaire from all sales, for cash or credit, of services, accommodations, materials, or other merchandise pursuant to rights granted in the Contract including gross receipts of Subconcessionaires. All moneys paid into coin-operated devices, except telephones, shall be included in Gross Receipts.

“Hazardous Substances” means any substance or mixture of substances that presents a danger to the public health or safety and includes but is not limited to a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. “Hazardous substance” may include any hazardous waste identified or listed by the administrator of the United States environmental protection agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed

under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act.

“HCR” means Honey Creek Resort.

“IDNR Lease” means Lease No. DACW41-1-97-233 between the Secretary of the Department of the Army and the IDNR, as amended by the Supplemental Agreement No. 1, the Supplemental Agreement No. 2, and as further supplemented and amended from time to time.

“Land Area Assignment” means the areas and facilities assigned to the Concessionaire for operations and maintenance.

“Preventative Maintenance” means planned, scheduled, routine and preventative periodic maintenance that is performed weekly, monthly, semi-annually, or annually on assets, typically including but not limited to, inspection, lubrication and adjustments. These expenses do not qualify for the Real Property Replenishment Reserve.

“Real Property Improvements” means improvements, replacements, or restorations to a good condition (or good working condition, if applicable) made to buildings, structures, or fixtures and equipment that are affixed to the land or building in such a manner that they become part of the realty. This term includes marina docks and slips.

“Routine Maintenance” means maintenance that occurs on a daily basis including, but not limited to, janitorial and custodial services, operations of utilities and grounds keeping.

“RFP” means the Request for Proposals or Request for Bids (and any Addenda thereto) that was issued to solicit the Deliverables that are subject to the Contract.

“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.

“State” means the State of Iowa, the Agency, and all State of Iowa agencies, boards, and commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

“Subconcessionaire” means an individual, corporation, partnership association or entity that is operating under a subcontract with the Concessionaire for the delivery of required or authorized services identified in the Scope of Work. For the avoidance of doubt, the term Sub concessionaire

shall not include any individual, corporation, partnership association or entity that is providing services to HCR pursuant to a contract entered into prior to the commencement of the Initial Term that is not expressly assumed by Concessionaire.

“Usage Report” means a report provided monthly and annually that includes usage data from each required and authorized service provided in the Scope of Work. The type of usage to be reported and due dates of reporting shall be provided in the Operating and Maintenance Plan.

1.2 Duration of Contract

1.2.1 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 Agency may, in its sole discretion, exercise any applicable extension by giving the Contractor written notice of the extension prior to the expiration of the initial term or renewal term.

1.2.2 This contract is not in effect until all approvals are granted by the Army Corps of Engineers in accordance with the USACE Lease with Iowa DNR.

1.3 Scope of Work

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

1.4 Termination

1.4.1 Immediate Termination by the State

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

1.4.1.1 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;

1.4.1.2 The State 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;

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

1.4.1.4 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.

1.4.2 Termination for Cause by the Agency

1.4.2.1 The Agency 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 60 days of the Agency’s notice of breach delivered by the Agency to Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- 1.4.2.2** 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;
- 1.4.2.3** 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 in connection with performance of this Contract;
- 1.4.2.4** Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- 1.4.2.5** Contractor terminates or suspends its business;
- 1.4.2.6** 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;
- 1.4.2.7** Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- 1.4.2.8** The Agency determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Agency or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- 1.4.2.9** 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;
- 1.4.2.10** Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- 1.4.2.11** 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:
 - 1.4.2.11.1** 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;

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

1.4.2.11.3 Making an assignment for the benefit of creditors;

1.4.2.11.4 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

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

1.4.3 Termination Due to Lack of Funds or Change in Law

Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

1.4.3.1 The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or

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

1.4.3.3 If the Agency'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

1.4.3.4 If the Agency's duties, programs or responsibilities are modified or materially altered; or

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

1.4.4 Limitation of the State's Payment Obligations

In the event of termination of this Contract for any reason by either party (except for termination by the Agency pursuant to Section 1.4.2), the Agency 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 Agency is obligated to pay pursuant to this Contract; provided however, that in the event the Agency terminates this Contract pursuant to Section 1.4.4, the Agency'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 1.4.5 in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

- 1.4.4.1** The payment of unemployment compensation to Contractor's employees;
- 1.4.4.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- 1.4.4.3** Any costs incurred by Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- 1.4.4.4** Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract;
- 1.4.4.5** Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

1.4.5 Contractor's Termination Duties

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

- 1.4.5.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Agency may require.
- 1.4.5.2** Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.
- 1.4.5.3** Cooperate in good faith with the Agency and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.

1.4.5.4 Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor.

1.4.5.5 Immediately deliver to the Agency any and all Deliverables for which the Agency 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.

1.4.6 Termination for Cause by Contractor

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

1.5 Confidential Information

1.5.1 Access to Confidential Information

The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Agency to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall provide to the Agency 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 Agency at all times.

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

1.5.3 Subpoena

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

1.5.4 Reporting of Unauthorized Disclosure

Either party shall immediately report to the other party any unauthorized disclosure of confidential information.

1.5.5 Contractor's Request for Confidential Treatment

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. Agency may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Agency 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.

1.5.6 Survives Termination

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

1.6 Indemnification

1.6.1 By the Contractor

The Contractor agrees to indemnify and hold harmless the State 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 Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties) directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

1.6.1.1 Any breach of this Contract;

1.6.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor (subconcessionaire) utilized or employed by the Contractor;

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

1.6.1.4 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;

1.6.1.5 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.

1.6.2 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 Agency or any other Indemnified Party.

1.7 Insurance

1.7.1 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 State of Iowa and the Agency shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

1.7.2 Types and Amounts of Insurance Required

Unless otherwise requested by the Agency 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 addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

Type of Insurance	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$5 million
	Products –	
	Comp/Op Aggregate	\$2 Million
	Personal injury	\$2 Million
Automobile Liability (including contractual liability) written on an occurrence basis	Each Occurrence	\$2 Million
	Combined single limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$2 Million
	Aggregate	\$10 Million
Errors and Omissions Insurance	Each Occurrence	\$1 Million
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$5 Million
Workers Compensation and Employer Liability	As Required by Iowa law	A required by Iowa law

1.7.3 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 Agency. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. 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 Agency. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

1.7.4 Waiver of Subrogation Rights

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

1.7.5 Additional Insurance Requirements

Contractor shall adhere to additional insurance requirements as outlined in Attachment 8 – Insurance.

1.8 Project Management & Reporting

1.8.1 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.

1.8.2 Review Meetings

During the review meetings the Project Managers shall discuss progress made by the Contractor and the State 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.

1.8.3 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:

1.8.3.1 Any event not within the control of the Contractor or the Agency that accounts for the problem;

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

1.8.3.3 Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

1.8.3.4 Any request or demand by one party that another party believes is not included within the terms of this Contract.

1.8.4 Problem Reporting Omissions

The Agency'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 Agency may have. The Agency'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.

1.8.5 Change Order Procedure

The Agency 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:

1.8.5.1 Written Request: The Agency shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.

1.8.5.2 The Contractor's Response: The Contractor shall submit to the Agency a firm cost proposal for the requested change order within five (5) business days of receiving the change order request.

1.8.5.3 Acceptance of the Contractor Estimate: If the Agency 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.

1.8.5.4 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.

1.9 Legislative Changes

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

1.10 Intellectual Property

1.10.1 Ownership and Assignment of Other Deliverables

Contractor agrees that the State and Agency shall become the sole and exclusive owners of all Deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables and all intellectual

property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the Agency 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 Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by Agency, upon completion or termination of this Contract, Contractor will immediately turn over to Agency all Deliverables not previously delivered to Agency, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Agency.

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 State's rights in and to the Deliverables.

1.10.3 Further Assurances

At the Agency's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in 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 Agency, 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 Agency hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency 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 Agency herein; and (3) the Agency 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 Agency'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 Agency in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the Agency's request and at the Contractor's sole expense: (1) procure for the Agency 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 Agency all fees, charges and any other amounts paid by the Agency with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency 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. 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 Agency or within such other period as the Agency specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the Agency'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 Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the Deliverables, to inform the Agency 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 Agency, and provide the Agency 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 Agency notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Agency, 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 Agency 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, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board, the Iowa Department of Administrative Services, and Iowa Office of the Chief Information Officer.

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 Agency 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 Agency'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 Agency certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Agency 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 Agency. At the Agency's request, Contractor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency. Within a reasonable period of time after the Agency has completed its Acceptance Testing, the Agency 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 Agency determines that a Deliverable satisfies its Acceptance Tests, the Agency shall provide Contractor with notice of Acceptance with respect to such Deliverable. If the Agency determines that a Deliverable fails to satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the Agency provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall correct and repair such Deliverable and submit it to the Agency within ten (10) days of Contractor's receipt of notice of Non-acceptance so that the Agency may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Agency 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

Agency 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 Agency 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 Agency's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Agency 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 1.6.1 of this Contract, the Agency may terminate this Contract pursuant to this section without providing Contractor with any notice or opportunity to cure provided for in Section 1.6.1. The Agency'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 Agency's satisfaction and the Agency has provided Contractor with written notice of Final Acceptance. If the Agency determines that all Deliverables satisfy its Acceptance Tests, the Agency 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 Agency'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 State or any agency, division or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Agency or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Agency 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, 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 Agency 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; (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 Agency 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 rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers. Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

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

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section 1.15.11, 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 State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

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

1.13.5 Procurement

Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations. Procurement of construction with public funds on State owned or leased grounds shall be performed by DAS.

1.13.6 Non-Exclusive Rights

This Contract is exclusive.

1.13.7 Non-Supplanting Requirement

To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

1.13.8 Compliance with Iowa Code chapter 8F

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

1.13.9 Amendments

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

1.13.10 Third Party Beneficiaries

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

1.13.11 Use of Third Parties

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

1.13.12 Choice of Law and Forum

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.

1.13.13 Assignment and Delegation

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

1.13.14 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.

1.13.15 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.

1.13.16 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.

1.13.17 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.

1.13.18 Supersedes Former Contracts or Agreements

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

1.13.19 Waiver

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

1.13.20 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:

1.13.20.1 At the time it is actually received; or,

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

1.13.20.3 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.

1.13.21 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.

1.13.22 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.

1.13.23 Time is of the Essence

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

1.13.24 Authorization

Contractor represents and warrants that:

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

1.13.24.2 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.

1.13.25 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.

1.13.26 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 Agency 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

Agency, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures.

1.13.26.1 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.

1.13.26.2 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.

1.13.26.3 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 Agency.

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

1.13.27 Audits or Examination of Records

1.13.27.1 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 Agency 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 Agency 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 Agency. The

requirements of this subsection shall apply to the Contractor as well as any subcontractors.

1.13.27.2 If a Contractor is independently audited but is not required to submit the audit report per the criteria in subsection 1.15.27.1 above, the Contractor shall submit to the Agency 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 Agency's request, the Contractor shall also submit one (1) copy of the final audit report to the Agency.

1.13.27.3 The Agency 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 Agency within thirty (30) days of its issuance, unless specific exemption is granted in writing by the Agency. 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.

1.13.27.4 The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Agency.

1.13.28 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.

1.13.29 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.

1.13.30 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 Agency 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.

1.13.31 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.

1.13.32 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 Agency. 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.

1.13.33 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 State of Iowa.

1.13.34 Conflict of Interest

Contractor represent, warrant, and covenant that no relationship exists or will exist during the Contract period between the Contractor and the Agency that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Contract. If a conflict of interest is proven to the Agency, the Agency may terminate this Contract, and the Contractor shall be liable for any excess costs to the Agency 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 Agency.

1.13.35 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 Agency may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

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

The Agency 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 Agency determines appropriateness.

1.13.37 Repayment Obligation

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

1.13.38 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.

1.13.39 Immunity from Liability

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

1.13.40 Public Records

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

1.13.41 Use of Name or Intellectual Property

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

1.13.42 Taxes

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

1.13.43 No Minimums Guaranteed

The contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

SECTION 2

Special Terms

2.1 Utilities

- 2.1.1** The State is responsible for providing sewer and wastewater treatment systems. Any impacts on the Contractor from failure of the State to maintain said infrastructure shall be considered as part of the Business Interruption insurance. The State may provide other utilities to the Contractor for use in connection with this Contract. Rates for use of said utilities shall be identified on an annual basis. If the State does not provide any other necessary utilities, the Contractor shall secure the necessary utilities at its own expense from outside sources.
- 2.1.2** DAS shall be responsible for ensuring that utility system infrastructure that lies outside of the Land Area Assignment yet supports the utility infrastructure of the Contractor shall remain functioning.

2.2 Right of Entry and Cooperation

DAS shall have the right at any time to enter upon or into DAS Facilities assigned to the Contractor for any purpose it deems necessary. Upon any such entry, DAS will take all reasonable measures to not disrupt the operation of Contractor's business or the provision of services to guests. Contractor agrees to cooperate in good faith with DAS at all times, including in the pursuit of third-party legal remedies.

2.3 Title

- 2.3.1** Title to all State of Iowa Facilities and Personal Property (whether such is assigned or purchased with the Personal Property Reserve) shall remain the sole property of DAS. Contractor has the right to use all State of Iowa Facilities and Personal Property only for purposes of fulfilling its obligations under this Contract and the same shall be returned to DAS upon the earliest of completion or termination of this Contract, or at DAS's request. Contractor acknowledges that it shall acquire no interest or rights in and to either State of Iowa Facilities or Personal Property, and is entitled to no compensation for such use unless otherwise specified herein. Contractor shall not disclose or use State of Iowa Facilities or Personal Property for any purpose, including but not limited to, pledging or encumbering it except as expressly provided for in this Contract.
- 2.3.2** Title to all alterations and improvements existing or hereafter erected at DAS Facilities, regardless of who constructs such improvements, shall immediately become DAS property and, at the end of the Contract term, shall remain DAS's without compensation to Contractor unless such compensation is owed due to termination.
- 2.3.3** Title to all personal property purchased by Contractor using monies or funds besides those identified in or contemplated by this Contract shall remain with the Contractor, excepting Intellectual Property under 2.7.5.

- 2.4** The Land Area Assignment, the State of Iowa facilities, and their current use complies with all applicable laws, including, without limitation, the Americans with Disabilities Act of 1990 (as amended to date) and all rules and regulations promulgated thereunder. The Concessionaire has inspected the Land Area Assignment, the State of Iowa facilities and assigned Personal Property, is thoroughly acquainted with their condition, and accepts the State of Iowa facilities and the assigned Personal Property "as is" with the exception of items identified in the Honey Creek Resort Facilities

Condition Assessment dated November 7, 2022 which DAS shall work in coordination with the Concessionaire to effect repairs within the first two years of the contract in an amount up to \$6,800,000.00, to be paid by the State. The State further indemnifies and holds harmless Contractor for any and all claims brought or arising prior to possession by Contractor under this Contract.

2.5 Partial Withdrawal

DAS may withdraw all or portions of the State of Iowa facilities and Personal Property at any time during the term of the Contract if: (1) The operations utilizing the State of Iowa Facilities and Personal Property have been terminated or suspended by DAS; or (2) DAS and Concessionaire mutually determine that some or all of the State of Iowa facilities and Personal Property assigned to the Concessionaire are no longer necessary for the concession operation.

2.6 Construction Approval

2.6.1 Construction Approval Process

The Contractor shall not construct, establish, remove, demolish, or dismantle any structure or facility without prior written approval from the DAS, which shall be predicated on approval by the U.S. Army Corps of Engineers (USACE) per the terms of the DAS Lease. Any proposed construction being performed with State or Federal funds shall be performed by DAS in compliance with Iowa Code Chapters 26, Chapter 8A, and other state or Federal laws and regulations as applicable. If the construction is proposed on land exclusively under the jurisdiction of the DAS, then only DAS prior written approval is required. DAS shall not unreasonably deny such approval of any structure or facility identified in the Contract, Scope of Work, or Proposal.

2.6.2 Initial DAS Review and Approval

DAS shall give initial but non-binding approval of Real Property Improvements during its review and approval of the Contractor 's Annual Capital Budget/Plan. DAS may request a preliminary scope of work to review. This approval is for scope, type, quantity, and location only.

2.6.3 DAS Final Design Review and Approval

2.6.3.1 The nature and extent of project requirements shall guide the level of detail for project submissions for final review and approval.

2.6.3.2 Prior to beginning any construction of any approved Capital Improvements contained in the Annual Capital Budget/Plan or otherwise mutually agreed upon the Contractor shall submit to DAS for final design review and approval a detailed Scope of Work, plans, specifications, and a proposed depreciation schedule that reflects complete amortization over the initial term of the Contract. DAS shall either approve or reject said plans within 30 to 60 days of receipt.

2.6.3.3 The Contractor shall provide consultant services to complete design of approved construction projects, as necessary (e.g., specifications signed and sealed by a Registered Architect in the State of Iowa).

2.6.3.4 All proposed facilities, including any new building structure the Contractor proposes, shall be subject to a review and approval process to preserve the existing architecture and appearance and function of the facility based on use.

2.6.3.5 To the greatest extent possible, green building practices shall be incorporated into any new construction.

2.6.3.6 Only projects receiving DAS final approval shall be submitted to the USACE for consideration as required by the terms of the DAS Lease, if such approval is required. The Contractor shall not proceed with any construction project unless it has been approved by USACE.

2.6.4 USACE Approval

2.6.4.1 The USACE local project office shall review and approve or deny in writing construction projects that are minor ground improvements or alterations to facilities.

2.6.4.2 The USACE district office shall review and approve all major construction or renovation projects.

2.6.5 Approved Construction Projects

The following terms apply to all construction that has received approval by both the DAS and the USACE:

2.6.5.1 The Contractor shall obtain all necessary permits, concurrences, and authorizations as required under relevant state or federal law. Copies of all permits, concurrences, and authorizations shall be submitted to the DAS with a detailed schedule of progress for said project(s).

2.6.5.2 A construction bond may be required in amounts reasonable to the circumstances and acceptable to the DAS in order to ensure faithful performance of the Contractor 's obligations under this Contract and to cure any default.

2.6.5.3 A minimum of three competitive bids shall be required for all Contract projects with a cost of over \$15,000.

2.6.5.4 Proposed projects shall comply with all applicable codes and be reviewed by the Iowa Department of Public Safety Building Code Bureau prior to commencement of construction.

2.6.5.5 Upon completion of each project, the Contractor shall submit to the DAS a sealed copy of As Built Drawings on CD or DVD media.

2.6.5.6 All Real Property Improvements constructed by the Contractor are subject to the terms of Section 2.3.

2.7 Monitoring and Review

2.7.1 On an annual basis, and more frequently if necessary as part of its ongoing monitoring efforts, DAS shall formally inspect and evaluate the Contractor surrounding issues related to:

- Contract Compliance

- Facility Condition
- Visitor Satisfaction
- Operational Performance
- Operational Service and Maintenance Requirements
- Operational and Capital Budgeting
- Sales and Marketing Functions

2.7.2 DAS shall schedule a meeting to review the annual inspection findings with the Contractor.

2.7.3 The Contractor shall develop a plan and schedule to address any deficiencies identified within the annual inspection. The DAS shall then monitor the progress of the Contractor's plan for compliance.

2.7.4 In compliance with the State of Iowa Accountable Government Act, the DAS will monitor the performance of the Contractor to make sure that Contractor is meeting the standards defined in the Contract and achieving the specified results. Once a quarter, or more frequently if warranted, the Contractor shall meet with DAS staff for the purposes of reviewing operational and financial performance, real property operation, maintenance and development, as well as other operational issues that may be of relevance to both parties. Meetings shall take place at HCR.

2.7.5 Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, social media accounts, maintenance records or logs, customer lists, and/or trade secrets created or conceived specifically and solely for use at HCR and which are used exclusively at HCR ("Intellectual Property"), shall be deemed to be a work made for hire and the DAS shall be considered the creator of such Intellectual Property. DAS shall own, for and on behalf of the State, the entire right, title, and interest to the Intellectual Property.

2.7.5.1 Concessionaire shall obtain the prior written approval of the DAS before the creation of any Intellectual Property, except for such items created in the ordinary course of business, including but not limited to maintenance records or logs and customer lists, by it or its Subconcessionaire(s). DAS shall not unreasonably withhold or delay its approval. Concessionaire, on behalf of itself and any Subconcessionaire(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the DAS and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the DAS.

2.7.5.2 The Concessionaire represents and warrants that the Intellectual Property produced shall not, to the Concessionaire's actual knowledge, infringe upon any other work, other than materials provided by the Contract to the Concessionaire to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm, or corporation; and that the concepts, materials and work product produced under this Contract will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm, or corporation, or other entity.

2.7.5.3 Concessionaire shall not take any action that would, to the actual knowledge of the Concessionaire impair the value of, or goodwill associated with, the name, property and Intellectual Property rights of DAS and the State of Iowa. Concessionaire shall obtain the prior advance written approval from DAS prior to Concessionaire's use and/or proposed alterations of the name, marks, or Intellectual Property rights of DAS or the State of Iowa.

2.7.5.4 For the purposes of this Contract, "Concessionaire Preexisting Materials" means any Intellectual Property owned or licensed by Concessionaire or which Concessionaire otherwise has the right to use, possess or exploit, that (i) existed on or prior to the date of this Contract or (ii) was created, acquired or licensed by or became available to Concessionaire after the date of this Contract independently of the services being performed pursuant to this Contract. Nothing set forth in this Contract grants or will be construed to grant to the DAS any right, title or interest in or to any Concessionaire Preexisting Materials. The DAS will acquire no right, title, or interest with respect to the Concessionaire Preexisting Materials as a result of its use of the Concessionaire Preexisting Materials in commerce or otherwise. The DAS agrees that the goodwill pertaining to Concessionaire Preexisting Materials existing now or generated during the term of this Contract belong and will inure exclusively to Concessionaire or their respective licensors or designers, as applicable.

2.7.5.5 The Contractor acknowledges and agrees to be bound by this Section 2.7.5.

2.7.6 Professional Practices

The Concessionaire represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices for the resort industry and in a competent and, where applicable, professional manner by knowledgeable, trained, and qualified personnel.

2.7.7 Authority to Enter into Contract

Each party represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber, or interfere with the rights granted to the other party.

2.7.8 Obligations Owed to Third Parties

Each party represents and warrants to the other party that all obligations owed to third parties with respect to the actions contemplated to be undertaken by such party pursuant to this Contract are or will be fully satisfied by such party so that the other party will not have any obligations with respect thereto.

2.7.9 Notice

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows in Section 1 of this Contract. 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. Each such notice shall be deemed to have been provided:

- 2.7.9.1** At the time it is actually received; or,
- 2.7.9.2** Within one day in the case of overnight hand delivery, courier, or services such as Federal Express with guaranteed next day delivery; or,
- 2.7.9.3** Within five days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

2.7.10 Use of Third Parties and Subconcessionaires

Concessionaire may contract with third parties for the performance of the Concessionaire's obligations under this Contract under the following conditions:

- 2.7.10.1** The Concessionaire's use of a subcontractor shall not be deemed in any way to provide for the incurrence of any obligation of the DAS in addition to the remuneration agreed upon in this Contract. Any use of a Subconcessionaire shall in no way alter the terms and conditions of this Contract.
- 2.7.10.2** The Concessionaire may enter into subcontracts to complete the work required by this Contract provided that the Concessionaire remains responsible for all services performed under this Contract. No subcontract or delegation of work shall relieve or discharge the Concessionaire from any obligation, provision, or liability under this Contract. The Concessionaire shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Subconcessionaire.
- 2.7.10.3** All restrictions, obligations, and responsibilities of the Concessionaire under this Contract also shall apply to the Subconcessionaires.
- 2.7.10.4** The DAS shall have the right to request the removal of a Subconcessionaire from the Contract for good cause. The Concessionaire shall indemnify, defend, and hold harmless the DAS 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 Concessionaire's breach of any subcontract into which it enters, including Concessionaire's failure to pay any and all amounts due by Concessionaire to any Subconcessionaire.
- 2.7.10.5** Each subcontract shall contain provisions for the DAS access to the Subconcessionaire's books, documents, and records and for inspections of work, premises or other property as required of Concessionaire herein.
- 2.7.10.6** Any action of a Subconcessionaire, which, if done by Concessionaire, would constitute a breach of this Contract, shall be deemed a breach by Concessionaire and have the same legal effect.
- 2.7.10.7** If delay results from a Subconcessionaire's conduct, from the Concessionaire's negligence or fault, or from circumstances which by the exercise of reasonable

diligence the Concessionaire should have been able to anticipate or prevent, then the Concessionaire shall be held responsible.

2.7.11 Certification Regarding Sales and Use Tax.

By executing this Contract, the Concessionaire 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) is 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 Concessionaire also acknowledges that the DAS may declare the Contract void if the above certification is knowingly false. The Concessionaire also understands that knowingly fraudulent certification may result in the DAS or its representatives filing action for damages for breach of this Contract.

2.7.12 Taxes

The State is exempt from federal excise tax, and no payment will be made for any taxes levied on Concessionaire’s employees’ wages. The State is exempt from state and local sales and use taxes related to this Contract.

2.7.13 Information Technology Security

The Concessionaire and all Concessionaire personnel shall comply with all relevant state or federal information technology security laws, especially those related to securing personal identification information.

2.7.14 Tax Liability

In the event that any real estate taxes are levied or assessed by lawful authority by reason of fact of this Contract and of the Concessionaire's use of the concession premises or against any structure erected by the State or Concessionaire on premises owned by the State, the Concessionaire shall pay such taxes timely. The DAS and Concessionaire agree there is no intent to establish a tax liability on either party and the State hereby represents that there are currently no real estate taxes due or owing and that the real property and improvements thereon owned by the State are currently not subject to any such real estate taxes.

2.7.15 Administration

There are no third-party beneficiaries to this Contract. This Contract is intended only to benefit the State, the DAS, and the Concessionaire. 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.

2.8 Obligations and Remedies in the Event of Early Termination

2.8.1 The Concessionaire shall pay the DAS within 60 days of the effective date of termination any fees or monies owed to the DAS including the balance of the Real Property Replenishment Fund, the Capital Improvement Fund, the Prepayment and Deposit Account, and the Gift Card account. Contract transition responsibilities shall be followed as outlined in Attachment 12.

2.8.2 The Concessionaire shall clean the State of Iowa facilities and Personal Property and return them to the DAS in satisfactory condition, within a period of time specified by the DAS, prior to Contract termination. The DAS will perform a final inspection of the State of Iowa facilities. If the DAS, in its commercially reasonable discretion, determines the DAS Facilities and Personal Property are not in satisfactory condition (reasonable wear and tear excepted), the DAS will

provide the Concessionaire with a list of corrective actions and specified period of time in which to complete the actions.

- 2.8.3** The concessionaire has been informed the State is considering sale of the State's interest in HCR, subject to the approval by USACE, and that such sale may occur within the initial term of the contract. Any such transfer of the State's interest in HCR shall be subject to the terms and conditions of this Contract.

2.9 Compliance with the IDNR Lease

- 2.9.1** This Contract is subject to all terms and conditions of the IDNR Lease. Concessionaire shall manage and operate the facilities and services in the Land Area Assignment in compliance with the IDNR Lease, and agrees to comply with the applicable provisions of the IDNR Lease related to its duties and obligations under this Contract. IDNR and Concessionaire acknowledge compliance with the IDNR Lease is vital to the successful operation, management, and maintenance of the facilities and services provided within the Land Area Assignment. The State certifies that attached to this Contract as Attachment 10 is an accurate and complete copy of the IDNR Lease as of the commencement date of this Contract. Concessionaire shall also be familiar with (i) Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1 and (ii) Army Regulation 600-7. Concessionaire acknowledges receipt and review of the foregoing and has become familiar with the applicable provisions of the IDNR Lease to effectively manage and operate the facilities and services in accordance therewith.

2.9.2 Amendments to IDNR Lease

IDNR or DAS as successor agency agrees to promptly provide the Concessionaire with copies of all executed amendments or supplements to the IDNR Lease, including any amendments or updates to any laws or regulations referred in the IDNR Lease that IDNR has received from the Secretary of the Army or agent thereof.

- 2.9.3** The Concessionaire will comply with all applicable reporting requirements required by IDNR under the IDNR Lease.

- 2.9.4** Any conflicts or differences between the terms of this Contract and the IDNR Lease shall be resolved in accordance with the IDNR Lease, as the governing document.

- 2.9.5** Notwithstanding anything to the contrary contained herein, in the event that the IDNR Lease is terminated by USACE (other than as a result of a default by Concessionaire under this Contract), then Concessionaire will have no obligations to IDNR or USACE under Section 17 (RESTORATION) of the IDNR Lease or to otherwise restore, remediate, or repair the Land Area Assignment to any condition or in any manner except as explicitly provided under any section of this Contract other than this Section 2.9.

2.10 Self-Insurance by the State of Iowa

The State of Iowa, to include DAS as an executive agency, is 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.

2.11 Suspension

- 2.11.1** If the DAS reasonably determines that continued operation of the concession presents an immediate hazard to the public health, safety, or welfare or is in violation of any state law or policy, DAS may immediately suspend the Contract by notice according to the procedures described herein. The notice shall contain specific reasons for the emergency suspension. The DAS may enforce the suspension by physically closing the concession premises. The DAS may assign employees to operate any part of a concession that the DAS determines should be opened during a suspension in order to provide continued services for park users; provided that DAS shall be fully responsible and liable for all actions and omissions of such employees as consistent with and permitted by Article VII, Section 1 of the Iowa Constitution and Iowa Code chapter 669.
- 2.11.2** If possible, the Concessionaire may act to correct the hazardous situation and request reinstatement of the Contract if the DAS agrees that a hazardous situation no longer exists.
- 2.11.3** The Concessionaire shall not be entitled to any compensation or other penalties or payments if the suspension lasts for less than ninety (90) days.

Section 3

Scope of Work

3.1 General Description of Services

The Contractor shall operate a commercial concession at Honey Creek Resort (HCR) on publicly-owned property to provide specified recreational facilities and services to the public for profit. DAS desires that a private commercial enterprise operate HCR in a profitable and sustainable manner so as to support the economic base of the region and communities surrounding the resort and to ensure a valuable state resource is maintained with minimal public financial and administrative resources.

3.1.1 This Contract gives the Contractor exclusive rights to conduct concession operations within the Land Area Assignment and for its employees, contractors, agents and representatives to use the Land Area Assignment and to ingress and egress therefrom, to prepare for and perform the concession operations and all other services necessary or desirable to perform the obligations of the Contractor under this Contract. The Contractor must have DAS approval prior to allowing other vendors to do business in the Land Area Assignment.

3.1.2 The Contractor shall charge rates that are reasonable and appropriate for the type and quality of the facilities or services. These rates shall be comparable with similar facilities and services provided in the private sector. DAS shall have the right to review said rates. Details on the rate review process and procedures for establishing complimentary or reduced rates is provided within the Operating and Maintenance Plan.

3.1.3 The Contractor shall be allowed to charge a "Conservation Fee" of three point seven five (3.75%) percent on the fee for rooms, cottages, golfing, and cart and RV campsite rentals. Any increases to this fee shall be reviewed and approved in writing by DAS. These fees shall be used for the furtherance of Sustainability and Naturalist Activities or environmental expenses.

3.2 Resort Operations

The Contractor shall operate the following aspects of HCR.

3.2.1 Main Lodge

3.2.1.1 Respondent must manage the operations.

3.2.1.2 Respondent must staff the operations.

3.2.1.3 Respondent must follow all applicable laws rules and regulations.

3.2.2 Cottages

3.2.2.1 Respondent must manage the operations.

3.2.2.2 Respondent must be able to staff the operations.

3.2.2.3 Respondent must follow all applicable laws rules and regulations.

3.2.3 Rathbun Lakeshore Grill

3.2.3.1 Respondent must be able to manage the operations.

3.2.3.2 Respondent must be able to staff the operations.

3.2.3.3 Respondent must follow all applicable laws rules and regulations.

3.2.4 Recreational Amenities (including the pavilion/outdoor shelter, restrooms, playground, basketball court, and resort beach).

3.2.4.1 Respondent must be able to manage the operations.

3.2.4.2 Respondent must be able to staff the operations.

3.2.4.3 Respondent must follow all applicable laws rules and regulations.

3.2.5 Courtesy Dock

3.2.5.1 Respondent must be able to manage the operations.

3.2.5.2 Respondent must be able to staff the operations.

3.2.5.3 Respondent must follow all applicable laws rules and regulations.

3.3 Golf Course Operations

3.3.1 The Preserve

3.3.1.1 Respondent must be able to manage the operations.

3.3.1.2 Respondent must be able to staff the operations.

3.3.1.3 Respondent must follow all applicable laws rules and regulations.

3.4 Compliance with Lease Agreement

Respondent must act in compliance with lease agreement with Secretary of the Army No. DACW41-1-97-233.

3.5 Compliance with Human Trafficking Prevention Training Certification

Respondent must be in compliance with Iowa Code section 80.45A.

<https://www.legis.iowa.gov/docs/code/80.45A.pdf>

3.6 Capital Improvements

The Concessionaire shall coordinate with DAS to establish the priorities for application of up to \$6,800,000.00, such funds to be provided by the State, to improve HCR within the first two years of the initial contract term by completing the following projects. The funds shall be applied to address existing safety, structural, or operational issues, including the items identified on the Honey Creek Resort Facilities Existing Condition Assessment dated November 7, 2022 as described in section 2.4, and may also be applied to completing the projects in this section. The funds may also be used to purchase personal property necessary for resort operations. If necessary, the parties may mutually agree to more or different services through an amendment to the Contract pursuant to Section

1.13.19. Concessionaire shall not implement any of these Capital Improvements without following the procedures set forth in Section 2.6. The funds for these improvements will not be from the Concessionaire Fees described in Section 4, or from the Real Property Replenishment Fund.

3.6.1 Welcome Center. Construction new Welcome Center estimated cost/value \$400,000.00.

3.6.2 Ice Cream Parlor. Construction new Ice Cream Parlor estimated cost/value \$45,000.00.

3.6.3 Spa. Construction and outfitting of a new spa Estimated cost/value \$85,000.00.

3.6.4 Workout Facility. Construction of a new workout facility \$50,000.00.

3.6.5 Small Group Pavilions. Construction of multiple small group pavilions with fire pits and grills \$85,000.00.

3.6.6 Upgraded Landscaping. New landscaping, signage, statues "Tribute to Iowa" \$250,000.00.

3.7 Concessionaire Investment

Contractor shall provide \$1,650,000 over the 6-year period of Concessionaire Agreement at a minimum of \$275,000 on average per year starting within the first year of the contract to be used exclusively for the following enhancements:

3.7.1 Holiday Light, Christmas and Fall Village Display. Purchase/Lease of professional holiday light and Christmas display costing \$100,000.00.

3.7.2 Marina/Water Recreation Upgrades. Purchase/Lease of new stationary waterpark, jet skis, boats, and kayaks costing \$350,000.00.

3.7.3 Guest and Visitor Amusement Rides – 8 Trained and Certified Draft Horses, 7 Trained and Certified Miniature Horses, 10 new horse drawn vehicles, people movers, carriages, wagons, sleighs, miniature carriages, wagons, 15 show harnesses, tack, trucks, trailers, corals, and associated equipment as broken out in 3.7.4, and 3.7.5.

3.7.4 Equine Amenities. Six-year lease of horses, carriages, sled, harnesses, and other equipment necessary for equine amenities costing \$150,000/YR = \$900,000.00.

3.7.5 Wattman Train. Six-year lease of Wattman Maxi Express Trackless Train Amusements: \$50,000/YR = \$300,000.00.

3.8 Personal Property

3.8.1 State Personal Property

DAS shall allow use of Personal Property by Contractor. Personal Property provided is referenced in Attachment 5.

3.8.2 Concessionaire Personal Property

Contractor shall provide any and all other Personal Property needed in performance of the Contract. Any such additional Personal Property provided by Contractor shall remain the property of Contractor in the event of suspension or termination, unless funded out of either the Capital Investment Fund, or the Real Property Replenishment Fund, or otherwise covered in termination clauses.

3.9 Maintenance Responsibility

The Contractor shall maintain all Facilities and Personal Property in a clean, sanitary, and safe manner, and shall likewise keep the same in good order and repair to the reasonable satisfaction of the DAS. DAS will perform periodic inspections of Facilities and Personal Property.

3.9.1 The Contractor shall maintain all DAS Facilities and DAS Personal Property along with all Contractor Personal Property in a clean, sanitary, and safe manner, and shall likewise keep the same in good order and repair to the reasonable satisfaction of the DAS, in all cases, as required by and based upon the standards outlined in the Operating and Maintenance Plan.

3.9.2 Disposal and replacement. When DAS Personal Property ceases to be serviceable, it shall be disposed of by the Contractor after notification to DAS. The Contractor shall be responsible for coordinating disposal. Proceeds from the disposal, minus administrative and disposal fees if any, shall be deposited into the real property replenishment fund.

3.10 Environmental Protection

3.10.1 Reporting and Notice

The Contractor shall make available upon request an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Land Area Assignment by the Contractor. The Contractor shall make available upon request copies of all documents, reports, monitoring data, manifests, and other materials required under applicable laws to be submitted to regulatory agencies.

3.10.1.1 The Contractor shall provide DAS immediate notice of any Environmental Condition of which it is or should have been aware.

3.10.1.2 The Contractor shall provide DAS immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any applicable law arising out of the activities of the Contractor its agents or employees.

3.10.2 Corrective Action

The Contractor, at its sole cost and expense, shall promptly control and contain any Environmental Condition arising during the term of this Contract solely and directly from the actions or omissions of the Contractor or its SubContractor s or affiliates under this Contract, including but not limited to payment of any fines or penalties imposed by appropriate agencies; provided that Contractor shall not be responsible for, or have any liability related to any Environmental Condition present in, on, over, under or at the Land Area Assignment or the DAS Facilities as of the date of this Contract or created by any acts, or failures to act, by the State or prior concessionaires.

3.10.3 Pest, Invasive Plant, and Weed Management

The Contractor shall be responsible for managing weeds and invasive plants, harmful insects, rats, mice, and other pests within the Land Area Assignment.

3.11 Employees

Contractor shall retain all personnel necessary to provide the visitor services required and authorized by this Contract. The Contractor shall comply with all applicable laws relating to employment and employment conditions.

3.12 Advertising

The Contractor shall use a high-level of professional discretion in all forms of advertising, marketing, and promotions. All promotional material, regardless of media format (i.e., printed, electronic, broadcast media) provided to the public by the Contractor in connection with the services provided under this Contract shall identify the Contractor as an authorized Contractor of DAS.

3.12.1 The following are all the property of the State of Iowa and may be used only with the prior advance written approval from DAS (not to be unreasonably withheld, conditioned or delayed) in advertising, promotions, or other marketing materials:

- HCR's park name and logo and trademarks;
- "Iowa State Parks" name and associated logos or trademarks;
- DAS's logo and trademark; DAS's web domain (www.das.iowa.gov);
- the existing names or any new names established during the term of this Contract for HCR's cottages, bedrooms, banquet halls or meeting spaces, recreation facilities, or common areas; the names of internal park roads, buildings, pavilions, open spaces, portals, or other such areas on the property; and HCR's web domain (www.honeycreekresort.com).

3.12.2 Under no circumstance shall Contractor be entitled to any compensation for the use of these names, domains, logos, or trademarks nor shall Contractor be entitled to any compensation for any DAS-approved redesigns made or commissioned by Contractor to the same.

3.12.3 All advertising, promotions, and marketing efforts shall comply with all applicable state or federal laws.

3.13 The Contractor shall comply with all laws, rules, and regulations of the state of Iowa and the local political subdivision and secure all necessary licenses and permits as they pertain to the operation of the various parts of the concession. The Contractor shall also pay other fees required by law for the various permits, items, or operations in connection with the concession.

3.14 Hours and Days of Operation

From time to time in its reasonable discretion, the Concessionaire may adjust the hours and days of operations of HCR or any of the amenities to reflect demand (or lack of demand) by customers and visitors.

3.15 Records and Reports

The Contractor shall submit to DAS on an annual basis financial statements audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards and procedures promulgated by the American Institute of Certified Public Accountants. In addition, the Contractor shall provide to the DAS specific usage and financial reports as dictated more fully in the Operating and Maintenance Plan. The Contractor shall maintain books, records, and documents that sufficiently and properly document and calculate all charges billed to the DAS throughout the term of this Contract for a period of at least five years following the date of final payment or

completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State 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 directly 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.

3.16 Facilities

Smoking is prohibited in all buildings and shall be allowed only in designated areas outside.

3.17 Monitoring and Review

In compliance with the State of Iowa Accountable Government Act, DAS will monitor the performance of the Concessionaire to make sure that Concessionaire is meeting the standards defined in the Contract and achieving the specified results. Once a quarter, or more frequently if warranted, the Concessionaire shall meet with DAS staff for the purpose of reviewing operational and financial performance, condition of personal property, real property operation, maintenance and development, as well as other operational issues that may be of relevance to both parties. Meetings shall take place at HCR. Performance Measures shall include:

- Contract Compliance
- Facility Condition and Deferred Maintenance progress
- Customer Experience Satisfaction
- Operational Performance
- Operational Servicing and Maintenance Requirements
- Operational and Capital Budgeting
- Sales and Marketing Functions
- Community Involvement

3.18 Accounts

3.18.1 Capital Improvement Fund

The Concessionaire shall establish an interest-bearing Capital Improvement Fund into which it shall deposit the concessionaire fees as described in section 4.1 below. Such amounts shall be deposited no later than the fifteenth day of the month following the month in which such Gross Receipts were measured. Failure to timely deposit funds shall result in the interest accumulation of one percent of the unpaid amount per month for each unfunded month. Access and visibility to this fund shall be provided to the DAS. This fund may be used for reinvestment back into HCR for Capital Improvements, subject to DAS approval and other approvals described elsewhere in this contract, when applicable. The fund will not be used for preventative, routine, or deferred maintenance. The fund will not be used to accomplish any of the items described as Concessionaire Investment in 3.7 above. Any capital improvements approved and paid for from the fund immediately become property of DAS. At the end of the contract or upon termination, the balance of the fund will be transferred to DAS.

3.18.2 Gift Card Account

The Concessionaire shall establish a Gift Card account into which it shall deposit \$XXXX provided by the Existing Operator/DAS on or before DATE to off-set Concessionaire's

expenses associated with the redemption of gift cards and gift certificates issued by the Existing Operator. At the end of the contract or upon termination, the balance of the fund will be transferred to DAS.

3.18.3 Real Property Replenishment Fund

The Concessionaire shall establish and fund an interest-bearing account for deferred maintenance of real property, into which it shall deposit 5.0% of monthly Gross Receipts. Such amounts shall be deposited no later than the fifteenth day of the month following the month in which such Gross Receipts were measured. Failure to timely deposit funds shall result in the interest accumulation of one percent of the unpaid amount per month for each unfunded month. Access and visibility to this fund shall be provided to the DAS. Expenditures from this account may be made for major maintenance repairs to real property, or replacement of personal property used for the maintenance and operations of the facility with approval from DAS. This account shall not be used for routine maintenance or preventative maintenance. This account will not be used for Capital Improvements eligible for the Capital Improvement fund per 3.18.1 above. At the end of the contract or upon termination, the balance of the fund will be transferred to DAS.

3.18.4 Prepayment and Security Deposit Account

The Concessionaire shall establish a Prepayment and Security Account into which it shall deposit \$XXXX provided by the Existing Operator/DAS on or before DATE to off-set Concessionaire's expenses associated with the prepayments and deposits received in advance of scheduled service provision. At the end of the contract or upon termination, the balance of the fund will be transferred to DAS.

3.18.5 Conservation Fee account

The Concessionaire shall establish and fund an interest-bearing account for conservation fees, into which it shall deposit the fees collected as conservation fees as described in 3.1.3 above. Such amounts shall be deposited no later than the fifteenth day of the month following the month in which such conservation fees were collected. Failure to timely deposit funds shall result in the interest accumulation of one percent of the unpaid amount per month for each unfunded month. Access and visibility to this fund shall be provided to the DAS. Expenditures from this account may be made for furtherance of Sustainability and Naturalist Activities, or environmental expenses. At the end of the contract or upon termination, the balance of the fund will be transferred to DAS.

SECTION 4

Pricing

4.1 Concessionaire Fees

Contractor shall provide a percentage of revenue to be paid as a fee, subject to the following terms:

4.1.1 Revenue Below \$3 Million. No fee is owed based on revenue until annual gross receipts exceed \$3,000,000.00.

4.1.2 Revenue Between \$3 and \$6 Million. A fee of 1% will be paid on the total annual gross receipts generated between \$3,000,000.00 and \$6,000,000.00.

4.1.3 Revenue Between \$6 and \$8 Million. A fee of 3% will be paid on the total annual gross receipts generated between \$6,000,000.00 and \$8,000,000.00.

4.1.4 Revenue Above \$8 Million. A fee of 5% will be paid on the total annual gross receipts generated above \$8,000,000.00.

4.2 Concessionaire Fees must be deposited into the Capital Improvement Fund.

4.3 In addition to the above Concessionaire Fees, a fee of 0.5% will be paid on the annual gross receipts generated between \$3,000,000.00 and \$6,000,000.00, which shall be paid to DAS as compensation for its services in relation to this Contract. Concessionaire shall charge no higher than the State established lodging rate for any official overnight visits required for contract management functions.

SECTION 5
Project Managers

5.1 Project Manager - Contractor

Beth Henderson

beth@achievainc.com

641.505.1549

5.2 Project Manager - State of Iowa

Allen Meyer

515.725.2272

allen.meyer@iowa.gov

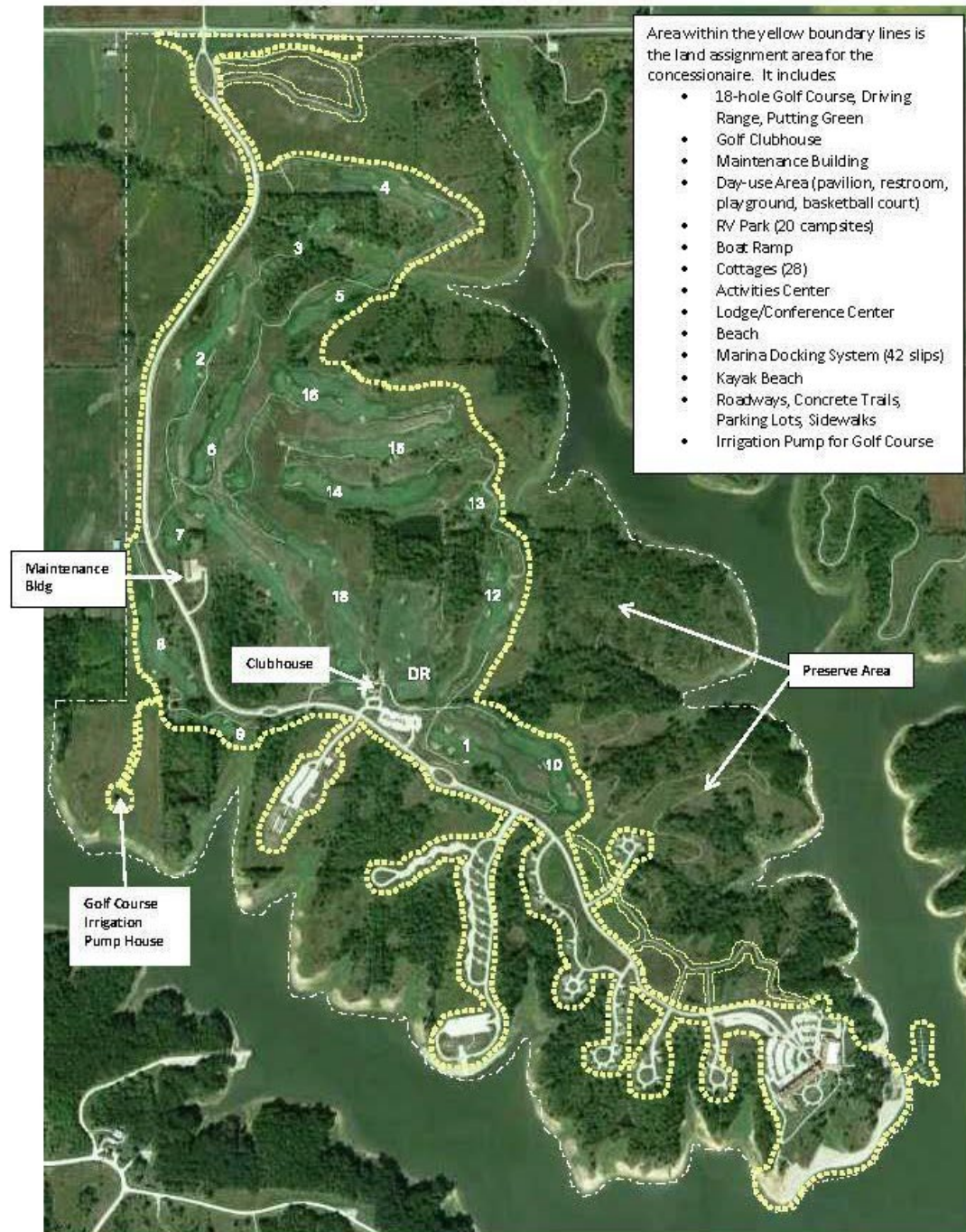
5.3 State of Iowa – DAS/Procurement Contact

Karl Wendt

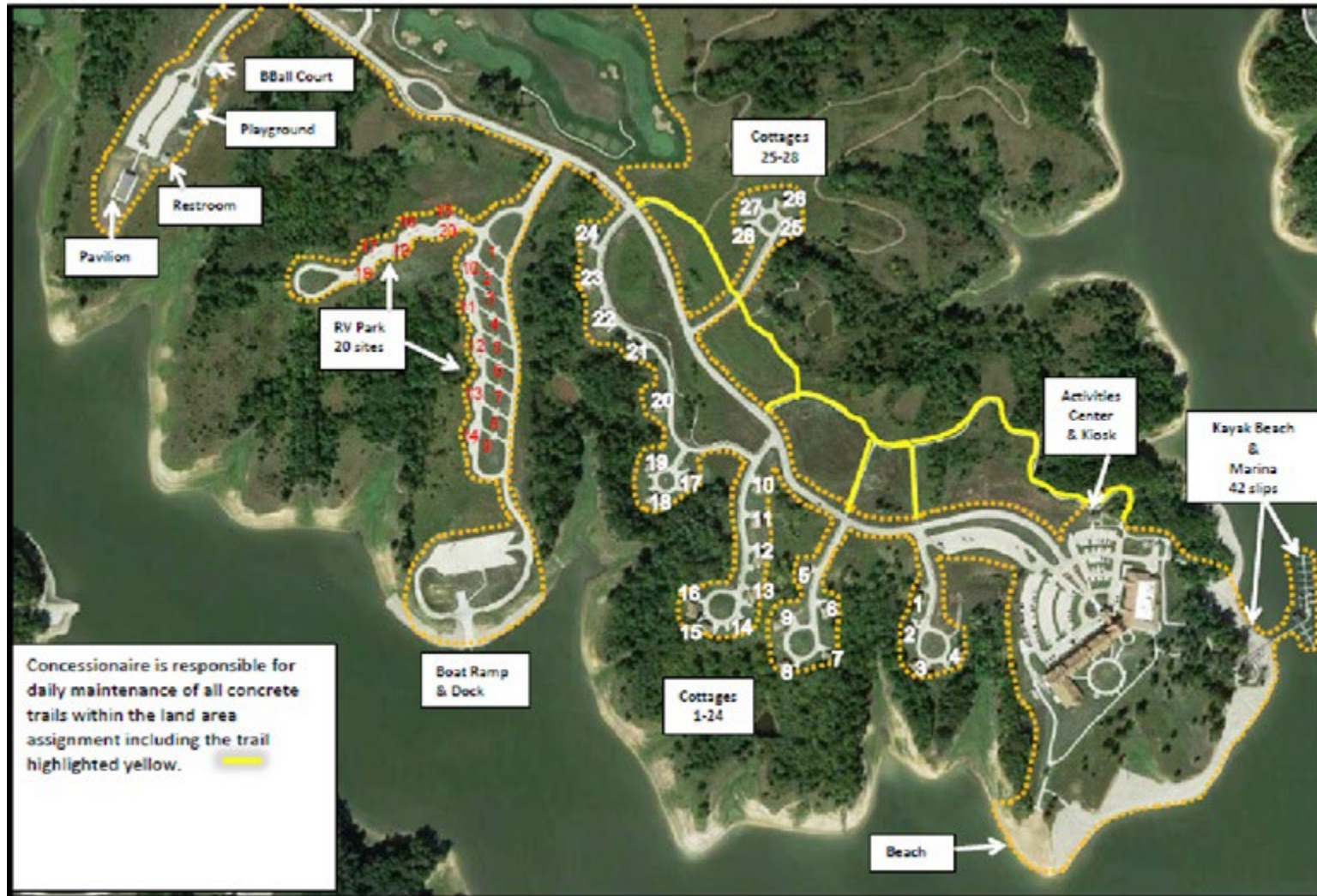
515.281.7073

karl.wendt@iowa.gov

Attachment 1 **Land Area Assignment (LAA)**



Attachment 2
Land Assignment Area (LAA)



Attachment 3
Real Property Inventory

Real Property Assets Assigned on Contract Effective Date		
Asset ID	Building Name	Square Footage
2011-45	Resort Lodge/Conference Ctr	108876
2011-17	Resort Cottage #1	756
2011-18	Resort Cottage #2	1029
2011-19	Resort Cottage #3	816
2011-20	Resort Cottage #4	816
2011-21	Resort Cottage #5	756
2011-22	Resort Cottage #6	816
2011-23	Resort Cottage #7	816
2011-24	Resort Cottage #8	816
2011-25	Resort Cottage #9	1104
2011-27	Resort Cottage #10	816
2011-28	Resort Cottage #11	816
2011-29	Resort Cottage #12	1104
2011-30	Resort Cottage #13	1104
2011-26	Resort Cottage #14	1104
2011-31	Resort Cottage #15	816
2011-32	Resort Cottage #16	1400
2011-33	Resort Cottage #17	1104
2011-34	Resort Cottage #18	1104
2011-35	Resort Cottage #19	1104
2011-36	Resort Cottage #20	816
2011-37	Resort Cottage #21	1104
2011-38	Resort Cottage #22	1104
2011-39	Resort Cottage #23	816
2011-40	Resort Cottage #24	756
2011-41	Resort Cottage #25	816
2011-42	Resort Cottage #26	756
2011-43	Resort Cottage #27	816
2011-44	Resort Cottage #28	816
2011-49	Golf Clubhouse Building	2152

**Attachment 4
Real Property Inventory**

Asset ID	Building Name	Square Footage
2011-50	Golf Maintenance Building	5600
585612035341	Bldg. Storage	80
585612035201	Bldg. Enclosure	360
N/A	Golf Course Cart Storage Building	896 24 cart charging station (space for 20 inside and 4 outside)
2011-46	Resort Activity Building	780
201241	Shelter Building	5250
2011-15	Basketball Court	1 Item
2011-7	Docks (42 slips, fishing cleaning station)	
2012-40	Restroom Building	520
N/A	RV Sites	20 campsites
Within Land Assignment Map	Road Systems	29,133 Linear Feet
2011-14	Resort Beach	
201243	Activities Center Outdoor Kiosk	
	Wedding Gazebo	
	Employee Mobile Home #1	
	Employee Mobile Home #2	
	Employee Mobile Home #3	
	Employee Mobile Home #4	
	Employee Mobile Home #5	
	Employee Mobile Home #6	

Attachment 5
Honey Creek Resort Personal Property Assigned

See Separate Attachment
SUBJECT TO INVENTORY VERIFICATION AND SIGNATURE PRIOR TO TAKEOVER

Attachment 6
Cottage Equipment/Item Minimum Inventory to Be Maintained

<u>Cottage Inventory List</u>					
One Bedroom (4)		Two Bedroom (14)		Four Bedroom (10)	
Item	Number	Item	Number	Item	Number
Cooking Utensils		Cooking Utensils		Cooking Utensils	
7.25" Fry Pan	1	7.25" Fry Pan	1	7.25" Fry Pan	1
9" Fry Pan	1	9" Fry Pan	1	9" Fry Pan	1
11" Fry pan	1	11" Fry pan	1	11" Fry pan	1
Covered Sauce Pan 2.2 qt.	1	Covered Sauce Pan 2.2 qt.	1	Covered Sauce Pan 2.2 qt.	1
Covered Sauce Pan 1.1 qt.	1	Covered Sauce Pan 1.1 qt.	1	Covered Sauce Pan 1.1 qt.	1
Stock Pot 5.5 qt.	1	Stock Pot 5.5 qt.	1	Stock Pot 5.5 qt.	1
Mixing Bowls	2	Mixing Bowls	2	Mixing Bowls	2
Strainer	1	Strainer	1	Strainer	1
Cutting Board	1	Cutting Board	1	Cutting Board	1
Pizza Pan	1	Pizza Pan	1	Pizza Pan	1
Measuring Cups/ Spoons	1	Measuring Cups/ Spoons	1	Measuring Cups/ Spoons	1
Slotted Spoon	1	Slotted Spoon	1	Slotted Spoon	1
Spatula	1	Spatula	1	Spatula	1
Vegetable Peeler	1	Vegetable Peeler	1	Vegetable Peeler	1
Can Opener	1	Can Opener	1	Can Opener	1
Knife Set	1	Knife Set	1	Knife Set	1
Table Service		Table Service		Table Service	
Spoons	8	Spoons	8	Spoons	15
Forks	8	Forks	8	Forks	15
Knives	8	Knives	8	Knives	15
Glasses	8	Glasses	8	Glasses	15
Bowls	8	Bowls	8	Bowls	15
Plates	8	Plates	8	Plates	15
Coffee Cups	8	Coffee Cups	8	Coffee Cups	15
Other		Other		Other	
Folding Chairs	2	Folding Chairs	2	Folding Chairs	2
Coffee Maker	1	Coffee Maker	1	Coffee Maker	1
Toaster	1	Toaster	1	Toaster	1
Weather Radio	1	Weather Radio	1	Weather Radio	1

Attachment 7
Honey Creek Resort State Park Operating and Maintenance Plan

The Operating and Maintenance Plan for Honey Creek Resort State Park (HCR) between Achieva. (“Concessionaire”) and DAS describes specific operating and maintenance requirements and responsibilities of the Concessionaire and DAS with regard to those facilities that are assigned under the Contract. These requirements shall form the basis of all of DAS’s inspections. DAS shall have the discretion to make commercially reasonable modifications to this Plan so long as those changes do not increase the financial obligations of the Concessionaire by more than ten thousand dollars (\$10,000) per year. All other changes shall be mutually agreed upon by the parties. All revisions shall be consistent with the main body of the Contract.

1.1 General Contract Operational Responsibilities

1.1.1 Concessionaire

1.1.1.1 The Concessionaire shall designate a General Manager who has the authority to:

1.1.1.1.1 Operate and manage the Contract services within the Land Area Assignment (LAA) in Attachment 1 and DAS Facilities assigned under this Contract outlined in Attachment 3;

1.1.1.1.2 Employ staff to fulfill the contractual requirements; and

1.1.1.1.3 Act as a liaison between the Concessionaire and DAS for all issues related to the Contract.

1.1.1.2 The Concessionaire shall designate an “acting” General Manager in the absence of the General Manager.

1.1.2 DAS

DAS and/or its designated representatives are responsible for oversight of all Park operations and concession operations. This includes:

1.1.2.1 Evaluation and inspection of Concessionaire Contract services; and

1.1.2.2 Review and approval of the elements within the Operating and Maintenance Plan.

1.2 General Concessionaire Operational Responsibilities

1.2.1 Scope of Operations

1.2.1.1 The Concessionaire shall provide the services outlined in the Contract on a year-round basis. However, some of the facilities or services may operate or be provided on a seasonal schedule. Specific operating hours are outlined by each operation within this plan, and any other shortening or extension of operating hours shall require the approval of DAS.

- 1.2.1.2** The Concessionaire shall work with DAS to adapt hours if needed to meet increased visitor demand. DAS requests for increased hours of operation shall take into consideration a balance between opportunities to service visitors and impact on Concessionaire's operating expenses.
- 1.2.1.3** On an annual basis, the Concessionaire shall provide to DAS a detailed schedule of daily operating hours for each service the Concessionaire shall provide under this Contract.

1.2.2 Customer Service Standards

- 1.2.2.1** The Concessionaire shall establish a clearly defined customer service standard. All actions by concession staff should reflect a desire to fulfill a high-level quality service obligation to visitors. All points of visitor contact, whether in person, over the telephone, in writing, or by any other means, shall convey a respectful, courteous, and service-oriented impression to the visitor. Concession management staff shall respond quickly to any conflicts, disputes, or concerns expressed by the visiting public, and shall seek to represent the DAS in a positive, professional, and courteous manner at all times.
- 1.2.2.2** It is the responsibility of the Concessionaire to monitor and be responsive to feedback received from visitors. It is particularly important that complaints be dealt with expeditiously, and at the most local- level possible. The General Manager shall be responsible for handling ordinary complaints, demonstrate to the DAS that a system is in place to monitor visitor feedback, and that issues are being resolved in a timely and satisfactory manner.
- 1.2.2.3** It shall be the responsibility of the Concessionaire to make sure the Concessionaire's rules are clearly known and understood by visitors, and also to set the standard for the manner in which they are enforced. The approach shall be to use education and information to gain voluntary compliance from visitors. This approach shall assume that visitors do not intentionally break the rules, but are simply not aware of them.
- 1.2.2.4** Any visitor-related incidents that escalate to a need for a higher level of enforcement authority shall be referred to the General Manager, or to local law enforcement if necessary. The General Manager shall document any such events on an incident report, which shall be shared with the DAS within 24 hours.

1.2.3 Rates

- 1.2.3.1** On an annual basis, and no later than 90 days prior to the end of each accounting year, the Concessionaire shall provide DAS a listing of rates that they will be using for all their services and facilities, as well as their discounting policies, for the next operating year. Included in their rate submittal shall be information regarding how the rates compare to other similar facilities and services in the competitive market. Following the presentation of the rates for review, DAS shall have up to 14 days to

provide comments. The Concessionaire shall take into consideration feedback from DAS in their final pricing determinations.

- 1.2.3.2** In the event Concessionaire elects, at Concessionaire's sole discretion, to charge a Conservation Fee, any changes to the Conservation Fee percentage require approval of DAS.
- 1.2.3.3** The Concessionaire is responsible for ensuring that its employees observe a strict impartiality as to rates and services in all circumstances. The Concessionaire shall comply with all applicable nondiscrimination laws in providing visitor services to the public.
- 1.2.3.4** The Concessionaire may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. DAS reserves the right to review and modify the Concessionaire's complimentary or reduced rate policies and practices.
- 1.2.3.5** The Concessionaire shall provide state employees conducting official business rates equal to the maximum lodging rates established by the Iowa Department of Administrative Services. Complimentary or reduced rates and charges shall otherwise not be provided to state employees by the Concessionaire except to the extent that they are equally available to the general public.
- 1.2.3.6** The Concessionaire shall establish refund policies that incorporate high-quality visitor service standards and are provided in a fair and expeditious manner.

1.2.4 Facilities and Service Payment Methods

- 1.2.4.1** The Concessionaire shall accept American Express, MasterCard, Visa, and Discover credit cards and debit cards, as well as cash as forms of payment.
- 1.2.4.2** The Concessionaire shall provide for the option of cash register receipts for all retail sales transactions and shall post a notice to that effect in convenient view of visitors.
- 1.2.4.3** DAS reserves the right to request copies of the transaction registers at any time.
- 1.2.4.4** The payment methods shall be Payment Card Industry Data Security Standard (PCIDSS) compliant.

1.2.5 Human Resources

1.2.5.1 Management Point of Contacts

- 1.2.5.1.1** On an annual basis the Concessionaire shall provide to DAS a listing of the names, titles, and contact information of the Contract Manager, General Manager, and all other management staff overseeing and assigned to the operation.

1.2.5.1.2 DAS shall have approval rights for the replacement of the General Manager. They shall have resume view rights for the Golf Course Superintendent and Food and Beverage Manager. The qualifications and skill levels of any replacement candidates shall be equal to those originally proposed in the selected RFP. Any staff proposed for these positions with lesser qualifications shall require an explanation and justification for such a decision.

1.2.5.2 Experience

On-site management staff shall possess a sufficient level of experience and professional expertise so as to ensure a high-quality operation.

1.2.5.3 Employee Identification

1.2.5.3.1 Staff shall wear identifiable uniforms including a name badge so they are easily distinguishable as concession employees.

1.2.5.3.2 The Concessionaire shall develop procedures to ensure that once employees are terminated they no longer have access to the Concessionaire's uniform or other business forms of identification.

1.2.5.4 Employee Code of Conduct

Within 60 days of the Contract commencement, the Concessionaire shall develop and share with DAS a detailed code of conduct for the operator's employees, including how the employees shall adhere to the Concessionaire's standards for appearance, customer service, conduct while on the park, representation of the DAS, and general compliance with all applicable laws and regulations. Additionally, the Concessionaire shall include a provision for what measures will be implemented in the event an employee breaches the code of conduct.

1.2.5.5 Employee Hiring Procedures

1.2.5.5.1 Concessionaire shall hire a sufficient number of staff to ensure consistent, high-quality visitor services and facility maintenance throughout the operating season.

1.2.5.5.2 The Concessionaire shall establish hiring procedures that include appropriate background checks for all applicants pursuing employment. This factor shall be advertised in all hiring announcements. Background checks shall be required to be performed every five years for full time returning employees and every 12 months for seasonal employees (unless a background check has been performed in the prior twelve months).

1.2.5.5.3 If the Concessionaire identifies through the updated background check that there is an active warrant or registration as a sexual or violent offender, they shall immediately notify DAS and begin a

personnel action based upon the Concessionaire's human resources policy.

1.2.5.5.4 The Concessionaire shall provide its employees with a statement of its policies regarding drug and alcohol abuse, and conduct educational program(s) for its employees to deter drug and alcohol abuse. The Concessionaire shall establish an appropriate employee drug-testing program, which shall test via methods and for substances consistent with the general practices followed in similar businesses. Positive drug tests shall result in immediate removal from any safety-sensitive position.

1.2.5.5.5 The Concessionaire shall provide DAS with a written summary of its drug testing activity twice yearly on June 30th and October 30th.

1.2.5.6 Staff Training and Orientation

1.2.5.6.1 The Concessionaire will be required to provide an employee handbook to all employees that identifies policies and regulations of the Concessionaire and the DAS. Within sixty days of Contract commencement, a copy of the employee handbook shall be provided to the DAS. Any updates to the handbook shall be sent to the DAS with identification of items that have been updated. The code of conduct mentioned in Part II.F.4 above shall be included in the employee handbook.

1.2.5.6.2 All Concessionaire employees assigned to the operation shall be sufficiently trained to perform their assigned tasks in a safe and competent manner. At a minimum, employees shall be trained in Customer Service, Resource Management, Safety, Interpretation of the Park's Natural Resources, Sanitation, Workman's Comp/Accident Training, and General Orientation to the local area.

1.2.5.6.3 On an annual basis, the Concessionaire shall provide to DAS a description of the specific training courses that assigned employees shall complete, the timing and frequency of when training is provided, and the processes for documenting staff completion of said training.

1.2.5.6.4 DAS shall require the Concessionaire to have requisite staff attend controlled burn/fire safety training to ensure that they are versed in IDNR policies. The schedule of these classes and number of employees desired to attend shall be determined on an annual basis. There shall be no costs for this training.

1.2.5.6.5 The Concessionaire shall ensure that all employees meet all applicable local and State health standards and requirements.

1.2.5.7 Vehicle Operation License

Employees driving concession vehicles shall have a valid operator's license for the size and class of vehicle being driven.

1.2.5.8 Employee Housing

1.2.5.8.1 Concessionaire may submit for review and approval by DAS and USACE employee housing located within the LAA.

1.2.5.8.2 In the case of inclement weather, DAS shall permit the General Manager to make determinations as to the need for staff to temporarily reside on site and shall consider the use of complimentary guest rooms.

1.2.6 Evaluations/Inspections

The Concessionaire shall establish methods to ensure that they can comply with the consistent delivery of the requirements of the Operating and Maintenance Plan. Within 120 days of Contract commencement, the Concessionaire shall provide to DAS the evaluation tools and performance monitoring methods that shall be employed to ensure these requirements can be fulfilled.

1.2.7 Advertising and Promotion

1.2.7.1 The Concessionaire shall provide to DAS its annual marketing plan sixty days before the beginning of the next operating year.

1.2.7.2 All promotional materials should be effective and appropriate for a broad range of economic, ethnic, and age strata. The Concessionaire's marketing and advertising should support the mission of DAS as well as the specific purpose and unique qualities of Honey Creek Resort State Park. Offensive or poorly-designed promotions shall be discontinued immediately if deemed inappropriate by the DAS.

1.2.8 Accessibility Guidelines and Compliance

Current Federal and State of Iowa regulations pertaining to ADA/ABA Accessibility Guidelines shall be integrated into the concession operations. Concession management staff shall ensure effective communication with all visitors with disabilities, including persons with impaired vision or hearing, so that all visitors may be adequately informed about accessible services, activities, and facilities within the LAA.

1.2.9 Protection and Emergency Services

1.2.9.1 General

The Concessionaire shall manage its employees in a way that minimizes the potential for conflicts to escalate and limits the need to involve law enforcement personnel in minor situations. However, when the Concessionaire believes a law has been violated, it shall contact local law enforcement.

1.2.9.2 Emergency Medical Care

The Concessionaire should immediately report medical emergencies by calling 911.

1.2.9.3 Reporting Medical Incidents

The Concessionaire shall report all medical, insurance claims, and workman's comp incidents to the DAS as soon as possible but no later than seven days.

1.2.9.4 First Aid

1.2.9.4.1 The Concessionaire shall ensure that there is an appropriate number of employees trained in first aid, including CPR, on staff within the resort property to render aid at any time of day or night.

1.2.9.4.2 The Concessionaire shall ensure that a necessary amount of Automated External Defibrillators exist on property and are working properly.

1.2.9.5 Emergency Communications System

The Concessionaire shall be responsible for maintaining a working emergency communications system that allows for communication between staff and guests. DAS shall require that the Concessionaire's emergency communication includes coordination with the National Oceanic and Atmospheric Administration (NOAA) system for tornado and other severe weather events.

1.2.9.6 Flooding and/or High Water on Rathbun Lake

The Concessionaire shall be responsible for instituting the Flood Management Plan outlined in Attachment C-12 when the level of Rathbun Lake exceeds 925 feet above MSL. These procedures shall be conducted in coordination with DAS.

1.2.10 Smoking

Smoking is prohibited in all concession buildings and at the resort beach.

1.2.11 Purchasing

The Concessionaire is encouraged to incorporate the use of environmentally-friendly materials. Additionally, the Concessionaire shall endeavor to source local products where feasible.

1.2.12 Risk Management

The Concessionaire is responsible for providing a safe and healthy environment for its employees and visitors. To ensure that this occurs, the Concessionaire shall be responsible for ensuring the following inspections and plans are in place. The DAS has the right at any time to review the process, procedures, and compliance with these risk management areas.

1.2.12.1 Hazard Mitigation and Safety Inspections

- 1.2.12.1.1** The Concessionaire shall perform detailed safety inspections at least annually, documenting the inspection results in a pre-approved format, and presenting the documented findings to the DAS.
- 1.2.12.1.2** Health inspections shall be conducted as required by County ordinances.
- 1.2.12.1.3** A hazard prevention, safety, and health inspection shall be conducted prior to the high-visitation season in accordance with OSHA requirements of 29 CRF 1910.
- 1.2.12.1.4** All safety and health issues should be thoroughly documented, and any identified corrective actions shall be implemented as quickly as possible.
- 1.2.12.1.5** The Concessionaire shall submit a hazard prevention plan and update it annually and file with DAS.

1.2.12.2 Emergency Response Plan

- 1.2.12.2.1** The Concessionaire shall submit a plan, and update it annually, identifying specific emergency response procedures for incidents occurring in the LAA in the following categories:
 - Tornado
 - Fire
 - Medical
 - Flood
 - Other
- 1.2.12.2.2** The emergency response plan shall include evacuation procedures for guest and employees, as well as procedures for safeguarding valuables. The plan shall include the identification of the chain of communications and command in the event of an emergency. The plan shall also include the levels of emergency response training staff shall receive and a process for evaluating emergency responses after the required reporting has taken place.
- 1.2.12.2.3** Concession staff shall demonstrate professionalism in all emergency responses, and comply with any applicable DAS policies and procedures, as well as any relevant requirements of the USACOE lease.

1.2.12.3 Security Procedures

The Concessionaire shall be responsible for securing its own Personal Property as well as any DAS Real or Personal Property placed into the care of the Concessionaire for the purposes of performing the Concessionaire's responsibilities under the Contract. The specific procedures for the safeguarding

and security of all such property shall be established in writing and made available for review by the DAS upon request.

1.2.12.4 Acknowledgement of Risk

The Concessionaire shall develop for DAS review a “Visitors Acknowledgement of Risk and Liability” form to be signed by visitors when they use or participate in services that involve a higher than standard degree of risk or liability. On an annual basis, the listing of activities that qualify under this category shall be identified and discussed.

1.2.12.5 Risk Prevention

1.2.12.5.1 As a minimum standard, concession staff shall watch for and seek to prevent the following hazards in the LAA:

- Excessive concentrations of bees, hornets, wasps, ants, and other insects.
- Slippery floors in restrooms and other structures.
- Protruding nails, bolts, wire ends, splinters, etc., on fences, buildings, table seats, or other improvements.
- Loose traffic barriers.
- Hazards on docks, and other water-based resources.
- Toxic plants.
- Broken glass or sharp fragments of metal or plastic.
- Unsanitary conditions, such as dead animals, garbage dumped in open areas, unauthorized effluent dumping, and the like.
- Hazards and objects on walkways, paths, and trails within its LAA.
- Waterpark accidents and hazards.
- Storage and management of pesticides, chemical, and other hazardous materials.

1.2.12.5.2 When risk conditions are identified, concession staff shall implement the following steps:

- Inform all persons who are at imminent risk.
- Take all prudent and necessary actions to protect the public.
- Immediately report the hazard to any other employee(s) that may be affected, or who may be able to help remedy the hazard.
- Remedy the hazard risk as feasible, and document the action taken.

1.2.12.6 Hazardous Materials Storage

1.2.12.6.1 Concession staff may need to store small amounts of materials such as fuel for equipment, paints, pesticides, herbicides, and cleaning/disinfecting products on the park. Materials stored within the LAA shall be stored in designated hazardous materials sheds or approved storage facilities. In all cases, care shall be taken to store all potentially hazardous materials in an approved and properly

ventilated facility and in compliance with all local, state, and federal storage requirements.

- 1.2.12.6.2** The Concessionaire shall have posted spill plans and keep an MSDS manual which contains all data sheets for chemicals stored or in use.

1.2.12.7 Vehicle and Equipment Safety

- 1.2.12.7.1** Vehicles and Equipment shall be in compliance with State and Federal safety standards. This applies to all vehicles, vessels, and equipment used by the Concessionaire for its operations, as well as for vehicles, vessels, and equipment used as rental equipment for visitors.

- 1.2.12.7.2** All concession-owned vehicles, vessels, and equipment shall be clearly identifiable as belonging to or associated with the concession operations.

1.2.12.8 Fire Prevention and Protection

- 1.2.12.8.1** The General Manager shall have a close working relationship with the DAS, including, but not limited to the on-site project manager and the fire district that has the most immediate response jurisdiction for the park. Prevention efforts should be carefully coordinated with the district. At a minimum, the concession operator should have:
- Clear procedures for the notification of the responding district(s).
 - Adequate emergency communications.
 - A current list of Emergency Phone Numbers.
 - Basic fire equipment & proper storage of equipment.
 - An evacuation plan that has been coordinated with the DAS, local fire, and law enforcement agencies.
 - Regular training and review of procedures with park staff.
 - An emergency equipment maintenance schedule.

- 1.2.12.9** An incident report should be used by the Concessionaire to document and record any occurrence that is out of the ordinary (typically related to law enforcement or risk management), or that may involve the need for follow-up at a later time. Typical examples of incident report types include accidents, injuries (or deaths), theft, vandalism, natural disaster, all 911 calls to emergency services agencies, property damage, and any incident that may involve an insurance carrier (i.e. civil liability). If in doubt, the Concessionaire should write the report. Such reports are to be shared with the on-site project manager within 24 hours.

1.2.13 Operational and Financial Reporting

1.2.13.1 Operational Reports

The following reports shall be provided at the frequency identified:

1.2.13.1.1 Transition Period Operating Budget

The Concessionaire shall review the preceding management company's proposed operating budget. The Concessionaire shall have the right to review and comment on the first quarter of the proposed operating budgets projections. They shall complete this review within 30 days of Contract commencement and submit a revised budget for DAS review.

1.2.13.1.2 Annual Reports

- Management Listing: including name, email, cell, and land line information for all management staff. This listing shall be provided on an annual basis and updated as changes occur.
- Staff listing: listing of all Concessionaire staff and identification information. Updated quarterly.
- Vehicle Listing Report: listing of all vehicles used by the Concessionaire including make, model and VIN number.
- Annual Rate Report with list of all established rates.
- Incident Reports.
- Hazard Mitigation and Safety Inspection Annual summary report.
- Emergency Response Plan.
- Annual Staff Training Calendar.
- Visitor Usage Reporting
- Annual Marketing Plan.

1.2.13.1.3 Monthly Reports

Visitor Usage Reporting shall be provided on a monthly and annual basis. The format for this reporting shall be provided by DAS. The following is the listing of the data that shall be requested by land use:

- Overnight Accommodations (e.g. lodging and cottages, RV sites)
 - Rooms/Sites available
 - Rooms/Sites occupied
 - Total rooms revenue by type
 - Average daily room rate by type
- Food and Beverage
 - Number of covers by outlet by meal period
 - Total food and beverage revenue
 - Documentation of number of banquet functions, function size, and total revenue by function
- Retail/Merchandise
 - Number of transactions by outlet
 - Total revenue by outlet

- Interpretive Programs
 - Number of Programs Slots Available
 - Number of Program Slots Attended
 - Number of People Attending Programs
- Total Program Revenue for Fee Based Programs
 - Rental Operations
 - Number of available rental items by type
- Usage of rental items by type
 - Total rental revenue
- Golf Operations
 - Number of rounds by type
 - Number of cart rentals
 - Revenue per round
 - Number of golf tournaments and attendance
- Waterpark Operations
 - Number of patrons
 - Total Waterpark Revenue
 - Total Food and Beverage Revenue
- Spa Operations
 - Number of patrons
- Employee Housing
 - Number of employees housed
 - Employee housing rate

1.2.13.2 Financial Reports

The following reports shall be provided at the frequency identified:

1.2.13.2.1 Annual Reports

- Annual Financial Report: submitted within 90 days after the end of the Concessionaire's accounting year. This report shall include the operating entity's balance sheet, income statement, statement of cash flows, and notes that are an integral part of such financial statements. This report shall be audited by an independent Certified Public Accountant. The income statement shall be organized using the Uniform System of Accounts for each asset type (e.g. lodging, Uniform Systems of Accounts for the Lodging Industry). Included in this report shall be a summary of annual Real Property Replenishment (RPR) Fund, Capital Improvement Fund, Gift Card Account, and Prepayment and Deposit Account.
- Pre-Opening Budget: provided within 30 days of Contract

execution. This budget shall include a detailed itemization by date, item activity, and all pre-opening compensation and supplies.

- Annual Operating Budget: Budget provided 30 days in advance of the end of each accounting year.
- Annual Conservation Fee Use: A report outlining the uses of the Conservation Fee along with the end of year balance shall be provided 60 days prior to the beginning of each accounting year.

1.2.13.2.2 Monthly Reports

The following report shall be submitted to DAS within 15 calendar days after the end of the month.

- Monthly Adjusted Gross Revenue.
- Monthly Cash Flow Statement.
- Monthly Budget Comparison: Comparison of Actual to Budget.
- Monthly Balance of the Capital Improvement Fund, the Gift Card Account, the Prepayment and Deposit Account, the Real Property Replenishment Fund, and the Conservation Fee Account.

1.2.14 Communications

In order to facilitate efficient and safe operations, the Concessionaire may utilize a variety of communications equipment, the extent and complexity dependent upon the scope of the contracted operations. Professional-grade communications equipment enhances services, and benefits the visitor experience by providing an increased level of security and safety. Professional-grade communications equipment typically involves the use of public airwaves, which are monitored and regulated by the Federal Communications Commission. As such, Federal licensing and use guidelines shall be followed. The Concessionaire shall notify the DAS within 30 days as to intent to introduce and strategy of use for Communication equipment and procedures.

1.2.15 Lost & Found Procedures

The Concessionaire shall establish a formal lost and found procedure as a service to visitors. A log shall be kept for all found items, items returned (and to whom), and unclaimed items turned over to the county sheriff as required by Iowa Code chapter 556F.

1.2.16 Reservation Systems

1.2.16.1 Reservation systems for all applicable land uses shall provide for advanced reservations and ensure that all visitors have equal access to a reservation opportunity. The Concessionaire shall accept transient reservations on a 366-day forward rolling basis. Group bookings shall be allowed up to three years in advance.

1.2.16.2 Reservation services shall be available via internet or telephone. If they are available via internet they should be available on a 24-hour real time basis. If available via telephone, the service should be available no less than normal business hours.

1.2.16.3 Confirmation numbers shall be provided to all guests. Policies and procedures regarding check-in and check-out time, deposits (i.e. reservation and damage), information on the conservation fee, cancellations and refunds shall be clearly stated on visitor reservation forms.

1.2.16.4 Within 120 days of Contract commencement, the Concessionaire shall provide to DAS its reservation systems policies and procedures for all assets under reservations. At a minimum these policies shall include a description of the visitor's reservations and registration experience, and policies pertaining to refunds, cancellations, early departures, and liability responsibilities.

1.2.16.5 Accurate, up-to-date reservation and registration systems shall be maintained and made available electronically to DAS upon request.

1.2.17 Point of Sale and Property Management Systems

Concessionaire shall have available a property management and point of sale system. The system shall have secure connectivity access to the internet and be Payment Card Industry Data Security Standard (PCIDSS) compliant with secure database connectivity. Access to systems shall be provided to DAS upon request.

1.2.18 Internet Infrastructure

Complimentary internet access shall be provided within public spaces in facilities. In room internet shall be available in the lodge and all cottage rooms. Variations to this requirement may be presented to the DAS and modified with written approval.

1.2.19 Quiet Hours

The Concessionaire shall establish quiet hours and they should be published and enforced by the Concessionaire. Concessionaire shall provide telephone numbers for security in the event disturbances occur after the posted quiet hours.

1.2.20 Media Inquiries

The Concessionaire shall notify DAS of all media inquiries. If media inquiries are related to DAS assets and their conditions or operations, these enquires shall be vetted with DAS prior to responding.

1.2.21 Required Notices

The Concessionaire shall post the following notice at all cash registers and payment transaction locations:

This service is provided by Achieva, a Concessionaire under Contract with the DAS. The Concessionaire is responsible for conducting operations. Please address any comments to:

Iowa Department of Administrative Services
Attention: Allen Meyer
1305 E Walnut ST
Des Moines, IA 50319
allen.meyer@iowa.gov

1.3 Specific Operating Requirements for Concession Services

1.3.1 Green Practices.

At a minimum, the following green practices shall be offered and encouraged for all guests:

- 1.3.1.1** Recycling in guest rooms and cottages with special containers for paper and cans.
- 1.3.1.2** Towel and sheet program, encouraging guests to reuse linens when possible.
- 1.3.1.3** Eco-Friendly amenities.
- 1.3.1.4** Electronic receipts and check in materials to reduce paper use.
- 1.3.1.5** Special parking for guests who drive energy efficient vehicles.
- 1.3.1.6** Other strategies that may be collectively developed by DAS and the Concessionaire.

1.3.2 Overnight Accommodations

1.3.2.1 Season/Hours of Operation

The Lodge and Cottages shall be available for rental 365 days per year.

1.3.2.2 Overnight Lodging

1.3.2.2.1 Guest Rooms – Lodge and Cottages

- Room Inventory
 - The Concessionaire shall maintain the required inventory of ADA rooms.
 - The Concessionaire shall provide up to 4 lodge rooms as pet friendly rooms. The Concessionaire shall provide up to 10 cottages as pet friendly. These lodge rooms shall be located in the same area and provide for easy access to the outside. The Concessionaire shall ensure that pet friendly lodge rooms and cottages shall be maintained and cleaned to the same quality standards as all other lodge rooms and cottages.
- Signage
 - All rooms shall be numbered with easily distinguishable numbers.
 - Directional Signage shall be provided on the back of each door that provides information regarding emergency exit and evacuation. This shall include information on where the individual guest room is located in relation to the closest exit.
 - Rates shall be prominently posted in a suitable location and made available at the guests request at the registration desk.
- Security
- All guest room doors shall be equipped with a functioning locking door. Doors shall have a double locking system from inside. Doors

and locks should be frequently inspected to ascertain operability. All sliding doors shall be equipped with hook lock as well as secondary locking device. If any guest room entrance door locks are inoperable, they shall be placed "out of order" and not rented until the lock is repaired.

- All guest room entrance doors shall be equipped with a chain or fixed night latch-type door guard. Auxiliary locks shall be provided for all exterior and connecting doors. Locks can be either a safety latch or other approved non-key locking device (chain).
- One way view ports, mounted 5 feet above the floor are required on exterior doors only, unless there are no side windows.
- All guest rooms with interconnecting doors shall have solid-core or metal doors equipped with a lock that is self-locking and a one-inch bored-in deadbolt lock on each door. A knob on the guest room side of the interconnecting door with a tamper-proof plate on the other side of the door complies with the self-locking requirement.
- Exterior Doors, Windows and Screens
 - (i) All doors, windows and screens shall be clean, in good working condition, and sufficiently tight to preclude the entry of rodents and insects. Exterior doors are to be well maintained and have limited scratches, scuffs, or marks. All guest room windows that open shall provide a lock that secures the window in a closed position.
- Safety
 - An operational single-station smoke detector is required in each guest unit.
 - Working Carbon Monoxide (CO) detectors shall be present in all guest rooms that incorporate gas or oil-powered heating equipment, or in rooms with fireplaces, etc. Hard wired CO detectors are preferred.
 - Each electrical outlet adjacent to sinks or other water sources shall be connected to a working ground fault interrupter.
 - Notification shall be provided in each guest room on how to obtain emergency assistance, such as fire, police, ambulance, and medical.

1.3.2.2.2

Guest Room Amenities - Lodge

- The following shall be provided for in each guest room:
 - Clock Radio
 - Luggage Rack
 - Coffee/Tea Maker and Supplies
 - Iron & Ironing Boards
 - Trash Cans/Recycling
 - Guest Room Directory
 - "Do Not Disturb" Hang Tags or other types of hang tags are

required for all rooms.

- Ice Bucket/Trays/Cups
- Clothes Storage- Hang Space. Closet/clothes hanger area shall be clean and neat and shall include at least eight matching heavy gauge plastic or wood hangers. No wire hangers are permitted.
- Televisions. At a minimum, one 32-inch color flat screen TV shall be provided in each room. Televisions shall be connected to a master system or cable to provide a good quality picture. Each television shall have a fully-functioning remote control.
- Guest Room Internet. Complementary in room internet is required.
- Cribs/Rollaways. Shall be available upon request and shall be clean and fully operational. They shall be delivered with clean and appropriately sized linens and blankets.
- Distressed Passenger Amenities. Additional complimentary toiletries shall be available on site to guests, upon request, 24 hours daily, free of charge. The following items, if not provided in guest rooms, shall be available at the registration or front desk: razor, shaving foam, toothbrush, toothpaste, comb, sanitary napkins and sewing kits. The availability of these items should be noted in the in-room guest service directory.
- In-room refrigerators must be available upon request. A charge may be levied for the refrigerator.

1.3.2.2.3

Guest Room Amenities Cottages

The following shall be provided in each cottages:

- Kitchen Area
 - Each kitchen shall be equipped with up to fourteen (14) place settings that relate directly to the occupancy of the unit, a coffee maker, a toaster, and an adequate inventory of pots and pans and serving utensils. An existing inventory of items is provided Attachment C-4.
 - Dishwasher, stovetop, refrigerator, microwave, and oven shall be cleaned at the end of each visit and shall be fully operational.
- Living Area. A lamp, living room chairs, side table, couch and a minimum of a 32 inch flat screen TV shall be shall be provided in each unit to accommodate the capacity of the unit.
- Dining Area. Tables and Chairs shall be cleaned after each visit and shall be inspected, repaired, and replaced on a schedule basis to eliminate worn or broken structures.
- Exterior Picnic Tables and Grills. Picnic tables and grills shall be cleaned and wiped down after each visit and replaced when worn or broken.

1.3.2.2.4

Guest Room Surfaces and Furniture- Lodges and Cottages

The following shall be made available in each room:

- Lighting. A minimum of three well positioned light fixtures shall be provided in each room to provide a high level of illumination. One

wall or overhead and two bedside lamps shall be provided. All bulbs shall be CFL and provide an equivalent of 13 watt pigtail CFL

- Climate Control

- Guest bedrooms shall have individually controlled thermostats and Cottages shall have a hall thermostat to provide for guest controlled heating and cooling. Combination Air Condition and Heating units shall be in place for the Lodge and the Cottages in line with PTeck product currently existing. Units shall be clean, well-maintained, and operate quietly.
- Cottage rooms shall have functioning thermostats for guest controlled heating and cooling. Units shall be clean, well maintained, and operate quietly.

- Furniture

- Guest rooms shall be equipped with free standing, well positioned furnishings that are attractive, comfortable, and free from dust, lint, finger marks, smudges, stains, and scratches. Furniture should be inspected, repaired, or replaced on a scheduled basis to eliminate worn finish or torn upholstery. Furniture shall be routinely inspected for the presence of insects and bedbugs. At a minimum a dresser, guest seating and a TV stand shall be provided.
- Guest rooms shall be color coordinated, design consistent, and in clean and serviceable quality, consistent with a three- to four-star lodging experience.
- Lodge Bed frame and Headboards. Each either double-queen or single-king bedded room shall be furnished with a fitted bed frame and headboard. Bed frames and headboards shall be dust free and in good condition. Headboards shall be regularly inspected for the presence of bedbugs and if evidence is noticed, shall be treated in place, according to current best management practices.
- Lodge Bedding. Each bed shall be made up with triple sheets, one mattress pad, a minimum of four pillows with pillow cases, a blanket, and a bedspread. All bedding shall be uniform, clean, free of stains rips, tears, and be commensurate with the size of the bed.
- Cottage Bed Frame and Headboards. Queen beds shall have frames and support bars and headboards. Bunk beds in cottages shall have frames and be made of wood.
- Cottage Bedding. Each queen bed shall have as a minimum a protective mattress encasement, mattress pad, fitted sheet, flat sheet, blanket and coverlet and three pillows. Cottage bunk beds shall have two pillows.
- Mattresses and Box Springs. Mattresses and box springs shall be of good quality and in good condition. Mattresses shall be clean, odorless, non-sagging, and free of lumps and protruding tufts, sized to fit the bed frame or springs, and routinely rotated. Mattress and box springs shall be regularly inspected for the

presence of bed bugs and if evidence is noticed, shall be treated in place, according to current best management practices.

- Linen/Mattresses and Other Furniture Replacement. All guest room linens shall be replaced every three to five years, or more frequently if use requires. All guest room furniture shall be replaced every five to seven years.
- Open Flame Equipment/Fireplaces. Woodstoves, fireplaces, or other open flame heating equipment shall be clean and in good operating condition. Equipment shall be cleaned and inspected on a periodic basis and before each occupant is checked in. Clearance (distance from combustible materials, including partitions and walls constructed with wood studs) for wood and oil stoves as well as fireplaces and other heating sources shall be at least the recommended distance as specified by the local fire agency authority. Adequate child protection devices such as screens, doors, etc. shall be present and in good condition. All woodstoves, fireplaces shall include instructions, appropriate fire tools, and precautionary notices for the guest information.
- Balconies/Patios and Other Outdoor Amenities. Any balconies and/or patios shall include adequate seating. Furniture shall be constructed of good quality durable materials suitable for exterior use.

1.3.2.2.5

Guest Room Bathrooms-Lodges and Cottages

- Amenities. Each room shall contain at a minimum a three-piece amenity package: shampoo, conditioner, or shampoo/conditioner combination; moisturizer lotion; and body soap (liquid or bar) provided in individual packages or bulk dispensing. If bulk dispensing is provided, individual packages shall be available upon request and a note/sign shall be added to this effect in the bathroom. If bulk dispensing is used, dispensers shall be flushed and cleaned at least once per quarter or more as needed.
- Facial/Toilet Tissue
 - Facial tissue shall be of standard size.
 - Each bathroom shall provide two rolls of two-ply tissue.
- Hair Dryer. Each room shall have a clean and operable hair dryer.
- Floor Coverings, Walls and Ceilings. Areas shall be free from defects, dirt, smudges, mold, mildew, cobwebs, and hair.
- Toilets. Low-flow toilets shall be cleaned and sanitized daily and be unpitted and free of cracks and stains. Toilet seats and lids shall be clean and sanitary, with no chipped or worn surfaces, bare wood, or other composition visible. Seats and lids shall be free of discoloration or stains and be securely fastened to the toilet seat and fit the shape of the toilet.
- Mirrors. There shall be a mirror in the lodge rooms and also in each cottage bathroom. The mirror shall be securely mounted, clean, unpitted, and free of cracks.

- Ventilation. All bathrooms areas shall be adequately ventilated.
- Lighting. Guest room bathrooms shall provide an overall high level of illumination. Fixtures generally include one central light fixture in a decorative cover. All lighting and covers shall be clean and in good working condition.
- Linens. Clean, 100% quality terry cloth wash cloth, face, and bath towels shall be provided in good condition in each bathroom. Towels are medium weight and size, with medium absorbency. Bath mats shall be provided in similar weight and grade to towels. There shall be at least four hand, face and bath towels per room or in quantities based on room pillow count.
- Nightlight. Each bathroom or bathroom area shall have a functioning nightlight, which may be integrated in a hair dryer or light switch.
- Shower/Tubs/Sinks. Areas shall be clean, unspotted, and free from stains. Surfaces shall be sanitized daily. Tubs/Shower shall be equipped with non-slip mat or have nonskid surfaces. Shower curtains and/or doors shall be untorn, clean, and free of mold and mildew and of sufficient length to prevent water from flowing onto the floor. All sinks and tubs shall be equipped with clean and functioning stoppers. Faucets shall be of designs to be low flow, securely installed, and properly sealed and grouted.

1.3.2.3 Ice, Vending, and Coin Laundry

1.3.2.3.1 Ice and Vending. One approved self-service ice machine and one approved soft drink machine shall be available for every 60-room block. Ice shall be available free of charge to guests 24 hours a day and its location shall be well identified. Any out of order machines shall be appropriately signed (no handmade signs) and include where the guest shall be able to find a functioning machine.

1.3.2.3.2 Coin Laundry. A minimum of two coin washers and two dryers shall be available within the lodge. Vending machines providing detergent and fabric softener shall be available in the laundry room, or sales should be offered through the front desk.

1.3.2.4 Housekeeping Services

1.3.2.4.1 Cleaning Service and Frequency

- Daily Service. Every occupied room (stayovers and checkouts) shall be serviced daily unless specified otherwise by a guest. At a minimum, each guest room shall be cleaned with complete bed and bath linen changes between stays.
- Maintenance Requests. Any maintenance requests/issues noted by guests shall be dealt with promptly, but no later than the end of the day.

- Deep Cleaning. There shall be an annual deep cleaning program established. Deep cleaning services includes mattress rotation, carpet shampooing, edge vacuuming, shower liner washed, upholstery vacuuming and cleaning, washing and cleaning of draperies, and laundering of pillows, blankets, and bedspreads.
- Inspection. All check out rooms and a representative sample of stay over rooms shall be inspected daily for housekeeping services.
- ADA room Housekeeping Services. ADA rooms should be left set-up for accessibility after each check-out (e.g. shower heads lowered, mirrors pulled forward, chairs pulled away from HVAC units). A courtesy call should be placed or personal visit made within an hour of check- in to enquire if the guest needs any changes or assistance in the room.

1.3.2.5 Other Disability Services

Employees shall assist visually impaired guests at registration by reading the registration information to the guest and by providing a written welcome and instructions for registration in braille. Guests shall be informed of the Telecommunications Device for the Deaf (TDD) phone and other assistance devices available. At least one TDD shall be available at the front desk at all times and one additional TDD shall be available for use in guest rooms upon request. If visual fire alarm notification is not permanently installed in the rooms for guests with hearing impairments, portable units shall be available at the front desk.

1.3.2.6 Guest Registration

1.3.2.6.1 Hours of Operation. Check-in and registration services are provided 24 hours per day. If the registration or front desk is closed for certain hours, an alternative method to facilitate check-in (bell to alert night audit or other back of house staff; message board to inform guest of alternative check-in method, etc.) shall be provided.

1.3.2.6.2 Check-In. Check-in shall be completed promptly in a friendly and professional manner. Guest wait times should be limited to 10 minutes during peak periods; and 1 to 2 minutes during other periods. Front desk staff shall acknowledge any waiting guests and demonstrate a sense of courteous urgency in concluding transactions when guests are waiting. Guests should be able to check-in from at least 4pm on day of arrival.

1.3.2.6.3 HCR Orientation Material. HCR specific material shall be available upon check-in, to include brochures, sustainability practices, maps, newsletters, and special notices. Upon request, additional information about local businesses, places of interest, major highways, airports, restaurants, places of worship, etc., shall be provided.

1.3.2.7 Check-Out

Guests shall be acknowledged as soon as possible with eye contact and a warm friendly greeting. Guest check-out wait times should be limited to 10 minutes during peak periods, and 1 to 2 minutes during other periods.

1.3.2.8 Compliance with State & Local Regulations

Overnight operations may be subject to additional local and State laws pertaining to hotel/motel operations. The Concessionaire shall be in compliance with stated laws.

1.3.3 Food and Beverage

1.3.3.1 Season/Hours of Operation

1.3.3.1.1 The chart below outlines the hours of operation by season for each of the food and beverage operations. On an annual basis, Concessionaire may submit revised operating hours for review and approval by DAS, which approval shall not be unreasonable withheld, conditioned or delayed.

Location	Months	Hours and Days of Operation
Resort Restaurant	10/15 to 5/30	7:00 am to 9:00 pm (Wkdy)
		7:00 to 10:00 pm (Wknd)
	6/1 to 10/14	7:00 am to 10:00 pm (Wkdy)
		7:00 am to 11:00 pm (Wknd)
Resort Lounge	10/15 to 5/30	11:00 am to TBD (Wkdy)
	6/1 to 10/14	11:00 am to 1:30 am (Wknd)
Resort Waterpark Snack Bar	6/1 to 9/7	11:00 am to 7:00 pm (F/S/SN)
	9/8 to 5/30	Not open Monday-Thursday
Resort Golf Course Snack Bar	+/-3/15 to 10/30	F: 4:00 pm to 7:00 pm S: 11:00 am to 7:00 pm SN:11:00 am to 4:00 pm

1.3.3.1.2 Food Service Types: The following is a listing of the types of food service that shall be provided under this Contract.

Location	Type of Food Service
Resort – Restaurant	Family casual
Resort Lounge	Bar and Table Service inside and outside
Resort – Waterpark	Snack Bar
Resort Golf Course	Snack Bar
Resort Banquets	Buffet, Sit down, and Reception

1.3.3.2 Management

The Concessionaire shall ensure availability of a unit manager or other key personnel in each food service outlet during all operating hours.

1.3.3.3 Table Appearance

Tables, chairs, and other restaurant furnishings shall be clean and free of damage or excessive wear. Upholstery shall be free of rips, tears, and stains. The Concessionaire shall set tables properly for the type of service provided, at a minimum with salt, pepper, sugar, and sugar substitutes.

1.3.3.4 Banquet Equipment and Supplies

The Concessionaire shall have a supply of banquet equipment that will allow for service of full occupancy of banquet and meeting space. Linen shall be free from rips, tears, and stains. Equipment should be functioning and not result in hazardous service standards for staff and/or guests.

1.3.3.5 Menu Offerings

1.3.3.5.1 The Concessionaire shall ensure that all menu items and pricing are visible, easy to read, available in printed form, and in adequate supply.

1.3.3.5.2 Menus shall provide for a wide variety of visitors including healthy choices, vegetarians, children, and those with medical restrictions. Menus shall not be ripped or torn and should be cleaned daily.

1.3.3.5.3 Banquet menus shall be developed to meet/address all meal periods. Clients shall have the option for designing alternative menus that can be appropriately serviced by the Concessionaire.

1.3.3.6 Health and Safety Standards and Code Compliance

All food preparation, storage, and dishwashing shall conform to the most recent of editions of local, state and federal regulations.

1.3.3.7 Food-Handling Service and Procedures

1.3.3.7.1 The Concessionaire shall serve food at the appropriate temperature.

1.3.3.7.2 The Concessionaire shall document its compliance with public health operating procedures, processes, personnel responsibilities, and training in a formal food safety management plan that covers safe food storage, handling, and preparation.

1.3.3.7.3 The individual responsible for food service operations shall hold certification as a ServSafe Food Protection Manager by the National Restaurant Association or other equivalent entity.

1.3.3.8 Point of Sale

Sufficient numbers of point of sale stations are staffed and available to prevent undue wait for payment of food and beverage items.

1.3.4 Alcohol Service

- 1.3.4.1** Concessionaire shall be responsible for providing and maintaining all alcohol licenses.
- 1.3.4.2** When alcohol is served, all applicable Federal, State, and local laws concerning liquor service shall be observed.
- 1.3.4.3** The following locations are approved for alcohol service including the types of alcohol allowed to be served.

Location	Type of Alcohol Service Allowed	License Required
Resort Restaurant	Spirits, Beer, Wine	On Sale
Resort Bar	Spirits, Beer, Wine	On Sale
Resort Retail Operation	Spirits, Beer, Wine	Off-Sale
Waterpark Snack Bar	Spirits, Beer	On Sale
Golf Course Snack Bar	Spirits, Beer	On Sale

- 1.3.4.4** The Concessionaire shall provide to DAS its policies and procedures for verifying age, dispensing, package sales, and on- and off-premise consumption.
- 1.3.4.5** Retail/Merchandise.
- 1.3.4.6** **Season/Hours of Operation**

The chart below outlines the location of where retail shall be offered and the hours and days of operation by season for each of the food and beverage operations. Within 90 days of award of Contract, Concessionaire may submit revised operating hours for review and approval by DAS.

Location	Months	Hours and Days of Operation
Resort Retail	1/1 to 12/31	8:00 am to 8:30 pm
Golf Course Retail	+/-3/15 to 10/30	Open when clubhouse is open

- 1.3.4.7** The central emphasis for the DAS in retail marketing of products at the park is the enhancement of visitor experiences. Specifically, all products and services offered under this Contract shall support the purpose and theme of the Park where such services are offered.
- 1.3.4.8** The Concessionaire shall provide a broad range of retail/merchandise items for sale in the locations identified within the Contract. Items deemed inappropriate, offensive, distasteful or be prohibited by the DAS. Themes and artwork on souvenirs and clothing shall be appropriate for the park setting. Products, goods, souvenirs, snacks, groceries, etc. will be professionally displayed in an orderly and attractive fashion in sections of the available retail space by specific groups (departments).
- 1.3.4.9** The Concession shall ensure that retail and merchandise pricing is fully labeled and easily understood by visitors.

1.3.4.10 Firewood Sales

1.3.4.10.1 Emerald Ash Borer - Federal Quarantine

In March 2014, the entire state of Iowa was placed under a federal firewood transport quarantine. It is illegal to move all ash products and all hardwood firewood from a quarantined area into a non-quarantined area.

1.3.4.10.2 Labeling

All firewood that is sold or distributed by the Concessionaire shall follow all firewood labeling requirements established by the Iowa Department of Agriculture and Land Stewardship in 21 IOWA ADMINISTRATIVE CODE 46.16.

1.3.5 Marinas/Courtesy Slips

1.3.5.1 Season/Hours of Operation

The chart below outlines the location of what marina services shall be offered and the hours and days of operation by season for each. Within 90 days of award of Contract, Concessionaire may submit revised operating hours for review and approval by DAS.

Location	Months	Hours and Days of Operation
Courtesy Slips	+/-3/15 to 10/30	24hours/day

1.3.5.2 Courtesy Docks

Boats in the courtesy dock may not exceed assigned slip designed capacity. Total length and beam include all temporary and permanent appurtenances.

1.3.5.3 Dock Checks

The Concessionaire shall ensure that the courtesy dock does not have nails that are protruding, decking has not lifted or otherwise warped, cleats are holding, boats are not bumping, hoses are hanging, utilities are in working order, and that bow pulpits and anchors are not overhanging the dock causing danger to people walking by.

1.3.5.4 Boating Safety and Regulatory Compliance

1.3.5.4.1 The Concessionaire shall have established procedures available for review by DAS and U.S. Army Corps of Engineers for how all water-based operations will be in complete compliance with U.S. Coast Guard regulations for safety. The procedures should be documented and outline how safety procedures and standards shall be implemented by concession employees.

- ### 1.3.6 Tour Operations (if approved).

1.3.6.1.1 Any third party tour concession operations that the Concessionaire contracts with to undertake on and off boarding within the LAA of this Contract shall have liability insurance to cover this activity.

1.3.6.1.2 All Concessionaire equipment used in tour operations shall be safe, clean, well maintained and in good condition and of the proper size and configuration to accommodate visitors. If equipment requires licensing, all licensing shall be up to date.

1.3.6.1.3 All Concessionaire tour visitors shall be briefed at the beginning of each trip in regards to safety requirements.

1.3.6.1.4 The Concessionaire shall ensure that staffing ratios and competencies for tours shall meet those outlined within tour industry for which the tours are offered.

1.3.7.1 Services and Facilities

- ### 1.3.8 Golf Services

Contract, Concessionaire may submit revised operating hours for review and approval by DAS.

Location	Months	Hours and Days of Operation
Golf Course	+/-3/15 to 10/30	Sunrise to Sunset
Golf Course Driving Range		
Tournaments		
Lessons		
Golf Course Food Service		
Golf Course Retail Operation		

1.3.8.2 Management

The Concessionaire shall have employed a full-time head golf professional. This person shall have teaching experience and be an active member in the Professional Golfers' Association of America. Golf Course Maintenance shall be overseen by an individual certified by the Golf Course Superintendent Association of America

1.3.8.3 Golf

1.3.8.3.1 Golf Tee Times

- A centralized automated reservation system shall be in place for accepting tee times.
- Tee times shall be available with a booking window commensurate with the competitive market conditions.
- Tee times shall be structured to accommodate an acceptable level of walk on demand during the week and weekend.

1.3.8.3.2 Cart Rental

The Concessionaire shall supply a fleet of a sufficient number of both golf carts (gas and/or electric) and manual pull carts. All carts offered for rental shall be maintained in good condition, include GPS, and be replaced on a cycle of not less than three years over the length of the Contract term.

1.3.8.3.3 Driving Range

- The golf driving range shall be free of trash.
- Hitting surfaces shall be well maintained.
- The Concessionaire shall offer an ample supply of range golf balls. Range golf balls shall be cleaned on a regular basis.
- Token operated ball dispensing machines (if offered) shall be in working order.

1.3.8.3.4 Lesson Program

- The Concessionaire shall respond to market needs regarding lesson programs that incorporates all skill levels, offering both individual and group lessons, and shall provide services to all ages and genders.

- The Concessionaire teaching professionals shall have nationally recognized credentials/certifications from the Professional Golfers Association of America.

1.3.8.3.5 Tournaments

On an annual basis, the Concessionaire shall submit to DAS a Tournament Plan. The plan shall include the following items:

- Maximum number of Tournaments.
- Targeted non-peak times for Tournaments.
- Proposed pricing structure.
- Details on strategies to provide access to the non-tournament public for use of course during tournaments.

1.3.8.3.6 Pro Shop

- Apparel, Golfing and Golf-Related Equipment. The Concessionaire shall carry a selection of apparel, golfing, and golf-related equipment with the focus on items necessary for daily play, e.g., balls, gloves, tees, hats, etc. The intent of this visitor service is to provide an appropriate selection of items, which represents a range of prices and quality levels.
- Gifts and Souvenirs. The retail area may offer items that have a direct relationship to the Park or the Golf Course, its environs, history, or other related natural or cultural topics. This shall provide visitors with opportunities to buy memorabilia of their visit while at the same time obtaining information or educational messages related to the Parks' resources.

1.3.8.3.7 Food and Beverage Service

Concessionaire shall provide snack bar services.

1.3.8.3.8 Clubhouse Public Areas and Restrooms

- The Concessionaire shall ensure facilities are maintained and cleaned on a regular schedule and provide clean, sanitary conditions with adequate amounts of hot water.
- Restrooms and showers shall be cleaned according to a posted schedule, but at least twice daily.

1.3.9 Activities Center and Interpreter Activities

1.3.9.1 The Concessionaire shall be responsible for managing and delivering interpretive programs out of the Activities' Center.

1.3.9.2 The Concessionaire shall develop and deliver to DAS on an annual basis its Activities Center Program Plan. This shall include a listing of programs and target markets, as well as fee vs. non-fee programs. Programs shall be oriented to all age cohorts but a large focus shall be on youth and families.

1.3.10 RV Park and Campground

1.3.10.1 Inventory

- 1.3.10.1.1** Campsites shall be available only to Recreational Vehicles.
- 1.3.10.1.2** All RV sites shall have water and electric hook ups.
- 1.3.10.1.3** At least one table and one grill/fire containing device shall be available at each site, which shall be clean, well maintained, and repaired as necessary to assure proper functioning.
- 1.3.10.1.4** All RV sites shall provide appropriate ingress and egress access.
- 1.3.10.1.5** Camping shall be limited to no more than 30 days in any 60-day consecutive period. Campers must vacate the campground for a minimum of three nights before returning to camp again.

1.3.11 Water/Sewer and Electric

- 1.3.11.1** All hook ups (water, electric sewer, and/or phone cable) shall be in good working condition.
- 1.3.11.2** All sewers shall have commercial caps.
- 1.3.11.3** All electrical outlets shall be hard wire feeds with covers connected to a working ground fault interrupter. All electrical boxes have covers and water risers are at least 6' above the ground and not located on the front of electrical panels.
- 1.3.11.4** All electrical service panels boxes serving hook ups that do not have a faceplate covering exposed wires shall be locked.
- 1.3.11.5** All water lines shall be operational with working spigots and equipped with operational back flow preventers sized for the size of the line.
- 1.3.11.6** Sanitary Disposal Stations shall be provided as required by NFPA 1194 and shall be properly maintained.

1.3.12 Waterpark

1.3.12.1 Season/Hours of Operation

The chart below outlines the location of what services shall be offered and the hours and days of operation by season for each. Within 90 days of award of Contract, Concessionaire may submit revised operating hours for review and approval by DAS.

Location	Months	Hours and Days of Operation
----------	--------	-----------------------------

Resort Waterpark	5/30 to 9/7	10:00 am to 9:00 pm Adult swim on F/S 9:00 pm to 10:00 pm
	9/8 to 5/29	M-F: 4:00 pm to 9:00 pm S: 10:00 am to 9:00 pm SN: 10:00 am to 4:00 pm

1.3.12.2 Signage

Posted signs shall be provided at the entrance to the Waterpark that state the user's responsibility and conveys appropriate rules and regulations.

1.3.12.3 Access

1.3.12.3.1 Daily wristbands for all guests are required.

1.3.12.3.2 Children under age of 16 must be accompanied by an adult.

1.3.12.3.3 Provisions should be made to prevent customers from entering the water slides at any points other than the designated entry access points.

1.3.12.4 Guest Conditions

1.3.12.4.1 Guests shall be checked for proper swim wear and compliance with any manufacturer's-required height and weight limitations Attire shall not have any ornamentation that can damage slides or cause injuries.

1.3.12.4.2 Guests who show signs of drug or alcohol use shall not be permitted to use slides.

1.3.12.4.3 Infants and toddlers in diapers and children not potty trained must wear swim diapers that shall be available at the gift shop, front desk, or snack bar.

1.3.12.4.4 No food or drinks shall be allowed in the immediate area of flumes, pools, or on the decks, stairs, and walkways surrounding the pool. Food and beverage shall be confined to the Waterpark snack bar areas. Trash containers shall be provided to keep litter off the decks, walkways, and pool.

1.3.12.5 Lifeguards/Attendants

1.3.12.5.1 A minimum of one Lifeguard monitoring the waterpark slide and one for monitoring the pool shall be in existence during all operating hours. Lifeguard training, qualifications, and ratios shall otherwise confirm with the standards in 641 IOWA ADMINISTRATIVE CODE chapter 15.

- 1.3.12.5.2** Responsibilities of attendants include continuous and direct supervision of their respective area.

1.3.12.6 Water Treatment

- 1.3.12.6.1** A specific person on each shift shall have responsibility for chlorination and water treatment procedures. They shall be thoroughly trained in all aspects including routine operations, handling, connection, disconnection, emergency procedure, and leak control procedures.
- 1.3.12.6.2** A safety chart shall be posted in or near the chlorination room as well as near a telephone where the waterpark manager frequently visits. Emergency numbers shall be shown on all safety charts.

1.3.12.7 Pool Operations

- 1.3.12.7.1** A specific person on each shift shall be responsible for all swimming pool operations including circulation and filtering system operation, maintenance, inspection, backwashing, and cleaning.
- 1.3.12.7.2** Concessionaire shall notify on-site project manager prior to draining any pool water. DAS shall test for chlorine residual before draining. Parameters shall meet the current wastewater operating permits for HCR outfall 002.

1.3.12.8 Inspections and Maintenance

Daily logs shall be kept to record all inspections, operational tests, water quality monitoring, and all accidents or unusual occurrences. The Concessionaire shall provide to DAS a copy of the inspection protocols for the Waterpark operation. The following shall be the minimum inspections required:

- 1.3.12.8.1** Slide Inspection. Slide/Flumes shall be inspected on a daily basis to ensure that there are no obstructions, crack, chips, bubbles, loose risers, or excessive movement.
- 1.3.12.8.2** Mechanical Inspections. All waterpark slides and amenities shall be maintained according to manufacturers recommended standards.
- 1.3.12.8.3** Water quality and chemical inspections. Water quality shall be monitored at a frequency necessary to maintain proper water quality levels.

1.3.12.9 Pool Towels

- 1.3.12.9.1** Towels shall be available in sufficient quantities.
- 1.3.12.9.2** Bins shall be provided for wet and clean towels.

1.3.13 Spa Services

(Operating Standards to be developed upon completion of spa)

1.3.14 Employee Housing

(Operating Standards to be provided by Achieva)

1.4 General Contract Maintenance Responsibilities

1.4.1 Concessionaire

1.4.1.1 The Concessionaire shall undertake maintenance of facilities within the LAA in a safe, attractive, and functioning condition to the satisfaction of the DAS, including compliance with this maintenance plan.

1.4.1.2 The Concessionaire shall undertake all maintenance in accordance with applicable laws, regulations, and codes.

1.4.1.3 All personnel undertaking maintenance shall have appropriate skills, experience, licenses, and certifications to conduct said work.

1.4.1.4 Where applicable, the Concessionaire shall obtain the appropriate licenses and permits required by the jurisdictional regulatory agencies and follow all State, local laws, regulations, ordinances, and industry standards or codes applicable to the operational duties being performed. Copies of said licenses and permits shall be made available to DAS upon request.

1.4.1.5 Repairs or replacements shall be done in accordance with industry standards, and the manufacturer's guidelines.

1.4.1.6 The Concessionaire shall comply with the RPR Reserve procedures outlined in this plan.

1.4.1.7 The Concessionaire shall use all reasonable means available to protect the environment and natural resources in maintaining the facilities and grounds within the LAA, and shall likewise strive to perform any and all activities in such a way as to minimize or eliminate guest impact.

1.4.1.8 The Concessionaire may perform emergency repairs without prior DAS approval as long as appropriate documentation follows within one business day. An emergency is defined as a condition that poses imminent danger to life or property.

1.4.2 DAS

1.4.2.1 DAS is responsible for oversight of all Concessionaire Maintenance. This includes:

1.4.2.1.1 Evaluation and inspection of DAS Facilities.

- 1.4.2.1.2** Review and approval of the elements within this Plan.
 - 1.4.2.1.3** Staff review of Concessionaire plans and proposals.
 - 1.4.2.2** All work performed by DAS or on behalf of DAS to ensure compliance with the previous section shall be coordinated with the Concessionaire to ensure a consistent approach to design and quality of such work and minimal interruption of resort operations.
 - 1.4.2.3** This Plan shall not be interpreted as requiring the DAS to conduct maintenance of DAS Facilities of any kind except as otherwise specified.
 - 1.4.2.4** Any approval or consent given by the DAS shall not relieve the Concessionaire or the Concessionaire's contractors of any responsibility for any errors or omissions, or from the responsibility to comply with the requirements of this Plan.
 - 1.4.2.5** Should DAS disrupt the land or DAS Facilities within the LAA, DAS shall provide mitigation signage, barriers, and replanting efforts as are needed.

1.5 General Concessionaire Maintenance Responsibilities

1.5.1 Maintenance Plan Reporting

1.5.1.1 Annual Capital Budget/Plan

The Annual Capital Budget/Plan (CB) shall be provided 60 days in advance of the end of each accounting year. The CB shall outline the Real Property Capital Improvements and Personal Property purchases planned for completion in the upcoming year. Additionally, the sources of funding to support these items shall be identified. DAS shall have approval rights on the Capital Budget.

1.5.1.2 Multi-year Real Property Replenishment Reserve Plan

- 1.5.1.2.1** On an annual basis, the Concessionaire shall provide DAS for review and approval a Multi-year (at least 3 years) Real Property Replenishment Reserve plan that covers all DAS Facilities used by the Concessionaire for operations. This plan shall outline the proposed activities along with the estimated budgeted expenditures.
- 1.5.1.2.2** The Concessionaire shall deliver the plan to DAS on or before 60 days after the start of each Contract year. DAS shall review and approve the plan within 30 days of submittal.

1.5.1.3 Multi-year Personal Property Reserve Plan

- 1.5.1.3.1** On an annual basis, the Concessionaire shall provide DAS for review and approval a multi-year (at least 3 years) Personal Property

Reserve Plan that covers all DAS Personal Property used by the Concessionaire for operations. This plan shall outline the proposed activities along with the estimated budgeted expenditures.

- 1.5.1.3.2** The Concessionaire shall deliver the plan to DAS on or before 60 days after the start of each Contract year. DAS shall review and approve the plan within 30 days of submittal.

1.5.1.4 Annual Real Property Replenishment Reserve and Personal Property Reserve Expenditures

Included in the Annual Financial Report shall be a detailed listing of all the Real Property Replenishment Fund and Capital Improvement Fund expenditures. This listing shall include the initial proposed expenditures and actual expenditures, as well as status of the two Reserve balances as of year-end.

1.5.1.5 Personal Property Inventory

Within 60 days of the beginning of each Contract year, the Concessionaire shall provide to the DAS an inventory of all Personal Property including identification by category (i.e. DAS Personal Property and Concessionaire Personal Property), item description by subcategory, value of property, year purchased, and planned or actual year of disposal. This data shall be maintained perpetually and available upon request on a monthly basis. Attachment 5 identifies the personal property inventory assigned to the Concessionaire at the beginning of the Contract term.

1.5.2 Maintenance Tracking

- 1.5.2.1** The Concessionaire shall schedule and track completion of all Concessionaire maintenance activities in an electronic format acceptable to the DAS. The system shall be capable of effectively providing information on the maintenance standards outlined in this document.

- 1.5.2.2** The following elements shall be able to be tracked within the Concessionaires maintenance tracking system:

- 1.5.2.2.1** Routine and Preventative Maintenance

- 1.5.2.2.2** Cyclic and component renewal

- 1.5.2.2.3** Personal Property replacement

1.5.3 Inspections

The Concessionaire shall conduct annual inspections of DAS Facilities to determine compliance with this Plan and to develop future maintenance requirements and plans. An DAS representative shall attend these inspections.

1.5.4 Compliance with Environmental, Historic and Cultural Requirements

The Concessionaire shall be responsible for ensuring that its maintenance activities are in compliance with the DAS Lease and all federal, state, and local environmental, historic and

cultural preservation laws, regulations, conditions or instructions, and other applicable laws. Any studies that may be required to ensure compliance are the responsibility of the Concessionaire.

1.5.5 Real Property Replenishment Reserve Management

- 1.5.5.1** Concessionaire shall establish an interest-bearing Real Property Replenishment (RPR) Reserve and fund it as outlined in Contract Section 3.18.3.
- 1.5.5.2** RPR Reserve funds shall only be expended if the project is part of the approved Multi-Year Real Property Replenishment Reserve Plan noted in 1.5.1.2 above. No projects may be commenced until the Concessionaire receives written approval from the DAS, which shall occur within 10 days of request. At its discretion, DAS may contribute additional State dollars to RPR Reserve projects. These funds shall not be considered part of the RPR Reserve percentage.
- 1.5.5.3** Projects paid for with RPR Reserve funds shall not include Routine Maintenance or Preventative Maintenance. Concessionaire is obligated to maintain and repair DAS Facilities as required by the Contract, and shall fund such work with monies earmarked for repair and maintenance in the Annual Operating Budget.
- 1.5.5.4** The balance in the RPR Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made from the RPR Reserve, the Concessionaire shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the DAS.
- 1.5.5.5** The Concessionaire shall obtain no ownership or Compensable Interest as a consequence of the expenditure of RPR Reserve funds or repair and maintenance expense funds.
- 1.5.5.6** Any RPR Reserve funds not duly expended by the Concessionaire as of the termination or expiration of this Contract shall be retained by the DAS.

1.5.6 Personal Property and Management

- 1.5.6.1** Items described in this section may be covered from the Real Property Replenishment Reserve.
- 1.5.6.2** RPR funds shall only be expended if the project is part of the approved Multi-Year Personal Property Reserve Plan approved by DAS. No projects may be commenced until the Concessionaire receives written approval from the DAS which shall occur within 10 days of request.
- 1.5.6.3** The Concessionaire shall maintain Personal Property visible to visitors as free of defects and according to industry standards for public use. Personal Property shall be safe, serviceable, and usable for their intended purposes.

- 1.5.6.4** The Concessionaire shall maintain, service, and repair Personal Property used by visitors and staff per the manufacturer's recommendations and replace them as necessary.
- 1.5.6.5** Personal Property associated with food service operations shall comply with safety, public health, and sanitation codes.
- 1.5.6.6** The Concessionaire shall only have within the LAA the Personal Property that is necessary for the delivery of the required and authorized services approved under this Contract. Security and storage of such property is the responsibility of the Concessionaire. All Personal Property used that is outside of the Concessionaire and/or DAS Facilities shall be kept out of public view as much as possible. Storage structures may be erected, at the Concessionaire's sole expense, and only by advance permission of the DAS.
- 1.5.6.7** Disposal of Personal Property shall be the responsibility of the Concessionaire. Disposal or replacement of any Personal Property identified as DAS Public Art Property shall be coordinated and approved by DAS. Replacement of said property shall be of like kind specific to Iowa's state park system, Iowa's natural resources, or Iowa's agricultural heritage.
- 1.5.6.8** Any PP Reserve funds not duly expended by the Concessionaire as of the termination or expiration of this Contract shall be retained by the DAS.

1.6 Specific Concessionaire Maintenance Standards

1.6.1 Building and Structures/Interior - general.

- 1.6.1.1** Foundations. The Concessionaire shall inspect foundations on an annual basis to ensure that they are structurally sound and adequately maintained to prevent deterioration.
- 1.6.1.2** Housekeeping. Maintenance and cleaning of building interiors, exteriors, and visitor use areas shall be performed with sufficient regularity to provide a positive visitor impression, give an overall appearance of clean and sanitary conditions, be free of litter, and be generally safe and neat in appearance.
- 1.6.1.3** Restrooms. Public restrooms shall be visited and cleaned a minimum of twice daily (during peak visitation periods), and toilet tissue, towels, and seat covers shall be refilled or replaced as necessary. Toilet tissue shall be replaced sufficiently to last until the next scheduled cleaning or at least the following day. Disinfectant shall be used on fixtures, risers, and floors. Floors shall be swept and mopped routinely as needed. Floors shall be squeegeed or swept to prevent water from standing and creating a potential hazard. Attention shall be given to graffiti, cobwebs, hornet and wasp-nests, missing signs, etc., and shall be resolved quickly. Odor-control agents shall be used to control odorous conditions in restrooms.

- 1.6.1.4** Flooring. The Concessionaire shall maintain flooring clean and free of stains, cracks, chips, and worn places. Interior masonry or tile shall have clean grouting and be in good repair. The Concessionaire shall clean the floors no less than once daily in visitor use and food preparation areas.
- 1.6.1.5** Carpet. The Concessionaire shall maintain carpeting clean and free of stains, rips, or burns. The Concessionaire shall replace carpet in public areas no less than every seven years.
- 1.6.1.6** Walls and Ceilings. The Concessionaire shall maintain walls and ceilings with a fresh appearance and they shall be kept free of breaks, cracks, blisters, loose plaster, and stains. Masonry or rock walls shall be sealed and covering such as wall paper and tile shall be clean and protected.
- 1.6.1.7** Windows. The Concessionaire shall keep windows clean, unbroken, and in good repair.
- 1.6.1.8** Interior Lighting. Public spaces should be appropriately illuminated with energy efficient lighting where practical. Lighting fixtures should be cleaned and in working order. Guest room hallways should be sufficiently illuminated to ensure guests have a sense of security entering and exiting rooms. Inoperable fixtures, or fixtures requiring bulb replacement, shall be remedied as quickly as possible upon discovery.
- 1.6.1.9** Elevators. The Concessionaire shall maintain elevators and lifts and similar devices in safe and operable condition. The Concessionaire shall ensure that such equipment is annually inspected by a third-party inspector that is qualified to conduct said inspection. Only qualified personnel may conduct maintenance on this type of equipment. The Concessionaire shall retain copies of all inspections over the course of the Contract and make them available to DAS.
- 1.6.1.10** Stairways. Shall be free from clutter, well lighted, and shall have no-slip surfaces.
- 1.6.1.11** Meeting Rooms. Meeting rooms should be clearly marked and supplied with well-maintained furniture. A system for identifying what groups are in each meeting rooms should exist. A posting of the daily groups meeting in each room should be visible as visitors enter the conference room area.
- 1.6.1.12** Drinking Fountains. All public drinking fountains shall be clean and in good working order.
- 1.6.1.13** Trash/Recycling. All trash cans within public view shall not be overflowing. Separate containers to provide for recycling shall be provided.
- 1.6.1.14** Emergency Lighting/Exit Lights/Emergency Exits. Lights on permanent structures shall be on emergency circuits and operable at all times. Emergency exits in all areas of the facility shall be adequately marked and not blocked.

1.6.1.15 Carbon Monoxide. Carbon Monoxide (CO) detectors shall be operating and present in all hallways or public spaces adjacent to those areas that incorporate gas or oil powered heating equipment (e.g. laundry rooms) or public areas with fireplaces. Hard wired detectors are preferred. When battery operated detectors are used they shall be tested monthly and batteries replaced monthly.

1.6.1.16 Waterpark Elements. Slide/Flumes shall be inspected on a daily basis to ensure that there are no obstructions, crack, chips, bubbles, loose risers, or excessive movement.

1.6.1.16.1 Slide surfaces shall be rinsed down daily with tap water.

1.6.1.16.2 Waxing of slides shall occur not less than two times per year.

1.6.1.16.3 The waterparks shall be closed annually for a full training and deep cleaning of all services.

1.6.1.16.4 Air temperature shall be maintained for proper humidity.

1.6.1.16.5 Water quality shall be monitored at a frequency necessary to maintain proper water quality levels. Pool chemicals shall be applied at least twice per day and three times during high occupancy periods. Adjustments shall be made a necessary to maintain proper water quality.

1.6.1.16.6 Circulation and filtering systems shall be monitored daily.

1.6.1.16.7 All waterpark slides and amenities shall be maintained according to manufacturers recommended standards.

1.6.2 Building and Structures/Exterior

1.6.2.1 Exterior Lighting

The Concessionaire is responsible for the repair and maintenance of all exterior lighting within their LAA. Only LED and CFL lights may be used. Lighting structures/fixtures used shall reduce light pollution as much as possible.

1.6.2.2 Roofs

The Concessionaire shall inspect roofs no less than once annually to ensure that roofing materials are intact and free of deterioration that may affect structural quality and are not jeopardized by any overhanging limbs or other vegetation. Roof maintenance shall be responsibility of the Concessionaire. Replacement of the roof structure shall be the responsibility of DAS.

1.6.2.3 Drainage Gutters and Downspouts

The Concessionaire shall ensure that gutters, downspouts, and drains remain properly attached to each facility and function as intended. The Concessionaire shall inspect, repair, and clean gutters and downspouts and roof drains at least

once a year to ensure the structures are free of obstructions, clear, and operational. As may become necessary due to weather events, the Concessionaire shall respond appropriately to correct impaired drainages.

1.6.2.4 Doors, Windows and Screens

The Concessionaire shall maintain doors, windows, and screens in good operational condition.

1.6.2.5 Siding and Walls

The Concessionaire shall maintain siding and walls to prevent moisture from entering facilities or deterioration of siding materials. Walls and trims shall be maintained in good condition, and shall be free of chips and damaged components.

1.6.2.6 Painting

The Concessionaire shall repaint surfaces on a regular cycle. The regular cycle shall be considered not less than once every five years and for interiors not less than once every seven years.

1.6.2.7 Ventilation

1.6.2.7.1 The Concessionaire shall ensure that structural ventilation is working suitably within the structures. The structural ventilation system shall be inspected on an annual basis to ensure that air circulation is functioning as designed.

1.6.2.7.2 The Concessionaire shall maintain a building management software system to monitor efficiency of the building systems.

1.6.2.8 Basketball Court

The concessionaire shall be responsible for maintaining the basketball court for surface breakages, the basketball poles and nets.

1.6.3 Signs

1.6.3.1 The Concessionaire shall maintain and replace all interior and exterior signs relating to its operations and services within the DAS Facilities, along with directional signs that relate specifically to concession operations. Signs identified in Attachment 9 shall remain in existence throughout this Contract.

1.6.3.2 The DAS has the right to install signs within Concession Facilities, after consultation with the Concessionaire.

1.6.4 Grounds and Landscaping

1.6.4.1 Grounds Keeping

- 1.6.4.1.1** The Concessionaire shall keep the LAA grounds free of litter and from domestic animal waste.
- 1.6.4.1.2** The Concessionaire shall manage the landscape within the LAA in compliance with the HCR Habitat Management Plan provided in Attachment ____.
- 1.6.4.1.3** The Concessionaire shall ensure compliance with all local, state and federal laws governing Threatened Species and Endangered Species and protection of wetlands to ensure the conservation and protection of the Threatened Species and Endangered Species within the LAA.
- 1.6.4.1.4** The Concessionaire shall maintain unobstructed/limited obstructed view corridors of Rathbun Lake from the back of Lodge.
- 1.6.4.1.5** The Concessionaire shall institute maintenance procedures and practices that provide for protection of the environment and natural resources. The Concessionaire shall use native plant species wherever possible in the landscaping, utilize integrated pest management practices, and shall minimize the use of fertilizers and chemicals.
- 1.6.4.1.6** No trees or other vegetation may be removed or other natural features of the concession area disturbed without written permission of the DAS.
- 1.6.4.1.7** The Concessionaire shall be responsible for mowing in the following areas identified in the LAA.
- 1.6.4.1.8** Application of chemical herbicides or pesticides must have prior written approval by the DAS and must be applied by a licensed person in conformance with applicable state law. If any such chemicals are to be used, the Concessionaire shall seek to administer these during low-use visitation periods if doing so will not negatively impact effectiveness. Should treated plants become a fire hazard, they should be promptly removed. All land applied chemicals used must be documented and provided to DAS to include in the USACE's annual report.
- 1.6.4.1.9** The Concessionaire shall be responsible for controlled burns within designated LAA with approval from DAS staff. Requisite staff associated with controlled burns shall have participated in DAS training program for controlled burns. A schedule for controlled burns shall be developed in coordination with DAS and DAS shall confirm dates and have staff available during the dates selected.

- 1.6.4.1.10** The Concessionaire shall be required to develop landscaping plans that include seasonal planting of annuals and other seasonal decorations to accent seasonal holidays and attractions. At a minimum, the bulb outs along the roadway shall be planted and maintained as regular grassed areas. The roadway and trail can be groomed on each ditch side by a mower width. Little bluestem plantings between the curb and trail shall be maintained as such. Seasonal landscaping including planters at the entrance to the resort, entry to lodge, to the patio, and to other areas deemed appropriate shall be the responsibility of the Concessionaire.

1.6.4.2 Tree and Shrub Management

- 1.6.4.2.1** Trees shall be maintained in a hazard-free manner, according to the standards utilized by DAS as identified within the Forest Hazard Tree Program in Attachment C-15. Lawns, shrubs, and other vegetation shall be kept mowed, trimmed, watered, fertilized, and maintained in such a manner as to provide for healthy vegetation, aesthetically pleasing appearance, and safe conditions for visitors.
- 1.6.4.2.2** All staff dealing with tree and shrub maintenance may attend DAS training for chain saw safety at no charge to the Concessionaire.
- 1.6.4.2.3** Removal of trees and shrubs shall require approval by DAS staff.

1.6.4.3 Beach Area

- 1.6.4.3.1** The Concessionaire shall be responsible for the purchasing, spreading, raking, and generally maintaining the sand on the beach.
- 1.6.4.3.2** The Concessionaire shall be responsible for placing the swim line in and out each season and adjusting the swim line as the lake level changes. Replacement of the swim line shall be the responsibility of the Concessionaire.

1.6.4.4 Roads, Parking Areas and Walkways

- 1.6.4.4.1** The Concessionaire shall maintain and keep in good repair all roads, curbs, parking islands, paved sidewalks, other walkways, and parking areas within the LAA. This includes routine maintenance including but not limited to grinding of concrete surfaces.
- 1.6.4.4.2** Roads, walkways, and parking spurs will be blown or swept as needed to remove needles, leaves, or other debris. Shoulders of roads shall be kept mowed and trimmed. Grass and brush shall be trimmed around signposts and traffic control devices. Ditches and culverts located in the parking lots shall be cleaned and maintained to allow proper drainage.

1.6.4.4.3 Parking bumper blocks, bollards, and barriers shall be routinely checked for damage. Wood, rock, concrete, and other barriers shall be inspected and maintained in a safe and stationary condition. Barriers shall be replaced as needed, and replacements shall match existing materials, colors, and style. Bollards, barrier rocks, and other such delineation devices shall be straightened or replaced to control and regulate proper use. Excess vegetation around barriers shall be trimmed to keep barriers visible.

1.6.4.5 Winter Preparation

Certain utility systems within the DAS Facilities may require winterization in order to prevent damage from freezing. In such cases, the Concessionaire shall follow the procedures provided by DAS. The Concessionaire shall winterize and secure any unoccupied structures and reopen said properties properly. The Concessionaire shall be solely responsible for any damage that results from inadequate preventative measures regardless of the season.

1.6.4.6 Snow Removal

The Concessionaire shall remove snow from roofs, solar features, entrances, porches, sidewalks, patios, and cottage decks within the LAA. The Concessionaire shall also be responsible for the plowing and salting/sanding of all roadways and parking lot areas within the LAA.

1.6.4.7 Entry Portal Sign and Flagpoles

The Concessionaire shall be responsible for maintaining the entry sign portal including repointing of bricks and lighting as well as maintenance of the flagpole and its lighting

1.6.4.8 Lodge and Clubhouse Portal Signs

The Concessionaire shall be responsible for maintaining the portal signs at the lodge and clubhouse including repointing of bricks.

1.6.5 Tables, Grills, & Outdoor Amenities

1.6.5.1 Concession staff shall remove food particles, chewing gum, grease, or other debris from tables, benches, and grills. Graffiti shall be removed from tabletops and benches upon discovery or notification.

1.6.5.2 Tables shall be level and secured to the ground to prevent relocation or theft. Wooden tables shall be painted on a three-year rotating cycle. Umbrellas for tables shall be clean and free from tears.

1.6.5.3 Ashes from fire rings and grills shall be removed with metal buckets and placed in an appropriate refuse container or area until cooled. Fire rings and grills shall be kept free of litter. Ashes, charcoal, and unburned wood shall be removed from fire rings and grills when there is less than four (4") inches of free side clearance. Care

shall be taken to avoid mixing hot ashes with combustible materials. Ashes shall not be hauled away from the site until fully cool.

1.6.6 Utilities

1.6.6.1 General

- 1.6.6.1.1** The Concessionaire shall operate, repair, replace, and maintain all interior and exterior utility systems up to 5' away from structures located within the LAA. Operation, repair, and replacement of these systems shall comply with all current code requirements per NEC, IMC, IPC, IBC and all other applicable codes.
- 1.6.6.1.2** The Concessionaire shall not extend or alter utility systems without prior written approval of the DAS.
- 1.6.6.1.3** All utility services not provided by DAS shall be done by independent suppliers that the Concessionaire shall pay directly.

1.6.6.2 Electricity

- 1.6.6.2.1** The Concessionaire shall be responsible for activating, maintaining, and paying for electrical service by establishing an account with the electric service provider. The Concessionaire shall be responsible for maintaining the secondary electrical lines and equipment (conduit, fuses, panel, switches, transformers, lines, etc.) that are supplying the DAS Facilities within the LAA including minor repairs.
- 1.6.6.2.2** The Concessionaire shall ensure that all electrical circuits under its control meet or exceed the standards for the National Electrical Code.
- 1.6.6.2.3** The Concessionaire shall have the responsibility for replacing any electrical systems within the DAS Facilities that are damaged as a result of negligence of the Concessionaire or its employees and contractors while working on or operating Concessionaire equipment.

1.6.6.3 Natural Gas or LPG

- 1.6.6.3.1** The Concessionaire may contract with a local service provider to provide liquid propane gas (LPG) or natural gas for DAS facilities inside the LAA, as necessary. The Concessionaire shall be responsible for activating, maintaining, and paying for such service.
- 1.6.6.3.2** The Concessionaire shall conduct and document inspections of its gas storage systems in accordance with applicable laws.

1.6.6.4 Water Systems

- 1.6.6.4.1** The Concessionaire shall be responsible for activating, maintaining, and paying for water service to all DAS facilities within the LAA by establishing an account with a water service provider. The Concessionaire shall be responsible for maintaining the secondary water lines and equipment that are supplying the DAS Facilities within the LAA including minor repairs.
- 1.6.6.4.2** Concessionaire shall be responsible for the maintenance, repair, operation, and regulatory compliance of the water system elements within their LAA.
- 1.6.6.4.3** The Concessionaire shall be allowed to pump water for the Golf Course from Rathbun Lake. Rathbun Regional Water Association (RRWA) shall retain ownership and maintenance responsibilities for the meter that is part of the system installed to provide water for irrigation. The Concessionaire shall receive two invoices annually: The first half-way through the irrigation season and the second at the end of the irrigation season. RRWA base rate is \$0.56 per 1,000 gallons as of 2015.
- 1.6.6.4.4** Concession staff shall utilize the following maintenance standards for all water fountains/hydrants included in the LAA area:
- All units and faucets flow freely and operate properly.
 - Catch basins shall be kept free of food particles, soap, grease, debris and standing water.
 - Painted surfaces/water devices shall be maintained in clean condition.
 - Faucets and drains shall be cleaned and maintained as needed.
 - Drain areas at spigots and well pumps shall drain properly.

1.6.6.5 Sewage & Effluent

- 1.6.6.5.1** The State shall provide sewer services to the Concessionaire. The costs for these services shall be free of charge. The Concessionaire shall be responsible for maintaining the secondary sewer lines and equipment that are supplying the State Facilities within the LAA including minor repairs, as may become necessary.
- 1.6.6.5.2** The Concessionaire has the responsibility to install and maintain grease traps in accordance with the State and other regulatory sources to assure that grease does not flow into the wastewater systems. The responsibility for maintenance shall include inspecting and pumping grease traps, and as needed disposing of grease in a safe and sanitary manner.
- 1.6.6.5.3** Grease traps and exhaust hoods shall be cleaned out on a regular schedule, with a minimum standard of not less than twice a year.
- 1.6.6.5.4** If a grease trap fails, the Concessionaire shall immediately notify the the State to mitigate impacts on the wastewater treatment plant.

1.6.6.6 Heating, Ventilation and Air Conditioning (HVAC) Systems

- 1.6.6.6.1** The Concessionaire is responsible for operating, maintaining, repairing, and replacing any HVAC systems associated within DAS Facilities.
- 1.6.6.6.2** All HVAC systems shall be inspected annually and shall be kept clean, maintained, and operating in accordance with the manufacturer's instructions.
- 1.6.6.6.3** All repairs to HVAC equipment shall be conducted by a certified HVAC technician. The Concessionaire shall retain copies of all inspections over the course of the Contract and make them available to DAS.
- 1.6.6.6.4** Chimneys, Stoves, Fireplaces, and exhaust ducts shall be cleaned and inspected not less than once per year. Chimneys that serve active fireplaces or solid burning stoves shall be lined, provided with spark arrestors, and maintained in good working order.

1.6.6.7 Solar Thermal System

The solar thermal system including evacuate tubes on roofs shall be cleaned twice yearly, spring and fall with soap and water.

1.6.6.8 Photovoltaic Panels

Shall be washed thoroughly twice a year including the spring and the fall with soap and water, with Windex, and a squeegee treatment. During the summer, they shall be wiped dry and soft mopped at least monthly.

1.6.6.9 Geothermal System Maintenance

The Concessionaire shall be responsible for ensuring that the geothermal system's above ground elements that provide heat to the cottages are maintained, repaired and replaced according to the manufacturer's standards.

1.6.6.10 Telephone, Internet and Television Services

The Concessionaire shall contract directly with commercial providers for telephone, internet, and television service to the DAS Facilities. Installation and location proposals shall be submitted to the DAS prior to commencing the projects.

1.6.6.11 Fire Prevention and Protection Systems

1.6.6.11.1 General

The Concessionaire shall ensure that all buildings, facilities, and support equipment within the DAS Facilities meets or exceeds NFPA Fire Codes, including the FPFA Life Safety Code unless specific variance is approved in writing by the DAS.

1.6.6.11.2 Testing

The Concessionaire shall install, inspect, operate, and maintain fire detection, initiating alarm, and notification systems and equipment, as well as fixed and portable fire suppression systems and equipment in the DAS Facilities in accordance with applicable laws.

1.6.6.11.3 Repairs and Outages

The Concessionaire shall ensure that the fire protection systems are in service at all times. If systems are being repaired, the Concessionaire shall provide adequate means of alternate protection. The Concessionaire shall notify the DAS immediately regarding any system outages or repairs as well as the plan for addressing them.

1.6.6.11.4 Inspections

Within 30 days of the beginning of each Contract year, the Concessionaire shall ensure that a full facility inspection has occurred. Copies of the inspection shall be forwarded to the DAS. If the inspection identifies any hazards or deficiencies, the Concessionaire shall correct them either immediately for immediate life safety issues, or within 10 days for non-immediate life safety issues.

1.6.6.12 Refuse and Waste Disposal

The Concessionaire shall be responsible for contracting with a local solid waste disposal company for the removal of waste from within the LAA. The Concessionaire shall be responsible for positioning an adequate number of dumpsters and trash receptacles to maintain refuse and waste disposal in a sightly and odor-free manner. Overflowing solid waste containers are not permissible, and the disposal of only legal substances shall be allowed.

1.6.6.13 Recycling

1.6.6.13.1 The Concessionaire shall provide recycling collection centers for various types of recycling (aluminum, plastic, and glass). Collection centers shall be properly posted, maintained in a clean and presentable condition, and made resistant to intrusions from native wildlife. Concession staff shall transport collected recyclable materials to an authorized reclamation center.

1.6.6.13.2 Concessionaire shall continue operation of a composting program.

1.6.7 Golf Course Maintenance

1.6.7.1 Golf Course Maintenance Plan

The Concessionaire shall develop golf course maintenance plans for both in- and out-of-season operations. The plans shall include the maintenance of the greens, tees, fairways, roughs, natural growth areas, bunkers, and course irrigation

features. Daily, seasonal, and annual practices shall also be addressed. The objective of said plans is to provide golf course maintenance standards that provide equal or greater quality commensurate with other area comparable public golf courses. Currently, the Preserve golf course is certified as part of the Audubon Cooperative Sanctuary Program, and this standard shall be maintained.

1.6.7.2 Greens

- 1.6.7.2.1** All greens are to be smooth and firm, with well-defined playing surfaces. Cups, flag sticks, and flags are to be uniform, clean, and in good repair. The goal is to have a consistent putting speed on all putting surfaces.
- 1.6.7.2.2** All greens shall be maintained according to their in- and out-of-season requirements. In-season mowing should match growth to maintain quality playing conditions. Out-of-season maintenance shall be as required.
- 1.6.7.2.3** Ball marks, divots, and other damaged turf areas on greens and practice greens shall be repaired.
- 1.6.7.2.4** Cup locations on all greens and practice putting greens shall be changed routinely during the active season. Cup locations shall be moved a sufficient distance from the previous placement.
- 1.6.7.2.5** All greens and practice putting greens shall be aerated a minimum of two times per year.
- 1.6.7.2.6** Fertilizer applications shall be based on the agreed upon Integrated Pest Management Program.

1.6.7.3 Tees

- 1.6.7.3.1** Tees are to be smooth, clean, and properly directed, with amenities in good condition and repair, consistent, and uniform. Tee markers are to be rotated consistent with cup rotation system and aligned with the line of play.
- 1.6.7.3.2** Tees shall be mowed on a regular basis.
- 1.6.7.3.3** All worn areas on tees shall be top-dressed to fill divots and level tee surface.
- 1.6.7.3.4** Tee markers and tee equipment shall be changed regularly during the active season.

1.6.7.4 Fairways

- 1.6.7.4.1** Fairways are all areas of play except greens, tees, roughs, and natural growth areas. Fairways shall be mowed and maintained distinct in height from rough areas.
- 1.6.7.4.2** Fairways shall be mowed on a regular basis.
- 1.6.7.4.3** Fairways shall be aerified a minimum of one time per year during the growing season.
- 1.6.7.5 Roughs**
- 1.6.7.5.1** Roughs are all turfed areas of play, except greens, tees and fairways and natural growth areas. Roughs shall be maintained and mowed distinct in height from fairways.
- 1.6.7.5.2** Fairway-to-tree-line play areas shall be aerified as necessary.
- 1.6.7.6 Natural Growth Areas**
These are all areas in which native or introduced vegetation is allowed to survive without routine mowing, cultivating, irrigation, or other routine maintenance procedures. These may be out-of-play areas, steep slopes, barriers, windbreaks, nature trails, etc. Such areas are to be maintained substantially free of trash, noxious weeds, and non-native vertebrate pests, and in such manner as to comply fully with applicable laws. Natural growth areas are necessary and desirable to maintain whenever practical.
- 1.6.7.7 Bunkers**
- 1.6.7.7.1** All bunkers shall be edged as necessary to maintain an appropriate lip and shall be raked a minimum of three times per week in season and as necessary out of season.
- 1.6.7.7.2** Sand depth shall be adequate to ensure playability at a minimum of 2".
- 1.6.7.7.3** Replacement sand shall be suitable for bunker use.
- 1.6.7.7.4** Reasonable efforts shall be employed to keep bunkers free of vegetation, leaves, rocks, or pooled water, and sand depths maintained to ensure playability.
- 1.6.7.8 Irrigation**
- 1.6.7.8.1** The Concessionaire shall be responsible for the maintenance, repair and replacement of irrigation systems, including submerged pumps that feed the irrigation systems. All elements of the irrigation systems shall be maintained in good repair. All heads, valves, controllers, wiring, and pipe as needed to maintain the proper

operation of the entire golf course irrigation system (including greens, tees, fairways, roughs, beds, etc.) shall be repaired and or replaced on an on- going basis.

1.6.7.8.2 The golf course shall be irrigated as necessary to support proper growth of turf where irrigation is available.

1.6.7.9 Drainage

Golf course drainage systems, underground and surface, shall be maintained and in good repair.

1.6.7.10 Aquatics

All water features (including lakes, ponds and streams) shall be maintained in a safe and sanitary manner, and in good appearance.

1.6.8 Marina Maintenance

1.6.8.1 Slips/Moorings Identification

Each mooring and/or slip shall be clearly and uniformly marked.

1.6.8.2 Cleats

Cleats shall be properly placed and secured for use at each slip area (e.g., no loose or missing cleats shall be evident). An adequate number and size of cleats shall be available to properly secure the vessel to the dock.

1.6.8.3 Lines

Lines shall be adequate in size and condition to properly secure the vessel to the dock. Roping system characteristics shall be consistent throughout the operation.

1.6.8.4 Breakwater

Any provided breakwater should be in good working condition. Material shall be well- secured to the docking system.

1.6.8.5 Utilities

1.6.8.5.1 Electrical. All slip electrical outlets shall be marine grade hard wire attached feeds with covers connected to a working ground fault interrupter.

1.6.8.5.2 Water. All slip water lines shall be operational with working water spigots and equipped with operational back flow preventers.

1.6.8.6 Flotation Systems

The system should be sturdy and free of broken or uneven sections and the concessionaire shall be responsible for maintenance of the docking system.

1.6.8.7 Decking

May be of concrete, fiberglass, composite, or pressure treated wood. All dock surfaces shall be clean, free of unnecessary obstructions, and well maintained. Railings should be in good repair and sturdy enough to support visitor use.

1.6.8.8 Gangways

Gangways and railings should be in good repair and sturdy enough to support visitor use. All gangway surfaces shall be secured with screws and should be clean, free of unnecessary debris/obstructions, and overall well-maintained. Railings, where required, should be in good repair and sturdy enough to support visitor use. All infrastructure/utilities necessary to service slips should be contained and out of sight.

1.6.8.9 Lighting

1.6.8.9.1 Adequate lighting throughout the marina shall be provided for ramps, docks, slips, and other public areas for nighttime operations.

1.6.8.9.2 At least one Coast Guard approved throw-type flotation device should be located in clear view on the gas dock and at appropriate intervals on all other docks.

1.6.8.10 Winterization

Concessionaire is responsible for any winterization activities necessary, such as water shut-off, ramp and dock removals, the storage of dock carts, etc. When the de-icing system is in operation, it shall be routinely checked.

1.6.9 Outdoor Swimming Pool (Maintenance Standards to be developed upon completion of pool)

1.7 Specific DAS Maintenance Responsibilities

1.7.1 Grounds and Landscaping

1.7.1.1 Water Areas and Boundaries

1.7.1.1.1 Responsible for maintaining rip rap areas adjacent to Rathbun Lake.

1.7.1.1.2 Responsible for maintaining the boat ramp and its related lighting within the LAA.

1.7.1.1.3 Responsible for replacing the Marina Break Water structure.

1.7.1.1.4 Responsible for pulling the boat ramp courtesy dock out in the winter and putting the dock in for the spring/summer.

1.7.1.2 Trail Systems

1.7.1.2.1 Maintain nature trails and the entire area designated as “preserve” within the LAA.

1.7.1.2.2 Maintain transition areas located by the trail head and marina docks and boat ramp (areas where rock may be stored for trail maintenance).

1.7.1.2.3 Maintain new shoreline trail system that runs from the beach to the marina slips.

1.7.1.2.4 Maintain and mow the U.S. Army Corps of Engineers' bike trail.

1.7.1.2.5 Maintain trail that connects to U.S. Army Corps of Engineers' trail (north end).

1.7.1.3 LAA Concrete/Roads

Maintain campus concrete areas including roads, parking Lots, cabin loops, sidewalks, golf course cart paths and trails, boat ramp, RV Park pads, to include replacement and striping.

1.7.1.4 Snow Removal

Sand for salting shall be provided by DAS/DOT. All roads outside the LAA shall be plowed by the county or DOT.

1.7.1.5 Controlled Burns

DAS is responsible for planning and managing the controlled burns within the DAS area of maintenance. DAS shall coordinate with the Concessionaire when controlled burns shall occur.

1.7.1.6 Tree Removal

DAS is responsible for tree removal within the DAS LAA area.

1.7.2 Buildings and Structures

1.7.2.1 Maintain the resort main entrance stone columns.

1.7.2.2 Maintain, repair and replace the playground elements except for the basketball court.

1.7.2.3 Assist in winterizing the pavilion restroom if resources are available.

1.7.2.4 DAS shall be responsible for replacing the roof structure.

1.7.3 Signs

DAS has responsibility for installing, maintaining and replacing all regulatory and directional signage.

1.7.4 Utilities

1.7.4.1 Electric Service

DAS shall repair, maintain, and replace the security lighting and electrical service along the roadways, boat ramp, RV Park, Marina and Pavilion up to 5' of the DAS facilities.

1.7.4.2 Geothermal Systems

DAS shall repair, maintain and replace all below ground geothermal system elements.

1.7.4.3 Wind Turbines

DAS shall replace structure if funds are available. If funds are not available, the Concessionaire shall not be responsible for replacement.

1.7.4.4 Photovoltaic Panels

DAS shall replace panels if funds are available. If funds are not available, the Concessionaire shall not be responsible for replacement.

1.7.4.5 Solar Thermal System

DAS shall replace the solar thermal system if funds are available. If funds are not available, the Concessionaire shall not be responsible for replacement.

1.7.4.6 Water

DAS shall repair, maintain, and replace all water lines, fire hydrants, and water systems up to 5' of the DAS facilities.

1.7.4.7 Sewage & Wastewater

DAS shall provide sewer and wastewater collection and treatment services to Concessionaire. DAS assumes responsibility for wastewater collection at the sewer main where the major points of collection occur. DAS shall operate and maintain lift stations. Maintenance and repair of all sewer and wastewater systems up to 5' of the building shall be the responsibility of DAS.

Attachment 8

Insurance

1. Insurance Policies

Prior to the start date of the term of this Contract, Concessionaire shall secure and at all times maintain, at its own expense, insurance in full force and effect from insurance companies with an AM Best rating of AAA or above. An exception shall be made for the identified blanket building coverage, and the blanket personal property policies, which shall be in full force and effect by July 1, 2023. Insurance shall be, at a minimum, of the types and in the amounts noted below. Concessionaire shall increase insurance, either by acquiring more or different types or by increasing the amount, as necessary to adequately protect its work, its investments, and all Real Property Improvements made during the Contract, to include all amendments, extensions, or renewals.

Insurance shall be "occurrence based" insurance rather than "claims made" insurance and shall insure against loss or damage resulting from or related to the Concessionaire's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and DAS shall be named as additional insureds or loss payees, or the Concessionaire shall obtain an endorsement to the same effect, as applicable.

1.1 Insurance

1.1.1 The Concessionaire shall obtain and maintain during the entire term of this Contract at its sole cost and expense the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by DAS. The DAS shall annually approve the types and amounts of insurance coverage purchased by the Concessionaire. The initial insurance requirements are set forth below and in Attachment 8.

1.1.1.1 From time to time, as conditions in the insurance industry warrant, the DAS may modify Attachment 8 to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

1.1.2 DAS shall not be responsible for any omissions or inadequacies of insurance coverages or amounts in the event the insurance purchased by the Concessionaire proves to be inadequate or otherwise insufficient for any reason whatsoever.

1.1.3 The Concessionaire shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessionaire or its employees, agents or contractors in carrying out the activities and operations required and/or authorized under this Contract. This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Contract, as more specifically set forth in Attachment 8. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Attachment 8.

1.1.4 In the event of damage or destruction, the Concessionaire shall repair or replace those Facilities and Personal Property utilized by the Concessionaire in the performance of the Concessionaire's

obligations under this Contract. For this purpose, the Concessionaire shall provide blanket building insurance coverage on Facilities for all or part of their replacement cost as specified in Attachment 8.

1.1.4.1 Blanket Building Insurance shall provide for the Concessionaire and DAS to be named insured as their interests may appear.

1.1.4.2 In the event of loss, the Concessionaire shall use all proceeds of such insurance to repair, rebuild, restore, or replace Facilities and/or Personal Property utilized in the Concessionaire's operations under this Contract, as directed by DAS. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The Concessionaire shall not be relieved of its obligations because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

1.1.4.3 Insurance policies that cover Facilities shall contain a loss payable clause approved by the DAS that requires insurance proceeds to be paid directly to the Concessionaire without requiring endorsement by DAS. The use of insurance proceeds for repair or replacement of Facilities will not alter their character as properties of DAS and, notwithstanding any provision of this Contract to the contrary, the Concessionaire shall gain no title as a result of the use of these insurance proceeds.

2. Type of Insurance

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	\$5 million \$2 Million \$2 Million \$2 Million
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence Aggregate	\$2 Million \$10 Million
Errors and Omissions Insurance	Each Occurrence	\$1 Million
Property Damage	Each Occurrence Aggregate	\$1 Million \$5 Million
Workers Compensation and Employer Liability	As Required by Iowa law	A required by Iowa law

TYPE OF INSURANCE	BASIS	EXPOSURE
Blanket Buildings	Values	\$40 Million
Blanket Business Personal Property	Values	\$4 Million
Blanket Business Income	Values	\$5.3 Million
Crime Employee Theft	Limit	\$100,000
Inland Marine		

Computer Coverage	Limit	\$510,000
Contractors Equipment	Limit	\$940,000
Boat Docks	Limit	\$250,000
Tees, Greens and Cut Fairways	Limit	\$250,000
Fine Arts	Any Item	\$25,000
	Total Limit	\$250,000
Earthquake and Flood	Limit	\$10 Million
Commercial General Liability	Total Sales	\$7.15 Million
Liquor Liability – Restaurant	Sales	\$370,000
Pollution – Pesticide and Herbicide	Limit	\$1 million
Excess Crime- Employee Theft	Limit	\$450,000

3. Claims Provision

All insurance policies required by this Contract must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

4. Certificates of Coverage

All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of DAS. The Concessionaire shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to DAS within 10 days of the date DAS enters into this Contract. The certificates shall be subject to approval by DAS. The Concessionaire shall state in the certificate that no cancellation of the insurance will be made without at least 30 days' prior written notice to DAS. Approval of the insurance certificates by DAS shall not relieve the Concessionaire of any obligation under this Contract.

5. No Limitation of Liability

Acceptance of the insurance certificates by DAS shall not act to relieve Concessionaire of any obligation under this Contract. All insurance policies and certificates shall be issued only by companies authorized to transact business in the State of Iowa. It shall be the responsibility of Concessionaire to keep the respective insurance policies and coverages current and in force during the life of this Contract.

6. Warranty

Concessionaire warrants that it has examined its insurance coverage to determine whether DAS and the State can be named as additional insureds without creating an adverse effect on Concessionaire's coverage.

7. Waiver of Subrogation Rights

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

Attachment 9 Resort Sponsorship Signage to Be Maintained

In 2006, the Natural Resource Commission (NRC) approved Rathbun Lake Resort, Inc. (RLR) to undertake fundraising efforts which included the use of naming rights and sponsorships as a form of recognition of facilities at Honey Creek Resort. The DAS developed an agreement with RLR that memorialized the relationship between DAS and RLR with respect to fundraising activities underway at Honey Creek Resort. In 2009, the NRC approved the agreement which included the facilities at Honey Creek Resort which are eligible for sponsorship, the timelines for the sponsorships, and the specifications for recognition signage.

In 2015, RLR declared that the fundraising efforts were exhausted and there would be no additional sponsorships of facilities at Honey Creek Resort through RLR. The list below identifies the sponsorships and associated recognition that must be maintained by the Concessionaire and DAS for the period of time identified in the chart below. Any changes of these sponsorship recognitions as part of a facility upgrade/update must be reviewed and approved by DAS. DAS will be responsible for the cost of recognition signage replacement identified below.

Donor	Sponsorship Recognition Location	Recognition Text	Duration of Recognition
Stanley Bay Farms (Catherine, Marilyn, Susan Bay)	Plaque in Great Room	Great Room Sponsored by Stanley Bay Farms, Inc. Catherine, Marilyn, and Susan Bay	Perpetual
Chris Desjardins Memorial Fund	Plaque in Conference Center	THANK YOU to the Chris Desjardins Memorial Fund for supporting renewable energy projects in Iowa State Parks	20 years Remove 1/1/2033
Cargill	Plaque on Activities Building	Activities Building Sponsor Cargill, Inc.	Perpetual
Iowa Trust and Savings Bank - Centerville	Plaque on Golf Clubhouse	Clubhouse Sponsor Iowa Trust and Savings Bank Centerville	Perpetual
Roger and Jan Winslow	Naming rights to Meeting Rm D & plaque	Roger & Jan Winslow Room	Perpetual
Mercy Medical Center - Centerville	Naming rights to Meeting Rm E & plaque	Mercy Medical Center Room Centerville	Perpetual
First Iowa State Bank - Albia	Naming rights to Meeting Rm F & plaque	First Iowa State Bank Room Albia	Perpetual
Bill Buss, Hall Engineering	Plaque on Great Lawn	Great Lawn In Honor of Bob and Ann Buss Hall Engineering Company	Perpetual
Peoples State Bank - Albia	Plaque on Cottage #3	Sponsored by Peoples State Bank - Albia	Perpetual
Stanley Bay Farms (Catherine, Marilyn, Susan Bay)	Plaque on Cottage #4	Sponsored by Stanley & Emily Bay Family	Perpetual
Kevin & Rhonda Kness & Marvin & Marilyn Kness	Plaque on Cottage #7	Sponsored by Kevin & Rhonda Kness Marvin & Marilyn Kness	Perpetual
L & W Quarries, Inc. - Centerville	Plaque near boat ramp	Sponsored by L&W Quarries, Inc. Centerville	Perpetual
Donor		Recognition Text	Duration of Recognition

	Sponsorship Recognition Location		
Johnson Holding Company - Johnny Johnson	Plaque on practice green	Sponsored by Johnson Holding Company Johnny Johnson	Perpetual
Peoples State Bank - Albia	Plaque on tee marker #1	Sponsored by Peoples State Bank Albia	Perpetual
First Iowa State Bank - Albia	Plaque on tee marker #10	Sponsored by First Iowa State Bank Albia	Perpetual
Ideal Ready Mix	Plaque on tee marker #9	Sponsored by Ideal Ready Mix	Perpetual
Hy Vee - Centerville, Corydon, Albia, Chariton, Chariton Wholesale	Plaque at trail head marker	Savanna Ridge Trail Sponsors Dave and Ruth Taylor Hy Vee - Centerville, Corydon, Albia, Chariton, Chariton Wholesale	Perpetual
Dave and Ruth Taylor	Plaque at trail head marker		Perpetual
Community First Bank - Keosauqua	Plaque in snack bar area	Community First Bank Keosauqua	20 years remove 1/1/2029
Peoples State Bank - Albia	Naming of Exec Rm & plaque	Peoples State Bank Room Albia	Perpetual
Nellie Coltrain	Naming of Pres Suite & Plaque	Argo Family Suite	20 years remove 1/1/2029
Caryl Sharp	Naming of Pres Suite & Plaque	Kaldenberg Family Suite	20 years remove 1/1/2029
Arnie & Judy Sohn	Plaque on Cottage #26	Sponsored by Arnie & Judy Sohn	Perpetual
Bill and Sherri Duey	Plaque at Fitness Center	Bill and Sherri Duey Family	Perpetual
Martha Hoch & Barb Climie	Plaque at 2nd flr Lakeside sitting area	In Honor of Robert K. and Charlotte Beck	20 years remove 1/1/2029
Carol Bradley	Plaque at 3rd flr Lakeside sitting area	In Honor of John and Betty McDanolds	Perpetual
Denny and Carolyn Ryan	Plaque at 3rd flr parking lot sitting area	Denny and Carolyn Ryan Family	Perpetual
A.Y.M., Inc - Albia	Plaque at business center area	A.Y.M. Inc Albia	7 years remove 5/1/2018
Bruce Watley	n/a	Bruce Watley	donor wall
Appanoose County Community Foundation	n/a	Appanoose County Community Foundation	donor wall
Winger Companies	n/a	Winger Companies	donor wall
Kness Manufacturing	n/a	Kness Mfg. Co., Inc.	donor wall
Joe and Barb Crall	n/a	Joe & Barb Crall	donor wall
Bratz Shell Station	Group plaque at marina dock	Bratz Shell Station	20 years remove 1/1/2029
Ray and Patty Tresemer	Group plaque at marina dock	Ray & Patty Tresemer - Tresemer Physical Therapy, Inc.	20 years remove 1/1/2029
Rathbun Yacht Club	Group plaque at marina dock	Rathbun Yacht Club	20 years remove 1/1/2029
Northside Insurance Company	Group plaque at marina dock	Northside Insurance Company - Centerville	20 years remove 1/1/2029
Thompson Environmental Consulting, Inc.	Group plaque at marina dock	Thompson Environmental Consulting, Inc.	20 years remove 1/1/2029
Larry and Vickie Wilkinson	Group plaque at marina dock	Larry & Vickie Wilkinson	20 years remove 1/1/2019
Dorsey and Whitney LLP	Group plaque at marina dock	Dorsey and Whitney, LLP	20 years remove 1/1/2029

In addition, a donor recognition plaque/sign located on a wall between the lodge and conference center will also be maintained in perpetuity with the following donor names.

Rathbun Lake Resort, Inc.

Kevin Kness President
Ray Davis, Secretary
David Taylor, President-Emeritus
Ann Hamilton
Dean Kaster
Jon Miles
Marlene Sprouse
William Duey, Advisor

Carol Bradley, Vice President
Catherine Bay, Secretary
John Glenn
John Hamilton
Jim Lindemayer
Dennis Ryan
Jeff Young
Dora Guffey, Advisor

U. S. Army Corps of Engineers
Rathbun Regional Water Association
Chariton Valley Electric Cooperative
Appanoose County Board of Supervisors
Monroe County Board of Supervisor
Catherine, Marilyn and Susan Bay
Iowa Telecom

Iowa Trust & Savings Bank
First Iowa State Bank
Roger & Jan Winslow
Peoples State Bank
Cargill
Mercy Medical Center – Centerville

Hall Engineering Company
Community First Bank
Hy-Vee of Albia, Centerville, Chariton, and Corydon
David & Ruth Taylor
Argo Family
Caryl Sharp & Jim Kaldenberg

Bruce Watley
Carol Bradley
Arnie & Judy Sohn
Kevin & Rhonda Kness
Dennis & Carolyn Ryan

Bill & Sherri Duey
Barb Climie & Martha Hoch
Marvin & Marilyn Kness
A.Y.M. Inc. Albia

Winger Companies
Rathbun Yacht Club
Jim & Ginger Craver
Larry & Vicki Wilkinson
Kness Mfg. Co., Inc.
Ray & Patty Tresemer

Thompson Environment
Dorsey & Whitney LLP
Joe & Barb Crall
Bratz Shell
Northside Insurance
Kris Koestner J&K

Attachment 10
Honey Creek Resort - USACE Lease with Iowa DNR
See Separate Attachment

Attachment 11

Flood Management Plan

From time to time the level of Lake Rathbun can change dramatically. This change in lake level can occur at almost any time of year and quite quickly. As a rule of thumb, one inch of rain in the watershed equates to one foot rise in lake elevation. Normal lake elevation is 904 feet above MSL (mean sea level) and the level at which the water starts to run through the emergency spillway is approximately 928 feet above MSL. During the summer season the USACE lake manager sends out periodic emails with relevant lake information.

Beach: As the lake rises the beach area at the resort becomes smaller. There is no need to close the beach until it is completely under water. The Concessionaire is responsible for moving the swimming area buoys in and out as needed. Heavy rains and warm temperatures can produce bacteria which may cause the swimming area to be closed. The DAS is responsible for sampling the water and the On Site Project Manager will post any needed warnings.

Boat Ramp: When the lake reaches approximately 916 feet above MSL the boat ramp becomes unusable.

Marina: The Concessionaire is responsible for adjusting the courtesy dock to match lake level. The Concessionaire will adjust the cables as needed. In the event of extremely high water warning signs may need to be posted if the docks become unsafe. If the docks become unsafe due to high water or storm damage guests with slip reservations should be notified. Boat rental operations will be evaluated as to how they can operate during dock closures and should communicate any changes to the guest services manager.

Lodge, Cottages, and RV Park: High lake levels have no known impact on these areas. However, reservations and guest services staff should be aware of lake conditions and any restriction ordered by the USACE in order to answer questions and address any concerns the guests may have.

Golf Course: When the lake reaches approximately 917 feet above MSL the four cart path bridges on the course become compromised. The bridges are all at slightly different elevations so the impact on play depends on the level the lake reaches. If the lake is expected to rise above 920 feet MSL then the cart traffic on the course must be rerouted to avoid these bridges. Auxiliary paths exist but are not maintained. Culverts may need to be replaced, gravel / rock put down, and directional signage put in place. If the lake level reaches 922 feet above MSL then golf-hole number five becomes unplayable as a par five and is reconfigured to a par three. At this point it generally becomes necessary to reduce green fees.

Marketing: If Lake Rathbun or other lakes in our region begin to rise and cause flooding. Local news outlets identify this issue. During this time DAS and the Concessionaire shall work collectively to get out the message that the resort is open and fully operational.

Attachment 12

Contract Transition Requirements

DAS and the Concessionaire will fully cooperate in good faith with one another and with the existing operator to achieve an orderly transition of operations as of the effective date of this contract in order to avoid disruption of services to visitors and minimize transition expenses. The parties shall meet regularly and take necessary actions to effectuate the transition, to be effective by April 14, 2023 or as otherwise agreed to by the parties.

1.1 Cooperation During Start Up Transition

During the Contract start up period, the Concessionaire and DAS agree to:

- 1.1.1** Designate representatives of both entities and any other related third party to coordinate all contract transition activities.
- 1.1.2** Outline rights and responsibilities of the Existing Operator as part of its transition activities.
- 1.1.3** Develop a plan to allow for interviewing and transitioning of existing employees.

1.2 Cooperation Prior to the Contract Expiration or Termination Date

At such time as the DAS may notify the Concessionaire that it will not continue its operations upon the Termination of this Contract, the Concessionaire, notwithstanding such notification, shall undertake the following tasks:

- 1.2.1** The Concessionaire shall continue to provide visitor services and otherwise comply with the terms of the Contract in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously with a view to maintaining customer satisfaction.
- 1.2.2** The Concessionaire shall continue to accept all future bookings for any required or authorized services that involve advance reservations. The Concessionaire shall not divert any bookings to other facilities managed or owned by the Concessionaire or any affiliate of the Concessionaire. The Concessionaire shall notify all visitors with bookings for any period after the Termination Date that the Successor Concessionaire will operate the facilities and services.
- 1.2.3** Within ten days of notification to the Concessionaire by DAS of the selection of the Successor Concessionaire, the Concessionaire shall provide the Successor Concessionaire a copy of the Concessionaire's booking/reservation logs as of the date of notification. The Concessionaire shall thereafter update such log every 30 days until the Termination Date. The log shall include at a minimum, name of visitor, address, contact information, dates of usage, rates quoted, amount of advanced deposit and confirmation number.
- 1.2.4** The Concessionaire shall designate one of the Concessionaire's key personnel as the point of contact (POC) for communications between the Concessionaire and the Successor Concessionaire. This POC shall timely respond to DAS meeting and information requests. The POC shall agree to meet monthly to discuss transition issues for up to six months prior

to Contract termination, or shall agree to another schedule deemed to be reasonable based upon an accelerated termination period. In the final month of the Contract, the POC shall agree to meet weekly. Meetings can be conducted via conference call or other practical means.

- 1.2.5** The Concessionaire shall provide the Successor Concessionaire with access to all Concession Facilities, including “back-of-house areas.” The Concessionaire shall also provide the Successor Concessionaire copies of the keys to all concession facilities.
- 1.2.6** The Concessionaire shall provide the DAS and the Successor Concessionaire full access to all relevant information and materials pertaining to the operation of the DAS Facilities. This information shall include but not be limited to complete information on the following: utilities, including gas and electric; fuel systems and fuel storage tanks; telephone service; water service; security systems, and life safety. The Concessionaire shall provide all such information within 30 days after receipt of notification of the selection of the Successor Concessionaire and update the information periodically (but not less frequently than 30 days) until the Termination Date.
- 1.2.7** The Concessionaire shall provide the DAS and the Successor Concessionaire with copies of all maintenance agreements, equipment leases, service contracts, and supply contracts, and copies of all liquor licenses and other licenses and permits (collectively “licenses”). Liquor licenses shall not be cancelled prior to contract termination.
- 1.2.8** The Concessionaire shall allow the Successor Concessionaire to solicit and interview for employment all of the Concessionaire’s salaried and hourly employees, including seasonal employees, through a coordinated process implemented by the Concessionaire.
- 1.2.9** The Concessionaire shall not enter into any contracts or agreements that would be binding on any concession facilities or concession operations in general after the Termination Date without the prior written agreement of the Successor Concessionaire.
- 1.2.10** Within 30 days after the receipt of the notification of selection of the Successor Concessionaire, the Concessionaire shall provide to DAS a copy of the Concessionaire’s monthly financial report. The Concessionaire thereafter, shall provide DAS with monthly updates of the financial report up to the termination date.
- 1.2.11** The Concessionaire shall provide the Successor Concessionaire with a complete, detailed, and well-organized list of Personal Property in connection with its operations under the Contract. The Concessionaire shall provide the list to the Successor Concessionaire within 30 days following receipt of the notification of the selection of the Successor Concessionaire. The Concessionaire shall designate those items that the Concessionaire believes are essential to maintaining continuity of operations or the special character of the concession operations. The Concessionaire shall assist the Successor Concessionaire in reviewing and validating the list.
- 1.2.12** The Concessionaire shall provide the Successor Concessionaire with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessionaire’s operations for the period of one

year prior to notification of the selection of the Successor Concessionaire. The Concessionaire shall provide all such information within 30 days after receipt of selection of the Successor Concessionaire and update the information monthly until the Termination Date.

- 1.2.13** The Concessionaire shall provide the DAS and the Successor Concessionaire with such other cooperation as reasonably may be requested.

1.3 Cooperation upon the Contract Expiration or Termination Date

Upon the Termination Date, the Concessionaire shall undertake the following activities.

- 1.3.1** The Concessionaire shall agree to attend a final transition meeting as part of no later than 20 days prior to the Termination Date. The objective of this meeting is to ensure that all elements of the transition have been accomplished and all parties agree that issues have been addressed appropriately. This meeting shall take place at a location that is mutually acceptable to both parties and shall be attended by representatives of DAS, the Concessionaire, and the Successor Concessionaire.
- 1.3.2** The Concessionaire shall cooperate with the transfer or assignment of all contracts and licenses entered into by the Concessionaire that the Successor Concessionaire elects to assume.
- 1.3.3** The Concessionaire shall disconnect itself from the booking/reservation platform associated with the existing contract, providing support if necessary to the Successor Concessionaire transitioning its information from its booking/reservation log. All reports due to DAS for the final operating season prior to Termination Date shall be due post termination at the time period outlined in the Contract.
- 1.3.4** No later than 10 days after the Termination Date, the Concessionaire shall provide the DAS with an itemized statement of all fees and payments due to the DAS under the terms of the Contract as of the Termination Date, including, without limitation, all deferred, accrued, and unpaid fees and charges. The Concessionaire within 10 days of its delivery to the DAS of this itemized statement shall pay such fees and payments to the DAS. The Concessionaire and the DAS acknowledge that adjustments may be required because of information that was not available at the time of the statement.
- 1.3.5** The Concessionaire shall make available to the DAS for DAS's collection, retention, and use, copies of all books, records, licenses, permits, and other information in the Concessionaire's possession or control that in the opinion of the DAS are related to or necessary for orderly and continued operations of the related facilities and services, notwithstanding any other provision of this Contract to the contrary.
- 1.3.6** The Concessionaire shall remove (with no compensation to Concessionaire) all items of collateral, inventory and supplies as may be marked with any trade name or trademark belonging to the Concessionaire within 30 days after Termination.
- 1.3.7** The Concessionaire shall provide the DAS and the Successor Concessionaire with such other cooperation as reasonably may be requested.

TAB 2 - Amendments



Department of
Administrative Services

KIM REYNOLDS, GOVERNOR

ADAM STEEN, DIRECTOR

December 16, 2024

This Amendment to the Concessionaire Agreement is effective December 16, 2024, between the Iowa Department of Administrative Services ("Agency") and Achieva Enterprises ("Concessionaire"). The Agency and the Concessionaire are collectively referred to as "the Parties."

The Concessionaire Agreement dated December 16, 2024 is amended as follows:

1. The Real Property Replenishment Reserve ("RPRR") requires an investment obligation of the Concessionaire in the amount of 5.0% of the gross monthly receipts, which is set aside for improvements to the real property assets of the Honey Creek Resort ("the RPRR investment obligation"). Revised calculation as shown on the October 31st, 2024 State Financials provided by DAS.
2. The RPRR investment obligation is waived for the period beginning on November 1, 2023, and ending on December 31, 2024 ("amendment period"), under the following conditions:
 - a. The Concessionaire shall submit and the Agency shall review the Concessionaire's unaudited financial statements (income statements, balance sheets) and applicable bank statements for the RPRR monthly for the months following the partial amendment period. The Agency will authorize the RPRR investment obligation funds to remain in the Concessionaire's operating fund on a monthly basis.
 - b. The RPRR investment obligation funds transferred from the RPRR into the operating fund shall only be used for allowable operating expenses, including the purchase of insurance coverage and payment for the annual financial audit for FY 1.
3. If the Concessionaire fails to provide the completed annual financial audit for FY 2 (January 1, 2024 – December 31, 2024) in accordance with the existing Concessionaire Agreement, this Amendment will automatically terminate and all RPRR investment obligation funds subject to this amendment shall be transferred back into the RPRR fund by the Concessionaire within seven (7) days of receiving notice of automatic termination by the Agency.
4. The Agency, in its sole discretion, may extend this Amendment prior to its expiration. Any extension must be agreed to by the Concessionaire and shall be in writing and signed by the Parties.
5. All other terms and conditions of the Concessionaire Agreement remain in full force and effect.

Signatures:

Achieva Enterprises

By: Beth Henderson
Printed name: Beth Henderson
Title: President
Date: December 16, 2024

Department of Administrative Services

By: Adam Steen
Printed name: Adam Steen
Title: Director
Date: 12.23.24



Department of
Administrative Services

Empowering People
Collaboration
Customer Service

Governor Kim Reynolds

Lt. Governor Adam Gregg

Adam Steen, Director

**AMENDMENT No. 1
TO CONCESSIONAIRE OPERATIONS CONTRACT 23186**

This Amendment No. 1 (this "Amendment") to Contract 23186, is made and entered into as of April 7, 2023 ("Effective Date"), by and between Achieva Enterprises, LLC ("Contractor"), and the Iowa Department of Administrative Services (the "Agency").

NOW, THEREFORE, the parties herein acknowledge and agree as follows:

1. Contract to Begin date is amended to April 12, 2023.
2. Contract date of Expiration is amended to April 11, 2029.

This amendment is made to allow additional time for Contractor to train personnel, install information technology, and perform other tasks necessary to commence operations.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed by their respective duly authorized representatives as of the date set forth above.

ACHIEVA ENTERPRISES

By: Beth Henderson

Name: BETH HENDERSON

Title: President

Dated: 4/7/23

IOWA DEPARTMENT OF ADMINISTRATIVE SERVICES

By: AS

Name: Adam Steen

Title: Director

Dated: 4/10/23

Attachment C-10
Activities Program Listing

Honey Creek Resort employs two full time Naturalists to manage and support the Resort in delivering interpretive and educational activities related to the environment and sustainability. It is a requirement of the Contract to maintain the current level of staffing and programming. Programming varies by season and includes programs that meet the needs of both leisure guest at the hotel as well as corporate and SMERF groups attending events and functions at the hotel. Programs and activities shall be designed to incorporate interpretive themes identified in the HCR Interpretive Plan. Core interpretive and educational programs include:

- Self Guided Hikes
- Guided Hikes
- Kayak Tours
- Outdoor Skills
- Fishing
- GPS/Map and Compass
- Birding
- Outdoor Cooking
- Nature Classes
- Animal Classes
- Astronomy Classes
- Water activities Classes
- Special Events
- Seasonal Programming
- Special Children's Programming (Pre K and Home School)
- Scout Badges
- Yoga and other Fitness
- Geocaching
- Roving Naturalist



10.3.2024

Beth Henderson, President & CEO
Achieva, LLC
12633 Resort Drive
Moravia, IA 52571

Beth,

This letter is to notify you that effective October 15, 2024 the Project Manager – State of Iowa, as designated in section 5.2 of Contract 23186, will change from Allen Meyer to Ryan West. The office phone number identified in the contract remains the same, 515-725-2272. The email for Ryan West is ryan.west@iowa.gov.

Our intent is to re-establish a relationship and provide a detailed list of activities that both the State of Iowa and Achieva, LLC could perform to clarify roles and responsibilities, as well as create new reporting processes. In order to formally re-establish our relationship, we would like to set up an in-person meeting between the State of Iowa and Achieva, LLC at Honey Creek Resort. In attendance from the State of Iowa will be: Ryan West, Charlee Cross, Mirela Jusic, and Scott Gustafson.

Prior to this meeting, we request Achieva, LLC submit the following:

- Any previously unsubmitted claims for reimbursement for any and all potentially allowable expenditures of State funds which have occurred on or before October 15, 2024. State funds includes: RIIF funds, Real Property Replenishment Funds (RPRF), and Conservation Fees. The submissions will need to be supported with paid invoices, including bank statements showing the payments were processed.
- All past due reports which have not been provided. Attached to this email is a tracking sheet to show what we believe the status is of the required reports. Please provide the documents for any of the unmarked boxes.

Please submit all of the aforementioned documents to Ryan West prior to October 15, 2024.

Once we have the remaining unsubmitted invoices, and all of the financial documentation, we will revise the Reserves Conservation Fee Schedule with the eligible invoices, and the calculations of the reserves. Any future adjustments for the period from contract start through October 15, 2024 should only occur if the contract is amended retroactively, or if the independent audit determines there were errors in the previously submitted reports to necessitate an adjustment. From the State of Iowa's perspective, we are prepared to move quickly to reconcile our records when we receive the requested information.

We suggest our in-person meeting take place soon after October 15, 2024. Ryan West will send proposed times to assist in scheduling.

Lastly, on August 19, 2024, Achieva, LLC submitted a file titled "Copy of Reserves Conservation Fee Schedule as of 05-04-24 (003)." It contained multiple entries in the "Cons Fee 24" and "Cons Fee 23" worksheets. Many of them were supported by invoices that showed items or services that seemed to be unrelated to sustainability, naturalist activities, or environmental expenses as described in 3.18.5 of Contract 23186. Others were for categories of expenses that may be eligible, although no supporting documents were provided. In our in-person meeting, we will have information related to Conservation Fees that should help clarify the proper allocation and reimbursement of those dollars.

Thank you for your time and attention,

Adam Steen, Director
Department of Administrative Services

TAB 3 – Management Agreement

MANAGEMENT AGREEMENT

for

HONEY CREEK RESORT STATE PARK

1. **PARTIES.** This Agreement is made between the State of Iowa, acting through the Iowa Department of Natural Resources (DNR), and Appanoose County, acting through the County Board of Supervisors (County).

2. **PROPERTY.** The DNR and the County have jointly determined that it is in the public interest to transfer the care, maintenance, and operational responsibility of Honey Creek Resort State Park to the County. Honey Creek Resort State Park is Iowa's premier destination resort located within the Rathbun Lake recreation complex. The parties mutually agree that local control is the ideal way to reinvigorate Honey Creek Resort State Park and better achieve the original legislative vision of it being an economic catalyst for the region. In more detail, this management agreement hereby transfers to the County general jurisdiction and responsibility for all of Honey Creek Resort State Park's business operations, which includes care and maintenance obligations for the state-owned real property and buildings and fixtures thereon (hereinafter the Resort). See Exhibits A and B. The state-owned buildings located on federal property and all of the Resort's supplies, equipment, and other goods shall be conveyed in a separate instrument, consistent with applicable law.

3. **AUTHORITY.** This Agreement is entered into under the authority of Iowa Code sections 331.X, 461A.3A(1), and 461A.27. Pursuant to said sections, the parties mutually agree that the County shall undertake the development, care, and maintenance of the Resort according to the following terms and conditions:

4. **TERM OF AGREEMENT.** This Agreement is effective on the date it is last signed below and continues in full force and effect to and including December 31, 2045.

5. **MANAGEMENT OF PROPERTY AND COMPLIANCE WITH LEASE.** The County agrees to maintain and manage the Resort as a public access area in substantially the same manner as the Resort was maintained and managed by the DNR. The County further agrees to:

- a. Comply with the terms of Lease No. DACW41-1-97-233 (Lease) between the Secretary of the Department of the Army and the DNR, as amended and as further supplemented and amended from time to time. The Lease is attached as Exhibit C.
- b. Operate the Resort in a professional and responsible manner. The County may operate the Resort through an agent or a private concessionaire; however, all third-party management or operational contracts are subject to approval by the DNR and the U.S. Army Corps of Engineers, consistent with the Lease.
- c. The State, acting through the Department of Administrative Services (DAS), shall oversee, manage, and distribute the Resort's deferred maintenance appropriation contained in 2023 Iowa Acts, Senate File 577, section 8, paragraph "f." These funds shall be spent consistent with the deferred maintenance needs identified in a facility condition assessment report dated November 7, 2022 (Exhibit D), and as otherwise required by the appropriation and other applicable law. DAS shall consult with the County and concession operator on the timing and prioritization of deferred maintenance projects.

6. IMPROVEMENTS.

- a. *State-owned real property.* The County shall make no permanent improvements to the state-owned real property as identified on Exhibit B until the development plans for such improvements have been approved by the DNR. Such approval shall be via the issuance of a Sovereign Lands construction permit pursuant to Iowa Code section 461A.4 and 571 Iowa Administrative Code chapter 13 and may require compliance with additional requirements, including those from the State Historical Preservation Office. All applicable requirements shall be included in said permit. All costs associated with installing and maintaining improvements under this paragraph shall be the express responsibility of the County.
- b. *Buildings and fixtures on state-owned land.* The County shall make no permanent improvements to the buildings and fixtures on the state-owned real property without first obtaining approval in writing from the DNR. All costs associated with maintaining, renovating, or otherwise repairing or improving the buildings and fixtures under this paragraph shall be the express responsibility of the County.
- c. *Federally-owned real property.* Consistent with the Lease, the County shall not construct, establish, remove, demolish, or dismantle any structure or facility on federally-owned real property without prior written approval from the DNR and the U.S. Army Corps of Engineers.

7. SURRENDER OF PROPERTY. At the expiration or termination of this Agreement, the County shall yield possession of the state-owned real property and buildings and fixtures thereon to the DNR and will, within 90 days after such time, remove all County-owned personal property present in such area. The state-owned real property and buildings and fixtures thereon shall be delivered to the DNR in as good order and condition as when the same was entered upon by the County.

8. PUBLIC USE OF RESORT. Nothing in this Agreement shall deny the right of the public to enter upon and use the Resort for any lawful purpose whatsoever.

9. INDEMNIFICATION. To the extent allowed by law, the County agrees to indemnify and hold harmless the State of Iowa and the DNR, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the DNR, related to or arising from: any breach of this Agreement; any negligent or wrongful act or omission; or any other act, or omission, by the County, its officers, agents, employees, volunteers, or contractors that results in damage to property or injury to a person or persons by virtue of its activities under this Agreement.

10. NONDISCRIMINATION. It is agreed that, with respect to use of the Resort, the County will not exclude anyone from participation in, deny anyone the benefits of, or otherwise subject anyone to discrimination because of the person's race, color, sex, gender identity, sexual preference, national origin, age, or disability.

11. COMPLIANCE WITH LAWS. The County, its officers, employees, agents, and contractors shall comply with all applicable federal, state and local laws, rules, ordinances, regulations, and orders in conducting activities pursuant to this Agreement, including without limitation, those laws, rules, and regulations related to the use of state-owned parks and recreation areas under the jurisdiction of the DNR and the Natural Resources Commission. Any claim or obligation arising out of this section, either by DNR or a third party, shall survive the termination, expiration, or conclusion of this Agreement.

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

13. CHOICE OF LAW AND FORUM. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the proceeding shall be commenced wherever venue is proper.

14. TERMINATION. Following 60 days written notice, the County may terminate this Agreement in whole or in part without penalty and without incurring any further obligations. Termination can be for any reason or no reason at all. The DNR may only terminate this Agreement due to the County's breach of any material term, condition, or provisions of either this Agreement or the Lease if such breach is not cured within 30 days of the DNR's delivery to the County of a written notice of breach, provided that cure is feasible.

15. OBLIGATIONS BEYOND AGREEMENT TERM. This Agreement shall remain in full force and effect to the end of the specified term or until terminated pursuant to this Agreement. All obligations the County incurred during or existing under this Agreement as of the date of expiration or termination shall survive the termination or expiration of this Agreement.

16. SPECIAL TAX ASSESSMENTS. The County agrees that it shall not levy special tax assessments against the Resort, and any improvements thereon, during the term of this Agreement. Nothing in this provision shall be construed as a waiver of sovereign immunity.

17. EXECUTION. This Agreement is entered into under the authority of a resolution adopted by the Appanoose County Board of Supervisors meeting on _____, as shown in the minutes thereof.

APPANOOSE BOARD OF SUPERVISORS

_____, Chair

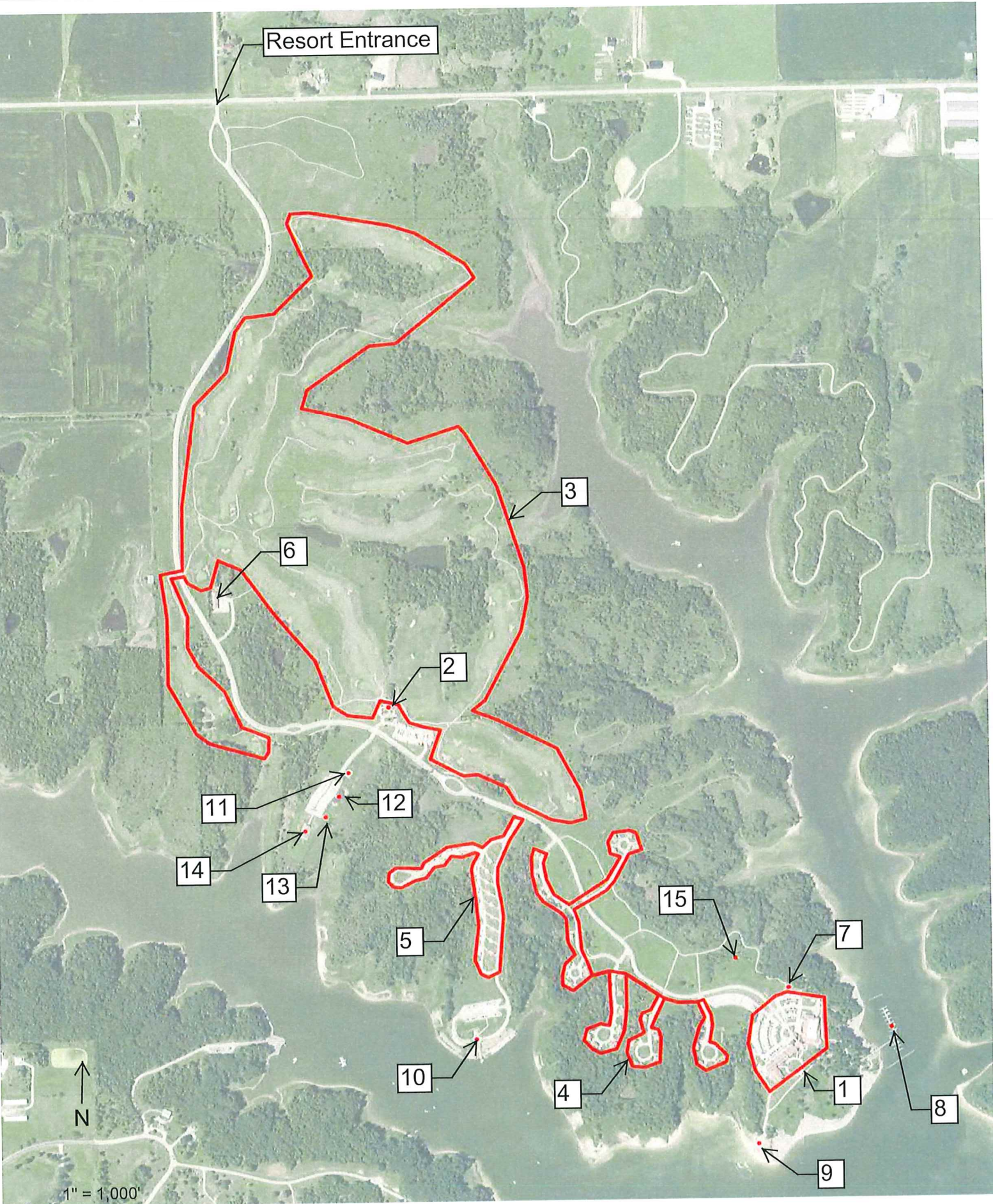
This Agreement is entered into under the authority of a resolution adopted by the Natural Resource Commission on _____, as shown in the minutes thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES

Kayla Lyon, Director

Date: _____

Resort Entrance



1" = 1,000'

HONEY CREEK RESORT - FACILITIES LIST			
#	Facility	Building Improvements (square feet)	Brief Description of the Improvement or Area
1	The Lodge on Rathbun Lake	108,299	Includes 105 Guest Rooms & Suites, Convention & Conference Halls, Banquet Serving, Lakeshore Grille (Restaurant) & Bar, Pirate's Cove Indoor Aquatic Center, Fitness Center, Offices, Mechanical Rms, Corridors, Elevators, and Stairwells. There is a 1,569-Sf Porte-Cochere (Drive-up Canopy, not part of Bldg. Sf) on the main entrance to the Convention/Restaurant portion (Section C on Plans) and 610 Sf of concrete exterior building docks. There are no balconies, but many of the lodge rooms have direct-access, walk-out patios (on both north and south elevations of The Lodge). South of the Lodge, on the southern-facing hill, there is a small, wood-frame Gazebo, used for outdoor weddings and other events.
2	The Preserve Clubhouse (incl. Pro Shop) - ON STATE LAND	1,995	The Clubhouse includes a pro-shop, snack bar, and restrooms, but no locker rooms; Cart charging station and covered patio and a cart storage shed (about 900 Sf) north of the Clubhouse, all located on State Land.
3	The Preserve 18-Hole Golf Course - MOSTLY ON STATE LAND		Some portions of holes are subject to the periodic flooding. There is about 150,978 square feet of paved (5" thick) cart paths throughout the course.
4	The Cottages - 8 ON STATE LAND	26,988	Located on cul-de-sacs west of the lodge, there are 28 cottages (1-, 2-, & 4-BR). Area calculations here does not include the Fireplaces and Decks (Wood, wraparound covered; handicapped units with ramps). Each Cottage has its own paved driveway, sidewalk and patio area.
5	RV Park - PARTIALLY ON STATE LAND		Located west of the Cottages. Temporary employee housing (trailers) currently sits on six of the sites on the west cul-de-sac.
6	Recreational Maintenance Building - ON STATE LAND	5,600	Used for general maintenance and the golf course. Wood frame, steel exterior with about 25,000 Sf of driveway and maneuvering lot.
7	Activities Building (Interpretive Center)	1,600	Located north of The Lodge; the Activities Building was designed by Iowa State University students to be a net-zero-energy facility, using solar and wind energy and efficient appliances. The top floor was built in Ames, and craned in over the lower portion.
8	Boat Dock		The Dock is located on Lake Rathbun, southeast of the lodge, featuring boat slips, storage for jet ski rentals, along with wave attenuators off the respective north and south ends, developed in 2016, and covers about 4 acres of water.
9	Beach		The beach is located on a southwesterly-facing peninsula midway between the Boat Dock (on the east) and the Boat Ramp (on the west), and accessed via a pedestrian path adjacent southwest of The Lodge. Encompasses a little over an acre of sand.
10	Boat Ramp		The boat ramp in HRC is located south of the southerly wing of the RV Park, accessed via a drive terminating at the ramp, with a parking area north of it (37 spaces, incl. two HC spaces).
11	Basketball Court - ON STATE LAND		40' x 60', hard surface, surrounded by mowed grass, located east of the entrance to the Day-Use area, accessible by pedestrian paths.
12	Playground - MOSTLY ON STATE LAND		Located in the Day Use Area, east of the large parking lot, includes the area of the playground and adjacent yard area.
13	Pavillion Bathrooms		Northeast of the Outdoor Pavilion, southeast tip of large parking lot in the Day Use Area; Flush Units, Concrete block.
14	Outdoor Pavillion		Located at the southerly point of the Day Use Area, it is accessed via a wide pedestrian trail. Used for weddings and other out-door congregate events.
15	Wind Turbine		Height = 60' and located about 500' northwest of the Activities Building. In 2011, DNR received a donation from the Chris Desjardins Memorial Fund.
*	Roadways and Parking Lots - PARTIALLY ON STATE LAND	240,171	Resort Drive winds south from paved, E/W County Highway J18; most lays on State Land, but some is on Federal land. The Cottage "loops", from east to west, consists of Wildlife Way, Mariposa Drive, Timber Drive, Avian Court, Feather Ridge Road, and Prairie View Court.
*	Sidewalks/Bike Paths/Patios - PARTIALLY ON STATE LAND	256,710	Approximately 75,259 square feet of sidewalks and patios exist around the Lodge, and approximately 181,451 square feet of paving for pedestrian/bike paths which span the rest of the Resort, much of which is situated along Resort Drive, but also around the north, east, and south sides of The Lodge and down to the Docks/Slips to the southeast.

HCR on State-owned Land = 332.43 Acres (44%)

Sections 4, 9, & 10, Chariton Township 70N, R-18W of the 5th P.M., Appanoose Co., IA

HCR on USACE-owned Land (DNR leases) = 425.00 Acres (56%)

Sections 4,9,10, 15, & 16, , Chariton Township 70N, R-18W of the 5th P.M., Appanoose Co., IA

Approximate Total Land of HCR = 757.43 Acres



NOTE: Map Parcels #17-22 are owned by USACE and consist of a total of 2,278.68 acres of land and water, most of which is not seen on this map. In addition, USACE owns much more land in and around Lake Rathbun, however, these are the only parcels upon which portions of HCR lay; according to the land lease there are 425 acres. The map boundaries are approximate.

Map Parcels	Sections-TWP-Rng-Appanoose Co	Land Descriptions	Acres
1-16	4,9, & 10, 70N, 18W	State - DNR Acres on HRC	332.43
17-22	4, 9, 10, 15, & 16, 70N, 18W	Federal - USACE Acres on HCR	425.00
		Approximate Total of HCR	757.43

EXHIBIT E
LEASE NO. DACW41-1-97-233



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

December 8, 2005

Civil Branch

SUBJECT: Transmittal of Supplemental Agreement No. 2 to Lease DACW41-1-97-233,
Rathbun Lake, Iowa

Iowa Department of Natural Resources
ATTN: Mr. Arnie Sohn
Wallace Building
502 East 9th Street
Des Moines, Iowa 50319

Dear Mr. Sohn:

I am enclosing the executed Supplemental Agreement No. 2 to Lease DACW41-1-97-233
that extends the term of the current lease to December 31, 2045.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of
my staff at 816-983-3917.

Sincerely,

A handwritten signature in black ink, appearing to read "G. G. Wilson", is written over a horizontal line.

Greg G. Wilson
Chief, Real Estate Division

Enclosure

**SUPPLEMENTAL AGREEMENT NO. 2
TO LEASE NO. DACW41-1-97-233
FOR PUBLIC PARK AND RECREATIONAL PURPOSES
RATHBUN LAKE
APPANOOSE COUNTY, IOWA**

This Supplemental Agreement entered into by and between the Secretary of the Army, party of the first part, and the Iowa Department of Natural Resources, an instrumentality of the State of Iowa, party of the second part, WITNESSETH THAT:

WHEREAS, on January 14, 1998, the Secretary of the Army, acting for and in behalf of the United States of America, as Secretary, did grant Lease No. DACW41-1-97-233 to the *Iowa Department of Natural Resources*, for public park and recreational purposes for a term of Twenty Five (25) years, beginning January 1, 1998 and ending December 31, 2022 and;

WHEREAS, both parties hereto executed Supplemental Agreement No. 1 to Lease DACW41-1-97-233 on the 25th day of February 2004 adding approximately 1.85 acres of land to the leasehold and;

WHEREAS, it is the desire of the Iowa Department of Natural Resources to extend the term of the lease to facilitate sale of state revenue generating bonds for the development of the Honey Creek State Resort facility;

WHEREAS, it is the desire of both parties and it is considered mutually beneficial to modify certain conditions in the lease and;

NOW THEREFORE, in consideration of the mutual benefits to be derived by the parties hereto, Lease No. DACW41-1-97-233, is hereby amended in the following particulars, but no others, effective upon date of execution:

- a. Condition 1 TERM is deleted in its entirety.
- b. Condition 1 TERM is inserted as follows: *Said premises are hereby leased for a term of Forty-Seven (47) years beginning January 1, 1998 and ending December 31, 2045.*

CERTIFICATE OF AUTHORITY

I KARYN Stone (name) certify that I am the
notary for the Iowa Department of Natural Resources,
that Liz Christiansen (signator of outgrant) who signed
the foregoing instrument on behalf of the grantee was then
Deputy Director (title of signator of outgrant) of the Iowa
Department of Natural Resources. I further certify that the
said officer was acting within the scope of powers delegated to
this officer by the governing body of the grantee in executing
said instrument.

Iowa Department of Natural Resources

Date: 12-2-05

Karlyn G. Stone, Notary
Clerk or Appropriate Official

4-24-06
(AFFIX SEAL)



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

November 30, 2005

Civil Branch

SUBJECT: Transmittal of Proposed Supplemental Agreement No. 2 to Lease DACW41-1-97-233, Rathbun Lake, Iowa

Iowa Department of Natural Resources
ATTN: Mr. Arnie Sohn
Wallace Building
502 East 9th Street
Des Moines, Iowa 50319

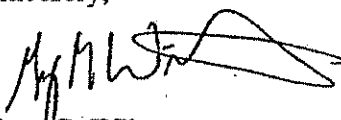
Dear Mr. Sohn:

I am enclosing a proposed Supplemental Agreement No. 2 to Lease DACW41-1-97-233 to extend the term of the current lease to December 31, 2045. This increased lease term will permit the sale of state bonds to generate revenue for the Honey Creek State Resort Park at Rathbun Lake, Iowa.

If the proposed document is satisfactory, please have the appropriate official of your organization date and sign the document. Have another official of your organization complete, date and sign the Certificate of Authority. Please return all completed documents to this office in the enclosed return envelope.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of my staff at 816-983-3917.

Sincerely,


Greg G. Wilson
Chief, Real Estate Division

Enclosure

**SUPPLEMENTAL AGREEMENT NO. 2
TO LEASE NO. DACW41-1-97-233
FOR PUBLIC PARK AND RECREATIONAL PURPOSES
RATHBUN LAKE
APPANOOSE COUNTY, IOWA**

This Supplemental Agreement entered into by and between the Secretary of the Army, party of the first part, and the Iowa Department of Natural Resources, an instrumentality of the State of Iowa, party of the second part, WITNESSETH THAT:

WHEREAS, on January 14, 1998, the Secretary of the Army, acting for and in behalf of the United States of America, as Secretary, did grant Lease No. DACW41-1-97-233 to the *Iowa Department of Natural Resources*, for public park and recreational purposes for a term of Twenty Five (25) years, beginning January 1, 1998 and ending December 31, 2022 and;

WHEREAS, both parties hereto executed Supplemental Agreement No. 1 to Lease DACW41-1-97-233 on the 25th day of February 2004 adding approximately 1.85 acres of land to the leasehold and;

WHEREAS, it is the desire of the Iowa Department of Natural Resources to extend the term of the lease to facilitate sale of state revenue generating bonds for the development of the Honey Creek State Resort facility;

WHEREAS, it is the desire of both parties and it is considered mutually beneficial to modify certain conditions in the lease and;

NOW THEREFORE, in consideration of the mutual benefits to be derived by the parties hereto, Lease No. DACW41-1-97-233, is hereby amended in the following particulars, but no others, effective upon date of execution:

- a. Condition 1 TERM is deleted in its entirety.
- b. Condition 1 TERM is inserted as follows: *Said premises are hereby leased for a term of Forty-Seven (47) years beginning January 1, 1998 and ending December 31, 2045.*

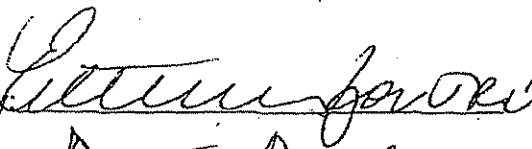
This Supplemental Agreement No.2 to Lease No. DACW41-1-97-233 is not subject to Title 10, U.S.C., Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this ____ day of _____, 200__.

GREG G. WILSON
Chief, Real Estate Division

This Supplemental Agreement No. 2 to Lease No. DACW41-1-97-233 is also executed by the grantee this 22^d day of December, 2005.

Iowa Department of Natural Resources

By: 
Title: Deputy Director

CERTIFICATE OF AUTHORITY

I KARYN Stone (name) certify that I am the
notary for the Iowa Department of Natural Resources,
that Liz Christiansen (signator of outgrant) who signed
the foregoing instrument on behalf of the grantee was then
Deputy Director (title of signator of outgrant) of the Iowa
Department of Natural Resources. I further certify that the
said officer was acting within the scope of powers delegated to
this officer by the governing body of the grantee in executing
said instrument.

Iowa Department of Natural Resources

Date: 12-1-05

Karlyn G. Stone, Notary
Clerk or Appropriate Official

4-20-06
(AFFIX SEAL)



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

May 10, 2005

Civil Branch

SUBJECT: Administrative Correction for Consent No.DACW41-2-04-0028, Rathbun Lake,
Iowa

Iowa Department of Natural Resources
ATTN: Mr. Arnie Sohn
Wallace Building
502 East 9th Street
Des Moines, Iowa 50319

Dear Mr. Sohn:

During a routine out-grant review in our office, the assigned number of this consent was found to be incorrect. We have made pen and ink changes to our record copy and request you also correct your copy of this consent document.

Request you change any references to document number DACW41-2-04-0028 to show the corrected number as **DACW41-3-04-0028**. This administrative change does not impact the term or any other conditions of the outgrant document.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of my staff at 816-983-3917.

Sincerely,

Anne L. Kosel
Chief, Civil Branch
Real Estate Division

Copies Furnished:
OD-TR
OF-RA

7780 PM12:08 05/13/05



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64105-2896

February 9, 2004

Civil Branch

SUBJECT: Transmittal of Proposed Consent No. DACW41-³04-0028, Rathbun Lake, Iowa

Iowa Department of Natural Resources
ATTN: Mr. Arnie Sohn
Wallace Building
502 East 9th Street
Des Moines, Iowa 50319

Dear Mr. Sohn:

I am enclosing the subject Consent to Easement Structures for the construction, operation and maintenance of a road within Tract Nos. 236E & 236E-2, Rathbun Lake, Iowa.

Please have the appropriate official of your organization sign and date all three copies of the proposed document. Have another official of your organization complete, date and sign all three copies of the Corporate Certificate. Then return all completed documents to this office in the enclosed self-addressed envelope.

You will receive an executed copy for your records. Upon completion of the work, please contact the Operations Manager at Rathbun Lake Reservoir, to make an appointment for a joint inspection of the completed work.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of my staff at 816-983-3917.

Sincerely,

Karl Mueller
Acting Chief, Civil Branch
Real Estate Division

Enclosure

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
KANSAS CITY DISTRICT
RATHBUN LAKE, APPANOOSE COUNTY, IOWA

CONSENT TO EASEMENT STRUCTURES

WHEREAS, the United States, has acquired a perpetual flowage easement and rights over Tract No(s). 236E, Rathbun Lake, Iowa, from Clarence L. Hiner, a single person and Floyd W. Hiner a single person by virtue of Warranty Deed dated April 19, 1966 and recorded at Appanoose County on April 19, 1966, Book 102, page 142; and Tract No 236E-2, Rathbun Lake, Iowa, from Clarence L. Hiner a single person and Floyd W. Hiner, a single person, by virtue of Deed of Road Easement dated March 14, 1967, recorded at Appanoose County on March 14, 1967, Book 102, page 282;

WHEREAS, said easements, grant to the United States the right of prior approval for any structures, excavation or fill to be located within the said easement area, which area is under the administrative control of the Kansas City District, Corps of Engineers.

WHEREAS, the United States has been requested to give consent to Construct and Maintain a Road on the above identified Tract(s).

NOW THEREFORE, the United States hereby gives consent to Iowa Department of Natural Resources to Construct and Maintain a Road at the location shown on EXHIBIT "A" attached hereto;

PROVIDED HOWEVER, that this consent is subject to the following conditions:

1. All activities conducted on the premises shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.
2. The giving of this consent does not in any way subordinate the United States' prior easement rights. The United States shall in no case be liable for any damage or injury to the structures herein consented to, which may be caused by any action of the United States under its easement, or that may result from the future operations undertaken by the United States, and no claim or right to compensation shall accrue from such exercise of the United States' easement rights.
3. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the consented activity.

CERTIFICATE OF AUTHORITY

I Lisa Dale (name) certify that I am the Executive Secretary
(title) of Iowa DNR, that Jeffrey Vorn (signator of outgrant)
who signed the foregoing instrument on behalf of the grantee was then Director
(title of signator of outgrant) of Iowa DNR. I further certify that the said officer was
acting within the scope of powers delegated to this governing body of the grantee in executing
said instrument.

IOWA DEPARTMENT OF NATURAL RESOURCES

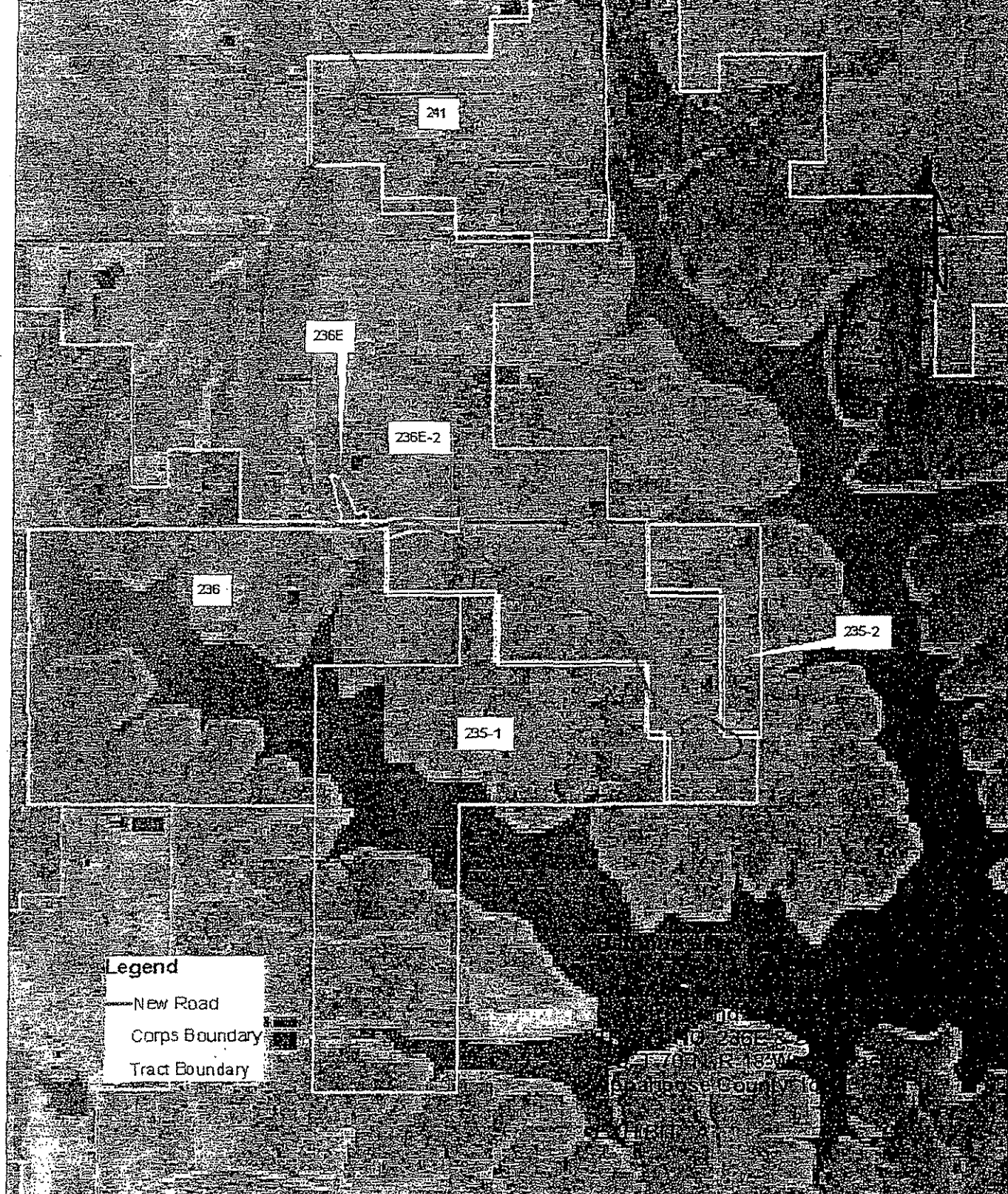
Date: 3/17/04

Lisa Dale
Clerk or Appropriate Official

(AFFIX SEAL)

3/17/04

Rathbun Lake Destination Park Road Location



**DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
KANSAS CITY DISTRICT
RATHBUN LAKE, APPANOOSE COUNTY, IOWA**

CONSENT TO EASEMENT STRUCTURES

WHEREAS, the United States, has acquired a perpetual flowage easement and rights over Tract No(s). 236E, Rathbun Lake, Iowa, from Clarence L. Hiner, a single person and Floyd W. Hiner a single person by virtue of Warranty Deed dated April 19, 1966 and recorded at Appanoose County on April 19, 1966, Book 102, page 142; and Tract No 236E-2, Rathbun Lake, Iowa, from Clarence L. Hiner a single person and Floyd W. Hiner, a single person, by virtue of Deed of Road Easement dated March 14, 1967, recorded at Appanoose County on March 14, 1967, Book 102, page 282;

WHEREAS, said easements, grant to the United States the right of prior approval for any structures, excavation or fill to be located within the said easement area, which area is under the administrative control of the Kansas City District, Corps of Engineers.

WHEREAS, the United States has been requested to give consent to Construct and Maintain a Road on the above identified Tract(s).

NOW THEREFORE, the United States hereby gives consent to Iowa Department of Natural Resources to Construct and Maintain a Road at the location shown on EXHIBIT "A" attached hereto;

PROVIDED HOWEVER, that this consent is subject to the following conditions:

1. All activities conducted on the premises shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.
2. The giving of this consent does not in any way subordinate the United States' prior easement rights. The United States shall in no case be liable for any damage or injury to the structures herein consented to, which may be caused by any action of the United States under its easement, or that may result from the future operations undertaken by the United States, and no claim or right to compensation shall accrue from such exercise of the United States' easement rights.
3. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the consented activity.

CERTIFICATE OF AUTHORITY

I Lisa Ogle (name) certify that I am the Executive Secretary
(title) of Iowa DNR, that Jeffrey Vorn (signator of outgrant)
who signed the foregoing instrument on behalf of the grantee was then Director
(title of signator of outgrant) of Iowa DNR. I further certify that the said officer was
acting within the scope of powers delegated to this governing body of the grantee in executing
said instrument.

IOWA DEPARTMENT OF NATURAL RESOURCES

Date: 2/17/04

Lisa Ogle
Clerk or Appropriate Official

(AFFIX SEAL)

3/17/04



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

February 25, 2004

Civil Branch

SUBJECT: Transmittal of Consent No.DACW41-2-04-0028, Rathbun Lake, Iowa

Iowa Department of Natural Resources
ATTN: Mr. Arnie Sohn
Wallace Building
502 East 9th Street
Des Moines, Iowa 50319

Dear Mr. Sohn:

I am enclosing the executed Consent to Easement Structures for the construction, operation and maintenance of a road within Tract Nos. 236E & 236E-2, Rathbun Lake, Iowa.

Upon completion of the work, please contact the Operations Officer at Rathbun Lake Reservoir, to make an appointment for a joint inspection of the completed work.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of my staff at 816-983-3917.

Sincerely,

Karl Mueller
Acting Chief, Civil Branch
Real Estate Division

Enclosure

**SUPPLEMENTAL AGREEMENT NO. 1
TO LEASE NO. DACW41-1-97-233
FOR PUBLIC PARK AND RECREATIONAL PURPOSES
RATHBUN LAKE
APPANOOSE COUNTY, IOWA**

This Supplemental Agreement entered into by and between the Secretary of the Army, party of the first part, and the Iowa Department of Natural Resources, an instrumentality of the State of Iowa; party of the second part, WITNESSETH THAT:

WHEREAS, on January 14, 1998, the Secretary of the Army, acting for and in behalf of the United States of America, as Secretary, did grant Lease No. DACW41-1-97-233 to the *Iowa Department of Natural Resources*, for public park and recreational purposes for a term of **Twenty Five (25)** years, beginning January 1, 1998 and ending December 31, 2022 and;

WHEREAS, it is the desire of both parties and it is considered mutually beneficial to modify certain conditions in the lease and;

WHEREAS, both parties hereto are desirous of identifying approximately 1.85 acres of land located in Tract Nos. 241, 236, 235-1 and 235-2 for the construction and maintenance of a road for entrance to Honey Creek Resort State Park:

NOW THEREFORE, in consideration of the mutual benefits to be derived by the parties hereto, Lease No. DACW41-1-97-233, is hereby amended in the following particulars, but no others, effective upon date of execution:

Add Exhibit "F" page 1, to the lease showing the road location.

CERTIFICATE OF AUTHORITY

I Lisa Ogle (name) certify that I am the
Executive Secretary for the Iowa Department of Natural Resources,
that Jeffrey Vonk (signator of outgrant) who signed
the foregoing instrument on behalf of the grantee was then
Director (title of signator of outgrant) of the Iowa
Department of Natural Resources. I further certify that the
said officer was acting within the scope of powers delegated to
this officer by the governing body of the grantee in executing
said instrument.

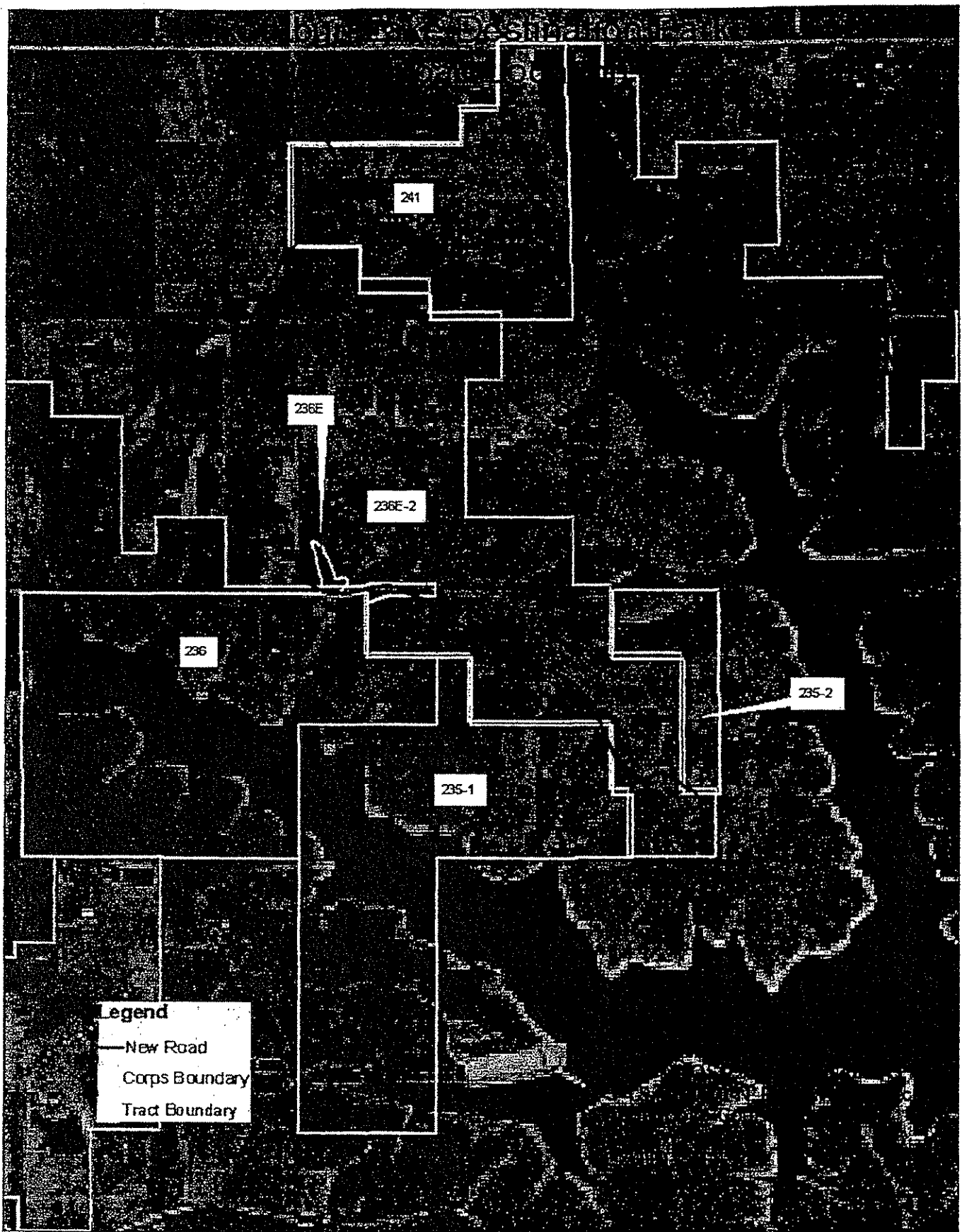
Iowa Department of Natural Resources

Date: 2/17/04

Lisa Ogle
Clerk or Appropriate Official

(AFFIX SEAL)

3/17/04





REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

February 25, 2004

Civil Branch

SUBJECT: Transmittal of Supplemental Agreement No. 1 to Lease DACW41-1-97-233,
Rathbun Lake, Iowa

Iowa Department of Natural Resources
ATTN: Mr. Arnie Sohn
Wallace Building
502 East 9th Street
Des Moines, Iowa 50319

Dear Mr. Sohn:

I am enclosing Supplemental Agreement to Lease DACW41-1-97-233 for the
construction, operation and maintenance of a road within Tract Nos. 241, 236, 235-1 and 235-2,
at Rathbun Lake, Iowa.

If you have any questions, please do not hesitate to write or telephone Robert M. Jewell of
my staff at 816-983-3917.

Sincerely,

Karl Mueller
Acting Chief, Civil Branch
Real Estate Division

Enclosure



This lease covers the area surrounding the Rathbun Resort Complex
To: John Beaman - copy for your files.

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

- St. Paul

REPLY TO
ATTENTION OF:

January 18, 1998

Real Estate Division

State of Iowa
Office of the Director
Mr. Larry J. Wilson
Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50319

Dear Mr. Wilson:

Enclosed is your executed copy of Lease DACW41-1-97-233, which grants the state the authority for a public park and recreational area at Rathbun Lake, Appanoose County, Iowa.

Please retain for your records.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to write or telephone me at 816-983-3749.

Sincerely,

Roy B. Shelton, Jr.
Acting Chief, Management and Disposal
Branch
Real Estate Division

Enclosure

RECEIVED

JAN 21 1998

Director's Office

DEPARTMENT OF THE ARMY
LEASE TO STATES
FOR PUBLIC PARK AND RECREATIONAL PURPOSES
RATHBUN LAKE
APPANOOSE COUNTY, IOWA

THIS LEASE is made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and the STATE OF IOWA, DEPARTMENT OF NATURAL RESOURCES, hereinafter referred to as the Lessee, an instrumentality of said state, with its principal office at the Wallace State Office Building, Des Moines, Iowa 50319.

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibits "A" and "B", attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby leased for a term of twenty five years, beginning January 1, 1998 and ending December 31, 2022.

2. CONSIDERATION

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319; and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, U.S. Army Corps of Engineer, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed

Park Lease
30 Sep 1994

as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

5. DEVELOPMENT PLANS

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit "C" which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

6. STRUCTURES AND EQUIPMENT

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on RESTORATION. However, no structures may be erected upon the premises unless and until the proposed location shall have been approved in writing by the District Engineer. The District Engineer may require the lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

7. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those

regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on NON-DISCRIMINATION, noting any deficiencies and providing a schedule for correction.

8. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

9. FACILITIES AND SERVICES

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on DEVELOPMENT PLANS either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

10. TRANSFERS, ASSIGNMENTS, SUBLEASES

a. Without prior written approval of the District Engineer,

the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

11. FEES

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

12. ACCOUNTS, RECORDS AND RECEIPTS

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. The lessee agrees that its expenditures in the administration, maintenance, operation, of the leased premises will not be less than the income obtained from operations on the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

13. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or

damage from any and all other causes.. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

14. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

15. LIGHTS, SIGNALS AND NAVIGATION

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

16. INSURANCE

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. The District Engineer may require closure of any or all of the premises during any period for which the sub-lessees and concessionaires do not have the required insurance coverage.

17. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

18. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements

imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

19. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

20. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on NOTICES.

22. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

23. PUBLIC USE

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

24. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises. Specifically prohibited are the use of gambling devices, such as slot machines, video gambling machines, or other casino type devices that would detract from the family atmosphere. District Commanders may allow the sale of state lottery tickets, in accordance with state and local laws and regulations, as long as the sale of tickets constitutes a collateral activity, rather than primary activity, of the Lessee. The Lessee shall not install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute

a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

d. In accordance with Public Law 104-52, Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act, cigarette vending machines will not be permitted on the leased premises, unless such vending machine is located in an area prohibited to minors, as allowed under the Act. Over-the-counter cigarette sales remain permissible.

25. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on DEVELOPMENT PLANS herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

26. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or

written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c.(2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that:

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and
- (iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

- (i) A senior company official in charge at the Lessee's location involved; or
- (ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the

District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage

nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

28. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit "D". Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on RESTORATION.

29. HISTORIC PRESERVATION

a. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

b. Known cultural resource sites are located on this area including but not limited to two designated prehistoric sites and one historic grave on Tract 208. Any planned soil disturbance must be submitted as plans to the Corps of Engineers for review and approval prior to any actual soil movement.

30. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

31. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

32. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

33. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

34. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

35. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall

obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

36. SPECIAL CONDITIONS

a. Areas of Native Prairie species are to be preserved for their inherent value. These areas are located on Tracts 234, 235-2, 235-1, 244-1, and 208, as shown on EXHIBIT "E", and are not to be disturbed or altered without additional evaluation and approval by the District Engineer. The Native Prairie species and locations are as follows:

1. Tract 234 (25PN) contains one of the largest stands of native prairie grass with the vegetation being composed of Native Indian grass, Native Big Bluestem, and Native Little Bluestem, with some forb species being present.

2. Tract 235-2 (22PR) contains patches that could be remnants of the original prairie. Vegetation consisting of Native Indian and Big Bluestem grasses, Native Pale Purple Coneflower and Purple Prairie Clover.

3. Tract 235-1 (13PN & 7PR) contains patches of prairie grasses and Compass plants.

4. Tract 244-1 (28iv/PN) contains patches of Compass Plants and Pale Purple Coneflowers.

5. Tract 208 (17iv/PN) contains at least one population of native gentian.

b. Boundary Monuments - The boundary between Federal and State - owned land consists of 27 corner monuments (AP818 through AP785), which cannot be removed. Any construction activity around these monuments will be coordinated with the Rathbun Project Manager.

c. The act of leasing the site for the proposed use as a state park will not require further Environmental and Historic Property Analysis (NEPA) review. However, before any construction is initiated, a plot plan showing the location of the proposed structure must be submitted to the Corps of Engineers for a final NEPA review and clearances before any movement of soil.

IN WITNESS WHEREOF I have hereunto set my hand by
authority/direction of the Secretary of the Army this 14th day
of January, 1997.

1998.
1998.

Charles B. Burton

by:

Title:

THIS LEASE is also executed by the Lessee this _____ day of
_____, 1997.

Iowa Department of Natural Resources

[Signature]

By:

Title:

LEGAL DESCRIPTION
LEASE NO. DACW41-1-97-233
IOWA STATE CONSERVATION COMMISSION
RATHBUN DAM AND RESERVOIR PROJECT, IOWA

A tract of land lying within the U.S. Government Reservation, Rathbun Reservoir, situated in Sections 3, 4, 9, 10, 15, and 16, all in Township 70 North, Range 18 West of the Fifth Principal Meridian, Appanoose County, Iowa, more particularly described as follows:

Beginning at the Northwest corner of the ~~E~~~~E~~~~S~~~~E~~ of Section 4; thence South to a point at the Northeast corner of the ~~E~~~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 4; thence West to a point at the Northwest corner of the ~~E~~~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 4; thence South to a point at the Northeast corner of the ~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 4; thence West to a point at the Northwest corner of the ~~S~~~~S~~~~N~~~~W~~~~S~~~~E~~ of Section 4; thence South to a point at the Southwest corner of the ~~N~~~~S~~~~W~~~~S~~~~E~~ of Section 4; thence East to a point at the Northwest corner of the ~~N~~~~S~~~~E~~~~S~~~~W~~~~S~~~~E~~ of Section 4; thence South to a point at the Southwest corner of the ~~N~~~~S~~~~E~~~~S~~~~W~~~~S~~~~E~~ of Section 4; thence East to a point at the Southeast corner of the ~~N~~~~S~~~~E~~~~S~~~~W~~~~S~~~~E~~ of Section 4; thence South to a point at the Southwest corner of the ~~W~~~~S~~~~E~~~~S~~~~E~~ of Section 4; thence East along the South line of Section 4 to a point at the Northwest corner of the ~~E~~~~N~~~~E~~~~N~~~~E~~ of Section 9; thence South to a point at the Northeast corner of the ~~E~~~~S~~~~W~~~~N~~~~E~~~~N~~~~E~~ of Section 9; thence West to a point at the Northwest corner of the ~~E~~~~S~~~~W~~~~N~~~~E~~~~N~~~~E~~ of Section 9; thence South to a point at the Southwest corner of the ~~E~~~~N~~~~W~~~~S~~~~E~~~~N~~~~E~~ of Section 9; thence East to a point at the Southeast corner of the ~~N~~~~E~~~~S~~~~E~~~~N~~~~E~~ of Section 9; thence South along the East line of Section 9 (West line Section 10) to a point at the Southwest Corner of the ~~N~~~~W~~~~S~~~~E~~ of Section 10; thence East to a point at the Northwest corner of the ~~E~~~~N~~~~W~~~~N~~~~W~~~~S~~~~W~~ of Section 10; thence South to a point at the Southwest corner of the ~~E~~~~N~~~~W~~~~N~~~~W~~~~S~~~~W~~ of Section 10; thence East to a point at the Northwest corner of the ~~E~~~~S~~~~E~~~~N~~~~W~~~~S~~~~W~~ of Section 10; thence South to a point at the Southwest corner of the ~~E~~~~N~~~~E~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence East to a point at the Southeast corner of the ~~E~~~~N~~~~E~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence South to a point at the Southwest corner of the ~~E~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence West along the South line of Section 10 to a point at the Southeast corner of the ~~W~~~~E~~~~S~~~~W~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence North to a point at the Northeast corner of the ~~W~~~~E~~~~S~~~~W~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence West to a point at the Northwest corner of the ~~W~~~~E~~~~S~~~~W~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence North to a point at the Northeast corner of the ~~W~~~~S~~~~W~~~~S~~~~W~~~~S~~~~W~~ of Section 10; thence West to a point at the Southeast corner of the ~~W~~~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 9; thence North to a point at the Northeast corner of the ~~W~~~~S~~~~W~~~~N~~~~E~~~~S~~~~E~~ of Section 9; thence West to a point at the Northwest corner of the ~~S~~~~E~~~~N~~~~W~~~~S~~~~E~~ of Section 9; thence North to a point at the Northeast corner of the ~~W~~~~N~~~~W~~~~S~~~~E~~ of Section 9; thence West to a point at the Southeast corner of the ~~S~~~~W~~~~S~~~~E~~~~N~~~~W~~ of Section 9; thence south to a point having a ground elevation of 904 feet (m.s.l.); thence in a southeasterly direction along the 904-foot contour line to a point on the East line of Section 16 (West line of Section 15); thence continuing in a East-Northeasterly direction along the 904-foot contour line to a point on the North line of Section 15 (South line of Section 10); thence continuing in a North-Northwestwardly direction along the 904-foot contour line to a point where said contour line intersects the West line of Section 3 (East line of Section 4); thence continuing along the 904-foot contour line in a Westwardly direction to curve to the right and continuing in a eastwardly direction to a point where said contour line intersects the East line of Section 4; thence North along the East line of Section 4

EXHIBIT "A"

to the Northeast corner of the SE $\frac{1}{4}$ of Section 4; thence West to the Northwest corner of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, to the point of beginning, containing 475 acres more or less.

Lease No. DACW41-1-97-233

DEVELOPMENT PLAN

EXHIBIT "C"

DEVELOPMENT PLAN(*)

RATHBUN RECREATION COMPLEX

DECEMBER 18, 1997

<u>Construction Item</u>	<u>Number and Size</u>	<u>Estimated Cost</u>
	YEAR 1	
Cabins	2	\$150,000
	YEAR 2	
Ramp/Trails	-	\$40,000
	YEAR 3	
Cabins	2	\$150,000
	YEAR 4	
Cabins	2	\$150,000
	YEAR 5	
Amenities	-	\$100,000

(*) Plans are still evolving for the full range of facilities to be provided. Amendments and additions are anticipated. The conceptual master plan for the Rathbun Recreation Complex most recently prepared by the Chariton Valley RC&D of Centerville, Iowa, represents the ultimate level of development. Implementation is projected as an incremental process. Precise location of all facilities will be subject to further review and approval by the U.S. Army Corps of Engineers and the Department of Natural Resources. Presence of archaeological or natural features such as native prairie remnants will be sufficient cause to relocate facilities which have only been conceptually located at this time.

At current levels of projected development, it is anticipated that 1 FTE will be required to operate and maintain the cabin facilities which constitute the primary development during the first five years.

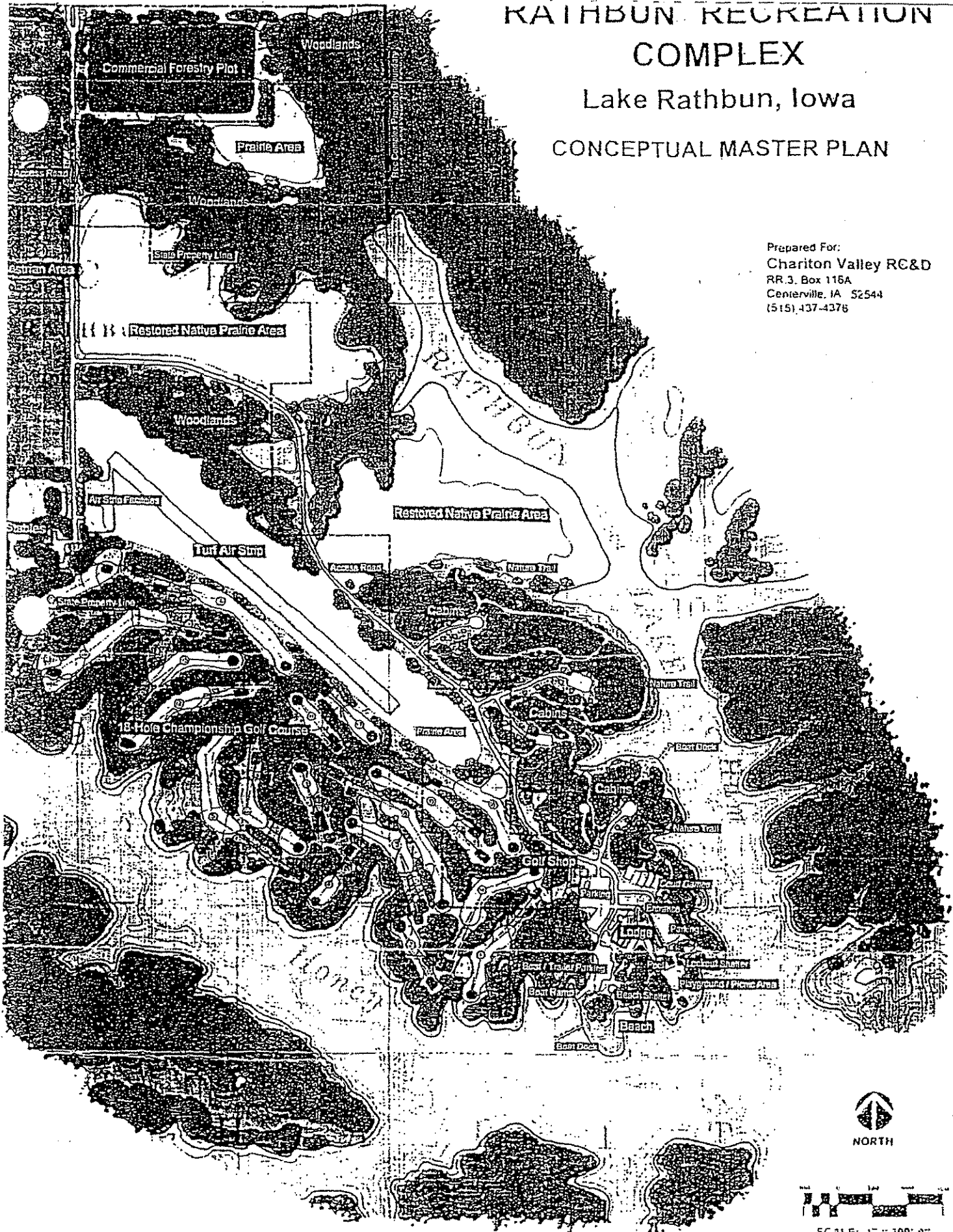
Funding and operation responsibilities remain to be identified, but are anticipated to be private or quasi-public partnerships and/or concession operations.

KATHBUN RECREATION COMPLEX

Lake Rathbun, Iowa

CONCEPTUAL MASTER PLAN

Prepared For:
Chariton Valley RC&D
RR.3, Box 116A
Centerville, IA 52544
(515) 437-4376



SCALE: 1" = 300'-0"

U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT
PRELIMINARY ASSESSMENT SCREENING (PAS)
RATHBUN LAKE

1. Real Property Transaction: Proposed grant of (X) lease
() license () easement () permit () deed or () sale of building to
Iowa Department of Natural Resources for Resort Lodge Complex (RECREATION)
purposes for a term of 25 years.

2. A description of the real property will be included in the outgrant.

3. Rathbun Project Records were searched on 14 February 1997 by Paul A. Egeland for any history of hazardous substance activity on the site.

(X) The search did not reveal any evidence of hazardous substance release, storage, or disposal exceeding CERCLA* thresholds.

(X) The search or other reason prompted an on-site survey, attached.

Signed By: Paul A. Egeland

Title: Natural Resource Specialist (Ranger) Date: 14 February 1997

4. Construction-Operations Division records were searched on 7/22/97
by [print] John Lucido for any history of hazardous substance
activity on the site.

(X) The search did not reveal any evidence of hazardous substance release, storage, or disposal exceeding CERCLA thresholds.

() The search or other reason prompts an on-site survey, attached.

Signed By: John Lucido

Title: Biologist Date: 7/22/97

5. Records of Real Estate Division were searched on SEPT 3 1997 by
[print] Roy Shelton for any history of hazardous substance activity
on the site.

(✓) The search did not reveal any evidence of hazardous substance release, storage, or disposal exceeding CERCLA thresholds.

() The search or other reason prompts on-site survey, attached.

Signed By: Roy D. Shelton

Title: Realty Specialist Date: SEPT 3 1997

6. Conclusion:

(✓) PAS indicates no necessity to provide notice under CERCLA nor any environmental conditions to affect the proposed real property transaction.

() PAS indicates a positive finding which requires further investigation and reporting.

Note: On-site surveys performed by Project personnel.

* Comprehensive Environmental Response, Compensation, and Liability Act

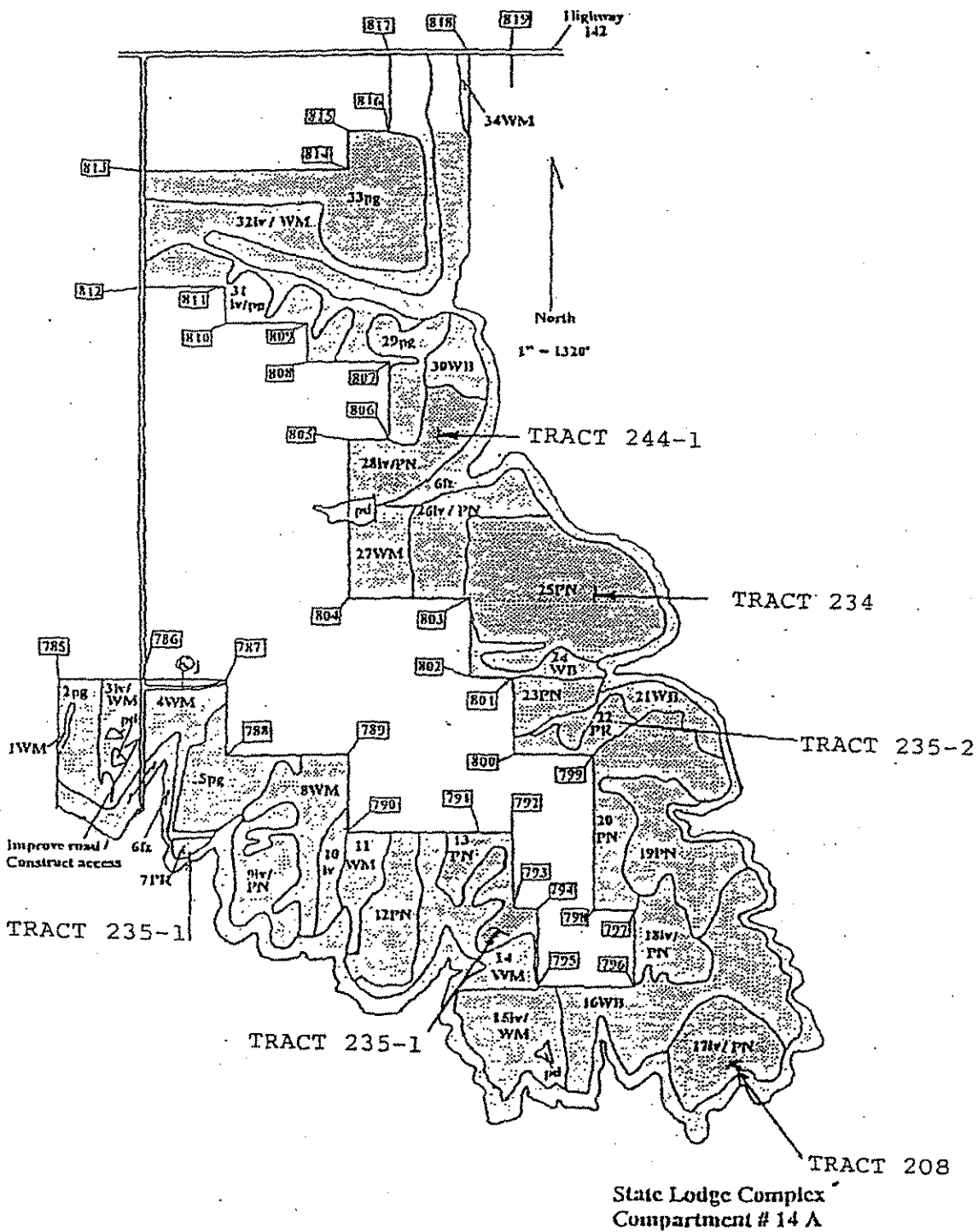
Attachment 2

EXHIBIT "D"

No. DACW42-1-97-233

Native Prairie Species

EXHIBIT "E"



NATURAL RESOURCE OMP MAP LEGEND

On each OMP Compartment Map, sub compartments are delineated and numbered for location and labeled for cover type, management practice or other significant item. A typical label "16wc" means this sub compartment area number "16" is a conifer tree planting.

COVER TYPE CODES *

fz = Flood Zone, annual forbs: smartweed, foxtail, etc.
fp = Food Plot, annual forbs: corn, etc.
pd = Pond, built
wt = Wetland, built
WT = Wetland, natural
tf = Turf, mown grass with scattered shade trees
iv = Introduced Vegetation, alien grass and forbs
PR = Prairie Relic, original prairie: very rare
PN = Prairie Natives, native grass and forb species
pp = Prairie Planted to warm season grass and forbs
pg = Prairie Grass planted to warm season grass
WW = Woodland - White oak with other trees
WB = Woodland - Bur oak with other trees
WL = Woodland - Linden with other trees
WM = Woodland - Mixture lacking white oak, bur oak, linden
WR = Woodland River bottom with swamp white oak, etc.
wc = Woodland Conifers planted
wh = Woodland Hardwoods planted
SF = Stream - Flowing
= Number sign followed by a number designating any item not shown above

* NOTE: Capital Letters above indicate unplanted native vegetation and natural streams.

MANAGEMENT PRACTICE CODES

#Pk = Parking - maintain
#Ar = Access Road - maintain
#pk = Parking - build
#pkt = Parking and Turnaround - build
#pd = Pond - build
#wt = Wetland - build
plaid = Developed park area, includes turf & roads
black = Food plots
heavy polkadot = Plant native trees
polkadot = Plant prairie
light polkadot = Prescribe burn area
3x = Firebreak line

CERTIFICATE OF AUTHORITY

I, Junie Cookin, hereby certify that I am the Administrative Secretary, Iowa Department of Natural Resources, State of Iowa, described in and which executed the foregoing agreement with the United States of America; that said Iowa Department of Natural Resources, State of Iowa, is organized under the laws of the State of Iowa; that Larry J. Wilson, who executed said agreement as Director of said Iowa Department of Natural Resources, State of Iowa, was then Director of said Iowa Department of Natural Resources, State of Iowa, and has been duly authorized to execute said instrument on behalf of said Iowa Department of Natural Resources, State of Iowa; that I know the signature of said Larry J. Wilson, and that the signature affixed to subject instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand this 22 day of December, 199⁷8.

SEAL

By:

Junie Cookin

ACKNOWLEDGMENT

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

BEFORE ME, a Notary Public in and for Jackson County, personally appeared Mr. Charles B. Barton, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the said instrument by authority of the Secretary of the Army, for the purposes therein expressed as the act and deed of the United States.

GIVEN under my hand and seal, this 14th day of January, 1998.

Michael A. Rogers
NOTARY PUBLIC

(Seal)

My commission expires on the 18th day of July, 1999.

MARILYN C. ROGERS
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF CLAY
MY COMMISSION EXPIRES JULY 12, 1999

EXHIBIT F
REGULATIONS

Department of Defense (32 CFR Part 300) issued as Department of Defense
Directives 5500.11 and 1020.1 and Army Regulation 600-7

Personnel—General

**Nondiscrimination
on the Basis of
Handicap in
Programs and
Activities
Assisted or
Conducted by
the Department
of the Army**

Headquarters
Department of the Army
Washington, DC
15 November 1983

Unclassified

SUMMARY of CHANGE

AR 600-7

Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army

This is a transitional reprint of this publication which places it in the new UPDATE format. Any previously published permanent numbered changes have been incorporated into the text.

Personnel—General

Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army

By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Major General, United States Army
The Adjutant General

History. This UPDATE issue is a reprint of the original form of this regulation that was published on 15 November 1983. Since that time, no changes have been issued to amend the original.

Summary. This regulation implements DOD Directive 1020.1. It defines policies and procedures for implementing the Army's

nondiscrimination programs and their command responsibilities; it also covers complaint, findings, compliance, sanctions, and hearings involved in discriminatory practices.

Applicability.

a. This regulation applies to Active Army and US Army Reserve units that are disbursing Federal financial assistance to, and conducting, programs and activities that affect handicapped persons in the United States and that are covered by this regulation.

b. This regulation also applies to recipients of Federal financial assistance disbursed by DA and to programs and activities that receive or benefit from this assistance, insofar as these recipients, programs, or activities affect handicapped persons in the United States.

c. This regulation does not apply to the Army National Guard.

Proponent and exception authority.
Not applicable

Impact on the New Manning System.

This regulation does not contain information that affects the New Manning System.

Army management control process. Supplementation. Supplementation of this regulation is prohibited unless prior approval is obtained from ASA(MRA), SAMR, WASH DC 20310.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested improvements. The proponent agency of this regulation is the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs). Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (SAMR-SFREA), WASH DC 20310.

Distribution. To be distributed in accordance with Special List.

Contents (Listed by paragraph and page number)

Chapter 1

Introduction, page 1

Section I

General, page 1

Purpose • 1-1, page 1

References • 1-2, page 1

Explanation of abbreviations and terms • 1-3, page 1

Policy • 1-4, page 1

Section II

Responsibilities, page 1

Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA)) • 1-5, page 1

Deputy for Civilian Personnel Policy and Equal Opportunity (DCPP&EO), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) • 1-6, page 1

Heads of Army Installations and activities • 1-7, page 1

Equal employment opportunity (EEO) officers • 1-8, page 1

Chapter 2

Discriminatory Practices, page 1

Section I

Types of Programs and Activities Subject to This Regulation, page 1

General coverage • 2-1, page 1

Federal programs • 2-2, page 1

Programs and activities that affect handicapped persons • 2-3, page 2

Section II

Guidelines for Determining Discriminatory Practices, page 2

General prohibitions against discrimination • 2-4, page 2

Prohibitions against employment discrimination by recipients • 2-5, page 3

Chapter 3

Program Accessibility, page 3

Section I

Accessibility, page 3

General requirements • 3-1, page 3

Existing facilities • 3-2, page 3

New construction • 3-3, page 3

Reasonable accommodation • 3-4, page 3

Section II

Specific Accessibility, page 4

Historic properties • 3-5, page 4

Contents—Continued

Military museums • 3-6, *page 4*

Chapter 4

Complaints and Findings, *page 5*

Section I

Complaints, page 5

Introduction • 4-1, *page 5*

Filing a complaint • 4-2, *page 5*

Investigating a complaint • 4-3, *page 5*

Information requirements • 4-4, *page 6*

Section II

Findings, page 6

Written notification of findings • 4-5, *page 6*

Finding of alleged discrimination or noncompliance • 4-6, *page 6*

Finding of no discrimination • 4-7, *page 6*

Appeal of finding • 4-8, *page 6*

Chapter 5

Assurances, *page 7*

Required assurances • 5-1, *page 7*

Self-evaluation and consultation with interested persons and organizations • 5-2, *page 7*

Dissemination of information • 5-3, *page 7*

Staff responsibilities • 5-4, *page 7*

Access to records and facilities • 5-5, *page 7*

Chapter 6

Compliance, *page 8*

Section I

Compliance Reviews, page 8

General • 6-1, *page 8*

Desk audit application review • 6-2, *page 8*

Preapproval on-site reviews • 6-3, *page 8*

Postapproval reviews • 6-4, *page 8*

Extensions • 6-5, *page 8*

Section II

Effective Compliance, page 8

Violations • 6-6, *page 8*

Written notice of violation • 6-7, *page 8*

Attempting to achieve voluntary compliance by recipients • 6-8, *page 8*

Chapter 7

Imposing Sanctions, *page 9*

Sanctions available • 7-1, *page 9*

Terminating, suspending, or refusing to grant or continue assistance • 7-2, *page 9*

Other sanctions • 7-3, *page 9*

Chapter 8

Hearings, Decisions, and Notices, *page 9*

Section I

Hearings, page 9

Reasonable notice • 8-1, *page 9*

Time and place of hearing • 8-2, *page 9*

Hearing examiner • 8-3, *page 9*

Right to counsel • 8-4, *page 9*

Procedures • 8-5, *page 9*

Consolidated or joint hearings • 8-6, *page 10*

Section II

Decisions and Notices, page 10

Decision by a person other than the responsible DA official • 8-7, *page 10*

Decisions on records or review by the responsible DA official • 8-8, *page 10*

Decisions on record when a hearing is waived • 8-9, *page 10*

Rulings required • 8-10, *page 10*

Approval by the Secretary of Defense • 8-11, *page 10*

Chapter 9

Restoring Eligibility for Financial Assistance, *page 10*

Adverse affect • 9-1, *page 10*

Restoration of eligibility • 9-2, *page 10*

Denial of eligibility • 9-3, *page 10*

Chapter 10

Coordination with Sections 502 and 503 of the

Rehabilitation Act of 1973 (As Amended), *page 10*

Developing accessibility • 10-1, *page 10*

Direct consultation • 10-2, *page 11*

Coordination of enforcement actions • 10-3, *page 11*

Section 503 • 10-4, *page 11*

Employment • 10-5, *page 11*

Appendix A. Format for Assurance of Compliance with the Department of the Army Under Section 504 of the Rehabilitation Act of 1973 (As Amended), *page 12*

Glossary

Chapter 1 Introduction

Section I General

1-1. Purpose

This regulation prescribes policy and procedures for prohibiting discrimination based on handicap in Department of the Army (DA) programs and activities that are—

- a. Receiving Federal financial assistance disbursed by DA.
- b. Conducted by DA.

1-2. References

- a. Required publications are listed below.

(1) Title 36, Code of Federal Regulations, chapter VIII, part 800 (36 CFR 800) (Protection of Historic and Cultural Properties). Cited in paragraph 3-5e.

(2) DODD 1020.1 (Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense). Cited in the summary statement.

(3) DOD 4270.1-M (Construction Criteria Manual). Cited in paragraph 10-1.

(4) Manual EM 1110-1-103 (Office of the Chief of Engineers) (Design for the Physically Handicapped). Cited in paragraphs 3-2a(1), 3-3, and 10-1. This publication is available from the Office of the Chief of Engineers Publications Depot, 890 South Picket St., ALEX VA 22304; (703) 274-7771.

(5) AR 600-23 (Nondiscrimination in Federally Assisted Programs). Cited in paragraph 6-1b.

b. Related publications are listed below. (A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.)

- (1) DODI 5000.22 (Guide to Estimating Reporting Costs).

(2) Public Law 93-112, section 504 (Rehabilitation Act of 1973), September 26, 1973 (sec 794, title 29, United States Code) (1976).

(3) Public Law 93-516, section 111 (Rehabilitation Act Amendments of 1974), December 7, 1974 (sec 706, 780, and 790, title 29, United States Code) (1976).

(4) Public Law 95-602, section 119 (Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978), November 6, 1978 (sec 794, title 29, United States Code) (Supp III, 1979).

(5) Title 28, Code of Federal Regulations, part 41 (28 CFR 41) (Department of Justice Regulation "Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs", August 11, 1981).

(6) Chapter 35, title 44, United States Code (44 USC 35) (Coordination of Federal Reporting Services).

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Policy

The Army's policy is that no qualified handicapped person will be subjected to discrimination on the basis of handicap in any program or activity that receives or benefits from Federal financial assistance disbursed by DA. (Guidelines for determining actions that discriminate against handicapped persons in the United States are discussed in chap 2, sec II.)

Section II Responsibilities

1-5. Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA))

The ASA(M&RA) or designee has overall DA responsibility to monitor compliance with this regulation. The ASA(M&RA) or designee will—

a. Coordinate efforts Army-wide to enforce provisions of this regulation.

b. Assist in developing standards and procedures set forth in chapter 2, section I, and chapters 4 and 5.

c. Assist in Army-wide efforts in implementing this regulation.

1-6. Deputy for Civilian Personnel Policy and Equal Opportunity (DCPP&EO), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)

The DCPP&EO will—

a. Ensure compliance with this regulation.

b. Receive and investigate complaints filed under this regulation.

c. Otherwise manage Army-wide responsibilities under this regulation, through direction from the Office of the ASA(M&RA).

1-7. Heads of Army Installations and activities

Heads of Army installations and activities will—

a. Cooperate fully with the ASA(M&RA) or designee in carrying out responsibilities prescribed by this regulation. This cooperation will include timely furnishing to the ASA(M&RA) or designee of required reports and information.

b. Assign sufficient personnel to implement and insure effective enforcement of provisions of this regulation.

c. Ensure that provisions of this regulation are carried out.

1-8. Equal employment opportunity (EEO) officers

EEO officers will—

a. Act as advisors to commanders of installations and activities to which they are assigned.

b. Submit reports described in chapter 4 (paras 4-2d, 4-4b, and 4-6c specifically).

Chapter 2 Discriminatory Practices

Section I

Types of Programs and Activities Subject to This Regulation

2-1. General coverage

Existing programs and activities that are assisted or conducted Army-wide and that are subject to this regulation (but do not appear in paras 2-2 and 2-3) are covered; even though they are not listed. Activities must report new programs and activities that are subject to this regulation to the ASA(M&RA) or designee within 15 calendar days of their creation or funding.

2-2. Federal programs

Federal financial assistance programs subject to this regulation and their enabling legislation, are listed below.

a. Various programs involving the loan or other disposition of surplus, obsolete, or unclaimed property (sec 483, 484, and 512, title 40, United States Code (1976); sec 1101 and 1107, title 49, United States Code (1976); sec 2541, 2544, 2571, 2576, 2662, 7308, 7541, 7542, 7545, 7546, and 7547, title 10, United States Code (1976 and supp IV 1980)).

b. National Program for the Promotion of Rifle Practice (sec 4307-4311, title 10, United States Code (1976) and the annual Appropriations Act).

c. Federal grants and cooperative agreements (sec 501-509, title 41, United States Code (supp III 1979)).

d. Army Corps of Engineers participation in cooperative investigations and studies concerning erosion of shores of coastal and lake waters (sec 426, title 33, United States Code (1976) and supp III 1979).

e. Army Corps of Engineers assistance in construction of works for restoration and protection of shores (sec 426e-h, title 33, United States Code (1976)).

f. Construction and operation of public park and recreational facilities in water resource development projects under DA administrative jurisdiction (sec 460d, title 16, United States Code (1976)).

g. Payment to States of lease receipts from lands acquired by the United States for flood control, navigation, and allied purposes (sec 701c-3, title 33, United States Code (1976)).

h. Grants of easements without consideration, or at nominal or reduced consideration, on land under DA control at water resource development projects (sec 558c and 702d-1, title 33, United States Code (1976); sec 2668 and 2699, title 10, United States Code (1976); sec 961, title 43, United States Code (1976); and sec 319, title 40, United States Code (1976)).

i. Army Corps of Engineers assistance in construction of small boat-harbor projects (sec 540 and 577, title 33, United States Code (1976)).

j. Emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works (sec 701s, title 33, United States Code (1976)).

k. Army Corps of Engineers contracts for protection, alteration, reconstruction, relocation, or placement of structures facilities (sec 633, title 33, United States Code (1976)).

l. Provision of specialized services or technical information by the Army Corps of Engineers to State and local governments for control of aquatic plant growths in rivers, harbors, and allied waters (sec 610, title 33, United States Code (1976)).

m. Provision of specialized services by the Army Corps of Engineers to any State for preparation of comprehensive plans for drainage basins located within the boundaries of said State (sec 1962d-16, title 42, United States Code (1976)).

n. Provision of specialized services by the Army Corps of Engineers to improve channels for navigation (sec 603a, title 33, United States Code (1976)).

o. Research grants and contracts with nonprofit institutions of higher education using equipment purchased under Public Law 85-934 (title 42, United States Code (1892)).

p. Provision of specialized service by the Army Corps of Engineers to reduce flood damage (sec 701g, title 33, United States Code (1976)).

q. US Soldiers' and Airmen's Home (sec 44c and 47, title 24, United States Code (1976)).

2-3. Programs and activities that affect handicapped persons

All programs and activities conducted by DA that affect handicapped persons in the United States are subject to this regulation. These programs and activities are included as listed below.

a. Promulgation of rules and regulations for public comment in a manner that grants handicapped persons a reasonable opportunity for such comment; an example is making cassette recordings of proposed rules.

b. Public meetings, conferences, or seminars sponsored or conducted by DA, but held in non-Governmental buildings.

c. Public meetings, conferences, or seminars sponsored or conducted by DA or a non-DA organization, but held in a DA building.

d. Open houses, memorial services, tours, or other ceremonies held on or in DA property.

e. Historic vessels.

f. Historic buildings and properties maintained by a DA activity; properties designated as historic under a statue of the appropriate State or local governmental body. (See glossary for explanation of the term historic property.)

g. Schools operated by DA within the United States (pursuant to sec 6 of Public Law 81-874 and sec 241, title 20, United States Code (1976)).

h. Donation of surplus or obsolete Army uniforms and combat items to the following:

- (1) Veterans' organizations.
- (2) Soldiers monument associations.
- (3) Museums. (See paras 3-5 and 3-6.)
- (4) Incorporated municipalities.

i. Programs and activities conducted by DA and recipients that are not included in this chapter will be held accountable for provisions in this regulation.

Section II Guidelines for Determining Discriminatory Practices

2-4. General prohibitions against discrimination

a. No qualified handicapped person will, on the basis of handicap, be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination under any program or activity that is conducted by DA or that receives or benefits from Federal financial assistance disbursed by DA.

b. A recipient or DA component may not—

(1) Directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(a) Provide different or separate aid, benefits, or services to handicapped persons than provided to others; an exception would be unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are equal to those provided to others.

(b) Deny a qualified handicapped person the opportunity to take part in or benefit from the aid, benefit, or service.

(c) Afford a qualified handicapped person an opportunity to take part in or benefit from the aid, benefit, or service that is not equal to that afforded others.

(d) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that afforded to others.

(e) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity granted to others receiving the aid, benefit, or service.

(2) Deny a qualified handicapped person the opportunity to take part in programs or activities that are not separate or different from regular programs or activities; this will be true even if such separate or different programs and activities are permissible under (1)(a) above.

(3) Provide assistance to an agency, organization, or person that discriminates on the basis of handicap in providing aid, benefit, or service to beneficiaries of the recipient's program or activity.

(4) Deny, on the basis of handicap, a qualified handicapped person the opportunity to take part as a member of planning or advisory boards.

(5) Use, directly or through contractual or other arrangements, criteria or methods of administration that—

(a) Subject qualified handicapped persons to discrimination on the basis of handicap.

(b) Defeat or substantially impair accomplishment of the objectives of the recipient's or DA component's program or activity with respect to handicapped persons.

(c) Perpetuate discrimination by another recipient if both recipients are subject to common administrative control, or are agencies of the same State.

c. In determining the site or location of a facility, a recipient or DA component may not make selections that—

(1) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives or benefits from Federal financial assistance.

(2) Defeat or substantially impair, with respect to handicapped persons, the accomplishment of objectives of the program or activity.

d. Recipients and DA components will—

(1) Administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(2) Take appropriate steps to—

(a) Make communications with their applicants, employees, and beneficiaries available to persons with impaired vision and hearing.

(b) Ensure that no handicapped individual is denied the benefits of, excluded from taking part in, or otherwise subjected to discrimination because of the absence of auxiliary aids. Examples of these

aids are as follows: certified sign-language interpreters, telecommunication devices (TDDs), or other telephonic devices for individuals with impaired sensory, manual, or speaking skills.

e. This section may not be interpreted to prohibit exclusion of the following:

(1) Persons who are not handicapped from benefits, programs, and activities limited by Federal statute or executive order to handicapped persons.

(2) One class of handicapped persons from a program or activity limited by Federal statute or executive order to a different class of handicapped persons.

2-5. Prohibitions against employment discrimination by recipients

Prohibition against discrimination in employment applies to the following:

a. Recruitment, advertising, and processing of applications for employment.

b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.

c. Rates of pay or any other form of compensation, and changes in compensation.

d. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

e. Leaves of absence, sick leave, or any other leave.

f. Fringe benefits available by virtue of employment, whether or not administered by the recipient.

g. Selection and financial support for training; these criteria include apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence for training.

h. Programs and activities sponsored by the employer; these include social and recreational programs.

i. Any other term, condition, or privilege of employment.

Chapter 3 Program Accessibility

Section 1 Accessibility

3-1. General requirements

Because the facilities of a recipient or DA component are inaccessible to or not usable by handicapped persons, no qualified handicapped person will be denied the benefits of, or be excluded from taking part in, or be subjected otherwise to discrimination under any program or activity—

a. That receives or benefits from Federal assistance disbursed by DA.

b. Conducted by DA.

3-2. Existing facilities

a. A recipient or DA component will operate programs or activities so that they are readily accessible to, and usable by, handicapped persons. However, this does not necessarily require a recipient or DA component to make each of its existing facilities or every part usable by handicapped persons.

(1) Guidance in determining accessibility of facilities is discussed in Office of the Chief of Engineers Manual EM 1110-1-103.

(2) Inquires on specific accessibility design problems should be addressed to the ASA(M&RA) or designee.

b. Structural changes necessary to make programs or activities in existing facilities accessible to the extent required by paragraph 3-1 will be made as discussed below.

(1) Such changes will be made as soon as practicable, but no later than 2 years after the effective date of this regulation. However, DA components concerned may extend this period of time if the following conditions apply:

(a) The program or activity is a particular mode of transportation (such as a subway station) that can be made accessible only through extraordinarily expensive structural changes to, or replacement of, existing facilities.

(b) Other accessible modes of transportation are available.

Note. This extension will be for a reasonable and definite period; this period will be determined after consultation with the ASA(M&RA) or designee.

(2) The recipient or DA component will develop a transition plan containing steps necessary to complete the changes. This plan will be developed—

(a) With the assistance of interested persons or organizations.

(b) Within a period of time to be established in each DA component's guidelines.

(3) The recipient or DA component will make a copy of the transition plan available for public inspection. At a minimum, the plan will include the information listed below.

(a) Identity of physical obstacles in the facilities that limit accessibility to handicapped persons.

(b) Description in detail of the methods that will be used to make the facilities accessible.

(c) Specific schedule for taking steps necessary to achieve full accessibility; if the time period is longer than 1 year, steps will be identified that will be taken during each year of the transition period.

(d) Indication of the person responsible for implementing the transition plan; this indication will include last name, first name, and middle initial.

c. A recipient or DA component may comply with paragraph 3-2 through the means listed below.

(1) Acquisition or redesign of equipment, such as TDDs or other telephonic devices for the deaf.

(2) Relocation of classes or other services to accessible buildings.

(3) Assignment of aides to beneficiaries, such as—

(a) Readers.

(b) Certified sign-language interpreters.

(c) Home visits.

(d) Delivery of health, welfare, or other services at accessible alternative sites.

(4) Alterations of existing facilities and construction of new facilities, under this subsection and paragraph 3-3.

(5) Other methods that make the program or activity accessible to handicapped persons.

d. A recipient or DA component is not required to make structural changes in existing facilities when other methods are available to achieve compliance with this section.

e. In choosing among alternatives for meeting the requirements of this section, a recipient or DA component will give priority to methods that offer programs and activities to handicapped persons in the most integrated setting appropriate with non-handicapped persons.

3-3. New construction

New facilities and alterations to existing facilities will be designed and constructed to be accessible and usable by handicapped persons. (See Office of the Chief of Engineers Manual EM 1110-1-103.) Inquiries about specific accessibility design problems should be addressed to the ASA(M&RA) or designee.

3-4. Reasonable accommodation

a. A recipient or DA component will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee. An exception is if the recipient or DA component demonstrates to the ASA(MRA) or designee that the accommodation would impose an undue hardship on operation of the program.

b. "Reasonable accommodation" includes the following:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons.

(2) Job restructuring.

(3) Part-time or modified work schedules.

(4) Acquisition or modification of equipment or devices, such as TDDs or other telephonic instruments.

(5) Provision of readers or certified sign-language interpreters.

c. In determining whether an accommodation would impose an undue hardship on operation of a recipient's or DA component's program, the ASA(MRA) or designee will consider the following factors, at a minimum:

(1) Overall size of the recipient's or DA component's installation or activity's program or activity; examples are number of employees, number and type of facilities, and size of budget.

(2) Size of the recipient's or DA installation or activity's operations: "operation" here will include composition and structure of the recipient's or DA component's installation or activity work force.

(3) Nature and cost of accommodation needed.

d. A recipient or DA component installation or activity may not deny employment opportunity to a qualified handicapped employee or applicant for employment; this is true if the basis for the denial is the need to make reasonable accommodation to physical or mental limitations of the employee or applicant.

Section II

Specific Accessibility

3-5. Historic properties

a. In the case of historic properties, program accessibility will mean that, when viewed in their entirety programs are usable by handicapped persons. (See the glossary for explanation of the term historic property.) Because the primary benefit of historic properties is the experience of the property itself, priority will be given to those methods of achieving program accessibility that make the historic property physically accessible to handicapped persons.

b. Methods of achieving program accessibility to otherwise inaccessible areas or features of historic properties include the following:

(1) Making physical alterations that give handicapped persons access.

(2) Using audiovisual materials and devices.

(3) Assigning individuals to guide handicapped persons.

(4) Adopting other innovative methods.

c. When program accessibility cannot be achieved without causing a substantial impairment of significant historic features, modification or waiver of access standards may be sought from the ASA(M&RA) or designee.

(1) A decision to grant a modification or waiver will be based on consideration of the following:

(a) Scale of the property, reflecting its ability to absorb alterations.

(b) Use of the property, whether primarily for public or private purposes.

(c) Importance of historic features of the property to conducting the program.

(d) Costs of alterations, compared to the increase in accessibility.

(2) The ASA(M&RA) or designee—

(a) Periodically will review waivers granted under this paragraph.

(b) May withdraw waivers if technological advances or changes warrant.

d. The decision by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)) or designee to grant a modification or waiver of access standards is subject to section 106 of the National Historic Preservation Act (PL 89-665), as amended. Section 106 reads as follows: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation

established under title II of this Act a reasonable opportunity to comment with regard to such undertaking."

e. The decision cited in *d* above will be based on title 36, Code of Federal Regulations, chapter VIII, part 800 (36 CFR 800). When the property is federally owned, or when Federal funds may be used for alterations, the ASA(M&RA) or designee will obtain comments (as cited in sec 106 quoted in *d* above) under 36 CFR 800 before effecting structural alterations.

3-6. Military museums

a. When military museums are involved, program accessibility will mean that the following are accessible and usable by handicapped persons:

(1) Exhibits.

(2) Displays.

(3) Tours.

(4) Lectures.

(5) Circulating or traveling exhibits.

(6) Other programs.

b. Methods of making museum programs accessible are discussed below. Commanders of DA installations and activities are encouraged to use "Museum and Handicapped Students: Guidelines for Educators." This is published by the National Air and Space Museum, Smithsonian Institution, WASH DC 20560; it is available through that address.

(1) Deaf and hearing-impaired persons, by—

(a) Training museum staff in sign-language.

(b) Providing qualified sign-language interpreters to accompany deaf or hearing-impaired visitors.

(c) Insuring that clear, concise language is used on all museum signs and display labels.

(d) Providing amplification devices.

(e) Providing printed scripts for films, videotapes, lectures, and tours.

(2) Blind and visually impaired persons, by—

(a) Providing museum catalogs in large-print editions printed over braille.

(b) Providing cassette tapes, records, or discs for museum tours or exhibits.

(c) Providing readers to accompany blind or visually impaired visitors.

(d) Using large-print and braille display cards at exhibits.

(e) Providing raised-line maps of museum buildings.

(f) Using raised-line drawings, reproductions, or models of large exhibits for tactile experiences, when touching of exhibits is prohibited.

(g) Placing large-print and braille signs to identify galleries, elevators, restrooms, and other service areas.

(h) Permitting guide dogs in all museum facilities.

(3) Other physically impaired persons, by—

(a) Lowering display cases.

(b) Spacing exhibits to make movement easier.

(c) Using ramps in galleries.

(d) Increasing lighting in exhibit areas, to ease viewing from a distance.

(e) Providing places to sit in exhibit areas.

(f) Making restrooms accessible.

(g) Using large-print exhibit display cards to ease reading from a distance.

(h) Sensitizing museum staff members to consider the needs of handicapped visitors when organizing exhibits.

c. Recipients may not take part in a contractual or other relationship that subjects qualified handicapped applicants or employees to discrimination prohibited by this section. These include relationships with—

(1) Employment and referral agencies.

(2) Labor unions.

(3) Organizations providing or administering fringe benefits to employees of the recipient.

(4) Organizations providing training and apprenticeship programs.

d. Recipients will make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee; an exception is if the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program. "Reasonable accommodation" here includes, but is not limited to, providing—

- (1) Ramps.
- (2) Accessible restrooms and drinking fountains.
- (3) Interpreters for deaf employees.
- (4) Readers for blind employees.
- (5) Amplified telephones.
- (6) TDDs such as teletypewriters (TTYs) or telephone writers.
- (7) Tactile signs on elevators.

e. Recipients—

(1) May not use employment tests or criteria that discriminate against handicapped persons.

(2) Will insure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(3) May not conduct a preemployment medical examination or make a preemployment inquiry about—

(a) Whether an applicant is a handicapped person.

(b) The nature or severity of a handicap.

(4) May make, however, a preemployment inquiry into an applicant's ability to perform job-related functions.

f. Recipients may invite applicants for employment to indicate whether and to what extent they are handicapped, when the recipient is taking—

(1) Remedial action to correct effects of past discrimination.

(2) Voluntary action to overcome effects of conditions that have resulted in limited participation by handicapped persons.

g. Material in f above pertains only if the recipient makes clear to the applicants that—

(1) The information is intended for use solely in connection with the recipient's—

(a) Remedial action obligations.

(b) Voluntary affirmative action efforts.

(2) The information—

(a) Is being requested on a voluntary basis.

(b) Will be kept confidential (as provided in i below).

(c) Will not subject the applicants to any adverse treatment, if refused.

(d) Will be used only under this regulation.

h. Nothing in this section will prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted before the employee's entrance on duty, if—

(1) All entering employees are subjected to such an examination, regardless of handicap.

(2) The results of such an examination are used only under this regulation.

i. Information obtained under this section concerning medical condition or history of applicants will be collected and maintained on separate forms; these forms will be collected and maintained on separate forms; these forms will be accorded confidentiality as medical records, with the following exceptions:

(1) Supervisors and managers may be informed about—

(a) Restrictions on work or duties of handicapped persons.

(b) Necessary accommodations.

(2) First aid and safety personnel may be informed, when appropriate, if a handicapping condition might require emergency treatment.

(3) Government officials investigating compliance with this regulation will be provided relevant information on request.

Chapter 4 Complaints and Findings

Section I Complaints

4-1. Introduction

a. The system for processing complaints outlined in this chapter covers complainants, recipients (grantees), and members of the general public. Because of handicaps, these persons are precluded from taking part in or attending certain programs, or gaining access to federally owned or leased buildings, Army posts, camps, or stations, because of architectural design or other barriers.

b. Complaints will be received by the Equal Employment Opportunity (EEO) officer at the location where the alleged discriminatory incident occurred, if it occurs on a military installation. Complainants also may choose to file their complaint directly with the ASD(MRA&L). (See para 4-2c.)

c. If a recipient is alleged to have contributed to a discriminatory practice, the complainant may file a written complaint with the EEO officer assigned to the installation or activity funding the program or project. DA components also receive funds for or provide programs or projects for public consumption. Therefore, they are required to display posters or other conspicuous notices to inform attendees or participants of their rights to file complaints of discrimination based on handicap, in connection with programs or projects conducted by DA.

4-2. Filing a complaint

a. A person who feels that he or she, or any group or class of persons, has been discriminated against on the basis of handicap can individually or through a representative file a complaint of discrimination within 60 calendar days of the alleged discriminatory incident. The EEO officer will have the authority to reject the complaint if it is not received in the EEO office within 60 days.

b. The complaint must be—

(1) Filed in writing.

(2) Signed by the complainant or the complainant's authorized representative.

(3) Submitted to the EEO officer having operating or servicing responsibility at the site or location where the alleged discriminatory incident occurred.

c. Complaints may be filed directly with the ASD(MRA&L) if the—

(1) Incident occurred on an Army post, camp, or station.

(2) Program or project was conducted by DA.

d. A copy of each complaint received by a local servicing EEO officer or designee will be forwarded by the EEO officer to HQDA(SAMR-OEPGR), WASH DC 20310 and ASD(MRA&L EO/SP), WASH DC 20310 within 10 calendar days after receipt. This reporting requirement has been assigned OMB No. 0704-0162.

e. The complaint must indicate how and by whom the complainant was discriminated against. The case will be closed after 30 days if the complainant does not provide the information listed below.

(1) When the discriminatory incident occurred.

(2) Name, address, telephone number, and other pertinent data about the complainant.

(3) Full description of what actually transpired.

(4) Specific request to have the incident investigated.

(5) What the complainant views as proper corrective action to alleviate future occurrences.

4-3. Investigating a complaint

a. Thirty calendar days will be allowed for investigation by any of the following:

(1) The local servicing EEO officer.

(2) The person designated by the local servicing EEO officer to conduct the investigation.

(3) The individual designated at the ASD(MRA&L) level.

b. Investigations by recipients will be conducted under the following procedures:

(1) Commander of a DA installation or activity may require or permit recipients to investigate complaints alleging violation of this regulation by—

(a) Insuring that the recipient investigates the complaints under standards, procedures, and requirements prescribed by this regulation.

(b) Requiring the recipient to submit a written report of each complaint and investigation to the DA installation or activity.

(c) Retaining a review responsibility over the investigation and disposition of each complaint.

(d) Ensuring that each complaint investigation is completed within 180 calendar days of receipt of the complaint by the proper DA installation or activity; an exception is an extension of time granted for good cause by the ASA(M&RA) or designee.

(e) Requiring the recipient to maintain a log of all complaints filed against the recipient.

(2) DA installations or activities that require or permit complaint investigations to be conducted by recipients will review recipient complaint investigations under this regulation.

c. A case file will be—

(1) Established for each complaint filed.

(2) Kept by the EEO officer for 3 years.

d. The complaint will be acknowledged within 10 calendar days of receipt by the EEO officer. Should the EEO officer determine that a complaint will be investigated, the following will be forwarded to the person designated to conducting the investigation (if other than the EEO officer):

(1) Copy of the letter of acknowledgment.

(2) Other relevant information.

e. The local EEO officer or the person designated at the ASD (MRA&L) level has the ultimate responsibility to assure that the person designated to investigate the alleged discriminatory incident obtains information, documentation, and statements necessary to investigate the complaint properly and adequately.

f. The investigative process will be completed within 30 calendar days after acknowledging receipt of complaint. A finding will be rendered by the commander or designee within 10 calendar days after the close of the investigation. The commander or designee can accept, reject, or modify the finding.

g. Withdrawal of complaint should be accepted only when the letter of withdrawal contains clear information suggesting that the complainant made the decision to withdraw on his or her own volition, without undue influence from the agency or recipient.

4-4. Information requirements

a. Installation EEO officers will maintain a log of all complaints filed with the EEO office. They also will notify (telephonically or by mail) the major Army command (MACOM) EEO office to assure that a simultaneous log is maintained. The log should include—

(1) Name and address of the complainant.

(2) Recipient's name and address (if applicable).

(3) Basis for the complaint.

(4) Current status.

b. MACOM EEO officers will submit the following reports to HQDA(SAMR-CPP&EO), Room 1E615, The Pentagon, WASH DC 20310 by 20 December and 20 June:

(1) A narrative summary report on complaints. This reporting requirement has been assigned RCS DD-M(SA) 1596.

(2) An Estimating Cost Report (DODI 5000.22).

Section II

Findings

4-5. Written notification of findings

a. The complainant will receive written notification outlining the finding from the installation commander or the EEO officer within 14 calendar days after the 30th day or close of investigation, whichever comes first.

b. This notification must indicate whether or not discrimination

or other violation occurred. If no discrimination is found, the complainant will be—

(1) Notified in writing.

(2) Informed of avenues of redress.

4-6. Finding of alleged discrimination or noncompliance

a. With a finding of discrimination, the EEO officer will recommend corrective action to the installation commander concerned or to the recipient.

b. When the investigation reveals that discrimination or a violation of this regulation has occurred, the EEO officer will issue a written notification outlining—

(1) The violation.

(2) Recommended corrective action.

(3) Suspense date for completion of corrective action.

c. Written notification and recommended corrective action will be forwarded to the commander or recipient (if applicable) within 14 calendar days after completion of the investigation; copies will be sent to HQDA (SAMR-OEPGR), WASH DC 20310 and the complainant. Also, each DA installation or activity commander will submit a narrative report by memorandum to the ASD(MRA&L) or designee when the DA installation or activity commander notifies an applicant or recipient that noncompliance with this regulation is indicated. The report, which has been assigned RCS DD-M(AR) 1597, will include the following information:

(1) Recipient's name (last name, first, and middle initial), if this refers to a person.

(2) Address (street address, city, state, and ZIP Code).

(3) The date (year, month, day).

(4) Nature of the finding.

(5) Name of the applicable federally assisted program or activity.

4-7. Finding of no discrimination

If the investigation reveals no discrimination or violation of this regulation, written notification will be forwarded within 14 calendar days after completion of the investigation to the following:

a. Installation commander.

b. Recipient.

c. Complainant.

d. HQDA(SAMR-OEPGR), WASH DC 20310.

4-8. Appeal of finding

a. If a complainant is dissatisfied with a local finding, he or she may appeal to HQDA(SAMR-OEPGR), WASH DC 20310 within 30 calendar days of receipt of the written notification that—

(1) Sets forth the finding.

(2) Informs the complainant of the right to further appeal.

b. The appeal to HQDA is—

(1) Automatic, if the complainant is dissatisfied with the local finding.

(2) Not constrained by any criteria other than time.

c. If the complainant is further dissatisfied with the HQDA decision, he or she may appeal to the ASD(MRA&L) (ATTN: Office, Deputy Assistant Secretary of Defense (EO/SP)), Room 3E314, The Pentagon, WASH DC 20310. An appeal to ASD(MRA&L) must be based on one of the following three reasons:

(1) New and material evidence is available that was not readily available when the previous decision was issued.

(2) The previous decision involves—

(a) An erroneous interpretation of law or regulation.

(b) A misapplication of established policy.

(3) The previous decision is of—

(a) A precedential nature involving new or unreviewed policy considerations that may have an affect beyond the actual case at hand.

(b) Such an exceptional nature as to merit the personal attention of the ASD(MRA&L).

d. If the complainant is still dissatisfied with the finding or decision after the administrative process has been exhausted, he or she may file a civil action in a US District Court.

e. An extension of the time limit for filing may be granted by the

EEO officer or appropriate ASD that he or she was prevented from the timely filing of an appeal for the following reasons:

- (1) Not notified of the time limit.
- (2) Experienced circumstances beyond his or her control.

f. If a complainant files a timely complaint for appeal, but no decision is rendered by the DCP&EO within 180 calendar days, the complainant may file a civil action in a US District Court. This civil action may be filed without going through the administrative process.

Chapter 5

Assurances

5-1. Required assurances

a. All recipients will file written assurances in their programs or activities will be conducted under this regulation. Recipients who are now receiving assistance from DA will have 6 months from the date of publication of this regulation to fill out and return the assurance form. New recipients must sign the assurance form prior to receiving assistance. The sample format is at appendix A. If a recipient fails to provide an assurance that conforms to the requirements of this section, the DA installation or activity commander will attempt to gain compliance under paragraphs 5-3, 5-4, and 5-5; this will hold true provided installation or activity commanders will continue the assistance, while proceedings required by paragraphs 6-6, 6-7, and 6-8, and chapters 7, 8, and 9 are pending.

b. The DA installation or activity commander will—

(1) Advise each recipient of the—

(a) Required elements of the assurance.

(b) Extent to which those receiving assistance from the recipients will be required to execute similar assurances, with respect to each program or activity.

(2) Ensure that each assurance does the following:

(a) Obliges the recipient to advise the DA installation or activity commander of receipt of complaints that allege discrimination against handicapped persons.

(b) Obliges the recipient to collect and provide items of information that the DA installation or activity commander requires.

(c) Is made applicable to any Federal financial assistance that might be disbursed by a DA installation or activity without submission of a new application.

(d) Obliges the recipient, when the financial assistance is in the form of property, for the period during which the property is used under a financial assistance agreement, or possessed by the recipient.

(e) Includes a provision recognizing that the US Government has the right to seek judicial enforcement of section 504 of the Rehabilitation Act of 1973 (as amended) and this regulation.

5-2. Self-evaluation and consultation with interested persons and organizations

a. Commanders of DA installations or activities will require recipients to conduct a self-evaluation with the assistance of interested persons; these interested persons will include handicapped persons or organizations that represent them. The self-evaluation will be conducted within 6 months of either of the following:

(1) The effective date of this regulation.

(2) First receiving Federal financial assistance disbursed by DA. When appropriate, commanders of DA installations or activities also will require recipients to consult at least annually with these interested persons.

b. In conducting the self-evaluation, each recipient will—

(1) Evaluate effects of policies and practices for compliance with—

(a) This regulation.

(b) Applicable supplementary guidelines.

(2) Modify policies that do not meet the requirements in (1) above.

(3) Take appropriate remedial steps to eliminate discriminatory effects of policies or practices.

c. For at least 3 years after the completion of a self-evaluation required under this paragraph, recipients will maintain on file, make available for public inspection, and provide to the ASA(MRA) or designee on request the information listed below.

(1) List of the interested persons consulted (last names, first names, and middle initials).

(2) Description of areas examined and problems identified in those areas.

(3) Description of modifications made and remedial steps taken.

5-3. Dissemination of information

a. Within 90 days of the effective date of this regulation or of first receiving assistance from a DA component, and on a continuing basis thereafter, recipients will notify beneficiaries and employees of their rights under this regulation. Appropriate steps will be taken to notify participants, beneficiaries, applicants for employment, employees, and unions or professional organizations involved in collective bargaining or professional agreements with the recipient; employees will include those with impaired vision or hearing.

b. The notification will indicate that recipient does not discriminate on the basis of handicap, in violation of this regulation. The notification will state, when appropriate, that the recipient does not discriminate in admitting or providing access to or treating or employing persons in its programs and activities. Such notification may be accomplished by—

(1) Posting notices.

(2) Publishing announcements in newspapers and magazines.

(3) Placing notices in publications.

(4) Distributing memoranda or other written communications.

c. If a recipient publishes (or uses and makes available to participants, beneficiaries, applicants for employment, or employees) recruitment materials or publications containing general information about the recipient's program and activities, this general information will include a statement of the policy described in a and b above. This may be accomplished by—

(1) Including appropriate inserts in existing materials and publications.

(2) Revising and reprinting materials and publications.

d. Materials developed under this regulation will be provided to insure that all beneficiaries and employees of the recipient understand the information.

5-4. Staff responsibilities

All DA determinations of receipt compliance with this regulation will be subject to reviews by the ASA (M&RA) or designee. When responsibility for approving applications for Federal financial assistance disbursed by DA is assigned to a DA installation or activity personnel in such offices will be designated to perform the functions described in chapters 6, 7, 8, 9, and 10.

5-5. Access to records and facilities

a. Each recipient will permit access to premises by DA officials during normal business hours; this access will be especially relevant when it is necessary for conducting on-site compliance reviews or complaint investigations. These officials will be allowed to—

(1) Photograph facilities.

(2) Inspect and copy books, records, accounts, and other material relevant to determining the recipient's compliance with this regulation.

b. Information so obtained will be used in connection with the administration of this regulation. If the recipient does not have the information requested, the recipient will—

(1) Submit to the DCP&EO a written report that contains a certification that the information is not available; the DCP&EO's address is HQDA (SAMR), Room 1E600, Pentagon, WASH DC 20310.

(2) Describe the good-faith efforts made to obtain the information.

Chapter 6 Compliance

Section I Compliance Reviews

6-1. General

Commanders of DA installations or activities will—

- a. Determine compliance of each recipient with this regulation.
- b. Perform, when possible, compliance reviews in conjunction with review and audit efforts implementing title VI of the Civil Rights Act of 1964. (See AR 600-23.)

6-2. Desk audit application review

Before approving an application for Federal financial assistance, DA installation and activity commanders will make written determinations of whether the recipient is in compliance with this regulation. This determination will be based on a review of assurance of compliance, executed by recipients under paragraph 5-1, and other data submitted by the recipient.

- a. When a determination cannot be made from the assurance and other data, the DA installation or activity commander will—
 - (1) Require the recipient to submit additional information.
 - (2) Take other steps as necessary to determine the recipient's compliance with this regulation.
- b. If this additional information demonstrates that the recipient is in compliance with this regulation, commanders of DA installations and activities will notify the recipient promptly that the recipient is in compliance.

6-3. Preapproval on-site reviews

a. When a desk audit application review conducted under paragraph 6-2 indicates that the recipient might not be in compliance with this regulation, the DA installation or activity commander may conduct a preapproval on-site review at the recipient's facilities before approving the disbursement of Federal financial assistance to the recipient. The commander of the DA installation or activity will conduct such a review when appropriate, when the following conditions apply:

- (1) If a desk audit application review that the recipient's compliance posture is questionable because of—
 - (a) A history of discrimination complaints.
 - (b) Current discrimination complaints.
 - (c) A noncompliance determination by another Government agency or DA installation or activity.
 - (d) Other indications of possible noncompliance.
- (2) If federal financial assistance is requested for construction, to determine whether the location and design of the project would provide service on a nondiscriminatory basis, in conformity with chapter 3, section I. An exception for construction would be extraordinary circumstances.
 - b. Preapproval on-site reviews will be conducted under—
 - (1) This regulation's guidelines.
 - (2) The provisions of paragraph 6-4 concerning postapproval reviews.

6-4. Postapproval reviews

Commanders of DA installations and activities will—

- a. Establish and maintain effective programs of post-approval reviews.
- b. Conduct postapproval reviews of each recipient. (Frequency and nature of these reviews are prescribed in this regulation.)
- c. Require recipients periodically to submit compliance reports.
- d. Record the results of the reviews; these results will include findings of fact and recommendations.

6-5. Extensions

A commander of a DA installation or activity will complete a review within 180 calendar days of the recipient's initiation. An exception will be if an extension of time is granted by the ASA(M&RA) or designee for good cause. This review will do one of the following:

- a. Find the recipient to be in compliance; the recipient then will be notified of this finding.
- b. Notify the recipient and the ASA(M&RA) or designee of a finding of probable noncompliance under paragraph 6-7.

Section II Effective Compliance

6-6. Violations

a. When a compliance review or complaint investigation indicates that a recipient has violated this regulation or the assurance executed under paragraph 5-1, the responsible DA installation or activity commander or the ASA(M&RA) or designee will attempt to effect compliance under paragraphs 6-7 and 6-8. The inability of a DA installation or activity commander to comply with any time frame prescribed in this regulation does not relieve a recipient of the responsibility for compliance with this regulation.

b. The DA installation or activity commander may require (when necessary to overcome the affects of discrimination in violation of this regulation) a recipient to take remedial action, with respect to handicapped persons who—

- (1) Are no longer participants in the recipient's program or activity, but who were participants in the program or activity when such discrimination occurred.
- (2) Would have been participants in the recipient's program or activity had the discrimination not occurred.
- (3) Are presently in the recipient's program or activity but not receiving full benefits or equal and integrated treatment within the program or activity.

6-7. Written notice of violation

After evaluating the investigative report, the commander of the DA installation or activity will issue to the recipient (under para 5-3) and to the ASA(M&RA) or designee a written notice that—

- a. Describes the apparent violation and corrective actions necessary to achieve compliance.
- b. Extends an offer to meet informally with the recipient.
- c. Informs the recipient that failure to respond to the notice within 15 calendar days of its receipt will result in initiation of enforcement procedures described in chapters 8, 9, and 10.

6-8. Attempting to achieve voluntary compliance by recipients

a. If a DA installation or activity commander issues a notice under paragraph 6-7, the commander will attempt to—

- (1) Meet the recipient.
- (2) Persuade the recipient to take steps necessary to achieve compliance with this regulation.
- b. If a recipient agrees to take remedial steps to achieve compliance, the DA installation or activity commander will require that the agreement—
 - (1) Be in writing.
 - (2) Be signed by the head of the DA installation or activity concerned or designee.
 - (3) Be signed by the principal official of the recipient.
 - (4) Specify action necessary to achieve compliance.
 - (5) Be made available to the public on request.
 - (6) Be subject to the approval of the ASA(M&RA) or designee.
- c. If satisfactory adjustment, or a written agreement, has not been achieved within 60 calendar days of the recipient's receipt of the notice issued under paragraph 6-7, the DA installation or activity commander will—
 - (1) Notify the ASA(M&RA) or designee.
 - (2) State the reasons for failure to reach satisfactory adjustments, or written agreement.

d. The commander of the DA installation or activity will initiate the enforcement actions prescribed in chapters 8, 9, and 10, if one of the following applies:

(1) The recipient does not respond to a notice under paragraph 6-7, within 15 calendar days, if receipt of the notice and satisfactory adjustments are not made within 45 calendar days of the date of the recipient's response.

(2) The DA installation or activity commander or the ASA(-M&RA) determines at any time within 90 days after the recipient receives a notice (under para 6-7) that, despite reasonable efforts, the recipient is not likely to comply and voluntarily.

e. If under d above, the DA installation or activity commander initiates enforcement action, attempts to persuade the recipient to comply voluntarily will be continued.

Chapter 7 Imposing Sanctions

7-1. Sanctions available

If a commander of a DA installation or activity has taken action under paragraphs 6-7 and 6-8, the commander may, by order, do the actions listed below. (These actions are subject to paras 7-2 and 7-3.)

a. Terminate, suspend, or refuse to grant or continue assistance to the recipient.

b. Refer the case to the Department of Justice for initiation of enforcement proceedings at a Federal, State, or local level.

c. Pursue remedies under State or local law.

d. Impose other sanctions on consultation with the ASA(M&RA) or designee.

7-2. Terminating, suspending, or refusing to grant or continue assistance

A commander of a DA installation or activity may not terminate, suspend, or refuse to grant or continue Federal financial assistance, unless—

a. Such action has been approved by the Secretary of Defense.

b. The commander has given the recipient an opportunity for a hearing (under procedures outlined in chap 8) and a finding of noncompliance has resulted.

c. Thirty calendar days have elapsed since the Secretary of Defense has filed a written report with the congressional committees that have jurisdiction over the program or activity in which the violation of this regulation exists. This report will describe the violation and action to be taken.

d. Such action affects only the particular activity or program (or portion thereof) of the recipient where the violation exists.

7-3. Other sanctions

A commander of a DA installation or activity may not impose the sanction provisions outlined in paragraphs 7-2c and d, unless—

a. The commander has given the recipient an opportunity for a hearing (under chap 8); a finding of noncompliance has resulted.

b. The action has been approved by the Secretary of Defense.

c. Ten calendar days have elapsed since the mailing of a notice informing the recipient of the—

(1) Continuing failure to comply with this regulation.

(2) Action necessary to achieve compliance.

(3) Sanction to be imposed.

d. During these 10 calendar days, the DA installation or activity command has made additional efforts to persuade the recipient to comply.

Chapter 8 Hearings, Decisions, and Notices

Section I Hearings

8-1. Reasonable notice

a. When a hearing is required by this regulation, reasonable notice will be given to the affected applicant or recipient by registered or certified mail; return receipt for this registered or certified mail will be requested. This notice will advise the applicant or recipient of the—

(1) Proposed action to be taken.

(2) Specific provisions under which the proposed action is to be taken.

(3) Matters of fact or law asserted as the basis for this action.

b. This notice also will provide for one of the following:

(1) Fix a date not less than 20 days after the date of the notice.

The applicant or recipient may request of the responsible DA official that the matter be scheduled for hearing within this time frame.

(2) Advise the applicant or recipient that the matter in question has been set for hearing at a stated place and time. This time and place—

(a) Will be reasonable.

(b) Will be subject to change for cause.

c. The complainant, if any, will be advised of the time and place of the hearing.

d. An applicant or recipient may waive a hearing, and submit written information and argument instead. Failure of an applicant or recipient to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, will be deemed—

(1) A waiver of the right to a hearing under this regulation.

(2) Consent to the making of a decision on the basis of such information that is available.

8-2. Time and place of hearing

Hearings will be held at the DA installation or activity, at a time fixed by the responsible DA official; an exception will be if this official determines that the convenience of the applicant or recipient requires that another place be selected. Hearings will be held before the responsible DA official or, at the official's discretion, before a hearing examiner designated by the official.

8-3. Hearing examiner

The hearing examiner will be a field grade official or civilian employee above the grade of GS-12 (or the equivalent); the examiner also will be a person admitted to practice law before a Federal court or the highest court of a State, Territory, Commonwealth, or the District of Columbia.

8-4. Right to counsel

In all proceedings under this chapter, the applicant or recipient and the responsible DA installation or activity commander will have the right to be represented by counsel.

8-5. Procedures

a. The recipient will receive an open hearing, at which he or she or his or her counsel may examine any witnesses present. Both the responsible DA official and the applicant or recipient will be entitled to introduce all relevant evidence on the issues at the outset of or during the hearing as—

(1) Stated in the notice for hearing.

(2) Determined by the officer conducting the hearing.

b. Technical rules of evidence will not apply to hearings conducted under this regulation. But rules or principles designed to assure production of the most credible evidence available will be applied where reasonably necessary by the officer conducting the hearing. These rules or principles also will be designed to subject testimony to test by cross-examination.

c. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered

or taken for record will be open to examination by the parties. Opportunity will be given to refute facts and arguments advanced on either side of the issues.

d. A transcript of the oral evidence will be made; an exception would be as to the extent the substance of the oral evidence is stipulated for the record.

e. All decisions will be based on the hearing record. Written findings will be made.

8-6. Consolidated or joint hearings

In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this regulation applies, or noncompliance with this regulation and the regulations of one or more other Federal departments or agencies issued under section 504 of the Rehabilitation Act of 1973 (as amended), the ASD(MRA&L), the Secretary of a Military Department, or other responsible DA official designated by the ASD(MRA&L) after consultation with the ASD(MRA&L) may, by agreement with such other departments or agencies as applicable, provide for the following:

a. Conduct of consolidated or joint hearings.

b. The application to such hearings.

c. Application to such hearings to appropriate procedures consistent with this regulation. (Final decisions in such cases will be made under chap 9.)

Section II

Decisions and Notices

8-7. Decision by a person other than the responsible DA official

a. If the hearing is held by a hearing examiner, the hearing examiner will either make an initial decision or certify the entire record; an initial decision may be made if the examiner is so authorized. The record will include the hearing examiner's recommended findings and proposed decision to the responsible DA official for a final decision. A copy of this initial decision or certification will be mailed to the applicant or recipient.

b. When the initial decision is made by the hearing examiner, the applicant or recipient may file with the responsible DA official his or her exceptions to the initial decision; reasons for the exception will be attached. This filing will be within 30 days of the mailing of such notice of initial decision.

c. In the absence of exceptions, the responsible DA official may, on the official's own motion within 45 days after the initial decision, serve on the applicant or recipient a notice that the official will review the decision.

d. On filing of exceptions or notices of review, the responsible DA official will—

(1) Review the initial decision.

(2) Issue his or her own decision, including the reasons.

e. In the absence of exceptions or notice of review, the initial decision will constitute the final decision of the responsible DA official.

8-8. Decisions on records or review by the responsible DA official

a. The applicant or recipient will be given reasonable opportunity to file briefs or other written statements of contentions to the responsible DA official when the responsible DA official does any of the following actions:

(1) Has the record certified to him or her for decision.

(2) Reviews the decision of a hearing officer, under paragraph 8-7.

(3) Conducts the hearing.

b. Copies of the final decision of the responsible DA official will be given in writing to—

(1) The applicant or recipient.

(2) The complainant, if any.

8-9. Decisions on record when a hearing is waived

When a hearing is waived under paragraph 8-1d, a decision will be made on the record by the responsible DA official. Copies of the decision will be given in writing to—

a. The applicant or recipient.

b. The complainant, if any.

8-10. Rulings required

Each decision of a hearing officer or responsible DA official will set forth the ruling on each finding, conclusion, or exception presented. The decision will identify the requirements imposed by this regulation with which the applicant or recipient has failed to comply.

8-11. Approval by the Secretary of Defense

a. A final decision of a responsible DA official will be transmitted promptly to the Secretary of Defense when this decision provides for the following:

(1) Suspension to grant or continue Federal financial assistance.

(2) Refusal to grant or continue Federal financial assistance.

(3) Imposition of any other sanction available under this regulation.

b. The Secretary of Defense may—

(1) Approve or vacate the decision.

(2) Remit or mitigate any sanction imposed.

c. Within 30 days, the Secretary of Defense will file a full written report of the circumstances and grounds for such action with the congressional committees having legislative jurisdiction over the programs involved.

d. Any action to suspend, terminate, or refuse to grant or continue Federal financial assistance will be limited—

(1) To the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made.

(2) In its effect to the particular program, or part thereof, in which noncompliance has been so found.

Chapter 9

Restoring Eligibility for Financial Assistance

9-1. Adverse affect

A recipient who is affected adversely by a final decision issued under chapter 8, section II may at any time request the responsible DA official to restore fully the eligibility to receive Federal financial assistance.

9-2. Restoration of eligibility

The responsible DA official will restore such eligibility immediately if the official determines that the recipient—

a. Has supplied information that demonstrates that the recipient has satisfied terms and conditions of the order entered under chapter 8, section II.

b. Is complying with this regulation.

c. Has provided reasonable assurance of continued compliance with this regulation.

9-3. Denial of eligibility

If the responsible DA official denies a request for restoration of eligibility, the recipient may submit a written request for a hearing; this written statement must state why the recipient believes the responsible DA official erred in denying the request. Following such a written request, the recipient will be given an expeditious hearing, under rules of procedure issued by the responsible DA Official; this hearing will determine whether requirements described in paragraph 9-2 have been met. While these proceedings are pending, sanction imposed by the order issued under chapter 8, section II will remain in effect.

Chapter 10

Coordination with Sections 502 and 503 of the Rehabilitation Act of 1973 (As Amended)

10-1. Developing accessibility

Commanders of DA installations or activities will use DOD 4270.1-M and Office of the Chief of Engineers Manual EM 1110-1-103 in developing requirements for accessibility of facilities. If issues with respect to section 502 of the Rehabilitation Act of 1973, as amended, that are not covered by this regulation are encountered, the ASD(MRA&L) or designee may be consulted. If necessary, the ASD(MRA&L) or designee will consult with the Architectural and Transportation Barriers Compliance Board in resolving these problems. This board can be contacted at 330 C St. SW, Room 1010, WASH DC 20202; (202) 472-2700 or (202) 245-1591.

10-2. Direct consultation

Commanders of DA installations and activities may advise recipients to consult directly with the Architectural and Transportation Barriers Compliance Board in developing accessibility criteria.

10-3. Coordination of enforcement actions

Commanders will—

- a. Coordinate enforcement actions relating to the accessibility of facilities with the Architectural and Transportation Barriers Compliance Board.
- b. Notify the ASD(MRA&L) or designee of this coordination.

10-4. Section 503

The commander will coordinate enforcement actions with the nearest Regional Office of Federal Contract Compliance Programs of the Department of Labor if the conditions discussed below apply. The DA installation or activity commander will notify the ASD(MRA&L) of this coordination.

- a. If a recipient also is a Federal contractor subject to—
 - (1) Section 503 of the Rehabilitation Act of 1973, as amended.
 - (2) The regulations under (1) above (sec 60-741, title 41, Code of Federal Regulations).
- b. If DA installation or activity commander has reason to believe that the recipient is in violation.

10-5. Employment

DA components that conduct Federal programs or activities covered by this regulation and involve employment of civilian persons to conduct such programs or activities must comply with—

- a. Section 5-1 of the Rehabilitation Act of 1973, as amended.
- b. Implementing rules and regulations of the Equal Employment Opportunity Commission.

Appendix A
Format for Assurance of Compliance with the
Department of the Army Under Section 504 of the
Rehabilitation Act of 173 (As Amended)

(Name of Recipient)

(Address)

(City or County)

(State and ZIP Code)

Hereby agrees that he or she will comply with:

- a. Section 504 of Public Law 93-112, "Rehabilitation Act of 1973" September 26, 1973 (29 U.S.C. 794) (1976);
- b. Section 111 of Public Law 93-516 "Rehabilitation Act Amendments of 1974" December 7, 1974 (29 U.S.C. 706, 780, 790) (1976); and
- c. Section 119 of Public Law 95-602, "Rehabilitation Comprehensive Services, and Development Disabilities Amendments of 1978" November 6, 1978 (sec 794, Note 29, United States Code) (supp III 1979), all requirements imposed by or pursuant to this regulation of the DA and in accordance with Section 504 of the Rehabilitation Act of 1973 (as amended), DA will prohibit discrimination based on handicap in programs and activities receiving Federal financial assistance disbursed by DA and in programs and activities conducted by DA; and **HEREBY GIVES ASSURANCE THAT** it will immediately take any measures necessary to effectuate this agreement.

If any personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant or recipient by DA or if such assistance is in the form of personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant or recipient by DA, or if such assistance is in the form of personal property or real property, or interest therein or structure thereon, then this assurance shall obligate the applicant or recipient or in the case of any transfer such as property, any transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for the period during which it retains ownership or possession of the property whichever is longer. In all other cases, this assurance shall obligate the applicant or recipient for the period during which the Federal financial assistance is extended to it by DA.

DA representatives will be allowed to visit recipient facilities. They will inspect the facilities to ensure that there are no barriers to impede the handicap's accessibility in either programs or activities. **THIS ASSURANCE** is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the applicant or recipient by DA, including installment payments after such date on account of arrangements for Federal financial aid which were approved such date. The applicant or recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant or recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the applicant or recipient.

(Date)

(Applicant or Recipient)

("By" name, title, and signature of authorized official)

Glossary

Section I

Abbreviations

ASA(M&RA)

Assistant Secretary of the Army (Manpower and Reserve Affairs)

ASD(MRA&L)

Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

DA

Department of the Army

DCPP&EO

Deputy for Civilian Personnel Policy and Equal Opportunity

EEO

equal employment opportunity

HQDA

Headquarters, Department of the Army

MACOM

major Army command

TDD

telephone devices for the deaf

TTY

teletypewriter

Section II

Terms

Facility

All, or any portion of, buildings, structures, equipment, roads, walks, parking lots, or other real or personal property; any interest in such property.

Federal financial assistance

Grant, loan, contract (other than a procurement contract or a contract of insurance or guarantee), or other arrangement by which the Federal Government provides, or otherwise makes available, assistance in the forms listed below.

a. Funds.

b. Services performed by Federal personnel; these include technical assistance, counseling, training, and provision of statistical or expert information.

c. Real and personal property; interest in or use of such property. This interest or use includes—

(1) Transfers or leases of such property for less than fair market value or for reduced consideration.

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

Handicapped person

a. Person who—

(1) Has a physical or mental impairment

that substantially limits one or more major life activities.

(2) Has a record of such an impairment.

(3) Is regarded as having such an impairment.

b. For purposes of this regulation (as it relates to employment programs of recipients) this term does not include an individual—

(1) Who is an alcohol or drug abuser.

(2) Whose current use of alcohol or drugs prevents him or her from performing the duties of the job in question.

(3) Whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others.

c. As used in this regulation, this term includes the following:

(1) Physical or mental impairment that include the following:

(a) Physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal and special sense organs; respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic; skin; and endocrine.

(b) Mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(c) Such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, and muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, drug abuse, and alcoholism.

(2) Impairment of major life activities that include the following: functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) Has a record of impairment, such as the following: history of, or has been misclassified as having, mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment, such as any of the following:

(a) Physical or mental impairment that does not substantially limit major life activities, but treated by a recipient or DA as constituting such a limitation.

(b) Physical or mental impairment that substantially limits major life activities only as a result of attitudes of others toward such impairment.

(5) Has none of the impairments defined in (1) through (4) above, but is treated by a recipient or the DA as having such an impairment.

Historic properties

Properties listed or eligible for listing in the National Register of Historic Places.

Qualified handicapped person

Handicapped person who with respect to—

a. Employment, can perform the essential

functions of the job in question with reasonable accommodation.

b. Services, meets the essential eligibility requirements for receiving the services in question.

Recipient

a. State or political subdivision or instrumentality thereof.

b. Public or private agency, institution, organization, or other entity.

c. Person who receives Federal financial assistance directly or through another recipient; this person includes successor, assignee, or transferee of a recipient, but not the ultimate beneficiary of the assistance.

d. Persons and entities applying to be recipients.

Substantial impairment

Significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

Section III

Special Abbreviations and Terms

There are no special terms.

Unclassified

PIN 054474-000

USAPA

ELECTRONIC PUBLISHING SYSTEM
TEXT FORMATTER ... Version 2.56

PIN: 054474-000
DATE: 01-25-99
TIME: 10:51:24
PAGES SET: 17

DATA FILE: ar600-7.fil
DOCUMENT: AR 600-7
DOC STATUS: NEW PUBLICATION



Department of Defense

DIRECTIVE

NUMBER 1020.1

March 31, 1982

Certified Current as of November 21, 2003

Incorporating Change 1, November 16, 1994

ASD(MRA&L)

SUBJECT: Nondiscrimination on the Basis of Handicap in Programs and Activities
Assisted or Conducted by the Department of Defense

- References: (a) Section 504 of Public Law 93-112, "Rehabilitation Act of 1973,"
September 26, 1973 (29 U.S.C. 794)(1976)
(b) Section 111 of Public Law 93-516, "Rehabilitation Act Amendments of
1974," December 7, 1974 (29 U.S.C. 706, 780, 790)(1976)
(c) Section 119 of Public Law 95-602, "Rehabilitation, Comprehensive
Services, and Developmental Disabilities Amendments of 1978,"
November 6, 1978 (29 U.S.C. 794)(Supp. III 1979)
(d) Department of Justice Regulation, "Implementation of Executive Order
12250, Nondiscrimination on the Basis of Handicap in Federally Assisted
Programs," August 11, 1981 (28 CFR 41)
(e) Chapter 35 of title 44, United States Code

1. PURPOSE

This Directive implements references (a) through (d) to prohibit discrimination based on handicap in programs and activities receiving Federal financial assistance disbursed by the Department of Defense and in programs and activities conducted by the Department of Defense.

2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the National Guard Bureau, and the Defense Agencies (hereafter referred to as "DoD Components") insofar as they:

2.1.1. Disburse Federal financial assistance to programs and activities that affect handicapped persons in the United States and that are covered by this Directive (see paragraph E1.1.2., enclosure 1); or

2.1.2. Conduct programs and activities that affect handicapped persons in the United States and that are covered by this Directive (see paragraph E1.1.3., enclosure 1).

2.2. This Directive also applies to each recipient of Federal financial assistance disbursed by the Department of Defense and to each program and activity that receives or benefits from such assistance, insofar as such recipient, program, or activity affects a handicapped person in the United States.

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

4. POLICY

It is DoD policy that no qualified handicapped person shall be subjected to discrimination on the basis of handicap under any program or activity that receives or benefits from Federal financial assistance disbursed by a DoD Component or under any Federal program or activity that is conducted by a DoD Component. Guidelines for determining actions that discriminate against handicapped persons are prescribed in enclosure 3.

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)), or designee, shall monitor compliance with this Directive. In discharging this responsibility, the ASD(MRA&L), or designee, shall:

5.1.1. Coordinate efforts of DoD Components to enforce this Directive.

5.1.2. Assist in the development of standards and procedures promulgated pursuant to enclosures 3, 4, and 5 of this Directive.

5.1.3. Perform the responsibilities assigned to the ASD(MRA&L) in enclosures 3, 4, and 5 of this Directive.

5.1.4. Otherwise assist DoD Components in implementing this Directive.

5.2. The Heads of DoD Components shall comply with this Directive. In discharging this responsibility, they shall:

5.2.1. Designate a policy-level official to ensure compliance with this Directive, receive and investigate complaints filed under this Directive, and otherwise manage DoD Component responsibilities under this Directive.

5.2.2. Notify the ASD(MRA&L), or designee, of the name, position, location, and telephone number of persons selected by them to be policy-level officials within 15-calendar days of such a selection.

5.2.3. Issue guidelines pursuant to enclosure 4 of this Directive.

5.2.4. Cooperate fully with the ASD(MRA&L), or designee, in that official's performance of the responsibilities assigned herein, including furnishing to the ASD(MRA&L), or designee, in a timely fashion any requested reports and information.

5.2.5. Assign sufficient personnel to implement and to ensure effective enforcement of this Directive.

6. ASSURANCES REQUIRED AND PROCEDURES

See enclosures 3, 4, and 5.

7. INFORMATION REQUIREMENTS

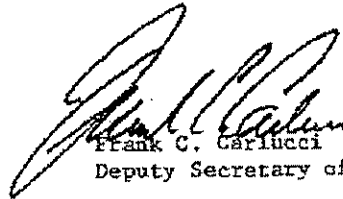
7.1. Each DoD Component shall maintain a log of all complaints that are filed with it or its recipients under this Directive. The log shall contain the complainant's name (last name, first, and middle initial) and address (street address, city, State, and zip code), the recipient's name (if this refers to a person, last name, first, and middle initial) and address (street address, city, State, and zip code), the nature of the complaint, and the current status of the complaint investigation or resolution. Each DoD Component shall submit a narrative summary report on complaints by memorandum to the ASD(MRA&L), or designee, before July 15 and January 15 of each year. This reporting requirement has been assigned Report Control Symbol DDM(SA)1596.

7.2. Each DoD Component shall submit a narrative report by memorandum to the ASD(MRA&L), or designee, whenever, pursuant to enclosure 4 of this Directive, the DoD Component notifies an applicant or recipient that noncompliance with this Directive is indicated. The report shall include the recipient's name (if this refers to a person, last name, first, and middle initial) and address (street address, city, State, and zip code), the date (YYMMDD) and nature of the finding, and the name of the applicable Federally assisted program or activity. This reporting requirement has been assigned Report Control Symbol DD-M(AR)1597.

7.3. The record keeping requirements contained in paragraph E4.3.2., enclosure 4, have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. Chapter 35 (reference (e)) and have been assigned OMB No. 0704-0102.

8. EFFECTIVE DATE

This Directive is effective June 1, 1982.



Frank C. Carlucci
Deputy Secretary of Defense

Enclosures - 5

- E1. Programs and Activities Subject to This Directive
- E2. Definitions
- E3. Guidelines for Determining Discriminatory Practices
- E4. Ensuring Compliance with This Directive in Federal Financial Assistance Programs and Activities
- E5. Ensuring Compliance with This Directive in Programs and Activities Conducted by the Department of Defense

E1. ENCLOSURE 1

PROGRAMS AND ACTIVITIES SUBJECT TO THIS DIRECTIVE

E1.1.1. This Directive applies to all DoD Components and recipients of Federal financial assistance disbursed by a DoD Component insofar as the programs and activities of the DoD Components and recipients affect handicapped persons in the United States. Existing programs and activities that are assisted or conducted by a DoD Component and that are subject to this Directive, but do not appear in paragraphs E1.1.2. or E1.1.3., below, are covered even though not listed. DoD Components must report new programs and activities that are subject to this Directive to the ASD(MRA&L), or designee, within 15-calendar days of their creation or funding.

E1.1.2. Federal financial assistance programs subject to this Directive include:

E1.1.2.1. Title 32, United States Code, Sections 101-716 (1976 and Supp. III 1979): the Army and Air National Guard.

E1.1.2.2. Title 40, United States Code, Sections 483, 484, and 512 (1976); title 49, United States Code, Sections 1101 and 1107 (1976); and title 10, United States Code, Sections 2541, 2544, 2571, 2576, 2662, 7308, 7541, 7542, 7545, 7546, and 7547 (1976 and Supp. IV 1980): various programs involving the loan or other disposition of surplus, obsolete, or unclaimed property.

E1.1.2.3. Title 10, United States Code, Sections 4307-4311 (1976), and the annual Department of Defense Appropriations Act: National Program for the Promotion of Rifle Practice.

E1.1.2.4. Secretary of the Navy Instruction 5720.19E, "Navy Science Cruiser Program," February 24, 1977.

E1.1.2.5. Title 10, United States Code, Section 9441 (1976 and Supp. IV 1980): Civil Air Patrol.

E1.1.2.6. Title 41, United States Code, Sections 501-509 (Supp. III 1979): Federal grants and cooperative agreements.

E1.1.2.7. Title 33, United States Code, Section 426 (1976 and Supp. III 1979): Army Corps of Engineers participation in cooperative investigations and studies concerning the erosion of shores of coastal and lake waters.

E1.1.2.8. Title 33, United States Code, Sections 426e-426h (1976): Army Corps of Engineers assistance in the construction of works for the restoration and protection of shores.

E1.1.2.9. Title 16, United States Code, Section 460d (1976): construction and operation of public park and recreational facilities in water resource development projects under the administrative jurisdiction of the Department of the Army.

E1.1.2.10. Title 33, United States Code, Section 701c-3 (1976): payment to States of lease receipts from lands acquired by the United States for flood control, navigation, and allied purposes.

E1.1.2.11. Title 33, United States Code, Sections 558c and 702d-1 (1976); title 10, United States Code, Sections 2668 and 2669 (1976); title 43, United States Code, Section 961 (1976); and title 40, United States Code, Section 319 (1976): grants of easements without consideration, or at a nominal or reduced consideration, on land under the control of the Department of the Army at water resource development projects.

E1.1.2.12. Title 33, United States Code, Sections 540 and 577 (1976): Army Corps of Engineers assistance in the construction of small boat harbor projects.

E1.1.2.13. Title 33, United States Code, Section 701s (1976): emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works.

E1.1.2.14. Title 33, United States Code, Section 633 (1976): Army Corps of Engineers contracts for the protection, alteration, reconstruction, relocation, or replacement of structures and facilities.

E1.1.2.15. Title 50, United States Code, Section 453 (1976): Defense Logistics Agency loans of industrial equipment to educational institutions (Tools for Schools).

E1.1.2.16. Title 33, United States Code, Section 610 (1976): provision of specialized services or technical information by the Army Corps of Engineers to State and local governments for the control of aquatic plant growths in rivers, harbors, and allied waters.

E1.1.2.17. Title 42, United States Code, Section 1962d-16 (1976): provision of specialized services by the Army Corps of Engineers to any State for the preparation of comprehensive plans for drainage basins located within the boundaries of said State.

E1.1.2.18. Title 33, United States Code, Section 603a (1976): provision of specialized services by the Army Corps of Engineers to improve channels for navigation.

E1.1.2.19. Title 33, United States Code, Section 701g (1976): provision of specialized services by the Army Corps of Engineers to reduce flood damage.

E1.1.2.20. Title 24, United States Code, Sections 44c and 47 (1976): United States Soldiers' and Airmen's Home.

E1.1.2.21. Title 10, United States Code, Chapter 55, as implemented by DoD 6010.8 -R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," January 10, 1977.

E1.1.3. All programs and activities conducted by the Department of Defense that affect handicapped persons in the United States are subject to this Directive. They include:

E1.1.3.1. Promulgation of rules and regulations for public comment in a manner that grants handicapped persons a reasonable opportunity for such comment (such as by making cassette recordings of proposed rules).

E1.1.3.2. Public meetings, conferences, or seminars sponsored or conducted by a DoD Component but held in non-Government buildings.

E1.1.3.3. Public meetings, conferences, or seminars sponsored or conducted by a DoD Component or by a non-DoD organization but held in a DoD building.

E1.1.3.4. Open houses, memorial services, tours, or other ceremonies held on or in DoD property.

E1.1.3.5. Military museums.

E1.1.3.6. Historic vessels.

E1.1.3.7. Historic buildings and properties maintained by a DoD Component and properties designated as historic under a statute of the appropriate State or local governmental body.

E1.1.3.8. Schools operated by the Department of Defense within the United States pursuant to Section 6 of Pub. L. 81-874, title 20, United States Code, Section 241 (1976).

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Facility. All or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or any interest in such property.

E2.1.2. Federal Financial Assistance. Any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Federal Government provides or otherwise makes available assistance in the form of:

E2.1.2.1. Funds.

E2.1.2.2. Services performed by Federal personnel, including technical assistance, counseling, training, and provision of statistical or expert information.

E2.1.2.3. Real and personal property or any interest in or use of such property, including:

E2.1.2.3.1. Transfers or leases of such property for less than fair market value or for reduced consideration.

E2.1.2.3.2. Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

E2.1.3. Handicapped Person. Any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of this Directive as it relates to employment programs of recipients, such term does not include any individual who is an alcoholic or drug abuser and whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question, or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others. As used in this paragraph:

E2.1.3.1. Physical or Mental Impairment. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal and special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, and

muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; drug abuse; and alcoholism.

E2.1.3.2. Major Life Activities. Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

E2.1.3.3. Has a Record of Such an Impairment. Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

E2.1.3.4. Is Regarded as Having an Impairment. Has:

E2.1.3.4.1. A physical or mental impairment that does not substantially limit major life activities but is treated by a recipient or DoD Component as constituting such a limitation;

E2.1.3.4.2. A physical or a mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

E2.1.3.4.3. None of the impairments defined above, but is treated by a recipient or DoD Component as having such an impairment.

E2.1.4. Historic Properties. Those properties listed or eligible for listing in the National Register of Historic Places.

E2.1.5. Include; Such As. Not all the possible items are covered, whether like or unlike the ones named.

E2.1.6. Qualified Handicapped Person. A handicapped person who:

E2.1.6.1. With respect to employment, can perform the essential functions of the job in question with reasonable accommodation.

E2.1.6.2. With respect to services, meets the essential eligibility requirements for receiving the services in question.

E2.1.7. Recipient. Any State or political subdivision or instrumentality thereof, any public or private agency, institution, organization, or other entity, or any person that receives Federal financial assistance directly or through another recipient, including any successor, assignee, or transferee of a recipient, but not the ultimate beneficiary of the assistance. The term includes persons and entities applying to be recipients.

E2.1.8. Substantial Impairment. A significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

E3. ENCLOSURE 3

GUIDELINES FOR DETERMINING DISCRIMINATORY PRACTICES

E3.1. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

E3.1.1. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination under any program or activity that is conducted by the Department of Defense or that receives or benefits from Federal financial assistance disbursed by the Department of Defense.

E3.1.2. A recipient or DoD Component may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

E3.1.2.1. Provide different or separate aid, benefits, or services to handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are equal to those provided to others;

E3.1.2.2. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

E3.1.2.3. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

E3.1.2.4. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that afforded to others; or

E3.1.2.5. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity granted to others receiving the aid, benefit, or service.

E3.1.3. A recipient or DoD Component may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different from regular programs or activities, even if such separate or different programs and activities are permissible under subparagraph E3.1.2.1., above.

E3.1.4. A recipient or DoD Component may not provide assistance to an Agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity.

E3.1.5. A recipient or DoD Component may not deny, on the basis of handicap, a qualified handicapped person the opportunity to participate as a member of planning or advisory boards.

E3.1.6. A recipient or DoD Component may not use, directly or through contractual or other arrangements, criteria or methods of administration that:

E3.1.6.1. Subject qualified handicapped persons to discrimination on the basis of handicap;

E3.1.6.2. Defeat or substantially impair accomplishment of the objectives of the recipient's or DoD Component's program or activity with respect to handicapped persons; or

E3.1.6.3. Perpetuate discrimination by another recipient if both recipients are subject to common administrative control or are agencies of the same State.

E3.1.7. In determining the site or location of a facility, a recipient or DoD Component may not make selections that:

E3.1.7.1. Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives or benefits from Federal financial assistance; or

E3.1.7.2. Defeat or substantially impair, with respect to handicapped persons, the accomplishment of the objectives of the program or activity.

E3.1.8. Recipients and DoD Components shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

E3.1.9. Recipients and DoD Components shall take appropriate steps to make communications with their applicants, employees, and beneficiaries available to persons with impaired vision and hearing.

E3.1.10. This section may not be interpreted to prohibit the exclusion of:

E3.1.10.1. Persons who are not handicapped from benefits, programs, and activities limited by Federal statute or Executive order to handicapped persons; or

E3.1.10.2. One class of handicapped persons from a program or activity limited by Federal statute or Executive order to a different class of handicapped persons.

E3.1.11. Recipients and DoD Components shall take appropriate steps to ensure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program or activity receiving or

benefiting from Federal financial assistance disbursed by the Department of Defense or under any program or activity conducted by the Department of Defense because of the absence of auxiliary aids, such as certified sign-language interpreters, telecommunication devices (TDDs), or other telephonic devices for individuals with impaired sensory, manual, or speaking skills.

E3.2. PROHIBITIONS AGAINST EMPLOYMENT DISCRIMINATION BY RECIPIENTS

E3.2.1. No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance disbursed by the Department of Defense.

E3.2.2. The prohibition against discrimination in employment applies to the following:

E3.2.2.1. Recruitment, advertising, and processing of applications for employment.

E3.2.2.2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.

E3.2.2.3. Rates of pay or any other form of compensation and changes in compensation.

E3.2.2.4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

E3.2.2.5. Leaves of absence, sick leave, or any other leave.

E3.2.2.6. Fringe benefits available by virtue of employment, whether or not administered by the recipient.

E3.2.2.7. Selection and financial support for training, including apprenticeship, professional meetings, conferences and other related activities, and selection for leaves of absence for training.

E3.2.2.8. Programs and activities sponsored by the employer, including social and recreational programs.

E3.2.2.9. Any other term, condition, or privilege of employment.

E3.2.3. A recipient may not participate in a contractual or other relationship that subjects qualified handicapped applicants or employees to discrimination prohibited by

this section, including relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

E3.2.4. A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Reasonable accommodation includes providing ramps, accessible restrooms, drinking fountains, interpreters for deaf employees, readers for blind employees, amplified telephones, TDDs such as Teletypewriters or Telephone Writers (TTYs), and tactile signs on elevators.

E3.2.5. A recipient may not use employment tests or criteria that discriminate against handicapped persons, and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

E3.2.6. A recipient may not conduct a pre-employment medical examination or make a pre-employment inquiry about whether an applicant is a handicapped person or about the nature or severity of a handicap. A recipient may make, however, a pre-employment inquiry into an applicant's ability to perform job-related functions.

E3.2.7. When a recipient is taking remedial action to correct the effects of past discrimination or is taking voluntary action to overcome the effects of conditions that have resulted in limited participation by handicapped persons in its Federally assisted program or activity, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped if:

E3.2.7.1. The recipient makes clear to the applicants that the information is intended for use solely in connection with its remedial action obligations or its voluntary affirmative action efforts.

E3.2.7.2. The recipient makes clear to the applicants that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph E3.2.9., below, that refusal to provide it will not subject the applicants to any adverse treatment, and that it will be used only in accordance with this Directive.

E3.2.8. Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty if:

E3.2.8.1. All entering employees are subjected to such an examination, regardless of handicap.

E3.2.8.2. The results of such an examination are used only in accordance with this Directive, which prohibits discrimination against a qualified handicapped person on the basis of handicap.

E3.2.9. Information obtained under this section concerning the medical condition or history of applicants shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

E3.2.9.1. Supervisors and managers may be informed about restrictions on the work or duties of handicapped persons and about necessary accommodations.

E3.2.9.2. First aid and safety personnel may be informed, when appropriate, if a handicapping condition might require emergency treatment.

E3.2.9.3. Government officials investigating compliance with Section 504 and this Directive shall be provided relevant information upon request.

E3.3. PROGRAM ACCESSIBILITY

E3.3.1. General Requirements. No qualified handicapped person shall, because a recipient's or DoD Component's facilities are inaccessible to or not usable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance disbursed by the Department of Defense or under any program or activity conducted by the Department of Defense.

E3.3.2. Existing Facilities

E3.3.2.1. A recipient or DoD Component shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This does not necessarily require a recipient or DoD Component to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons. For guidance in determining the accessibility of facilities, see Chapter 18 of DoD 4270.1-M, "Department of Defense Construction Criteria Manual," June 1, 1978, and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103, "Design for the Physically Handicapped," October 15, 1976. Inquiries on specific accessibility design problems may be addressed to the ASD(MRA&L), or designee.

E3.3.2.2. When structural changes are necessary to make programs or activities in existing facilities accessible to the extent required by paragraph E3.3.1., above:

E3.3.2.2.1. Such changes shall be made as soon as practicable, but not later than 3 years after the effective date of this Directive; however, if the program or activity is a particular mode of transportation (such as a subway station) that can be made accessible only through extraordinarily expensive structural changes to, or replacement of, existing facilities and if other accessible modes of transportation are available, the DoD Component concerned may extend this period of time. This extension shall be for a reasonable and definite period, which shall be determined after consultation with the ASD(MRA&L), or designee.

E3.3.2.2.2. The recipient or DoD Component shall develop, with the assistance of interested persons or organizations and within a period to be established in each DoD Component's guidelines, a transition plan setting forth the steps necessary to complete such changes.

E3.3.2.2.3. The recipient or DoD Component shall make a copy of the transition plan available for public inspection. At a minimum, the plan shall:

E3.3.2.2.3.1. Identify physical obstacles in the recipient's or DoD Component's facilities that limit the accessibility of its program or activity to handicapped persons.

E3.3.2.2.3.2. Describe in detail the methods that will be used to make the facilities accessible.

E3.3.2.2.3.3. Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period.

E3.3.2.2.3.4. Indicate the person (last name, first, and middle initial) responsible for implementation of the transition plan.

E3.3.2.3. A recipient or DoD Component may comply with subparagraphs E3.3.2.1. and E3.3.2.2., above, through such means as the acquisition or redesign of equipment, such as telecommunication or other telephonic devices; relocation of classes or other services to accessible buildings; assignment of aides to beneficiaries, such as readers or certified sign-language interpreters; home visits; delivery of health, welfare, or other services at accessible alternate sites; alteration of existing facilities and construction of new facilities in conformance with this subsection and paragraph E3.3.3., below; or any other method that results in making the program or activity of the recipient or DoD Component accessible to handicapped persons.

E3.3.2.4. A recipient or DoD Component is not required to make structural changes in existing facilities when other methods are effective in achieving compliance with this section.

E3.3.2.5. In choosing among available methods for meeting the requirements of this section, a recipient or DoD Component shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate with non-handicapped persons.

E3.3.3. New Construction. New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall be designed and constructed, to the maximum extent feasible, to be readily accessible to and usable by handicapped persons. For guidance in determining the accessibility of facilities, see Chapter 18 of DoD 4270.1-M and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103. Inquiries about specific accessibility design problems may be addressed to the ASD(MRA&L), or designee.

E3.3.4. Historic Properties

E3.3.4.1. In the case of historic properties, program accessibility shall mean that, when viewed in their entirety, programs are readily accessible to and usable by handicapped persons. Because the primary benefit of historic properties is the experience of the property itself, DoD Components and recipients shall give priority to those methods of achieving program accessibility that make the historic property, or portions thereof, physically accessible to handicapped persons.

E3.3.4.2. Methods of achieving program accessibility include:

E3.3.4.2.1. Making physical alterations that give handicapped persons access to otherwise inaccessible areas or features of historic properties.

E3.3.4.2.2. Using audiovisual materials and devices to depict otherwise inaccessible areas or features of historic properties.

E3.3.4.2.3. Assigning individuals to guide handicapped persons into or through otherwise inaccessible portions of historic properties.

E3.3.4.2.4. Adopting other innovative methods.

E3.3.4.3. When program accessibility cannot be achieved without causing a substantial impairment of significant historic features, the DoD Component or recipient may seek a modification or waiver of access standards from the ASD(MRA&L), or designee.

E3.3.4.3.1. A decision to grant a modification or waiver shall be based on consideration of the following:

E3.3.4.3.1.1. Scale of the property, reflecting its ability to absorb alterations.

E3.3.4.3.1.2. Use of the property, whether primarily for public or private purposes.

E3.3.4.3.1.3. Importance of the historic features of the property to the conduct of the program.

E3.3.4.3.1.4. Costs of alterations in comparison to the increase in accessibility.

E3.3.4.3.2. The ASD(MRA&L), or designee, shall review periodically any waiver granted under this paragraph and may withdraw it if technological advances or other changes warrant.

E3.3.4.4. The decision by the ASD(MRA&L), or designee, to grant a modification or waiver of access standards is subject to Section 106 of the National Historic Preservation Act, as amended, and shall be made in accordance with the Advisory Council on Historic Preservation regulation on "Protection of Historic and Cultural Properties" (36 CFR 800). When the property is Federally owned or when Federal funds may be used for alterations, the ASD(MRA&L), or designee, shall obtain the comments of the Advisory Council on Historic Preservation when required by Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation regulation on "Protection of Historic and Cultural Properties" (36 CFR 800) prior to effectuation of structural alterations.

E3.3.4.5. DoD Component guidelines prepared in accordance with enclosure 4 of this Directive shall include a listing of all historic properties, including historic ships, subject to this Directive and a plan for compliance with this paragraph.

E3.3.5. Military Museums

E3.3.5.1. In the case of military museums, program accessibility shall mean that exhibits, displays, tours, lectures, circulating or traveling exhibits, and other programs of military museums are accessible to and usable by handicapped persons. Methods of meeting this requirement include the following:

E3.3.5.1.1. Museum programs may be made accessible to deaf and hearing-impaired persons by means such as training museum staff, such as docents, in sign language; providing qualified sign-language interpreters to accompany deaf or hearing-impaired visitors; ensuring that clear, concise language is used on all museum signs and display labels; providing amplification devices; or providing printed scripts for films, videotapes, lectures, or tours. DoD Components are encouraged to use "Museums and Handicapped Students: Guidelines for Educators," published by the National Air and Space Museum, Smithsonian Institution, Washington, DC 20560.

E3.3.5.1.2. Museum programs may be made accessible to blind and visually-impaired persons by means such as providing museum catalogues in a large-print edition printed over Braille; providing cassette tapes, records, or disks for museum tours or exhibits; providing readers to accompany blind or visually impaired visitors; using large-print and Braille display cards at exhibits; providing raised-line maps of the museum building; using raised-line drawings, reproductions, or models of large exhibits to facilitate tactile experiences when touching exhibits is prohibited; placing large-print and Braille signs to identify galleries, elevators, restrooms, and other service areas; and permitting guide dogs in all museum facilities.

E3.3.5.1.3. Museum programs may be made accessible to other physically impaired persons by means such as lowering display cases; spacing exhibits to facilitate movement; using ramps in galleries; increasing lighting in exhibit areas to facilitate viewing from a distance; providing places to sit in exhibit areas; making restrooms accessible; using large-print exhibit display cards to facilitate reading from a distance; and sensitizing museum staff to consider the needs of handicapped visitors when organizing exhibits.

E3.3.5.2. DoD Component guidelines developed in accordance with enclosure 4 of this Directive shall identify military museums subject to this paragraph and shall contain a plan for making museum programs accessible to handicapped persons. Technical assistance in the preparation and content of these plans may be obtained from the National Access Center, 1419 27th Street, NW, Washington, DC 20007 ((202) 333-1712 or TTY (202) 333-1339). In addition, community organizations that serve handicapped persons and handicapped persons themselves shall be consulted in the preparation of these plans.

E3.4. REASONABLE ACCOMMODATION

E3.4.1. A recipient or DoD Component shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient or DoD Component demonstrates to the ASD(MRA&L), or designee, that the accommodation would impose an undue hardship on the operation of its program.

E3.4.2. Reasonable accommodation includes the following:

E3.4.2.1. Making facilities used by employees readily accessible to and usable by handicapped persons.

E3.4.2.2. Job restructuring; part-time or modified work schedules; acquisition or modification of equipment or devices, such as telecommunication or other telephonic instruments; the provision of readers or certified sign-language interpreters; and similar actions.

E3.4.3. In determining whether an accommodation would impose an undue hardship on the operation of a recipient's or DoD Component's program, the ASD(MRA&L), or designee, shall consider the following factors, at a minimum:

E3.4.3.1. The overall size of the recipient's or DoD Component's program or activity, such as the number of employees, number and type of facilities, and size of budget.

E3.4.3.2. The size of the recipient's or DoD Component's operations, including the composition and structure of the recipient's or DoD Component's workforce.

E3.4.3.3. The nature and cost of the accommodation needed.

E3.4.4. A recipient or DoD Component may not deny any employment opportunity to a qualified handicapped employee or applicant for employment if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

E4. ENCLOSURE 4

ENSURING COMPLIANCE WITH THIS DIRECTIVE IN FEDERAL FINANCIAL
ASSISTANCE PROGRAMS AND ACTIVITIES

E4.1. SUPPLEMENTARY GUIDELINES ISSUED BY THE DoD COMPONENTS

E4.1.1. Whenever necessary, DoD Components shall publish supplementary guidelines for each type of program or activity to which they disburse Federal financial assistance within 120 days of the effective date of this Directive or of the effective date of any subsequent statute authorizing Federal financial assistance to a new type of program or activity. DoD Components shall obtain approval of these supplementary guidelines from the ASD(MRA&L), or designee, before issuing them. Prior to their issuance, the ASD(MRA&L), or designee, shall submit supplementary guidelines prepared pursuant to this paragraph to the Coordination and Review Section, Civil Rights Division, Department of Justice, for review and approval. To the extent that supplementary guidelines issued by DoD Components deal with the employment of civilians in programs and activities subject to this Directive, the ASD(MRA&L), or designee, shall also obtain the approval of the Equal Employment Opportunity Commission (EEOC) in accordance with Executive Order 12067.

E4.1.2. The ASD(MRA&L), or designee, and the DoD Components shall ensure that their supplementary guidelines conform to the requirements of this Directive and that they provide:

E4.1.2.1. A description of the types of programs and activities covered.

E4.1.2.2. Examples of prohibited practices likely to arise with respect to those types of programs and activities.

E4.1.2.3. A list of the data collection and reporting requirements of the recipients.

E4.1.2.4. Procedures for processing and investigating complaints.

E4.1.2.5. Procedures for hearings to determine compliance by recipients with this Directive.

E4.1.2.6. Requirements or suggestions for affirmative action on behalf of qualified handicapped persons.

E4.1.2.7. Requirements for the dissemination of program and complaint information to the public.

E4.1.2.8. A description of the form of the assurances that must be executed pursuant to section E4.2., below, and sample assurances.

E4.1.2.9. Requirements concerning the frequency and nature of post-approval reviews conducted pursuant to section E4.8., below.

E4.1.2.10. A period of time, provided for by subparagraph E3.3.2.2.2. of enclosure 3, for the development of a transition plan that sets out the steps necessary to complete structural changes that might be required by section E3.3. of enclosure 3.

E4.1.2.11. The maximum period of time that may be allowed for extensions that might be granted pursuant to subparagraph E3.3.2.2. of enclosure 3.

E4.1.2.12. An appendix that contains a list of identified programs and activities of the type covered by the supplementary guidelines, including the names of the programs and activities and the authorizing statute, regulation, or directive for each program and activity.

E4.1.2.13. Requirements for the recipient to designate a responsible official to coordinate the implementation of supplementary guidelines.

E4.1.2.14. Requirements for any other actions or procedures necessary to implement this Directive.

E4.1.3. When the Head of a DoD Component determines that it would not be appropriate to include one or more of the provisions described in paragraph E4.1.2., above, in the supplementary guidelines of that DoD Component or that it is not necessary to issue such guidelines at all, the reasons for such determination shall be stated in writing and submitted to the ASD(MRA&L), or designee, for review and approval. Once that determination is approved, the DoD Component shall make it available to the public upon request.

E4.1.4. The Heads of the DoD Components, or designees, shall be responsible for keeping the supplementary guidelines current and accurate. When a DoD Component determines that a program or activity should be added to or deleted from the guidelines, the DoD Component shall notify the ASD(MRA&L), or designee, in writing.

E4.2. REQUIRED ASSURANCES

E4.2.1. The DoD Components shall require all recipients to file written assurances that their programs or activities will be conducted in accordance with this Directive and supplementary guidelines promulgated by the DoD Components. If a recipient fails to provide an assurance that conforms to the requirements of this section, the DoD Component shall attempt to effect compliance pursuant to sections E4.6. through E4.8.,

below, provided that if assistance is due and payable to the recipient based on an application approved prior to the effective date of this Directive, the DoD Component shall continue the assistance while any proceedings required by sections E4.14. through E4.22., below, are pending.

E4.2.2. The DoD Components shall advise each recipient of the required elements of the assurance and, with respect to each program or activity, of the extent to which those receiving assistance from recipients shall be required to execute similar assurances.

E4.2.3. The DoD Components shall ensure that each assurance:

E4.2.3.1. Obligates the recipient to advise the DoD Component of any complaints received that allege discrimination against handicapped persons.

E4.2.3.2. Obligates the recipient to collect and provide the items of information that the DoD Component lists in its supplementary guidelines pursuant to subparagraph E4.1.2.3., above.

E4.2.3.3. Is made applicable to any Federal financial assistance that might be disbursed by a DoD Component without the submission of a new application.

E4.2.3.4. Obligates the recipient, when the financial assistance is in the form of property, for the period during which the property is used under a financial assistance agreement or is possessed by the recipient.

E4.2.3.5. Includes a provision recognizing that the U.S. Government has the right to seek judicial enforcement of Section 504 and this Directive.

E4.3. SELF-EVALUATION AND CONSULTATION WITH INTERESTED PERSONS AND ORGANIZATIONS

E4.3.1. The DoD Components shall require recipients to conduct, within 6 months of the effective date of this Directive or of first receiving Federal financial assistance disbursed by the Department of Defense, a self-evaluation with the assistance of interested persons, including handicapped persons or organizations that represent them. When appropriate, the DoD Components also shall require recipients to consult at least annually with such persons. The "Department of Health, Education and Welfare Section 504 Technical Assistance Reserve Directory," April 1980, shall be consulted to identify likely sources for consultation. In conducting its self-evaluation, each recipient shall:

E4.3.1.1. Evaluate the effects of its policies and practices with respect to its compliance with this Directive and the applicable DoD Component's supplementary guidelines.

E4.3.1.2. Modify any policies that do not meet such requirements.

E4.3.1.3. Take appropriate remedial steps to eliminate the discriminatory effects of any such policies or practices.

E4.3.2. For at least 3 years following the completion of a self-evaluation required under paragraph E4.3.1., above, a recipient shall maintain on file, make available for public inspection, and provide to the ASD(MRA&L), or designee, upon request:

E4.3.2.1. A list of the interested persons (last names, first names, and middle initials) consulted.

E4.3.2.2. A description of areas examined and problems identified, if any, with respect to those areas.

E4.3.2.3. A description of any modification made and remedial steps taken.

E4.4. DISSEMINATION OF INFORMATION

E4.4.1. Within 90 days of the effective date of this Directive or of first receiving assistance from the Department of Defense and on a continuing basis thereafter, each recipient shall notify beneficiaries and employees of their rights under this Directive and shall take appropriate steps to notify participants, beneficiaries, applicants for employment and employees, including those with impaired vision or hearing, and unions or professional organizations involved in collective bargaining or professional agreements with the recipient that the recipient does not discriminate on the basis of handicap in violation of this Directive. The notification shall state, when appropriate, that the recipient does not discriminate in admitting or providing access to or treating or employing persons in its programs and activities. Such notification may be accomplished by posting notices, publishing announcements in newspapers and magazines, placing notices in its publications, or distributing memoranda or other written communications.

E4.4.2. If a recipient publishes or uses and makes available to participants, beneficiaries, applicants for employment, or employees recruitment materials or publications containing general information about the recipient's programs and activities, it shall include in those materials or publications a statement of the policy described in paragraph E4.4.1., above. This may be accomplished by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

E4.4.3. Understandable materials developed in accordance with this section shall be provided to ensure that all beneficiaries and employees of the recipient understand the information. In addition, recipients shall disseminate appropriate and comprehensive

information about formal and informal complaint and appeal procedures, including directions on how and where to file complaints and to appeal DoD Component decisions.

E4.5. INTIMIDATION AND INTERFERENCE

Recipients and the DoD Components shall take reasonable steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of retaliating against, interfering with, or discouraging the filing of a complaint, furnishing of information, or assisting or participating in an investigation, compliance review, hearing, or other activity related to the administration of this Directive.

E4.6. STAFF RESPONSIBILITIES

All DoD Component determinations of recipient compliance with this Directive shall be subject to reviews by the ASD(MRA&L), or designee. When responsibility for approving applications for Federal financial assistance disbursed by a DoD Component is assigned to regional or area offices of the DoD Component, personnel in such offices shall be designated to perform the functions described in sections E4.8. and E4.14. through E4.22., below.

E4.7. ACCESS TO RECORDS AND FACILITIES

Each recipient shall permit access to its premises by DoD officials during normal business hours when such access is necessary for conducting onsite compliance reviews or complaint investigations, and shall allow such officials to photograph facilities and to inspect and copy any books, records, accounts, and other material relevant to determining the recipient's compliance with this Directive. Information so obtained shall be used only in connection with the administration of this Directive. If the recipient does not have the information requested, it shall submit to the DoD Component a written report that contains a certification that the information is not available and describes the good-faith efforts made to obtain the information.

E4.8. COMPLIANCE REVIEW

The DoD Components shall determine the compliance of each recipient with this Directive as follows:

E4.8.1. General. Whenever possible, the DoD Components shall perform compliance reviews in conjunction with their review and audit efforts implementing Title VI of the Civil Rights Act of 1964.

E4.8.2. Desk Audit Application Review. Before approving an application for Federal financial assistance, the DoD Component concerned shall make a written determination as to whether the recipient is in compliance with this Directive, based on a review of the assurance of compliance executed by a recipient pursuant to section E4.2., above, and other data submitted by the recipient. When a determination cannot be made from the assurance and other data submitted by the recipient, the DoD Component concerned shall require the recipient to submit additional information and shall take other steps as necessary to determine the recipient's compliance with this Directive. If this additional information demonstrates that the recipient is in compliance with this Directive, the DoD Component shall notify the recipient promptly that it is in compliance.

E4.8.3. Pre-approval Onsite Review

E4.8.3.1. When a desk audit application review conducted pursuant to paragraph E4.8.2., above, indicates that the recipient might not be in compliance with this Directive, the DoD Component concerned may conduct a pre-approval onsite review at the recipient's facilities before approving the disbursement of Federal financial assistance to the recipient. The DoD Component shall conduct such a review:

E4.8.3.1.1. When appropriate, if a desk audit application review reveals that the recipient's compliance posture is questionable because of a history of discrimination complaints, current discrimination complaints, a noncompliance determination by another Government Agency or DoD Component, or other indications of possible non-compliance; or

E4.8.3.1.2. If Federal financial assistance is requested for construction, except under extraordinary circumstances, to determine whether the location and design of the project would provide service on a nondiscriminatory basis, in conformity with section E3.3. of enclosure 3.

E4.8.3.2. Pre-approval onsite reviews shall be conducted under DoD Component supplementary guidelines and in accordance with the provisions of paragraph E4.8.4., below, concerning post-approval reviews.

E4.8.4. Post-approval Reviews. The DoD Components shall:

E4.8.4.1. Establish and maintain effective programs of post-approval reviews.

E4.8.4.2. Conduct such reviews of each recipient, the frequency and the nature of which shall be prescribed in the DoD Component supplementary guidelines implementing this Directive.

E4.8.4.3. Require recipients periodically to submit compliance reports to them.

E4.8.4.4. Record the results of the reviews, including findings of fact and recommendations.

E4.8.5. A DoD Component shall complete a review within 180 calendar days of initiating it unless an extension of time is granted by the ASD(MRA&L), or designee, for good cause shown, and shall either:

E4.8.5.1. Find the recipient to be in compliance and notify the recipient of that finding; or

E4.8.5.2. Notify the recipient and the ASD(MRA&L), or designee, of a finding of probable noncompliance, pursuant to section E4.15., below.

E4.9. FILING OF COMPLAINTS AGAINST RECIPIENTS

E4.9.1. The DoD Components shall establish and publish in their supplementary guidelines procedures for the prompt processing and disposition of complaints against recipients, consistent with this section.

E4.9.2. A DoD Component shall consider all complaints that:

E4.9.2.1. Are filed with it within 180 days of the alleged discrimination or within a longer period of time if an extension is granted for good cause by the DoD Component with the approval of the ASD(MRA&L), or designee.

E4.9.2.2. Include the name, address, and telephone number, if any, of the complainant; the name and address of the recipient committing the alleged discrimination; a description of the acts or omissions considered to be discriminatory; and other pertinent information.

E4.9.2.3. Are signed by the complainant or the complainant's authorized representative (legal counsel or a person with power of attorney granted by the complainant).

E4.9.3. The DoD Components shall transmit a copy of each complaint filed with them to the ASD(MRA&L), or designee, within 10-calendar days after its receipt.

E4.9.4. If the information in a complaint is incomplete, the DoD Component shall request the complainant to provide the additional information required. If the DoD Component does not receive this requested information within 30-calendar days of the date of the request, the case may be closed and the complainant so notified in writing.

E4.9.5. If a complaint concerning a program or activity is filed with a DoD Component that does not have jurisdiction over it, the DoD Component shall refer the

complaint to the ASD(MRA&L), or designee, and advise the complainant in writing of such referral. The ASD(MRA&L), or designee, then shall refer the complaint to the appropriate DoD Component and so notify the complainant in writing.

E4.10. INVESTIGATION BY THE DoD COMPONENTS

E4.10.1. The DoD Components shall investigate complaints that involve recipients and that meet the standards described in section E4.9., above, unless good cause for not investigating is stated in a written notification of the disposition of the complaint provided to the complainant.

E4.10.2. If an investigation of a complaint is conducted, the DoD Component concerned shall maintain a case record that contains:

E4.10.2.1. The name (last name, first, and middle initial), address (street address, city, State, and zip code), and telephone number of each person interviewed.

E4.10.2.2. Copies, transcripts, or summaries of pertinent documents.

E4.10.2.3. A reference to at least one program or activity conducted by the recipient and receiving Federal financial assistance disbursed by a DoD Component, and a description of the amount and nature of the assistance.

E4.10.2.4. A narrative report of the results of the investigation that contains references to relevant exhibits and other evidence that relates to the alleged violations.

E4.11. INVESTIGATIONS BY RECIPIENTS

E4.11.1. A DoD Component may require or permit recipients to investigate complaints alleging violation of this Directive. In such cases, the DoD Component shall:

E4.11.1.1. Ensure that the recipient investigates the complaints in accordance with the standards, procedures, and requirements prescribed in section E4.10., above.

E4.11.1.2. Require the recipient to submit a written report of each complaint and investigation to the DoD Component.

E4.11.1.3. Retain a review responsibility over the investigation and disposition of each complaint.

E4.11.1.4. Ensure that each complaint investigation is completed within 180-calendar days of the receipt of the complaint by the proper DoD Component, unless an extension of time is granted for good cause by the ASD(MRA&L), or designee.

E4.11.1.5. Require the recipient to maintain a log of all complaints filed against it, as described in paragraph 7.1. of this Directive.

E4.11.2. DoD Components that require or permit complaint investigations to be conducted by recipients shall review recipient complaint investigations pursuant to this section and section E4.12., below.

E4.12. RESULTS OF INVESTIGATIONS

E4.12.1. Within 180 days of the receipt of a complaint, the DoD Component, recipient, or the ASD(MRA&L), or designee, shall give written notification:

E4.12.1.1. Of the disposition of the complaint to the complainant and, as the case may be, to the recipient or the DoD Component.

E4.12.1.2. To the complainant that within 30-calendar days of receipt of the written notification, the complainant may request that the ASD(MRA&L), or designee, review the findings in the notification pursuant to section E4.13., below.

E4.12.2. If the complaint investigation results in a determination by the DoD Component that a recipient is not complying with this Directive, the DoD Component shall proceed as prescribed in sections E4.14. through E4.22., below. If the DoD Component determines that the recipient is in compliance, the DoD Component shall submit the complete case file to the ASD(MRA&L), or designee, within 15-calendar days after the notification of the disposition of the investigation to the complainant.

E4.13. REVIEWING COMPLETED INVESTIGATIONS

E4.13.1. The ASD(MRA&L), or designee, may review all completed investigations.

E4.13.2. The ASD(MRA&L), or designee, shall review the results of any investigation of a complaint if the complainant requests such a review pursuant to subparagraph E4.12.1.2., above.

E4.13.3. After reviewing the results of an investigation, the ASD(MRA&L), or designee, may:

E4.13.3.1. Find that no further investigation is necessary and approve the results of the investigation;

E4.13.3.2. Request further investigation by the DoD Component; or

E4.13.3.3. Require the DoD Component to take appropriate corrective action.

E4.14. EFFECTING COMPLIANCE

E4.14.1. When a compliance review or complaint investigation indicates that a recipient has violated this Directive, the applicable DoD Component's supplementary guidelines, or the assurances executed pursuant to section E4.2., above, the responsible DoD Component or the ASD(MRA&L), or designee, shall attempt to effect compliance in accordance with sections E4.15. and E4.16., below. The inability of a DoD Component to comply with any time frame prescribed by this Directive does not relieve a recipient of the responsibility for compliance with this Directive.

E4.14.2. The DoD Component may require, when necessary to overcome the effects of discrimination in violation of this Directive, a recipient to take remedial action:

E4.14.2.1. With respect to handicapped persons who are no longer participants in the recipient's program or activity, but who were participants in the program or activity when such discrimination occurred.

E4.14.2.2. With respect to handicapped persons who would have been participants in the recipient's program or activity had the discrimination not occurred.

E4.14.2.3. With respect to handicapped persons presently in the recipient's program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.

E4.15. WRITTEN NOTICE

After evaluating the investigative report, the DoD Component shall issue to the recipient and, pursuant to paragraph E4.14.2., above, to the ASD(MRA&L), or designee, a written notice that:

E4.15.1. Describes the apparent violation and the corrective actions necessary to achieve compliance.

E4.15.2. Extends an offer to meet informally with the recipient.

E4.15.3. Informs the recipient that failure to respond to the notice within 15-calendar days of its receipt shall result in the initiation of enforcement procedures described in sections E4.18. through E4.22., below.

E4.16. ATTEMPTING TO ACHIEVE VOLUNTARY COMPLIANCE BY
RECIPIENTS

E4.16.1. If a DoD Component issues a notice pursuant to section E4.15., above, the DoD Component shall attempt to meet with the recipient and shall attempt to persuade it to take the steps necessary to achieve compliance with this Directive.

E4.16.2. If a recipient agrees to take remedial steps to achieve compliance, the DoD Component shall require that the agreement be in writing and:

E4.16.2.1. Be signed by the Head of the DoD Component concerned, or designee, and by the principal official of the recipient.

E4.16.2.2. Specify the action necessary to achieve compliance.

E4.16.2.3. Be made available to the public upon request.

E4.16.2.4. Be subject to the approval of the ASD(MRA&L), or designee.

E4.16.3. If satisfactory adjustment or a written agreement has not been achieved within 60-calendar days of the recipient's receipt of the notice issued pursuant to section E4.15., above, the DoD Component shall notify the ASD(MRA&L), or designee, and state the reasons therefore.

E4.16.4. The DoD Component shall initiate the enforcement actions prescribed in sections E4.18. through E4.22., below, if:

E4.16.4.1. The recipient does not respond to a notice pursuant to section E4.15., above, within 15-calendar days of its receipt and satisfactory adjustments are not made within 45-calendar days of the date of the recipient's response; or

E4.16.4.2. The DoD Component or the ASD(MRA&L) determines at any time within 90 days after the recipient receives a notice pursuant to section E4.15., above, that, despite reasonable efforts, it is not likely that the recipient will comply promptly and voluntarily.

E4.16.5. If, pursuant to paragraph E4.16.4., above, the DoD Component initiates enforcement action, it also shall continue its attempts to persuade the recipient to comply voluntarily.

E4.17. IMPOSING SANCTIONS

E4.17.1. Sanctions Available. If a DoD Component has taken action pursuant to sections E4.15. and E4.16., above, the DoD Component may, by order, subject to paragraphs E4.17.2. and E4.17.3., below:

E4.17.1.1. Terminate, suspend, or refuse to grant or continue assistance to such recipient.

E4.17.1.2. Refer the case to the Department of Justice for the initiation of enforcement proceedings at a Federal, State, or local level.

E4.17.1.3. Pursue any remedies under State or local law.

E4.17.1.4. Impose other sanctions upon consultation with the ASD(MRA&L), or designee.

E4.17.2. Terminating, Suspending, or Refusing to Grant or Continue Assistance. A DoD Component may not terminate or refuse to grant or continue Federal financial assistance unless:

E4.17.2.1. Such action has been approved by the Secretary of Defense.

E4.17.2.2. The DoD Component has given the recipient an opportunity for a hearing pursuant to the procedures set out in section E4.18., below, and a finding of non-compliance has resulted.

E4.17.2.3. Thirty-calendar days have elapsed since the Secretary of Defense has filed a written report describing the violation and action to be taken with the committees of the House of Representatives and Senate that have jurisdiction over the program or activity in which the violation of this Directive exists.

E4.17.2.4. Such action is limited to affect only the particular activity or program, or portion thereof, of the recipient where the violation exists.

E4.17.3. Other Sanctions. A DoD Component may not impose the sanctions set out in subparagraphs E4.17.1.3. and E4.17.1.4., above, unless:

E4.17.3.1. The DoD Component has given the recipient an opportunity for a hearing pursuant to section E4.18., below, and a finding of noncompliance has resulted.

E4.17.3.2. The action has been approved by the Secretary of Defense.

E4.17.3.3. Ten-calendar days have elapsed since the mailing of a notice informing the recipient of its continuing failure to comply with this Directive, the action necessary to achieve compliance, and the sanction to be imposed.

E4.17.3.4. During those 10-calendar days the DoD Component has made additional efforts to persuade the recipient to comply.

E4.18. HEARINGS FOR RECIPIENTS

E4.18.1. General. When, pursuant to subparagraph E4.17.2.2., above, an opportunity for a hearing is given to a recipient, the DoD Component involved shall follow the procedures prescribed in paragraphs E4.18.2. through E4.18.6., below.

E4.18.2. Notice. The DoD Component concerned shall notify the recipient of the opportunity for a hearing by registered or certified mail, return receipt requested, when the recipient denies a tentative finding of noncompliance with this Directive.

E4.18.2.1. The DoD Component shall ensure that the notice:

E4.18.2.1.1. Describes the proposed sanctions to be imposed.

E4.18.2.1.2. Cites the section of this Directive under which the proposed action is to be taken.

E4.18.2.1.3. States the name and office of the DoD Component official who is responsible for conducting the hearing (hereafter referred to as the "responsible DoD official").

E4.18.2.1.4. Outlines the issues to be decided at the hearing.

E4.18.2.1.5. Advises the recipient either of a date, not less than 20-calendar days after the date that the notice is received, by which the recipient may request that the matter be scheduled for a hearing, or of a reasonable time and place of a hearing that is subject to change for good cause shown.

E4.18.2.2. When a time and place for a hearing are set, the DoD Component shall give the recipient and the complainant, if any, reasonable notice of such time and place.

E4.18.3. Waiver of a Hearing. A recipient may waive a hearing and submit to the responsible DoD official, in writing, information or arguments on or before the date stated pursuant to subparagraph E4.18.2.1.5., above.

E4.18.3.1. A recipient waives its right to a hearing if it fails to request a hearing on or before a date stated pursuant to subparagraph E4.18.2.1.5., above, or fails to appear at a hearing that has been scheduled pursuant to that subparagraph.

E4.18.3.2. If a recipient waives its right to a hearing under this section, the responsible DoD official shall decide the issues and render a final decision that is based on the information available and that conforms to the requirements of paragraph E4.19.4., below.

E4.18.4. Hearing Examiner. Hearings shall be conducted by the responsible DoD official or by a hearing examiner designated by the official, provided that the hearing examiner shall be a field grade officer or civilian employee above the grade of GS-12 (or the equivalent) who is admitted to practice law before a Federal court or the highest court of a State, territory, commonwealth, or the District of Columbia.

E4.18.5. Right to Counsel. In all proceedings under this section, the recipient and the DoD Component may be represented by counsel. The representation of the recipient will not be at U.S. Government expense.

E4.18.6. Procedures. Hearings authorized under this section shall be subject to the following:

E4.18.6.1. Hearings shall be open to the public.

E4.18.6.2. Formal rules of evidence will not apply. The DoD Component concerned and the recipient shall be entitled to introduce all relevant evidence on the issues stated in the notice of hearing issued pursuant to paragraph E4.18.2., above, and those designated by the responsible DoD official or the hearing examiner at the outset of or during the hearing. The responsible DoD official or hearing examiner, however, may exclude irrelevant, immaterial, or repetitious evidence.

E4.18.6.3. All witnesses may be examined or cross-examined, as the case may be, by each party.

E4.18.6.4. All parties shall have the opportunity to examine all evidence differed or admitted for the record.

E4.18.6.5. A transcript of the proceedings shall be maintained in either electronic or typewritten form and made available to all parties.

E4.19. DECISIONS

E4.19.1. Initial or Proposed Decisions by a Hearing Examiner. If a hearing is conducted by a hearing examiner who is designated by the responsible DoD official pursuant to paragraph E4.18.4., above, the hearing examiner shall either:

E4.19.1.1. Make an initial decision, if so authorized, that conforms to the requirements of paragraph E4.19.4., below; or

E4.19.1.2. Certify the entire record and submit to the responsible DoD official recommended findings and a proposed decision.

E4.19.2. Review of Initial Decisions. Initial decisions made by a hearing examiner pursuant to subparagraph E4.19.1.1., above, shall be reviewed as follows:

E4.19.2.1. A recipient may file exceptions to an initial decision within 30-calendar days of receiving notice of such initial decision. Reasons shall be stated for each exception.

E4.19.2.2. If the recipient does not file exceptions pursuant to subparagraph E4.19.2.1., above, the responsible DoD official may notify the recipient within 45-calendar days of the initial decision that the responsible DoD official will review the decision.

E4.19.2.3. If exceptions are filed pursuant to subparagraph E4.19.2.1., above, or a notice of review is issued pursuant to subparagraph E4.19.2.2., above, the responsible DoD official shall review the initial decision and, after giving the recipient reasonable opportunity to file a brief or other written statement of its contentions, issue a final decision that addresses each finding and conclusion in the initial decision and each exception, if any.

E4.19.2.4. If the exceptions described in subparagraph E4.19.2.1., above, are not filed and the responsible DoD official does not issue the notice of review described in subparagraph E4.19.2.2., above, the initial decision of the hearing examiner shall constitute the final decision of the responsible DoD official.

E4.19.3. Decisions by the Responsible DoD Official Who Conducts a Hearing or Receives a Certified Record. If a hearing examiner who is designated by the responsible DoD official certifies the entire record and submits recommended findings and a proposed decision to the responsible DoD official pursuant to subparagraph E4.19.1.2., above, or if the responsible DoD official conducts the hearing, after giving the recipient a reasonable opportunity to file a brief or other written statement of its contentions, the responsible DoD official shall render a final decision that conforms to paragraph E4.19.4., below.

E4.19.4. Contents of Decisions. Each decision of a hearing examiner or responsible DoD official shall state all findings and conclusions and identify each violation of this Directive. The final decision may contain an order pursuant to section E4.17., above, providing for the suspension or termination of or refusal to grant or continue all or some of the Federal financial assistance under the program or activity involved and contain terms, conditions, and other provisions that are consistent with and intended to achieve compliance with this Directive.

E4.19.5. Notice of Decisions and Certifications. The responsible DoD official shall provide a copy of any certified record of a hearing and any initial or final decision to the recipient and the complainant, if any.

E4.19.6. Review by the Secretary of Defense. The responsible DoD official shall transmit promptly any final decision that orders a suspension, termination, or denial of Federal financial assistance through the ASD(MRA&L) to the Secretary of Defense. The Secretary may:

E4.19.6.1. Approve the decision;

E4.19.6.2. Vacate the decision; or

E4.19.6.3. Remit or mitigate any sanction imposed.

E4.20. RESTORING ELIGIBILITY FOR FINANCIAL ASSISTANCE

E4.20.1. A recipient that is affected adversely by a final decision issued under section E4.19., above, may at any time request the responsible DoD official to restore fully its eligibility to receive Federal financial assistance.

E4.20.2. If the responsible DoD official determines that the information supplied by the recipient demonstrates that it has satisfied the terms and conditions of the order entered pursuant to section E4.19., above, and that is complying with and has provided reasonable assurance that it will continue to comply with this Directive, the responsible DoD official shall restore such eligibility immediately.

E4.20.3. If the responsible DoD official denies a request for restoration of eligibility, the recipient may submit a written request for a hearing that states why it believes the responsible DoD official erred in denying the request. Following such a written request, the recipient shall be given an expeditious hearing under rules of procedure issued by the responsible DoD official to determine whether the requirements described in paragraph E4.20.2., above, have been met. While any such proceedings are pending, the sanctions imposed by the order issued under section E4.19., above, shall remain in effect.

E4.21. INTERAGENCY COOPERATION AND DELEGATION

E4.21.1. When several recipients are receiving assistance for the same or similar purposes from a DoD Component and another Federal Agency, the DoD Component shall notify the ASD(MRA&L), or designee. Such notification shall be in writing and shall contain:

E4.21.1.1. A description of the programs and activities involved.

E4.21.1.2. A statement of the amount of money expended on the programs and activities in the previous and current fiscal year by the DoD Component and the Agency.

E4.21.1.3. A list of the known primary recipients.

E4.21.2. The ASD(MRA&L), or designee, shall attempt to negotiate with the Federal Agency a written delegation agreement that designates the Agency or the DoD Component as the primary Agency for purposes of ensuring compliance with Section 504 of P.L. 93-112, as amended, and this Directive, depending upon which of them administers a larger financial assistance program with the common recipients and other relevant factors. If necessary, the agreement shall establish procedures to ensure the enforcement of Section 504 of P.L. 93-112, as amended, and this Directive. The ASD(MRA&L), or designee, shall provide written notification to recipients of an agreement reached under this paragraph.

E4.21.3. When several recipients are receiving assistance for the same or similar purposes from two or more DoD Components, the DoD Components may negotiate a proposed written delegation agreement that:

E4.21.3.1. Assigns responsibility for ensuring that the recipient complies with this Directive to one of the DoD Components.

E4.21.3.2. Provides for the notification to recipients and the responsible program officials of the DoD Components involved of the assignment of enforcement responsibility.

E4.21.4. No delegation agreement reached in accordance with paragraph E4.21.3., above, shall be effective until it is approved by the ASD(MRA&L), or designee.

E4.21.5. When possible, existing delegation agreements relating to Title VI of the Civil Rights Act of 1964 shall be amended to provide for the enforcement of this Directive.

E4.21.6. Any DoD Component conducting a compliance review or investigating a complaint of an alleged violation by a recipient shall notify any other affected Agency or DoD Component through the ASD(MRA&L), or designee, upon discovery that the

Agency or DoD Component has jurisdiction over the program or activity in question and shall subsequently inform it of the finding made. Such reviews or investigations may be conducted on a joint basis.

E4.21.7. When a compliance review or complaint investigation under this Directive reveals a possible violation of Executive Order 11246, Titles VI or VII of the Civil Rights Act of 1964, or any other Federal law, the DoD Component shall notify the appropriate Agency, through the ASD(MRA&L), or designee.

E4.22. COORDINATION WITH SECTIONS 502 AND 503

E4.22.1. DoD Components shall use DoD 4270.1-M and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103, in developing requirements for the accessibility of facilities. If DoD Components encounter issues with respect to Section 502 of the Rehabilitation Act of 1973, as amended, that are not covered by these publications, the ASD(MRA&L), or designee, may be consulted. If necessary, the ASD(MRA&L), or designee, shall consult with the Architectural and Transportation Barriers Compliance Board in resolving such problems.

E4.22.2. The DoD Components may advise recipients to consult directly with the Architectural and Transportation Barriers Compliance Board in developing accessibility criteria.

E4.22.3. The DoD Components shall coordinate enforcement actions relating to the accessibility of facilities with the Architectural and Transportation Barriers Compliance Board and shall notify the ASD(MRA&L), or designee, of such coordination.

E4.22.4. If a recipient is also a Federal contractor subject to Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations thereunder (41 CFR 60-741) and if a DoD Component has reason to believe that the recipient is in violation thereof, the DoD Component shall coordinate enforcement actions with the Department of Labor, Office of Federal Contract Compliance Programs. The DoD Component shall notify the ASD(MRA&L), or designee, of such coordination.

E5. ENCLOSURE 5

ENSURING COMPLIANCE WITH THIS DIRECTIVE IN PROGRAMS AND
ACTIVITIES CONDUCTED BY THE DEPARTMENT OF DEFENSE

E5.1. SUPPLEMENTARY GUIDELINES

E5.1.1. Whenever necessary, the ASD(MRA&L), or designee, shall publish supplementary guidelines for programs and activities that are conducted by the DoD Components and that are subject to this Directive. Prior to their issuance, the ASD(MRA&L), or designee, shall submit supplementary guidelines prepared pursuant to this paragraph to the Coordination and Review Section, Civil Rights Division, Department of Justice, for review.

E5.1.2. The Heads of the DoD Components, or designees, shall be responsible for keeping the supplementary guidelines described in this section current and accurate. When a DoD Component head determines that a program or activity should be added to or deleted from the guidelines, that official shall notify the ASD(MRA&L), or designee, in writing.

E5.2. STAFF RESPONSIBILITIES

The ASD(MRA&L), or designee, shall determine DoD Component compliance with this Directive as it pertains to programs and activities that are conducted by the DoD Components and are subject to this Directive.

E5.3. FILING OF COMPLAINTS

E5.3.1. Complaints of discrimination in a program or activity conducted by a DoD Component may be filed directly with the ASD(MRA&L), or designee.

E5.3.2. The DoD Components shall develop procedures, such as posters or other devices, to notify participants in the programs and activities listed in paragraph E1.1.3. of enclosure 1 of their right to be free of discrimination because of handicap in those programs and activities and of their right to file complaints of discrimination with the ASD(MRA&L), or designee.

E5.4. INVESTIGATIONS OF COMPLAINTS

E5.4.1. The ASD(MRA&L), or designee, shall investigate complaints of discrimination in programs and activities that are conducted by the DoD Components and are subject to this Directive.

E5.4.2. A case record of each investigation shall be compiled in accordance with paragraph E4.10.2. of enclosure 4.

E5.5. RESULTS OF INVESTIGATIONS

If the complaint investigation results in a determination by the ASD(MRA&L), or designee, that a DoD Component's program or activity is not complying with enclosure 4 of this Directive, the ASD(MRA&L), or designee, shall proceed as prescribed in sections E4.14. through E4.22. of enclosure 4. Hearings prescribed under section E4.18. of enclosure 4 of this Directive, however, need not be conducted. If the ASD(MRA&L), or designee, determines that the DoD Component is in compliance, the ASD(MRA&L), or designee, shall notify the complainant within 15-calendar days of such determination.

E5.6. WRITTEN NOTICE

If an investigative report concludes that there has been a violation of this Directive in a program or activity conducted by a DoD Component and the ASD(MRA&L), or designee, accepts that conclusion, that official shall issue to the Head of the DoD Component a written notice describing the apparent violation, the corrective actions necessary to achieve compliance, and a suspense date for completion of the corrective actions.

E5.7. EFFECTING COMPLIANCE

When necessary to overcome the effects of discrimination in violation of this Directive, the ASD(MRA&L), or designee, may require a DoD Component to take remedial action similar to that in paragraph E4.14.2. of enclosure 4.

E5.8. EMPLOYMENT

DoD Components that conduct Federal programs or activities covered by this Directive that involve employment of civilian persons to conduct such a program or activity must comply with Section 501 of the Rehabilitation Act of 1973, as amended, and the implementing rules and regulations of the EEOC.



Department of Defense

DIRECTIVE

NUMBER 5500.11

May 27, 1971

Certified Current as of November 21, 2003

Incorporating Change 1, August 15, 1972
ASD(M&RA)

SUBJECT: Nondiscrimination in Federally Assisted Programs

Reference: (a) Public Law 88-352, "The Civil Rights Act of 1964," 78 Stat. 241, July 2, 1964

1. PURPOSE

The purpose of this Directive is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from any component of the Department of Defense.

2. DEFINITIONS

2.1. Component means the Office of the Secretary of a Military Department or a Defense Agency.

2.2. Responsible Department official means the Secretary of Defense or other official of the Department of Defense or component thereof who by law or by delegation has the principal responsibility within the Department or component, for the administration of the law extending such assistance.

2.3. The term United States means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

2.4. The term Federal financial assistance includes:

2.4.1. Grants and loans of Federal funds;

2.4.2. The grant or donation of Federal property and interests in property;

2.4.3. The detail of Federal personnel;

2.4.4. The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

2.4.5. Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

2.5. The term program includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions that must be met in order to receive the Federal financial assistance and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

2.6. The term facility includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

2.7. The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

2.8. The term primary recipient means any recipient who is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

2.9. The term applicant means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request or plan.

3. APPLICABILITY

This Directive applies to any program for which Federal financial assistance is authorized under a law administered by any component of the Department of Defense, including the Federally assisted programs and activities listed in enclosure 1 of this Directive. *This Directive applies to money paid, property transferred, or other Federal financial assistance extended under any such program after January 7, 1965 pursuant to an application approved prior to such date. This Directive does not apply to:*

3.1. *Any Federal financial assistance by way of insurance guaranty contracts;*

3.2. *Money paid, property transferred, or other assistance extended under any such program, before January 7, 1965;*

3.3. *Any assistance to any individual who is the ultimate beneficiary under any such program; or*

3.4. Any employment practice, under any such program, of any employer, employment agency, or labor organization, except as noted in subparagraph 4.2.5., below. The fact that a program or activity is not listed in enclosure 1 shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the Federal Register.

4. POLICY

4.1. General. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this Directive applies.

4.2. Specific Discriminatory Actions Prohibited

4.2.1. A recipient under any program to which this Directive applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

4.2.1.1. Deny an individual any service, financial aid, or other benefit provided under the program;

4.2.1.2. Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

4.2.1.3. In determining the site or location of facilities, make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Directive applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this Directive;

4.2.1.4. Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

4.2.1.5. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

4.2.1.6. Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition that individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

4.2.1.7. *Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.*

4.2.1.8. *Deny a person the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.*

4.2.2. A recipient, in determining the types of services, financial aid, or other benefits, or facilities that will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

4.2.3. As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

4.2.4.

4.2.4.1. *In administering a program regarding that the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.*

4.2.4.2. *Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions that resulted in limiting participation by persons of a particular race, color, or national origin.*

4.2.5. *Where a primary objective of the Federal financial assistance is not to provide employment, but nevertheless discrimination on the grounds of race, color or national origin in the employment practices of the recipient or other persons subject to this Directive tends, on the grounds of race, color or national origin of the intended beneficiaries, to exclude intended beneficiaries from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this Directive applies, the recipient or other persons subject to this Directive are prohibited from (directly or through contractual or other arrangements) subjecting an individual to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising; employment, layoff or termination; upgrading, demotion or transfer; rates of pay or other forms of compensation; and use of facilities), to the extent necessary to ensure equality of opportunity to, and nondiscriminatory treatment of the beneficiaries. Any action taken by a DoD Component pursuant to this provision with respect to a State or local agency subject to the Standards for a Merit System of Personnel Administration, 45 C.F.R. 70, shall be consistent with those standards and shall be coordinated with the United States Civil Service Commission.*

4.2.6. *The enumeration of specific forms of prohibited discrimination, in this paragraph does not limit the generality of the prohibition in paragraph 4.1. of this section.*

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Manpower and Reserve Affairs) shall be responsible for insuring that the policies of this Directive are effectuated throughout the Department of Defense. He may review from time to time as he deems necessary the implementation of these policies by the components of the Department of the Defense.

5.2. The Secretary of each Military Department is responsible for implementing this Directive with respect to programs and activities receiving financial assistance from his Military Department; and the Assistant Secretary of Defense (Manpower and Reserve Affairs) is responsible for similarly implementing this Directive with respect to all other

components of the Department of Defense. Each may designate official(s) to fulfill this responsibility in accordance with paragraph 2.2. of this Directive.

5.3. The Assistant Secretary of Defense (Manpower and Reserve Affairs) or, after consultation with the Assistant Secretary of Defense (Manpower and Reserve Affairs), the Secretary of each Military Department or other responsible Department official designated by the Assistant Secretary of Defense (Manpower and Reserve Affairs) may assign to officials of other Departments or Agencies of the Government, with the consent of such Departments or Agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this Directive (other than responsibility for final decision as provided in section 11.), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this Directive to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Agency.

6. ASSURANCES REQUIRED

6.1. General

6.1.1. Every application for Federal financial assistance to carry out a program to which this Directive applies, except a program to which paragraph 6.2. applies and every application for Federal financial assistance to provide a facility shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this Directive.

6.1.2. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. In any case in which Federal financial assistance is extended without an application having been made, such extension shall be subject to the same assurances as if an application had been made. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

Any such assurance shall include provisions that give the United States a right to seek its judicial enforcement.

6.1.3. In the case of real property, structures or improvements thereon, or interests therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective. In programs receiving Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this Directive shall extend to any facility located wholly or in part in such space.

6.1.4. The assurance required in the case of a transfer of surplus personal property shall be inserted in a written agreement by and between the Department of Defense component concerned and the recipient.

6.2. Continuing State Programs. Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this Directive applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application:

6.2.1. Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this Directive; and

6.2.2. Provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this Directive. In cases of continuing State programs in which applications are not made, the extension of Federal financial assistance shall be subject to the same conditions under this paragraph as if applications had been made.

6.3. Assurances from Institutions

6.3.1. In the case of Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

6.3.2. The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

6.4. Elementary and Secondary Schools. The requirement of paragraph 6.1., 6.2., or 6.3., above, with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system:

6.4.1. Is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order; or

6.4.2. Submits a plan for the desegregation of such school or school system that the responsible official of the Department of Health, Education and Welfare determines is adequate to accomplish the purposes of the Act and this Directive, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the said Department officer may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purpose of the Act or this Directive within the earliest practicable time. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of said order.

7. COMPLIANCE INFORMATION

7.1. Cooperation and Assistance. Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Directive and shall provide assistance and guidance to recipients to help them comply voluntarily with this Directive.

7.2. Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Directive. *In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this Directive.*

7.3. Access to Sources of Information. Each recipient shall permit access by the responsible Department official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Directive. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

7.4. Information to Beneficiaries and Participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Directive and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Directive.

8. CONDUCT OF INVESTIGATIONS

8.1. Periodic Compliance Reviews. The responsible Department official or his designee(s) shall from time to time review the practices of recipients to determine whether they are complying with this Directive.

8.2. Complaints. Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this Directive may by himself or by a representative file with the responsible Department official a written complaint.

A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.

8.3. Investigations. The responsible Department official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Directive. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Directive occurred, and other factors relevant to a determination of whether the recipient has failed to comply with this Directive.

8.4. Resolution of Matters

8.4.1. If an investigation pursuant to paragraph 8.3. indicates a failure to comply with this Directive, the responsible Department official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided in section 9. of this Directive.

8.4.2. If an investigation does not warrant action pursuant to subparagraph 8.4.1., the responsible Department official will so inform the recipient and the complainant, if any, in writing.

8.5. Intimidatory or Retaliatory Acts Prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this Directive, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Directive. The identity of complainants shall not be disclosed except when necessary to carry out the purposes of this Directive, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

9. PROCEDURE FOR EFFECTING COMPLIANCE

9.1. General. If there appears to be a failure or threatened failure to comply with this Directive, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Directive may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law as determined by the responsible Department official. Such other means may include, but are not limited to:

9.1.1. A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any

law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

9.1.2. Any applicable proceedings under State or local law.

9.2. Noncompliance with Section 6. If an applicant fails or refuses to furnish an assurance required under section 6., or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph 9.3. of this section. The component of the Department of Defense concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the component shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefore approved prior to the effective date of this Directive.

9.3. Termination of or Refusal to Grant or to Continue Federal Financial Assistance. Except as provided in paragraph 9.2. no order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

9.3.1. The responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

9.3.2. There has been an express finding, after opportunity for a hearing (as provided in section 10 of this Directive), of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this Directive;

9.3.3. The action has been approved by the Secretary of Defense pursuant to section 11. of this Directive; and

9.3.4. The expiration of 30 days after the Secretary of Defense has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

9.4. Other Means Authorized by Law. No action to affect compliance by any other means authorized by law shall be taken until:

9.4.1. The responsible Department official has determined that compliance cannot be secured by voluntary means;

9.4.2. The action has been approved by the Assistant Secretary of Defense (Manpower and Reserve Affairs);

9.4.3. The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

9.4.4. The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this Directive and to take such corrective action as may be appropriate.

10. HEARINGS

10.1. Opportunity for Hearing. Whenever an opportunity for a hearing is required by section 9. of this Directive, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

10.1.1. Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing; or

10.1.2. Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of hearing. An applicant or recipient may waive a hearing and submit written information and argument. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under Section 602 of the Act and paragraph 9.3. of this Directive and consent to the making of a decision on the basis of such information as is available.

10.2. Time and Place of Hearing. Hearings shall be held at the offices of the responsible component of the Department of Defense in Washington, DC at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the component requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated by him.

10.3. Hearing Examiner. The examiner shall be a field grade officer or civilian employee above the grade of GS-12 (or the equivalent) who shall be a person admitted to practice law before a Federal court or the highest court of a State.

10.4. Right to Counsel. In all proceedings under this section, the applicant or recipient and the responsible component of the Department shall have the right to be represented by counsel.

10.5. Procedures

10.5.1. The recipient shall receive an open hearing at which he or his counsel may examine any witnesses present. Both the responsible Department official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

10.5.2. Technical rules of evidence shall not apply to hearings conducted pursuant to this Directive, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

10.6. Consolidated or Joint Hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this Directive with respect to two or more programs to which this Directive applies, or noncompliance with this Directive and the regulations of one or more other Federal Departments or Agencies issued under Title VI of the Act, the Assistant Secretary of Defense (Manpower and Reserve Affairs), the Secretary of a Military Department, or other responsible Department official designated by the Assistant Secretary of Defense (Manpower and Reserve Affairs) after consultation with the Assistant Secretary of Defense (Manpower and Reserve Affairs) may, by agreement with such other Departments or Agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of appropriate procedures not inconsistent with this Directive. Final decisions in such cases, insofar as this Directive is concerned, shall be made in accordance with section 11.

11. DECISIONS AND NOTICES

11.1. Decision by Person Other Than the Responsible Department Official. If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may

within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefore. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

11.2. Decisions on Record or Review by the Responsible Department Official.

Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph 11.1. or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

11.3. Decisions on Record Where a Hearing is Waived. Whenever a hearing is waived pursuant to paragraph 10.1. a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

11.4. Rulings Required. Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Directive with which it is found that the applicant or recipient has failed to comply.

11.5. Approval by the Secretary of Defense. Any final decision of a responsible Department official which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this Directive or the Act, shall promptly be transmitted to the Secretary of Defense, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

11.6. Contents of Orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this Directive, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this Directive, or to have otherwise failed to comply with this Directive, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this Directive.

11.7. Post-termination Proceedings

11.7.1. An applicant or recipient adversely affected by an order issued under paragraph 11.6. shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or it brings itself into compliance with this Directive and provides reasonable assurance that it will fully comply with this Directive.

11.7.2. Any applicant or recipient adversely affected by an order entered pursuant to paragraph 11.6., above, may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph 11.7.1., above. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

11.7.3. If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph 11.7.1., above. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph 11.6. shall remain in effect.

12. JUDICIAL REVIEW

Action taken pursuant to Section 602 of the Act is subject to judicial review as provided in Section 603 of the Act.

13. EFFECT ON OTHER ISSUANCES

13.1. All issuances heretofore issued by any officer of the Department of Defense or its components that impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this Directive applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this Directive, except that nothing in this Directive shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this Directive.

13.2. Nothing in this Directive, however, shall be deemed to supersede any of the following (including future amendments thereof):

13.2.1. Executive Orders 10925, 11114, and 11246 and issuances thereunder;

13.2.2. The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education and Welfare, and of Labor, 28 F.R. 734; or

13.2.3. Executive Order 11063 and issuances thereunder, or any other issuances, insofar as such Order or issuances prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this Directive is inapplicable, or prohibit discrimination on any other ground.

14. IMPLEMENTATION

The Secretary of each Military Department shall submit regulations implementing this Directive to the Assistant Secretary of Defense (Manpower and Reserve Affairs).

15. EFFECTIVE DATE AND CANCELLATION

This Directive shall become effective on the 30th day following the date of its publication in the Federal Register. DoD Directive 5500.11, December 28, 1964 is superseded and canceled.

A handwritten signature in black ink, appearing to read "David Patrick", is written over a horizontal line.

Deputy Secretary of Defense

Enclosures - 1

E1. Federal Financial Assistance to Which This Directive Applies

E1. ENCLOSURE 1

FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS DIRECTIVE APPLIES

E1.1.1. The Army and Air National Guard (Title 32, United States Code).

E1.1.2. Various programs involving loan or other disposition of surplus property (various general and specialized statutory provisions including: 40 United States Code 483, 484, 512; 49 United States Code 1101 - 1119; 10 United States Code 2541, 2542, 2543, 2572, 2662, 7308, 7541, 7542, 7545, 7546, 7547).

E1.1.3. National Program for Promotion of Rifle Practice (10 United States Code 4307 and annual Department of Defense Appropriation Act).

E1.1.4. National Defense Cadet Corps Program (10 United States Code 3540(b), 4651).

E1.1.5. Office of Civil Defense assistance to programs of adult education in civil defense subjects (50 United States Code App. 2281(e), (f)).

E1.1.6. Office of Civil Defense radiological instruments grants (50 United States Code App. 2281 (h)).

E1.1.7. Office of Civil Defense program (with Public Health Service) for development of instructional materials on medical self-help (50 United States Code App. 2281(e), (f)).

E1.1.8. Office of Civil Defense university extension programs for civil defense instructor training (50 United States Code App. 2281 (e)).

E1.1.9. Office of Civil Defense programs for survival supplies and equipment, survival training, emergency operating center construction, and personnel and administrative expenses (50 United States Code App. 2281 (i), 2285).

E1.1.10. Office of Civil Defense Shelter Provisioning Program (50 United States Code App. 2281(h)).

E1.1.11. Office of Civil Defense assistance to students attending Office of Civil Defense schools (50 United States Code App. 2281(e)).

E1.1.12. Office of Civil Defense loans of equipment or materials from OCD stockpiles for civil defense, including local disaster purposes (50 United States Code App. 2281).

E1.1.13. Navy Science Cruiser Program (Sec Nav Instruction 5720. 19A).

E1.1.14. Civil Air Patrol (10 United States Code 9441).

E1.1.15. Research grants made under the authority of Public Law 85-934 (42 U.S.C. 1892).

E1.1.16. Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, wherein title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of Public Law 85-934 (42 U.S.C. 1891).

E1.1.17. Army Corps of Engineers participation in cooperative investigations and studies concerning erosion of shores of coastal and lake waters (33 United States Code 426).

E1.1.18. Army Corps of Engineers assistance in the construction of works for the restoration and protection of shores and beaches (33 United States Code 426 e-h).

E1.1.19. Public park and recreational facilities at water resource development projects under the administrative jurisdiction of the Department of the Army (16 United States Code 460d and Federal Water Project Recreation Act, Public Law 89-72, 79 Stat. 218, July 9, 1965).

E1.1.20. Payment to States of proceeds of lands acquired by the United States for flood control, navigation, and allied purposes (33 United States Code 701-c-3).

E1.1.21. Grants of easements without consideration, or at a nominal or reduced consideration, on lands under the control of the Department of the Army at water resource development projects. (33 United States Code 558c and 702 d-1; 10 United States Code 2668 and 2669; 43 United States Code 961; 40 United States Code 319).

E1.1.22. Army Corps of Engineers assistance in the construction of small boat harbor projects (33 United States Code 540 and 577, and 47 Stat. 42, February 10, 1932).

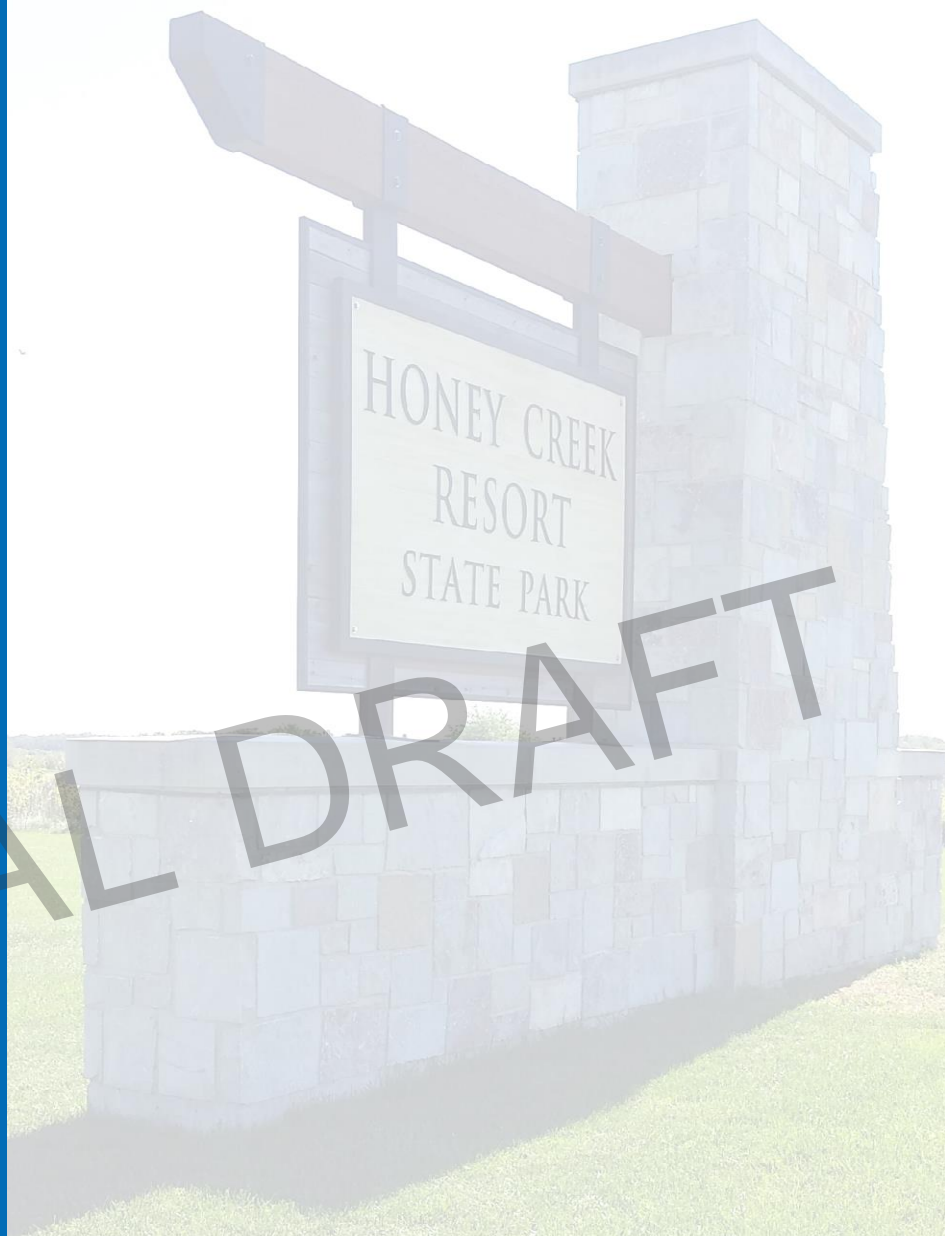
E1.1.23. Emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works (33 United States Code 701r).

E1.1.24. Assistance to States and local interests in the development of water supplies for municipal and industrial purposes in connection with Army Corps of Engineers reservoir projects (Water Supply Act of 1958, 43 United States Code 390b).

E1.1.25. Army Corps of Engineers contracts for remedial works under authority of Section III of Act of July 3, 1958 (33 United States Code 633).



FINAL DRAFT



Honey Creek Resort

Facilities Condition Assessment

Moravia, Iowa

Date: November 7, 2022

Shive-Hattery Project Number 2142205650

SHIVEHATTERY
ARCHITECTURE+ENGINEERING

4125 Westown Parkway, Suite 100

West Des Moines, IA 50266

November 7, 2022

Adam Steen, Director
Iowa Department of Administrative Services
1305 East Walnut Street
Des Moines, Iowa 50319

RE: Honey Creek Resort Facilities Condition Assessment

Mr. Steen,

Thank you for the opportunity to perform the services referenced above. We have completed our evaluation and have summarized the results in the attached report. This report provides an assessment of civil, architectural-structural, mechanical, plumbing, and electrical systems for the Honey Creek Resort.

This written report outlines the team's observations as to the condition of the facilities. Included is a list of suggested repairs to remedy observed material deficiencies addressing priority and probable cost of construction. If you have any questions or need further assistance, please contact us at your convenience.

Sincerely,

SHIVE-HATTERY, INC.


	<p>I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly Registered Architect under the laws of the State of Iowa.</p> <p>Mark H. Allen, AIA, NCARB, LEED AP</p>
	<p>Printed or typed name</p> <p><i>Mark H. Allen</i></p> <p>11-07-2022</p>
	<p>Signature:</p> <p>Date</p>
	<p>Registration Expires:</p> <p>Pages, Sheets, or Divisions covered by this seal: This Report</p>

TABLE OF CONTENTS

A. EXECUTIVE SUMMARY

1. Scope of Review
2. Facility Condition Assessment Overview

B. EXISTING CONDITIONS

Summary matrix

1. Events Center
2. Hotel
3. Water Park
4. Activities Center
5. Cottages and Employee Residences
6. Golf Course Structures
7. Site & Site Structures

C. APPENDIX

1. Reference photographs
 - a) Architectural / Structural
 - b) Mechanical
 - c) Electrical
 - d) Civil / Site

EXECUTIVE SUMMARY

FINAL DRAFT

SCOPE OF REVIEW

We have performed a facility condition assessment for the Honey Creek Resort located on Rathbun Lake in Moravia, Iowa. This report provides an assessment of the property with respect to physical conditions and prioritization criteria as needed to address areas in need of repair for continued long term use.

The assessment included site visits to generally observe the buildings and site systems including discussions with building management and maintenance personnel. Budgetary pricing has been provided and is predicated on replacing items in-kind and does not include upgrades. The assessment did not include any invasive procedures or extensive investigation. The team performed a visual assessment of representative interior, exterior and site components only. A representative sample of areas, but not all, were available for our review.

Some of the conditions identified may require further analysis and documentation prior to remediation which may or may not have an impact on the budgetary pricing identified herein.

This pricing exercise is geared towards identifying a magnitude of cost in 2022 dollars for construction costs only. A variety of allowances, unit prices and market pricing from similar costs per square foot pricing as seen from this service area were used as a basis for developing costing information. In consultation with McGough Construction, Shive-Hattery has applied this information to this report and prepared a cost index for your consideration.

ASSESSMENT OVERVIEW

This assessment was conducted to identify the physical condition of the buildings and to help categorize potential repair and maintenance items such that a systematic process can incorporate the repairs into an established maintenance schedule. To help prioritize the order in which the identified items should be addressed, priority groupings were established to help determine the most critical needs moving forward. The following priority groupings were established for this assessment:

Priority 1: 0 to 1 year, preemptive action: This priority describes conditions that if deferred will further deteriorate leading to additional damage or potentially unsafe conditions. This work, if performed, will remedy the identified conditions and reduce further deterioration caused by external factors. If not corrected expeditiously, these items could worsen leading to more severe damage of building components or create unsafe conditions for building occupants.

Priority 2: 1 to 5 years, mitigate additional damage: This priority includes conditions requiring appropriate attention to minimize predictable deterioration or potential downtime and any associated damage that would ensue if deferred further. If conditions are not addressed in a timely manner, the condition could progressively worsen causing additional damage.

Priority 3: 5 to 15 years, Beyond Expected Life: This priority includes conditions or systems that have been in service for a period of time beyond normally accepted industry standards. This priority includes items that may be of aesthetic concern or do not conform to current building codes but are "grandfathered" in their current condition. No action is required at this time, but should substantial work be undertaken, these items may require corrective action be taken.

Team members used reference materials, professional experience, and systems expertise to observe and assess existing conditions. While this review did not observe any conditions at this time that would be considered unsafe, several conditions observed that if not addressed in a timely manner could lead to unsafe conditions and should be addressed within the year. These items have been marked urgent in the existing conditions portion of this assessment.

The numbered photographs, which appear in the Appendix starting on page 34 of this report, are noted at the end of various recommendations.

Upon completion of the site observations, the information was broken down into the following individual categories for each group: architectural-structural, mechanical, electrical, and civil / site. Each discipline organized their review accordingly. A general description has been provided with a series of listed recommendations and anticipated costs tabulated by priority.

In general, our review has found that most of the areas reviewed are in reasonable condition with respect to their age and type. We have found several items of note and address them specifically while other recommendations are made to help advance asset protection efforts and general maintenance of these facilities. As the scope of service was limited to visual observations only, this assessment does not identify all potential deficiencies. However, reasonable conclusions can be drawn so that proactive steps can be taken to address notable concerns for added protection and preventative care extending the useful life of each facility.

The proposed repairs can be addressed now or spread out over time giving you options to address varied initial costs and/or varied functional efficiencies. Many combinations exist providing the flexibility that you may require to address these repairs.

FINAL DRAFT

EXISTING CONDITIONS

FINAL DRAFT

BUDGETARY PRICING SUMMARY

BUILDING GROUP	Priority 1 Summary	Priority 2 Summary	Priority 3 Summary	Building Group Total
1. EVENTS CENTER	\$ 127,000	\$ 624,000	\$ 113,000	\$ 864,000
2. HOTEL	\$ 326,000	\$ 1,440,000	\$ 312,000	\$ 2,078,000
3. WATER PARK	\$ 372,000	\$ 812,500	\$ 335,500	\$ 1,520,000
4. ACTIVITIES CENTER	\$ 79,500	\$ 17,000	\$ 1,500	\$ 98,000
5. COTTAGES & EMPLOYEE RESIDENCES	\$ 784,000	\$ 618,000	\$ 401,000	\$ 1,803,000
6. GOLF COURSE STRUCTURES	\$ -	\$ 71,000	\$ 49,000	\$ 120,000
(clubhouse, storage, maintenance, & pump house)				
7. SITE & SITE STRUCTURES	\$ 27,000	\$ 242,000	\$ 48,000	\$ 317,000
(paving, pavilion, restrooms, gazebo, & dock)				
PRIORITY GROUP TOTALS	\$ 1,715,500	\$ 3,824,500	\$ 1,260,000	

IDENTIFIED REPAIRS GRAND TOTAL BUDGETARY PRICING \$ 6,800,000

* Construction Costs: All sums identified in 2022 dollars of construction cost (trade labor and materials only).

* Deferred Maintenance: The costs are identified in 2022 dollars. Any future work should be adjusted accordingly for inflation.

* Allowances do not include savings possible if repairs are combined into a single project and competitively bid.

* In consultation with McGough Construction, Shive-Hattery (architect/engineer), as design professionals familiar with the construction industry have prepared this opinion of the probable cost of construction. As design professionals, we do not have control over the cost of labor, or equipment, or the contractor's method of determining bid prices, or over competitive bidding. Accordingly, the architect/engineer cannot and does not warrant or represent that such bids or negotiated prices will not vary from the probable cost of construction.

* Items observed to be unsafe at this time have been denoted as "**URGENT**" and require immediate attention.

* All associated costs represent allowances to address the identified condition. Mitigation of each item will require further clarification on quantity, quality, and schedule to work within the established allowance defined herein.

HONEY CREEK RESORT

Facilities Condition Assessment

A1.1 EVENTS CENTER

GENERAL COMMENTS AND NOTES	Reviewer:	M. Allen / E. Maguire
<p>The events center is in average to above average condition for the age of the facility. Structural movement was observed via wall cracking near entry vestibules and moisture penetration was observed throughout area via stained ceilings. Public restroom complied with ADA requirements at the time of construction but is not up to date with current guidelines. Vinyl wall covering is delaminating at numerous areas.</p>		

[illegible]

Discipline total	\$ 560,000
------------------	------------

9

GENERAL COMMENTS AND NOTES	Reviewer:	Sprenger, Baumhover, Cloyd
<p>Mechanical systems are in commensurate condition with the type of systems and their age. Thorough cleaning and re-balancing would improve indoor air quality. Some HVAC systems are nearing the end of their useful life cycle.</p>		

DISCIPLINE: MECHANICAL	Priority 1	Priority 2	Priority 3
Duct Cleaning.		\$ 5,000	\$ 5,000
HVAC Equipment cleaning allowance.		\$ 5,000	\$ 5,000
Heat pump condensate pans have been overflowing and causing stains on ceiling tiles. Add an alarm sensor at 5 locations.	\$ 5,000		
Replace heat pumps .	\$ 48,000		
Replace water heater. (installed 02-14-2017)		\$ 7,000	
Replace water heater. (installed 07-18-2022)			\$ 7,000
Replace Ice Maker.		\$ 7,000	
Upsize unit serving the lobby.		\$ 6,000	
50% of thermostats still require replacement by Johnson Controls.		\$ 6,000	
Replace pump cover.			\$ 1,000
Replace damaged grilles, registers and diffusers - 10 @ \$500 each.			\$ 5,000
Replace damaged insulation in water service room.		\$ 2,000	
Replace Ice Maker.		\$ 6,000	
Replace Caulking on sinks - 10 locations.	\$ 1,000		
Replace Air Handlers on roof (5).		\$ 40,000	
Replace Kitchen Hood Make Up Air Units and exhaust fans.		\$ 25,000	
Replace condensing units (5).		\$ 40,000	
(includes freezer and cooler condensing units & evaporator coils)			
Priority totals	\$ 54,000	\$ 149,000	\$ 23,000

Discipline total	\$ 226,000
------------------	------------

HONEY CREEK RESORT

Facilities Condition Assessment

E1.1 EVENTS CENTER

GENERAL COMMENTS AND NOTES	Reviewer:	J. Waldron, L. Anderson
<p>*Arc flash study and labels recommended for entire site. Arc flash studies to be completed for entire campus under a single review. Items herein are broken up for pricing estimates only. Arc flash guidelines were not in place at the time of construction. Recommended that an Arc flash study be conducted in accordance with NFPA 70E and OSHA safety guidelines.</p> <p>Electric Utility is Chariton Valley Electric.</p>		

DISCIPLINE: ELECTRICAL	Priority 1	Priority 2	Priority 3
INTERIOR			
Replacement of light fixture housings. (approx. 20 locations)			\$ 10,000
Replace non-functioning redundant VFD's in mechanical room.	\$ 35,000		
Create code required 3ft clearance from all electrical equipment.		\$ 5,000	
Broken conduit with exposed wiring in electrical room.	\$ 3,000		
Lack of arc flash labels on electrical equipment - arc flash study should be done and stickers created for all electrical equipment per NFPA 70E & OSHA.		\$10,000	
EXTERIOR			
Any sustainable energy systems (solar/photovoltaics) would need to be connected to be functional. Solar has not worked for the past five years and is supposed to feed domestic water system. It was reported that two pumps are needed to be replaced in order to fix it.	\$ 10,000		
Provide maintenance / repair to lightning protection system. (Franklin rod mounting brackets)		\$ 5,000	
Priority totals	\$ 48,000	\$ 20,000	\$ 10,000

Discipline total	\$ 78,000
------------------	-----------

A2.1 HOTEL

GENERAL COMMENTS AND NOTES	Reviewer:	M. Allen / S. Brase
<p>The 105 guest room hotel is in average condition for the age of the facility. Structural movement was observed at the hotel to events center demising wall via unlevel floors. Minor gypsum board cracking was observed at areas needing control joints. Moisture penetration was observed at the lower level guest rooms at HVAC chases. Rust was observed at a number of guest room bathroom door frames and shower drains. ADA requirements were met at the time of construction but are not up to date with current guidelines. Vinyl wall covering is delaminating extensively. Exterior prep and repaint needed within 5 years. Work has begun updating hotel room finishes but only a small percentage of rooms have been updated. The same finish updates should be completed for the remaining hotel rooms - no budgetary pricing has been included for hotel room finish updates herein other than areas in need of repair.</p>		

DISCIPLINE: ARCHITECTURAL & STRUCTURAL	Priority 1	Priority 2	Priority 3
INTERIOR			
Patch and repair damaged vinyl wall covering. (500 SF)		\$ 50,000	
Rusting door frame prep and paint. (approximately 30 doors)		\$ 10,000	
Corridor carpet replacement. (approximately 8000 square ft)		\$ 60,000	
Gypsum board patch and repair. \$2K per 105 rooms.		\$ 210,000	
* Predominately wood frame construction, but virtually no interior control joints - more gypsum board cracking can be expected			
* Previously repaired bathroom ceilings - addressed above in gyp bd patching			
Vertical grab bar installation. (6 accessible guest room toilets)			\$ 2,000
Allowance to re-grout tile shower surrounds at all rooms.		\$ 40,000	
Replace door and frame from public corridor to service area.		\$ 5,000	
Replace 105 hotel room door electronic locking systems - door hardware only.		\$ 210,000	
Hotel room HVAC chase on going maintenance	\$ 35,000	\$ 70,000	\$ 70,000
Mitigate moisture damage at 30 HVAC chases - damaged areas only.	\$ 54,000		
* HVAC chases systematically leaking condensation requiring frequent maintenance			
* Run HVAC during off season to prevent further damage to int. finishes			
* Bounce in corridor floor due to structural members being 2x10's in lieu of trusses. It is structurally sound, but uncomfortable to walk across.			
EXTERIOR			
Hail damaged asphalt roofing replacement allowance (approx. 350 sqs)		\$ 150,000	
Pressure wash exterior allowance (confirm bird nest protection w/ DNR)		\$ 30,000	
Complete exterior prep and paint allowance		\$ 125,000	
Replace damaged and/or loose privacy fencing allowance (approx. 125 l)	\$ 10,000		
275 LF Lower level sill flashing installation allowance		\$ 25,000	
Repair / replace damaged siding. Approx 5,000 SF	\$ 124,000		
Replace concrete apron for positive drainage (150 sq yds lower level walk out)	\$ 25,000		
Rain gutter and downspout cleaning	\$ 10,000		
Priority totals	\$ 258,000	\$ 985,000	\$ 72,000

Discipline total \$ 1,315,000

HONEY CREEK RESORT

Facilities Condition Assessment

M2.1 HOTEL

GENERAL COMMENTS AND NOTES	Reviewer:	Sprenger, Baumhover, Cloyd
<p>Mechanical systems are in commensurate condition with the type of systems and their age. HVAC equipment is nearing or is passed its useful life cycle. Condensation management at HVAC units is creating moisture issues leading to deterioration and damage. Further design investigations are recommended to develop a solution that will prevent further damage.</p>		

DISCIPLINE: MECHANICAL	Priority 1	Priority 2	Priority 3
Replace caulking in showers - all locations.		\$ 30,000	
Replace PTAC units at 95 guest rooms.		\$ 250,000	
Replace Filters at PTAC units. (105 locations)		\$ 5,000	
Replace/repair rusted tubs. (12)		\$ 60,000	
Repair damaged PVC elbow on condensate discharge. (50)	\$ 24,000		
Replace damaged hot water heater.	\$ 7,000		
Install hard duct and fire damper in backup cooling to IT room.	\$ 3,000		
Add supply duct to office in laundry room.	\$ 2,000		
Add bug screens on newer units. (50)		\$ 5,000	
Replace 9 condensing units. (southwest corner of hotel structure)		\$ 35,000	
Replace laundry furnace.		\$ 5,000	
Replace IT room cooling unit.		\$ 5,000	
Replace LL hall furnace.		\$ 5,000	
Insulate and seal refrigerant piping that penetrate exterior wall.	\$ 4,000		
Replace passive solar system pumps.	\$ 10,000		
* Condensing unit grouping on Southwest corner of hotel are too tightly spaced together and are likely not functioning at full potential. Currently, units are functioning, but likely will fall short of anticipated life cycle. Limited space prevents spreading units apart. Will require design analysis for long term solution. No other recommendations at this time.			
* Dryer vent discharge is directed towards condensing units. An airflow diverter was installed to redirect dryer exhaust up and away from condensing units. Further analysis and design are needed to recommend a more permanent solution.			
* Rust colored water from faucets was observed. Implement a maintenance schedule to flush and purge water lines.			
Priority totals	\$ 50,000	\$ 400,000	\$ -

Discipline total	\$ 450,000
------------------	------------

HONEY CREEK RESORT

Facilities Condition Assessment

E2.1 HOTEL

GENERAL COMMENTS AND NOTES	Reviewer:	J. Waldron, L. Anderson
<p>*Arc flash study and labels recommended for entire site. Arc flash studies to be completed for entire campus under a single review. Items herein are broken up for pricing estimates only. Arc flash guidelines were not in place at the time of construction. Recommended that an Arc flash study be conducted in accordance with NFPA 70E and OSHA safety guidelines.</p> <p>Electric Utility is Chariton Valley Electric.</p>		

DISCIPLINE: ELECTRICAL	Priority 1	Priority 2	Priority 3
INTERIOR			
Lack of arc flash labels on electrical equipment - arc flash study should be done and stickers created for all electrical equipment per NFPA 70E & OSHA.		\$10,000	
Push bar hardware required on electrical room door downstairs. Manual toggle switches for lighting control required in all electrical rooms.	\$8,000		
Convert all lighting to LED fixtures. (all rooms & corridors)		\$40,000	
Repair and replacement of light fixtures housing incorrectly installed.	\$8,000		
Fire alarm system is previous generation model. Upgrade recommended.			\$ 240,000
West electrical room - replace exit door hardware with panic device. Replace occupancy sensor for lighting control with manual toggle switch.	\$2,000		
EXTERIOR			
Add receptacles for proper exterior applications.		\$ 5,000	
* Condensing unit grouping on Southwest corner of hotel are too tightly spaced together and are likely not functioning at full potential. Currently, units are functioning, but likely will fall short of anticipated life cycle. Limited space prevents spreading units apart. Will require electrical design analysis for long term solution. No other recommendations at this time.			
Priority totals	\$ 18,000	\$ 55,000	\$ 240,000

Discipline total	\$ 313,000
------------------	------------

HONEY CREEK RESORT

A3.1 WATER PARK

GENERAL COMMENTS AND NOTES		Reviewer:	M. Allen
<p>The water park is in average condition for the age of the facility. Structural movement was observed at the West water slide stair tower via cracked slab edge. Minor gypsum board wall damage was observed. Moisture penetration was observed at gyp. board ceiling around ductwork. Rust was observed at stainless steel guard rail connectors and the stainless steel drinking fountain. ADA requirements were met at the time of construction but are not up to date with current guidelines. Several glass guard rail sections were cracked. Exterior prep and repaint needed.</p>			

DISCIPLINE: ARCHITECTURAL & STRUCTURAL	Priority 1	Priority 2	Priority 3
INTERIOR			
Gypsum board patch and repair. Approx 50 SQ FT.		\$ 5,000	
Vertical grab bar installation. (2 accessible toilet stalls)			\$ 500
Replace restroom tile flooring with slip resistant tile.		\$ 37,000	
Restrooms tile flooring cleaning.	\$ 2,000		
Drinking fountain replacement.		\$ 3,000	
Guardrail and handrail connection components, replace damage pieces.		\$ 5,000	
Guardrail glazing replacement. (3 broken panels)		\$ 3,000	
Miscellaneous repairs allowance. (vinyl base, ACT, touch up paint)		\$ 5,000	
Repair structural steel column near water slide stair. (rust damage)	\$ 5,000		
* the high humidity and the tracking of the chlorinated water is leaving heavy deposits on the floor surfaces. Given the nature of the space we believe this to be unavoidable and recommend an above average annual allowance be budgeted for cleaning.			
* Condensation on block wall in pump room. Monitor / repaint when needed.			
EXTERIOR			
Hail damaged asphalt roofing replacement. (approx. 150 sqrs)		\$ 69,500	
Pressure wash exterior.		\$ 10,000	
Complete exterior prep and paint.		\$ 50,000	
Stabilize footings and repair crack in slab edge at water slide ext. enclosure.		\$ 25,000	
- near water slide stair bump out.			
Priority totals	\$ 7,000	\$ 212,500	\$ 500

Discipline total	\$ 220,000
------------------	------------

HONEY CREEK RESORT

M3.1 WATER PARK

GENERAL COMMENTS AND NOTES		Reviewer:	Sprenger, Baumhover, Cloyd
<p>HVAC systems are nearing or are passed their useful life cycle. Energy recovery ventilator (ERV) was observed to not be fully functioning.</p>			

[illegible]

Discipline total	\$ 362,000
------------------	------------

HONEY CREEK RESORT

E3.1 WATER PARK

GENERAL COMMENTS AND NOTES		Reviewer:	J. Waldron, L. Anderson
<p>*Arc flash study and labels recommended for entire site. Arc flash studies to be completed for entire campus under a single review. Items herein are broken up for pricing estimates only. Arc flash guidelines were not in place at the time of construction. Recommended that an Arc flash study be conducted in accordance with NFPA 70E and OSHA safety guidelines.</p> <p>Electric Utility is Chariton Valley Electric.</p>			

DISCIPLINE: ELECTRICAL	Priority 1	Priority 2	Priority 3
INTERIOR			
Lack of arc flash labels on electrical equipment - arc flash study should be done and stickers created for all electrical equipment per NFPA 70E & OSHA.		\$5,000	
EXTERIOR			
Receptacles upgraded to be Weatherproof GFCI.	\$ 5,000		
Priority totals	\$ 5,000	\$ 5,000	\$ -

Discipline total	\$ 10,000
------------------	-----------

W3.1 WATER PARK

GENERAL COMMENTS AND NOTES	Reviewer:	J. Bartley
The water park structures and systems are in fair condition for its age. The larger issue is damage occurring from a pool system that is generating chloramines which are being released into the water park air space. The resulting humidity and chlorine-laden air is causing corrosion of metallic items within the area. A UV system is proposed to help mitigate the chloramine issues. Most of the remaining repairs are typical for the age of facility and life-cycle of equipment.		

DISCIPLINE: Aquatics structure and systems	Priority 1	Priority 2	Priority 3
Remove and replace exposed aggregate finish in pool basins.			\$ 140,000
Provide seal coating on pool deck, with non-skid texture.	\$ 30,000		
Replace wading pool and spa filters.		\$ 40,000	
Replace activity pool/lazy river filters and assoc. piping.			\$ 175,000
Replace end suction pumps.		\$ 110,000	
Install UV treatment system for all pools.		\$ 100,000	
Construct separate chemical room to isolate chlorine and acid from main pool equipment.		\$ 75,000	
Recoat ship slide structure and replace corroded carbon steel hardware.		\$ 75,000	
Replace safety pads at exit of wading pool slides.	\$ 8,000		
Replace tall spray in wading pool.			\$ 20,000
Replace the floatables and safety pads in the water walk.		\$ 30,000	
Replace the stair treads on the large slide structure.		\$ 25,000	
Recoat the metal structure and rails on the water slide stair structural members, and remove all corrosion in the process.		\$ 25,000	
Recoat the gel coating on the water slide flume.		\$ 40,000	
Replace the PVC VGBA covers on the pool basins.	\$ 35,000		
Priority totals	\$ 73,000	\$ 520,000	\$ 335,000

Discipline total **\$ 928,000**

E4.1 ACTIVITIES CENTER

GENERAL COMMENTS AND NOTES	Reviewer:	J. Waldron, L. Anderson
<p>*Arc flash study and labels recommended for entire site. Arc flash studies to be completed for entire campus under a single review. Items herein are broken up for pricing estimates only. Arc flash guidelines were not in place at the time of construction. Recommended that an Arc flash study be conducted in accordance with NFPA 70E and OSHA safety guidelines.</p> <p>Electric Utility is Chariton Valley Electric. Building has PV solar panels on the roof.</p>		

DISCIPLINE: ELECTRICAL	Priority 1	Priority 2	Priority 3
INTERIOR			
Lack of arc flash labels on electrical equipment - arc flash study should be done and stickers created for all electrical equipment per NFPA 70E & OSHA.		\$5,000	
EXTERIOR			
Any sustainable energy systems (solar, wind, photovoltaics) would need to be connected to be functional. Solar does not currently work and is supposed to feed domestic water system.	\$ 10,000		
Priority totals	\$ 10,000	\$ 5,000	\$ -

Discipline total **\$ 15,000**

A5.1 COTTAGES & EMPLOYEE RESIDENCES

GENERAL COMMENTS AND NOTES	Reviewer:	E. Maguire
<p>28 Cottages are available on the campus. Cottage variants include 1 bedroom with loft, 2 bedroom, and 4 bedroom options. Cottages are one and two story wood frame structures with the primary floor elevated above grade constructed on cast in place concrete piers. The exterior cladding is fiber cement siding and trim with vinyl windows, a primary exterior door that provides hotel key card access, and a secondary exterior door with access to the deck. All cottages include elevated decks with stairs or ramps at ADA units. Exteriors are in need of cleaning. Some interior painted surfaces have been damaged, chipped, or are flaking paint and requires touch up paint. Hail damage was observed on some of the exterior siding. Asphalt shingle roofs appeared to be in above average condition. No repairs recommended at this time. Vertical cracking observed at gypsum board at landings of spiral stair and railing in lofted cottages. Support of railings and stairs should be investigated. All associated pricing is intended for all 28 cottages and 6 resident housing unless noted otherwise.</p>		

DISCIPLINE: ARCHITECTURAL & STRUCTURAL	Priority 1	Priority 2	Priority 3
Elevated decks are not adequately supported. Sagging of deck and out-of-plumb railings is readily observable. Composite planks have failed and been replaced in several locations. Study deck design and revise as necessary. Price includes replacement of all decks. (Photo A5.1-01)	\$ 450,000		
Stairs at cottage decks are failing. Stairs are being replaced. (Photo A5.1-02)			
Ramps at ADA units are not adequately supported. Composite planks have failed and been replaced in several locations. Railings are sturdy but pitched outboard. Investigation and redesign recommended. (Photo A5.1-03)	\$ 40,000		
Some balusters at railing are missing. Replace as needed. (Photo A5.1-04)	\$ 5,000		
URGENT: Some fire alarm devices are missing. Others are not secured to the ceiling and suspended by the power wires. Carbon monoxide detectors are missing, expired, or not operational. Repair or replace. (Photo A5.1-05)	\$ 10,000		
Exterior geothermal chase at some cottages has been compromised by vermin. Chases should be modified to have more resistant cladding to resist vermin access. Repair HVAC and interior damage.	\$ 30,000		
URGENT: Several concrete piers at some of the cottages observed have had issues at top of the piers adjacent to outboard anchor bolt. Based on informal observations, it appears that rebar cage was not provided around the anchor bolt assembly. This reinforcing would assist with distributing shear loads on the anchor bolts. Concrete requires rebar to resist shear loads. The areas where concrete has blown out should be repaired. Potential repair options include concrete patch with carbon fiber wrap. Issue was noted at 4 cabins. (Photos A5.1-06 and A5.1-07)	\$ 30,000		
Vertical cracking observed at gypsum board at landings of spiral stair and railing in lofted cottages. Patch and repair. (Photos A5.1-08 and A5.1-09)		\$ 20,000	
Fiber Cement siding is damaged in some locations. Repair or replace. (Photos A5.1-10, A5.1-11, A5.1-12, and A5.1-13)		\$ 65,000	
Some areas of exterior wall have large gaps between in-plane planks. Manufacturers guidance should be followed to seal these gaps and repair. (Photo A5.1-15)		\$ 150,000	
Priority totals	\$ 565,000	\$ 235,000	\$ -

Discipline total \$ 800,000

A5.2 COTTAGES & EMPLOYEE RESIDENCES

GENERAL COMMENTS AND NOTES	Reviewer:	E. Maguire
Architectural / structural comments continued from previous page.		

DISCIPLINE: ARCHITECTURAL & STRUCTURAL	Priority 1	Priority 2	Priority 3
Some shower plumbing fixtures are loose and sealant at shower enclosure has failed. Secure plumbing fixtures and reseal. (Photo A5.1-16)		\$ 6,000	
Sealant at sink basins needs to be replaced. (Photo A5.1-17)		\$ 7,000	
Kitchen counters are plastic laminate. Edging and field laminate is failing in many locations. Allowance for replacing with plastic laminate countertop. (Recommend replacing with better, long term solution of solid surfacing. Doubles cost but improved longevity)		\$ 56,000	
Facia panels under primary floor are dislodged or loose. Resecure and replace worn panels. (Photo A5.1-18)		\$ 40,000	
Soffit and facia panels at roof level are dislodged in several cottages. Resecure panels and replace worn panels. (Photos A5.1-19, A5.1-20, and A5.1-21)		\$ 76,000	
Secondary exterior patio doors have worn-out door operating hardware. Door hardware is loose and does not smoothly operate. Recommend replacing all operating hardware.	\$ 13,000		
Bathroom exhaust fans are not secured and noisy when operating. Replace.		\$ 11,000	
Sink faucet replacement. (14)		\$ 16,000	
Enamel coating at kitchen sink basins has worn off. Replace sink basins. (Photo A5.1-22)			\$ 16,000
Flooring trim is incomplete or missing in some areas. Repair or replace. (Photo A5.1-23)			\$ 8,000
Repaint faded chimney fiber cement cladding. (Photo A5.1-24)			\$ 16,000
Damage downspouts, missing segments, and missing splash blocks. Unsupported extensions below floor may require additional support structure.		\$ 30,000	
Seal in lite at some main entry doors has failed. Replace lite. (Photo A5.1-25)		\$ 4,000	
Interior walls are dented and damaged. Patch and repair. Aesthetic issue only.			\$ 140,000
Restroom solid surface needs to be resealed. Aesthetic issue only. (Photo A5.1-26)			\$ 25,000
Replace approx. 40 broken window panes. (Photo A5.1-27)		\$ 20,000	
Appliances are near or at end of service life. Some microwaves don't work. Some ranges functions are not operational. Fridge interior panels are damaged. Replace all appliances.			\$ 87,000
Cracking at ridge of living rooms. Aesthetic issue only. Patch and repair. (Photo A5.1-28)			\$ 77,000
Replace sealant at tubs. (Photo A5.1-29)			\$ 25,000
Employee Housing skirts are damaged in several locations. Repair or replace at all 6 units. (Photo A5.1-30 and A5.1-31)		\$ 12,000	
Employee Housing. Perimeter of windows is drafty and exposed where trim is missing. Seal perimeter of windows at all 6 units. (Photos A5.1-32 and A5.1-33)		\$ 15,000	
Employee Housing. Water damage at ceilings. Repair leaks in roof and ceilings allowance for all 6 units. (Photo A5.1-34)	\$ 50,000		
Priority totals	\$ 63,000	\$ 293,000	\$ 394,000

Discipline total \$ 750,000

Discipline total	\$ 100,000
------------------	------------

GENERAL COMMENTS AND NOTES	Reviewer:	Sprenger, Baumhover, Cloyd
Mechanical systems are generally showing signs of age and are nearing the end of their useful life.		

DISCIPLINE: MECHANICAL	Priority 1	Priority 2	Priority 3
Replace underground domestic water piping at cottages. (28)		\$ 50,000	
Clean Grilles on Equipment closets at cottages.			\$ 2,000
Replace non-functioning heat pumps at two unobserved cottages.	\$ 8,000		
Replace water heaters at cottages. (28)	\$ 43,000		
Replace window AC units in all cottages. (28)		\$ 25,000	
Priority totals	\$ 51,000	\$ 75,000	\$ 2,000

Discipline total	\$ 128,000
------------------	------------

A6.1 GOLF COURSE STRUCTURES (clubhouse, storage, maintenance, & pump houses)

GENERAL COMMENTS AND NOTES	Reviewer:
5 Golf Course Structures were reviewed. The Club House (CH) is in good condition. Mechanical/Electrical room was observed to be used for storage (E6.1_1). This could be a fire hazard. Room should not be used for storage. The Open Storage Building is a light frame wood structure in good condition. The North Pump House (NPH) has some deteriorated elements and wildlife damage that should be repaired. The South Pump House (SPH) and Maintenance Building (MB) are in good condition.	

DISCIPLINE: ARCHITECTURAL & STRUCTURAL	Priority 1	Priority 2	Priority 3
CH: Control Joints were not observed. Cracking was noted in walls in many locations including: where direction of wall changes, along walls of extended runs, above door and window frames, and where gypsum board ceiling abut walls. Common locations for .Control Joints include door frames, where gypsum board assemblies suspended from structure abuts walls, and at regular intervals along extended walls. Control Joints prevent cracking in gypsum board resulting from natural building movement. Patch and repair gypsum board cracks only. (Photos A6.1-02, A6.1-03, A6.1-04, and A6.1-05)			\$ 10,000
NPH: Fiber Cement exterior has sustained extensive vermin damage. In some locations vermin have penetrated siding and sheathing. Limited patching has been done. Recommend replacing damaged elements and studying vermin resistant cladding options. (Photos A6.1-06, A6.1-07, and A6.1-08)		\$ 8,000	
NPH: Exterior door and frame have extensive surface rust. Remove rust and re-paint. (Photo A6.1-09)		\$ 5,000	
MB: Gypsum board ceiling above vehicular lift is damaged. (Photo A6.1-10)			\$ 4,000
MB: Fascia and Soffit trim have become dislodged in some locations. Secure and make water tight. (Photo A6.1-11)		\$ 3,000	
Priority totals	\$ -	\$ 16,000	\$ 14,000

Discipline total **\$ 30,000**

HONEY CREEK RESORT

M6.1 GOLF COURSE STRUCTURES (clubhouse, storage, maintenance, & pump house)

GENERAL COMMENTS AND NOTES		Reviewer:	Sprenger, Baumhover, Cloyd
Mechanical systems are generally showing signs of age and are nearing the end of their useful life.			

[illegible]

Discipline total	\$ 70,000
------------------	-----------

Discipline total	\$ 20,000
------------------	-----------

C7.1 SITE & SITE STRUCTURES (paving, pavilion, restrooms, gazebo, & dock)

GENERAL COMMENTS AND NOTES	Reviewer:	K. Scallon / M. Moylan
Site paving is generally in good condition with respect to the age. Limited deterioration or damage was observed. Specific areas of concern include uneven pavement panels that now act as tripping hazards. These items have been given a Priority 1 ranking due to pedestrian trip and fall concerns. Other pavement areas require routine maintenance such as crack sealing and isolated removal and replacement of deteriorated PCC pavement panels.		

DISCIPLINE: CIVIL	Priority 1	Priority 2	Priority 3
MAIN PARKING LOT			
Replace 120 sq yards PCC panels. (Photos C7.1-01 to C7.1-03)		\$ 12,000	
Replace 125 sq yards PCC sidewalk panels. (Photos C7.1-04 to C7.1-10)	\$ 12,500		
Replace 16 sq yards PCC sidewalk panel adjacent to intake. (Photo C7.1-11)	\$ 1,500		
Replace broken curb stop. Approx 6 LF			\$ 500
Grind PCC pavement at joint. (Photo C7.1-12)	\$ 1,500		
Seal 450 lineal feet of pavement cracks. (Photos C7.1-13 to C7.1-15)		\$ 9,000	
Replace PCC curb and gutter. (Photo C7.1-16)			\$ 1,000
Clean sand from linear trench drain. (Photo C7.1-17)		\$ 1,000	
DOCK			
Replace concrete square panels. Approx 10 SQ Yds Photo C7.1-18)		\$ 1,000	
ACTIVITIES CENTER			
Replace 42 sq yards PCC sidewalk panels. (Photo C7.1-19)	\$ 4,000		
Grind PCC pavement at joint. (Photo C7.1-20)	\$ 500		
WALKING TRAIL			
Seal cracks. (Photo C7.1-21)			\$ 6,000
MAIN ROAD			
Replace 70 sq yards PCC panels. (Photo C7.1-22)		\$ 7,000	
Grind PCC pavement at joint. Approx. 15 LF			\$ 1,000
Seal pavement cracks. (Photo C7.1-23)		\$ 5,000	
CABIN ROADS/DRIVEWAYS			
Replace 50 sq yards PCC panels. (Photo C7.1-24)		\$ 5,000	
Grind PCC pavement at joint. (Photo C7.1-25)			\$ 1,000
Seal cracks.			\$ 5,000
Replace broken curb stop. Approx. 6 LF			\$ 500
Priority totals	\$ 20,000	\$ 40,000	\$ 15,000

Discipline total **\$ 75,000**

Discipline total	\$ 75,000
------------------	-----------

GENERAL COMMENTS AND NOTES		Reviewer:	E. Maguire
<p>Restroom Structure (RR) is made of precast concrete panels and roof with separate facilities for men and women. The Pavilion (Pv) is a mass timber structure with concrete block bases at columns.</p>			

DISCIPLINE: ARCHITECTURAL & STRUCTURAL	Priority 1	Priority 2	Priority 3
RR: Exterior concrete slabs have cracks radiating from corners of Rest Room structure. Replace panels and ensure that adequate accommodations are made for expansion and contraction. (Photo A7.1-07)			\$ 8,000
RR: Paint on precast walls of Rest Rooms is fading and worn off. Re-paint.			\$ 13,000
RR: Interior floor and wall finish is peeling. Repair or replace. (Photo A7.1-08)			\$ 10,000
Pv: Pavilion columns passthrough CMU bases with cast stone tops. All 22 bases are consistently cracking along short axis of pavilion. Cracking is assumed to be from column movement along long axis of pavilion. Replace all column bases with same but with connection at column to absorb structural movement. (Photos A7.1-03, A7.1-04, A7.1-05, and A7.1-06)		\$ 110,000	
Priority totals	\$ -	\$ 110,000	\$ 31,000

Discipline total	\$ 141,000
------------------	------------

GENERAL COMMENTS AND NOTES		Reviewer:	Sprenger, Baumhover, Cloyd
<p>This group of structures has no or limited mechanical systems. All plumbing fixtures appeared to be in reasonable condition.</p>			

Discipline total \$ -

APPENDIX

FINAL DRAFT

CIVIL - SITE PHOTOGRAPHS

FINAL DRAFT

ARCHITECTURAL - STRUCTURAL PHOTOGRAPHS

FINAL DRAFT

MECHANICAL PHOTOGRAPHS

FINAL DRAFT

ELECTRICAL PHOTOGRAPHS

FINAL DRAFT



TAB 4 – Lease
Agreement (Vehicles
and Equipment)

**28E Agreement
Between
IOWA DEPARTMENT OF ADMINISTRATIVE SERVICES, ON BEHALF OF THE STATE OF IOWA
And
APPANOOSE COUNTY
For
LEASING OF EQUIPMENT AND VEHICLES AT HONEY CREEK RESORT**

I. PURPOSE:

This Agreement between the State of Iowa Department of Administrative Services (DAS or State or Lessor) and Appanoose County (County or Lessee) (collectively the “Parties”) sets forth the Agreement between the Parties with respect to the leasing of State owned equipment, vehicles, and other personal property at Honey Creek Resort (HCR or Resort) in Moravia, Iowa, for the purposes of ensuring such equipment and vehicles are used for the ongoing operations of HCR after ownership and responsibility for the Resort is transferred to the County.

A list of the personal property subject to this Agreement (hereinafter referred to as “Leased Property”) is attached hereto as **Exhibit A**.

II. TERMS

1. **CONSIDERATION:** The Lessor agrees to lease to the Lessee the Leased Property for a fee of \$1.00 per item per rental period during the term of this Agreement. The fee shall be due on the first day of each rental period. Lessor shall not be responsible for the refund of any fee if this Agreement terminates as set forth herein prior to the conclusion of any rental period.
2. **USE OF PROPERTY:** Lessee shall use the Leased Property solely for the ongoing operations of HCR. The Leased Property shall not be used for any other purpose unless approved in writing by Lessor. The Leased Property is considered and shall remain personal property and shall not attach to any real property, regardless of its use.
3. **MAINTENANCE AND REPAIR:** Lessee acknowledges and agrees that all maintenance, repair, and operational costs, including all labor, parts, material, and other repair and maintenance costs, related to the Leased Property shall be the sole responsibility of the Lessee. The Lessor shall have no obligation to incur any costs or liability related to the Leased Property during the term of this Agreement. Lessee shall take all commercially reasonable steps to maintain Leased Property in working order, including following manufacturer prescribed maintenance requirements and repairing damaged or broken equipment to the satisfaction of Lessor. Lessee shall insure that Leased Property is used in accordance with manufacturer’s usage recommendations and requirements. Lessee shall further assure that all Leased Property is not subjected to careless, reckless, or unusually or needlessly rough usage. Lessee shall not modify any Leased Property without prior consent of Lessor.

Lessee shall maintain documentation of maintenance and repair of Leased Property. Prior to removing Leased Property from service, Lessee must provide adequate notice to Lessor concerning the reasons the Leased Property is no longer suitable for use by the Lessee in accordance with section II.2 above. Upon removal from service, Lessee shall immediately return Leased Property to Lessor and update Exhibit A to reflect the removal of said property.

Lessee shall inspect all Leased Property within five (5) business days of the beginning of the initial rental period as set forth in paragraph 5 below. Unless Lessee provides Lessor with written notice of any defect or other objection to the condition of the Leased Property within the five (5) business day inspection period, the Parties agree that it will be presumed that Lessee has inspected and acknowledged that the Leased Property is in good condition and repair. Lessor shall have the right at any time to enter the premises occupied by the Leased Property and shall be given free access thereto and afforded necessary facilities for the purposes of inspection of the Leased Property.

4. **INSURANCE:** At its expense, Lessee shall ensure all Leased Property is properly covered by commercially reasonable comprehensive insurance policy obtained by a provider licensed to provide such insurance by the State of Iowa. Such insurance shall cover damage to the Leased Property, bodily injury, and property damage. Such insurance shall be subject to approval by the Lessor and shall include the State of Iowa – Department of Administrative Services as a named additional insured of the insurance coverage. Any insurance covering loss or damage to the Leased Property shall name Lessor as loss payee. Such insurance coverage shall not be changed, modified, amended, cancelled, or otherwise altered without prior notification and approval of Lessor. Lessee shall promptly notify Lessor of any damage to the Leased Property that may result in an insurance claim.

Lessor shall not be responsible for any loss or damage to property, material, or equipment belonging to Lessee, its subcontractors, its agents, or any other third party resulting from the Leased Property while the Leased Property is in Lessee's custody or control. Lessee is encouraged to obtain appropriate liability insurance against risk of such loss. Lessee and its insurers waive all rights of subrogation against Lessor.

5. RENTAL PERIOD: The initial rental period of this Agreement shall be effective MONTH DAY, YEAR, and shall continue until December 31, 2025.
6. SUBSEQUENT RENTAL PERIODS: This Agreement shall automatically renew on January 1, 2026, for the rental period from January 1, 2026, through December 31, 2026. On January 1 of each subsequent year, this Agreement shall automatically renew for a one-year rental period unless terminated as provided for herein.
7. TITLE TO PROPERTY: Ownership and title to all Leased Property subject to this Agreement shall remain with the Lessor. Lessee shall not acquire any interest in the Leased Property other than the leasehold interest subject to the terms of this Agreement.
8. REPLACEMENT OF LEASED PROPERTY: Lessor has no obligation or intention to replace, maintain, or repair any item of Leased Property. If an item is removed from service in accordance with paragraph 3 above, Lessee shall be solely responsible for replacement of said item at its own discretion and expense. Such replacement item acquired by Lessee, its subcontractors, or agents, is not subject to the terms of this Agreement.
9. TERMINATION FOR CONVENIENCE: This Agreement may be terminated by either party upon thirty (30) days written notice.
10. TERMINATION DUE TO BREACH BY LESSEE: Lessor may terminate this Agreement upon written notice for the breach of this Agreement by Lessee of any material term of this Agreement after any cure time provided in such notice from the Lessor.
11. TERMINATION DUE TO CHANGE IN LAW: If, within the sole opinion of Lessor, the legislature or governor either fail to appropriate sufficient funds to allow the Lessor to meet its obligations under this agreement or change the Lessor's authority to engage in activities or operations related to the subject matter of this Agreement, the Lessor shall have the right to terminate this Agreement without penalty and without advanced notice.
12. DUTIES UPON TERMINATION: Upon termination or expiration of this Agreement, Lessee shall immediately return to Lessor any Leased Property subject to this Agreement in good repair and operative condition, reasonable wear and tear resulting from proper usage excepted.
13. INDEMNIFICATION: Lessee agrees to indemnify and hold harmless Lessor, 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 Iowa Attorney General's Office), and the costs, expenses, and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Agreement, including (i) any breach of this Agreement; (ii) any negligent, intentional, or wrongful act or omission of the Lessee or any agent or subcontractor of Lessee, including any entity retained to operate HCR; or (iii) the Lessee's performance or attempted performance of this Agreement, including any agent or subcontractor of Lessee, including any entity retained to operate HCR.
14. WARRANTY: Lessor makes no warranties, expressed or implied, as to any matter whatsoever related to the Leased Property including, without limitation, the condition or fitness of the Leased Property for any purpose or that the Leased Property complies with any applicable federal, state, or local law, rule, regulation, code, or ordinance. Lessor further disclaims any liability for any loss, damage, or injury to Lessee or any third party resulting from the operation of the Leased Property. Lessee leases the Leased Property "AS IS" and Lessor is in no event liable for any loss, delay, or any other liability due to defects or inoperability of the Leased Property.

III. ADMINISTRATION:

1. NOT A JOINT VENTURE: Nothing in this Agreement shall be construed as creating or constituting any kind of relationship between the parties besides that of a Lessor/Lessee. Each party shall be deemed to be independent of the other and the Parties do not have the authority to enter into any contract or create a liability or obligation on behalf of, in the name of, or binding upon another party to this Agreement.
2. THIRD PARTY BENEFICIARIES: There are no third-party beneficiaries of this Agreement. This Agreement is intended only to benefit the State and the County.
3. USE OF THIRD PARTIES: The Lessor acknowledges that the Lessee may contract with third parties for the performance of any of Lessee's obligations under this Agreement, and in particular the use of the Leased Property for the ongoing operations of HCR. The Lessee shall notify the Lessor in writing of all subcontracts relating to this Agreement prior to the time the subcontracts become effective. The Lessor reserves the right

- to restrict the use of the Leased Property by any subcontractor. As it relates to the Leased Property, any subcontract must require the Lessee to ultimately remain responsible for compliance with this Agreement.
4. **AMENDMENTS:** This Agreement may be amended in writing from time to time by mutual consent of the parties.
 5. **CHOICE OF LAW AND FORUM:** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Agreement shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.
 6. **ASSIGNMENT AND DELEGATION:** Lessee may not assign, transfer, or convey in whole or in part its duties and obligations under this Agreement. Lessee may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber this Agreement or the Leased Property subject to this Agreement.
 7. **INTEGRATION:** This Agreement represents the entire Agreement between the Parties as it relates to Leased Property. The parties shall not rely on any representation which may have been made which is not included in this Agreement.
 8. **HEADINGS OR CAPTIONS:** The paragraph headings or captions used in this Agreement are for identification purposes only and do not limit or construe the contents of the paragraphs.
 9. **SUPERSEDES FORMER CONTRACTS OR AGREEMENTS:** This Agreement supersedes all other prior contracts or agreements between the Parties as it relates to the Leased Property.
 10. **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 this Agreement shall not be construed as affecting any subsequent right to require performance or to claim breach.
 11. **NOTICE:** Any and all notices or communications provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Agreement on behalf of the party. Each such notice shall be deemed to have been provided at the time it is actually received.
 12. **CUMULATIVE RIGHTS:** The various rights, powers, options, elections and remedies of any party provided in this Agreement, 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.
 13. **SEVERABILITY:** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
 14. **AUTHORIZATION:** By signing this Agreement, the Lessee represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement, that it has taken all requisite action to approve execution, delivery, and performance of this Agreement, and that this Agreement is a legal, valid, and binding obligation upon itself in accordance with its terms.
 15. **QUALIFICATIONS OF STAFF:** Lessee, its subcontractors or agents, shall ensure that operators of the Leased Property are competent and not under the influence of any substance. Lessee, its subcontractors, or agents shall be responsible for assuring that all persons authorized to operate or use Leased Property are properly license, certified, or accredited as required for the use of Leased Property under applicable federal, state, or local law, regulation, rule, or ordinance. Furthermore, Lessee, its subcontractors and agents, shall be responsible for ensuring proper training on the use of Leased Property for all persons operating the Leased Property. The Lessor is not responsible for any costs or expenses incurred by Lessee, its subcontractors, or agents, related to the training or employment of operators of the Leased Property.
 16. **OBLIGATIONS BEYOND TERM OF AGREEMENT:** This Agreement shall remain in full force and effect to the end of the specified term of the Agreement or until terminated pursuant to the requirements of the Agreement. All obligations of the Parties incurred or existing during the term of the Agreement shall survive the termination or expiration of this Agreement.
 17. **CONFLICT OF INTEREST:** Lessee represents, warrants, and covenants that no relationship exists or will exist during the Agreement period between the Lessee and the Lessor that is a conflict of interest. No employee, officer or agent of the Lessee or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Agreement. If a conflict of interest is proven to the Lessor, the Lessor may terminate this Agreement, and the Lessee shall indemnify the Lessor for any liability as a result of the conflict of interest. The Lessee 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 Lessee shall report any potential, real, or apparent conflict of interest to the Lessor.

18. IMMUNITY FROM LIABILITY: Every person who is a party to the Agreement is hereby notified and agrees that the State, and all of its employees, agents, successors, and assigns are immune from liability and suit for or from Lessee and/or subcontractors' activities involving third parties and arising from the Agreement.
19. TAXES: The State is exempt from Federal excise taxes and from State and local sales and use taxes. Lessee shall be responsible for any and all license fees, assessments, sales, use, property, excise or any other tax owed or imposed relating to Lessee's use or possession of the Leased Property.

CERTIFICATION and AUTHORIZED SIGNATURES:

IN WITNESS WHEREOF, The State of Iowa Department of Administrative Services and Appanoose County have executed this AGREEMENT by the signatures of authorized persons of the entities and on the date indicated below:

AUTHORIZED SIGNATURES:

State of Iowa Department of Administrative Services

Appanoose County

Adam Steen, Director DATE
Hoover State Office Building, Level 3
1305 E. Walnut St.
Des Moines, Iowa 50319

NAME, TITLE DATE
ADDRESS

Appendix A

Quantity	Equip.	Serves area	Location	Manufacturer	Model	Life Expectancy	Cost Each	Total Cost
1	4320 Tractor	Golf Course	Maint. Shed	John Deere	4320 Tractor	18	23,630	23,630
1	4520 Tractor	Golf Course	Maint. Shed	John Deere	4520 Tractor	19	21,366	21,366
1	2500b	Golf Course	Maint. Shed	John Deere	2500b	6	20,716	20,716
1	2500b	Golf Course	Maint. Shed	John Deere	2500b	8	20,716	20,716
1	MultiPro1200	Golf Course	Maint. Shed	Toro	MultiPro1200	14	19,931	19,931
1	Aercore 1500	Golf Course	Maint. Shed	John Deere	Aercore 1500	15	18,592	18,592
1	Pro Gator	Golf Course	Maint. Shed	John Deere	Pro Gator	9	14,722	14,722
1	td652	Golf Course	Maint. Shed	Progressive	td652	13	14,000	14,000
1	Aercore 800	Golf Course	Maint. Shed	John Deere	Aercore 800	10	13,795	13,795
1	Electric 4 wheeler	Activities	Activity Building	Jason Van DerZyl/Rusty Latimer's	2011 Stealth Nighthawk VIN#4S9BB2329BA321150	5	6,200	6,200
1	TX Gator	Golf Course	Maint. Shed	John Deere	TX Gator	8	5,625	5,625
1	TX Gator	Golf Course	Maint. Shed	John Deere	TX Gator	9	5,625	5,625
1	TX Gator	Golf Course	Maint. Shed	John Deere	TX Gator	10	5,625	5,625

1	220 c	Golf Course	Maint. Shed	John Deere	220 c	12	5,734	5,734
1	220 c	Golf Course	Maint. Shed	John Deere	220 c	12	5,734	5,734
1	220 c	Golf Course	Maint. Shed	John Deere	220 c	12	5,734	5,734
1	220 c	Golf Course	Maint. Shed	John Deere	220 c	12	5,734	5,734
1	220 c	Golf Course	Maint. Shed	John Deere	220 c	12	5,734	5,734
1	2500b	Golf Course	Maint. Shed	John Deere	2500b	7	28,440	28,440
1	Greens Mower	Golf Course	Maint. Shed	Toro	Greens master	9	30,082	30,082
1	MTI - Mower	Golf	Golf Maint	Toro	Greensmaster Triflex 3300 Model 04510	8	31,004	31,004
1	3225C	Golf Course	Maint. Shed	John Deere	3225C	10	34,050	34,050
1	3225C	Golf Course	Maint. Shed	John Deere	3225C	11	34,050	34,050

TAB 5 – Zero Value Declaration

PROPERTY DISPOSAL AGREEMENT

This Disposal Agreement (“Agreement”) is made in accordance with Iowa Admin. Code r. 11-- 111.2(4) and entered into between the Iowa Department of Administrative Services, on behalf of the Iowa Department of Natural Resources (“Donor”), and the Appanoose County Board of Supervisors, an office or unit of a political subdivision of the State of Iowa, who shall be the surplus property program agent for purposes of compliance with rule 11 IAC 111.2(4) (collectively the “Parties”). The Parties agree to the following terms:

1. **Purpose.** The purpose of this agreement is for the disposal of state surplus through donation to the Appanoose County Board of Supervisors for use at the Honey Creek Resort located in Appanoose County. The Appanoose County Board of Supervisors agrees that all property subject to the terms of this Agreement shall be used for the ongoing operations of the Honey Creek Resort.

2. **Definitions.** Terms used in this Agreement that are defined in Iowa Administrative Code rule 11—111.1 shall be given the meaning attributed to the term(s) as set forth in that rule. Undefined terms used in this agreement shall be given their common and ordinary meaning.

3. **Property.** Donor hereby donates to the Appanoose County Board of Supervisors the surplus property of the State of Iowa identified on Attachment 1 (“Property”) in the quantities noted.

By affixing his signature to this Agreement, the director of the Iowa Department of Administrative Services has determined that the Property identified on Attachment A has little or no value to the State of Iowa as contemplated by Iowa Code § 8A.324.

4. **Compensation and Fees.** No fees or compensation shall be exchanged between the Parties except for the transfer of the Property from the Donor to Appanoose County. Each Party shall otherwise be responsible for its own costs associated with this Agreement. Appanoose County may not sell the Property unless the Property becomes unfit for use in the operations of Honey Creek Resort.

5. **Title to Property.** Title to the Property shall hereby transfer to the Appanoose County Board of Supervisors once it takes possession of the Property.

6. **Duration of the Agreement.** This Agreement shall become effective upon execution by the Parties and shall terminate upon completion of the transfer of the Property to the Appanoose County Board of Supervisors or within one year from the date this Agreement is executed, whichever occurs first. It is the intent of the Parties that this Agreement is limited solely to the one-time transfer of the identified Property. The Parties shall enter into separate Agreements for any future transfer of property, if needed or desired.

7. **Liability and Indemnification.** The Appanoose County Board of Supervisors agrees to indemnify and hold harmless the State of Iowa, its officers, employees, volunteers and agents (collectively the indemnified parties) from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General’s Office, and the costs and expenses and reasonable attorneys’ fees of other counsel required to defend the indemnified parties, related to or arising from performance under this Agreement. This provision shall survive the termination of the Agreement.

8. **Default and Termination.** This Agreement may be terminated by either party by written notice to the other party prior to the completion of the transfer of the Property from the Donor to Appanoose County. If a party fails to comply with any of the provisions of this Agreement, the other party shall have

the right to terminate this Agreement upon written notice to the breaching party, without penalty or liability of any nature.

9. **Contract Administration.** This Agreement represents the entire Agreement between the Parties and neither party is relying on any representation which may have been made which is not included in this Agreement. The Appanoose County Board of Supervisors shall provide Donor with documentation as may be reasonably requested by Donor to verify compliance with this Agreement. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Iowa without regard to the choice of law provisions of Iowa law. Any and all litigation or actions commenced in connection with this Agreement shall be brought in Polk County District Court for the State of Iowa or, if Federal Court is the proper venue, in the United States District Court for the Southern District of Iowa, Central Division. Nothing contained in this provision shall be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity or Eleventh Amendment immunity. The Parties acknowledge that certain state or federal laws now or in the future may require Donor to disclose information on gifts and/or donations. Donor may report information about the Property provided under this Agreement, as provided by law, and such information may be publicly accessible in accordance with Iowa Code chapter 22 and/or any other applicable law.

10. **Exhibits.** Attachment 1 - Property

11. **Document Execution.** This Agreement may be executed in multiple originals, which, when taken together form a complete Agreement, and each party to the Agreement shall possess one of the fully executed Agreements.

12. **Signatures:**

DONOR

Director of the Department of Administrative Services (or designee):

By: _____ Date: _____

Printed name: _____

Title: _____

Appanoose County Board of Supervisors

By: _____ Date: _____

Printed name: _____

Title: _____

Attachment 1 – Property

Item Number	Description	Quantity

TAB 6 – Inventory List (including % to be deducted)

Inventory shrinkage—the loss of inventory due to factors like theft, administrative errors, and damage—is a concern across various industries, including hospitality. While specific shrinkage rates for the hotel industry aren't extensively documented, insights can be drawn from related sectors:

- **Retail Industry:** In the U.S., the average inventory shrinkage rate was 1.4% in 2021.
- **Hospitality Industry:** Profit margins are typically slim, ranging from 0% to 15%, with an average between 3% and 5%. This narrow margin underscores the importance of minimizing losses, including those from inventory shrinkage.

Given the operational similarities, it's reasonable to estimate that hotels experience inventory shrinkage rates comparable to the retail sector, around 1% to 2% annually. However, the unique aspects of hotel operations—such as room amenities, on-site restaurants, and frequent guest turnover—can influence this rate

To mitigate inventory shrinkage, hotels can implement measures like:

- **Employee Training:** Educating staff on proper inventory handling and loss prevention.
- **Robust Inventory Management Systems:** Utilizing technology to track inventory in real-time.
- **Enhanced Security Protocols:** Installing surveillance systems and conducting regular audits.

By adopting these strategies, hotels can better control inventory losses and maintain profitability.

Sources:

https://www.netsuite.com/portal/resource/articles/inventory-management/shrinkage.shtml?utm_source=chatgpt.com

https://totalfood.com/technology-inventory-shrinkage-maximize-profits/?utm_source=chatgpt.com

**Attachment 3
Real Property Inventory**

Real Property Assets Assigned on Contract Effective Date		
Asset ID	Building Name	Square Footage
2011-45	Resort Lodge/Conference Ctr	108876
2011-17	Resort Cottage #1	756
2011-18	Resort Cottage #2	1029
2011-19	Resort Cottage #3	816
2011-20	Resort Cottage #4	816
2011-21	Resort Cottage #5	756
2011-22	Resort Cottage #6	816
2011-23	Resort Cottage #7	816
2011-24	Resort Cottage #8	816
2011-25	Resort Cottage #9	1104
2011-27	Resort Cottage #10	816
2011-28	Resort Cottage #11	816
2011-29	Resort Cottage #12	1104
2011-30	Resort Cottage #13	1104
2011-26	Resort Cottage #14	1104
2011-31	Resort Cottage #15	816
2011-32	Resort Cottage #16	1400
2011-33	Resort Cottage #17	1104
2011-34	Resort Cottage #18	1104
2011-35	Resort Cottage #19	1104
2011-36	Resort Cottage #20	816
2011-37	Resort Cottage #21	1104
2011-38	Resort Cottage #22	1104
2011-39	Resort Cottage #23	816
2011-40	Resort Cottage #24	756
2011-41	Resort Cottage #25	816
2011-42	Resort Cottage #26	756
2011-43	Resort Cottage #27	816
2011-44	Resort Cottage #28	816
2011-49	Golf Clubhouse Building	2152

**Attachment 4
Real Property Inventory**

Asset ID	Building Name	Square Footage
2011-50	Golf Maintenance Building	5600
585612035341	Bldg. Storage	80
585612035201	Bldg. Enclosure	360
N/A	Golf Course Cart Storage Building	896 24 cart charging station (space for 20 inside and 4 outside)
2011-46	Resort Activity Building	780
201241	Shelter Building	5250
2011-15	Basketball Court	1 Item
2011-7	Docks (42 slips, fishing cleaning station)	
2012-40	Restroom Building	520
N/A	RV Sites	20 campsites
Within Land Assignment Map	Road Systems	29,133 Linear Feet
2011-14	Resort Beach	
201243	Activities Center Outdoor Kiosk	
	Wedding Gazebo	
	Employee Mobile Home #1	
	Employee Mobile Home #2	
	Employee Mobile Home #3	
	Employee Mobile Home #4	
	Employee Mobile Home #5	
	Employee Mobile Home #6	

Attachment 5
Honey Creek Resort Personal Property Assigned

See Separate Attachment
SUBJECT TO INVENTORY VERIFICATION AND SIGNATURE PRIOR TO TAKEOVER

Attachment 6
Cottage Equipment/Item Minimum Inventory to Be Maintained

<u>Cottage Inventory List</u>					
One Bedroom (4)		Two Bedroom (14)		Four Bedroom (10)	
Item	Number	Item	Number	Item	Number
Cooking Utensils		Cooking Utensils		Cooking Utensils	
7.25" Fry Pan	1	7.25" Fry Pan	1	7.25" Fry Pan	1
9" Fry Pan	1	9" Fry Pan	1	9" Fry Pan	1
11" Fry pan	1	11" Fry pan	1	11" Fry pan	1
Covered Sauce Pan 2.2 qt.	1	Covered Sauce Pan 2.2 qt.	1	Covered Sauce Pan 2.2 qt.	1
Covered Sauce Pan 1.1 qt.	1	Covered Sauce Pan 1.1 qt.	1	Covered Sauce Pan 1.1 qt.	1
Stock Pot 5.5 qt.	1	Stock Pot 5.5 qt.	1	Stock Pot 5.5 qt.	1
Mixing Bowls	2	Mixing Bowls	2	Mixing Bowls	2
Strainer	1	Strainer	1	Strainer	1
Cutting Board	1	Cutting Board	1	Cutting Board	1
Pizza Pan	1	Pizza Pan	1	Pizza Pan	1
Measuring Cups/ Spoons	1	Measuring Cups/ Spoons	1	Measuring Cups/ Spoons	1
Slotted Spoon	1	Slotted Spoon	1	Slotted Spoon	1
Spatula	1	Spatula	1	Spatula	1
Vegetable Peeler	1	Vegetable Peeler	1	Vegetable Peeler	1
Can Opener	1	Can Opener	1	Can Opener	1
Knife Set	1	Knife Set	1	Knife Set	1
Table Service		Table Service		Table Service	
Spoons	8	Spoons	8	Spoons	15
Forks	8	Forks	8	Forks	15
Knives	8	Knives	8	Knives	15
Glasses	8	Glasses	8	Glasses	15
Bowls	8	Bowls	8	Bowls	15
Plates	8	Plates	8	Plates	15
Coffee Cups	8	Coffee Cups	8	Coffee Cups	15
Other		Other		Other	
Folding Chairs	2	Folding Chairs	2	Folding Chairs	2
Coffee Maker	1	Coffee Maker	1	Coffee Maker	1
Toaster	1	Toaster	1	Toaster	1
Weather Radio	1	Weather Radio	1	Weather Radio	1

TAB 7 – Description of RIIF Funds

BUDGET UNIT BRIEF – FY 2025

Fiscal Services Division

July 1, 2024



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

Honey Creek — RIIF

Purpose

This appropriation to the Department of Natural Resources (DNR) supports the deferred maintenance costs at Honey Creek Resort State Park that are required to be completed pursuant to a contract entered into with the State and the new concessionaire of the Resort. The contract is managed by the Department of Administrative Services (DAS), and the full cost for the deferred maintenance required to be paid by the State is \$6.8 million.

Funding

The General Assembly appropriated \$6.0 million from the Rebuild Iowa Infrastructure Fund (RIIF) in FY 2024 for this purpose. The DNR utilized funding from its FY 2023 State Park Infrastructure Improvements appropriation for the remaining cost of the contract. This funding is provided to the DAS to oversee and manage the deferred maintenance needs.

Budget Unit Number

543020H0017

Doc ID 1446104

More Information

Iowa Department of Natural Resources: iowadnr.gov/Places-to-Go/State-Parks/Iowa-State-Parks/Honey-Creek-State-Park

Honey Creek Resort: honeycreekresort.com

LSA Staff Contact: Maria Wagenhofer (515.281.5270) maria.wagenhofer@legis.iowa.gov

Honey Creek Resort Deferred Maintenance Process

The Department of Administrative Services (DAS) and Achieva meet weekly, typically onsite to review ongoing construction projects to address any issues, adjust onsite work to accommodate resort business needs, and keep everyone informed on the progress of all the projects. Possible new projects are usually presented during these meetings. Below is a short description of the approval process we have been utilizing.

- Once a new project request has been identified, a project description is provided to DAS by Achieva, along with any cost information they have gathered or put together.
- DAS reviews the project scope and determines if it requires design and outside project management.
 - If design and outside project management is required, the contracted Construction Management company (CM – currently McGough) is contacted to put together a more detailed cost estimate for an overall budget.
 - If design and outside project management is not required, DAS creates a more detailed cost estimate for the overall budget.
- Once a scope and overall budget are established, and it is agreed the project should proceed, either a new project is established or additional scope is added to an existing project.
- Ongoing construction is monitored by DAS and Achieva.
- All changes in scope are reviewed and approved by DAS and Achieva.
- All payments for complete work are submitted through DAS' online project management system, Procore, and reviewed and approved by Achieva, DAS and DAS Finance.
- In the future, Achieva and the County would determine which projects that would take place next. Achieva or the County would work with DAS to execute the projects.

TAB 8 – FAQ's

FAQ's

Q. Why can't we charge to use the public boat ramp?

A. The ramp and the corresponding parking lot are subsidized by marine fuel tax. Should the county or concessionaire decide they want to charge for parking or charge for access to the public ramp; they would be required to pay back the marine fuel tax at a cost of \$399,813.15.

Q. How much are waste water costs?

A. Estimate ~\$16,000 a year based on historical flow rates charged at \$2.50 per 1,000 gallons (be advised that ADLM may charge more in the future).

Estimate ~\$16,000 a year based on historical flow rates charged at \$2.50 per 1,000 gallons (be advised that ADLM may charge more in the future).

Average 5-year repair costs are \$6,684/year ▪ *note: on a yearly basis, repairs costs are typically \$1-3k, but one year a \$25k pump had to be replaced, which skewed the average upwards.*

5-year average testing costs are \$695/year.

Q. How is snow removal handled?

A. The Concessionaire shall remove snow from roofs, solar features, entrances, porches, sidewalks, patios, and cottage decks within the LAA. The Concessionaire shall also be responsible for the plowing and salting/sanding of all roadways and parking lot areas within the LAA.

HONEY CREEK RESORT - FACILITIES LIST			
#	Facility	Building Improvements (square feet)	Brief Description of the Improvement or Area
1	The Lodge on Rathbun Lake	108,299	Includes 105 Guest Rooms & Suites, Convention & Conference Halls, Banquet Serving, Lakeshore Grille (Restaurant) & Bar, Pirate's Cove Indoor Aquatic Center, Fitness Center, Offices, Mechanical Rms, Corridors, Elevators, and Stairwells. There is a 1,569-Sf Porte-Cochere (Drive-up Canopy, not part of Bldg. Sf) on the main entrance to the Convention/Restaurant portion (Section C on Plans) and 610 Sf of concrete exterior building docks. There are no balconies, but many of the lodge rooms have direct-access, walk-out patios (on both north and south elevations of The Lodge). South of the Lodge, on the southern-facing hill, there is a small, wood-frame Gazebo, used for outdoor weddings and other events.
2	The Preserve Clubhouse (incl. Pro Shop) - ON STATE LAND	1,995	The Clubhouse includes a pro-shop, snack bar, and restrooms, but no locker rooms; Cart charging station and covered patio and a cart storage shed (about 900 Sf) north of the Clubhouse, all located on State Land.
3	The Preserve 18-Hole Golf Course - MOSTLY ON STATE LAND		Some portions of holes are subject to the periodic flooding. There is about 150,978 square feet of paved (5" thick) cart paths throughout the course.
4	The Cottages - 8 ON STATE LAND	26,988	Located on cul-de-sacs west of the lodge, there are 28 cottages (1-, 2-, & 4-BR). Area calculations here does not include the Fireplaces and Decks (Wood, wraparound covered; handicapped units with ramps). Each Cottage has its own paved driveway, sidewalk and patio area.
5	RV Park - PARTIALLY ON STATE LAND		Located west of the Cottages. Temporary employee housing (trailers) currently sits on six of the sites on the west cul-de-sac.
6	Recreational Maintenance Building - ON STATE LAND	5,600	Used for general maintenance and the golf course. Wood frame, steel exterior with about 25,000 Sf of driveway and maneuvering lot.
7	Activities Building (Interpretive Center)	1,600	Located north of The Lodge; the Activities Building was designed by Iowa State University students to be a net-zero-energy facility, using solar and wind energy and efficient appliances. The top floor was built in Ames, and craned in over the lower portion.
8	Boat Dock		The Dock is located on Lake Rathbun, southeast of the lodge, featuring boat slips, storage for jet ski rentals, along with wave attenuators off the respective north and south ends, developed in 2016, and covers about 4 acres of water.
9	Beach		The beach is located on a southwesterly-facing peninsula midway between the Boat Dock (on the east) and the Boat Ramp (on the west), and accessed via a pedestrian path adjacent southwest of The Lodge. Encompasses a little over an acre of sand.
10	Boat Ramp		The boat ramp in HRC is located south of the southerly wing of the RV Park, accessed via a drive terminating at the ramp, with a parking area north of it (37 spaces, incl. two HC spaces).
11	Basketball Court - ON STATE LAND		40' x 60', hard surface, surrounded by mowed grass, located east of the entrance to the Day-Use area, accessible by pedestrian paths.
12	Playground - MOSTLY ON STATE LAND		Located in the Day Use Area, east of the large parking lot, includes the area of the playground and adjacent yard area.
13	Pavillion Bathrooms		Northeast of the Outdoor Pavillion, southeast tip of large parking lot in the Day Use Area; Flush Units, Concrete block.
14	Outdoor Pavillion		Located at the southerly point of the Day Use Area, it is accessed via a wide pedestrian trail. Used for weddings and other out-door congregate events.
15	Wind Turbine		Height = 60' and located about 500' northwest of the Activities Building. In 2011, DNR received a donation from the Chris Desjardins Memorial Fund.
*	Roadways and Parking Lots - PARTIALLY ON STATE LAND	240,171	Resort Drive winds south from paved, E/W County Highway J18; most lays on State Land, but some is on Federal land. The Cottage "loops", from east to west, consists of Wildlife Way, Mariposa Drive, Timber Drive, Avian Court, Feather Ridge Road, and Prairie View Court.
*	Sidewalks/Bike Paths/Patios - PARTIALLY ON STATE LAND	256,710	Approximately 75,259 square feet of sidewalks and patios exist around the Lodge, and approximately 181,451 square feet of paving for pedestrian/bike paths which span the rest of the Resort, much of which is situated along Resort Drive, but also around the north, east, and south sides of The Lodge and down to the Docks/Slips to the southeast.

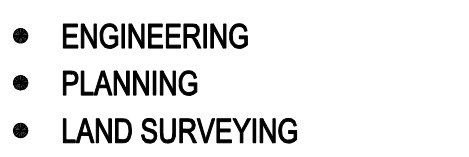


3211 W Sencore Drive
Sioux Falls, SD 57107
Phone: (506)334-2371
Fax: (605)334-8480



TSP, Inc.
1112 N. West Ave.
Sioux Falls, SD 57104
Phone: (605)336-1160
Fax: (605)336-7926

Architecture
Engineering
Construction



300 N. Dakota Ave., Suite 114
Sioux Falls, SD 57104
Phone: (605)339-7215
Fax: (605)339-7271

PROJECT TITLE:

**Honey Creek Resort
State Park**
Rathbun Lake, IA

01/09/09	Phase 1 Package III	

SRK	DATE	DESCRIPTION
-----	------	-------------

CONTRACT HOLDER #: 04060315

CONSULTANT #: SDO5558
DRAWN BY: DFG

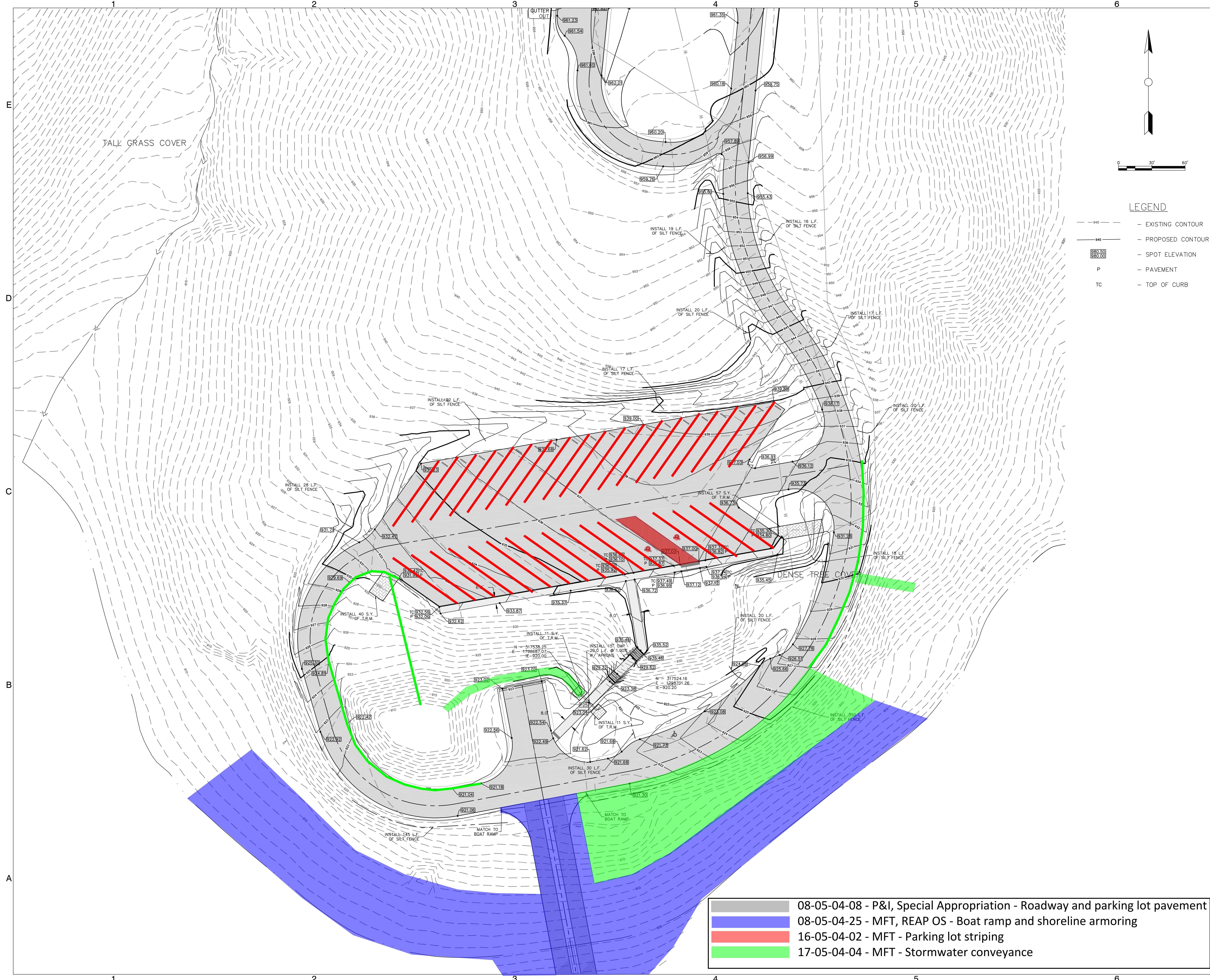
HECK BY: DFG

© TSP 2008

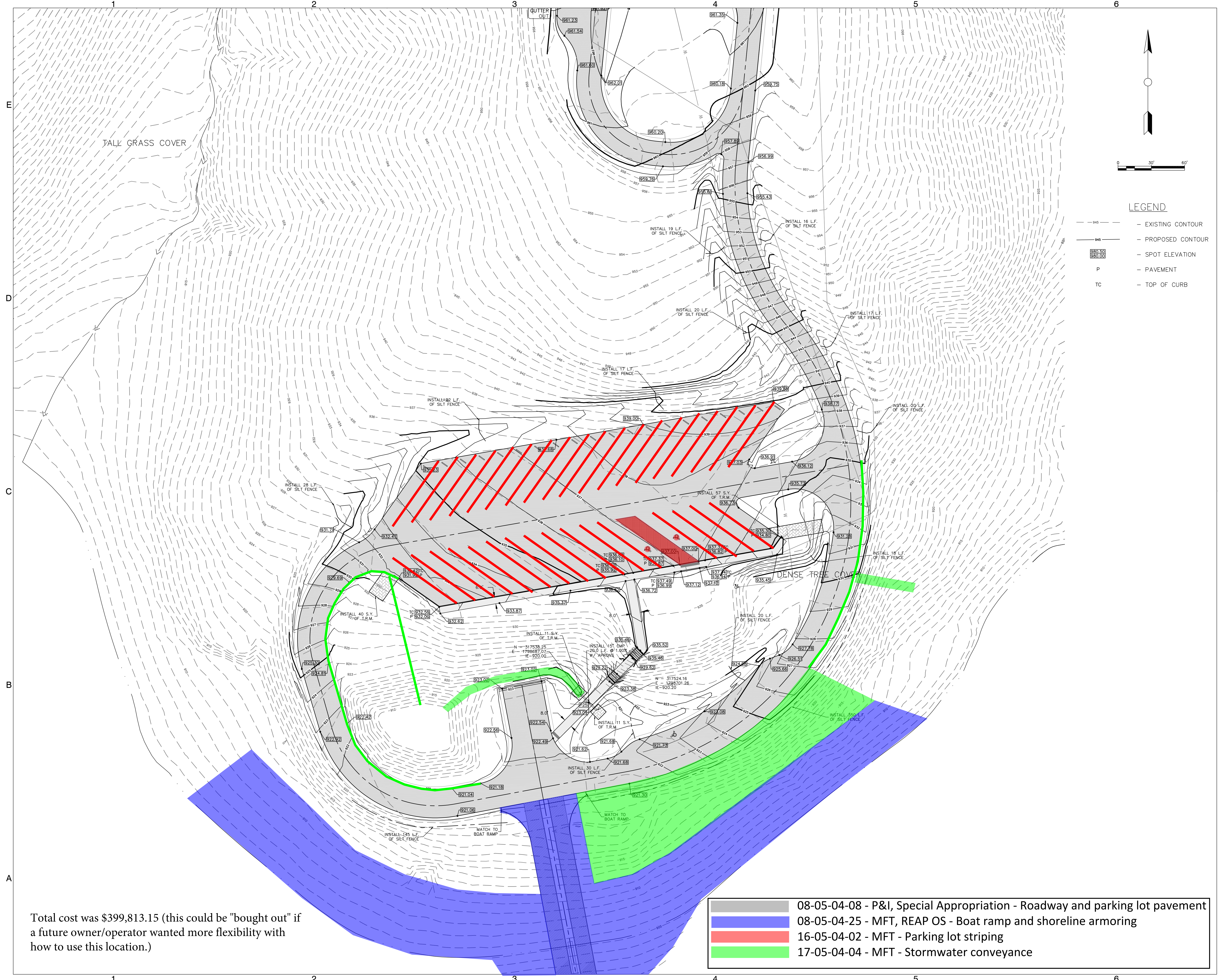
LOADING - BOAT RAMP

LOADING - BOAT TRAIL

CGR-108



s: \\05558\CIVIL 3D\2008\DWG\FG-RV PARK GRADING.dwg



Total cost was \$399,813.15 (this could be "bought out" if a future owner/operator wanted more flexibility with how to use this location.)

- 08-05-04-08 - P&I, Special Appropriation - Roadway and parking lot pavement
- 08-05-04-25 - MFT, REAP OS - Boat ramp and shoreline armoring
- 16-05-04-02 - MFT - Parking lot striping
- 17-05-04-04 - MFT - Stormwater conveyance

DNR

Iowa Department of
Natural Resources

Wallace State Office Building
502 East Ninth Street
Des Moines, IA 50319
Phone: (515)281-8941

R

REGENCY HOTEL
MANAGEMENT

3211 W Seneca Drive
Sioux Falls, SD 57107
Phone: (605)334-2371
Fax: (605)334-8480

TSP

To Solve. To Excel. Together.

TSP, Inc.
1112 N. West Ave.
Sioux Falls, SD 57104
Phone: (605)336-1180
Fax: (605)336-7926

Architecture
Engineering
Construction

**EHRHART
GRIFFIN &
ASSOCIATES**

- ENGINEERING
- PLANNING
- LAND SURVEYING

300 N. Dakota Ave., Suite 114
Sioux Falls, SD 57105
Phone: (605)339-7215
Fax: (605)339-7271

PROJECT TITLE:

**Honey Creek Resort
State Park
Rathbun Lake, IA**

MARK	DATE	DESCRIPTION
1	01/08/08	Phase 1 Package III
CONTRACT HOLDER #:		
CONSULTANT #:		
DRAWN BY:		
CHECK BY:		

SHEET TITLE:
**GRADING - BOAT RAMP
PARKING**

CGR-108

HWY J18



HONEY CREEK RESORT

ON RATHBUN LAKE

Inside Lodge:

Restaurant



Water Park



RV Campground



Boat Ramp



Beach



Boat Slip & Rental



Firepit



Parking



Restrooms



Fishing



Playground



Trails



Maintenance



Viewing Blind



Trails

----- PAVED

..... ROCK SURFACED

RESORT DRIVE

Golf Course



Golf Clubhouse

Day Use Area

RESORT DRIVE

Savanna Ridge Trail

Harm Creek

Honey Creek

FEATHER RIDGE RD

PRAIRIE VIEW CT

TIMBER DRIVE

MARIPOSA DRIVE

WILDLIFE

Activity Building

Lodge

Honey Creek
State Park



461A.3A Honey creek resort state park — findings — competitive bidding.

1. Honey creek resort state park is established to provide important recreational and economic benefits to the state.

2. Competitive bid laws, including hearings in connection with contracts, shall not apply to either the department's or its agents' contracts involving or benefitting the resort if the contract is carrying out a public or essential governmental function. However, the exemption from competitive bid laws in [this section](#) shall not be construed to apply to contracts for the development or construction of facilities at the resort, including but not limited to lodges, campgrounds, cabins, and golf courses.

[2019 Acts, ch 46, §5](#)

Attachment C-10
Activities Program Listing

Honey Creek Resort employs two full time Naturalists to manage and support the Resort in delivering interpretive and educational activities related to the environment and sustainability. It is a requirement of the Contract to maintain the current level of staffing and programming. Programming varies by season and includes programs that meet the needs of both leisure guest at the hotel as well as corporate and SMERF groups attending events and functions at the hotel. Programs and activities shall be designed to incorporate interpretive themes identified in the HCR Interpretive Plan. Core interpretive and educational programs include:

- Self Guided Hikes
- Guided Hikes
- Kayak Tours
- Outdoor Skills
- Fishing
- GPS/Map and Compass
- Birding
- Outdoor Cooking
- Nature Classes
- Animal Classes
- Astronomy Classes
- Water activities Classes
- Special Events
- Seasonal Programming
- Special Children's Programming (Pre K and Home School)
- Scout Badges
- Yoga and other Fitness
- Geocaching
- Roving Naturalist

Attachment C-9
Resort Sponsorship Signage to Be Maintained

In 2006, the Natural Resource Commission (NRC) approved Rathbun Lake Resort, Inc. (RLR) to undertake fundraising efforts which included the use of naming rights and sponsorships as a form of recognition of facilities at Honey Creek Resort. The IDNR developed an agreement with RLR that memorialized the relationship between IDNR and RLR with respect to fundraising activities underway at Honey Creek Resort. In 2009, the NRC approved the agreement which included the facilities at Honey Creek Resort which are eligible for sponsorship, the timelines for the sponsorships, and the specifications for recognition signage.

In 2015, RLR declared that the fundraising efforts were exhausted and there would be no additional sponsorships of facilities at Honey Creek Resort through RLR. The list below identifies the sponsorships and associated recognition that must be maintained by the Concessionaire and IDNR for the period of time identified in the chart below. Any changes of these sponsorship recognitions as part of a facility upgrade/update must be reviewed and approved by IDNR. IDNR will be responsible for the cost of recognition signage replacement identified below.

Donor	Sponsorship Recognition Location	Recognition Text	Duration of Recognition
Stanley Bay Farms (Catherine, Marilyn, Susan Bay)	Plaque in Great Room	Great Room Sponsored by Stanley Bay Farms, Inc. Catherine, Marilyn, and Susan Bay	Perpetual
Chris Desjardins Memorial Fund	Plaque in Conference Center	THANK YOU to the Chris Desjardins Memorial Fund for supporting renewable energy projects in Iowa State Parks	20 years Remove 1/1/2033
Cargill	Plaque on Activities Building	Activities Building Sponsor Cargill, Inc.	Perpetual
Iowa Trust and Savings Bank - Centerville	Plaque on Golf Clubhouse	Clubhouse Sponsor Iowa Trust and Savings Bank Centerville	Perpetual
Roger and Jan Winslow	Naming rights to Meeting Rm D & plaque	Roger & Jan Winslow Room	Perpetual
Mercy Medical Center - Centerville	Naming rights to Meeting Rm E & plaque	Mercy Medical Center Room Centerville	Perpetual
First Iowa State Bank - Albia	Naming rights to Meeting Rm F & plaque	First Iowa State Bank Room Albia	Perpetual
Bill Buss, Hall Engineering	Plaque on Great Lawn	Great Lawn In Honor of Bob and Ann Buss Hall Engineering Company	Perpetual
Peoples State Bank - Albia	Plaque on Cottage #3	Sponsored by Peoples State Bank - Albia	Perpetual
Stanley Bay Farms (Catherine, Marilyn, Susan Bay)	Plaque on Cottage #4	Sponsored by Stanley & Emily Bay Family	Perpetual
Kevin & Rhonda Kness & Marvin & Marilyn Kness	Plaque on Cottage #7	Sponsored by Kevin & Rhonda Kness Marvin & Marilyn Kness	Perpetual
L& W Quarries, Inc. - Centerville	Plaque near boat ramp	Sponsored by L&W Quarries, Inc. Centerville	Perpetual

Donor	Sponsorship Recognition Location	Recognition Text	Duration of Recognition
Johnson Holding Company - Johnny Johnson	Plaque on practice green	Sponsored by Johnson Holding Company Johnny Johnson	Perpetual
Peoples State Bank - Albia	Plaque on tee marker #1	Sponsored by Peoples State Bank Albia	Perpetual
First Iowa State Bank - Albia	Plaque on tee marker #10	Sponsored by First Iowa State Bank Albia	Perpetual
Ideal Ready Mix	Plaque on tee marker #9	Sponsored by Ideal Ready Mix	Perpetual
Hy Vee - Centerville, Corydon, Albia, Chariton, Chariton Wholesale	Plaque at trail head marker	Savanna Ridge Trail Sponsors Dave and Ruth Taylor	Perpetual
Dave and Ruth Taylor	Plaque at trail head marker	Hy Vee - Centerville, Corydon, Albia, Chariton, Chariton Wholesale	Perpetual
Community First Bank - Keosauqua	Plaque in snack bar area	Community First Bank Keosauqua	20 years remove 1/1/2029
Peoples State Bank - Albia	Naming of Exec Rm & plaque	Peoples State Bank Room Albia	Perpetual
Nellie Coltrain	Naming of Pres Suite & Plaque	Argo Family Suite	20 years remove 1/1/2029
Caryl Sharp	Naming of Pres Suite & Plaque	Kaldenberg Family Suite	20 years remove 1/1/2029
Arnie & Judy Sohn	Plaque on Cottage #26	Sponsored by Arnie & Judy Sohn	Perpetual
Bill and Sherri Duey	Plaque at Fitness Center	Bill and Sherri Duey Family	Perpetual
Martha Hoch & Barb Climie	Plaque at 2nd flr Lakeside sitting area	In Honor of Robert K. and Charlotte Beck	20 years remove 1/1/2029
Carol Bradley	Plaque at 3rd flr Lakeside sitting area	In Honor of John and Betty McDanolds	Perpetual
Denny and Carolyn Ryan	Plaque at 3rd flr parking lot sitting area	Denny and Carolyn Ryan Family	Perpetual
A.Y.M., Inc - Albia	Plaque at business center area	A.Y.M. Inc Albia	7 years remove 5/1/2018
Bruce Watley	n/a	Bruce Watley	donor wall
Appanoose County Community Foundation	n/a	Appanoose County Community Foundation	donor wall
Winger Companies	n/a	Winger Companies	donor wall
Kness Manufacturing	n/a	Kness Mfg. Co., Inc.	donor wall
Joe and Barb Crall	n/a	Joe & Barb Crall	donor wall
Bratz Shell Station	Group plaque at marina dock	Bratz Shell Station	20 years remove 1/1/2029
Ray and Patty Tresemer	Group plaque at marina dock	Ray & Patty Tresemer - Tresemer Physical Therapy, Inc.	20 years remove 1/1/2029
Rathbun Yacht Club	Group plaque at marina dock	Rathbun Yacht Club	20 years remove 1/1/2029
Northside Insurance Company	Group plaque at marina dock	Northside Insurance Company - Centerville	20 years remove 1/1/2029
Thompson Environmental Consulting, Inc.	Group plaque at marina dock	Thompson Environmental Consulting, Inc.	20 years remove 1/1/2029
Larry and Vickie Wilkinson	Group plaque at marina dock	Larry & Vickie Wilkinson	20 years remove 1/1/2019
Dorsey and Whitney LLP	Group plaque at marina dock	Dorsey and Whitney, LLP	20 years remove 1/1/2029

In addition, a donor recognition plaque/sign located on a wall between the lodge and conference center will also be maintained in perpetuity with the following donor names.

Rathbun Lake Resort, Inc.
Kevin Kness President
Ray Davis, Secretary
David Taylor, President-Emeritus
Ann Hamilton
Dean Kaster
Jon Miles
Marlene Sprouse
William Duey, Advisor

Carol Bradley, Vice President
Catherine Bay, Secretary
John Glenn
John Hamilton
Jim Lindemayer
Dennis Ryan
Jeff Young
Dora Guffey, Advisor

U. S. Army Corps of Engineers
Rathbun Regional Water Association
Chariton Valley Electric Cooperative
Appanoose County Board of Supervisors
Monroe County Board of Supervisor
Catherine, Marilyn and Susan Bay
Iowa Telecom

Iowa Trust & Savings Bank
First Iowa State Bank
Roger & Jan Winslow
Peoples State Bank
Cargill
Mercy Medical Center – Centerville

Hall Engineering Company
Community First Bank
Hy-Vee of Albia, Centerville, Chariton, and Corydon
David & Ruth Taylor
Argo Family
Caryl Sharp & Jim Kaldenberg

Bruce Watley
Carol Bradley
Arnie & Judy Sohn
Kevin & Rhonda Kness
Dennis & Carolyn Ryan

Bill & Sherri Duey
Barb Climie & Martha Hoch
Marvin & Marilyn Kness
A.Y.M. Inc. Albia

Winger Companies
Rathbun Yacht Club
Jim & Ginger Craver
Larry & Vicki Wilkinson
Kness Mfg. Co., Inc.
Ray & Patty Tresemer

Thompson Environment
Dorsey & Whitney LLP
Joe & Barb Crall
Bratz Shell
Northside Insurance
Kris Koestner J&K