

**PROGRAM PARTNER CONTRACT
BETWEEN THE INITIATIVE FOUNDATION
AND THE KANDIYOHI COUNTY BOARD OF COMMISSIONERS**

THIS CONTRACT is made between the Initiative Foundation (hereinafter the "Foundation") and the Kandiyohi County Board of Commissioners (hereinafter the "Program Partner")

WHEREAS, the ML 2014, Ch. 256, Art . 1, Sec. 2, Subd. 5(k), Evaluate the Effectiveness of AIS Prevention Strategies, appropriated \$4,040,000 from the Lessard-Sams Outdoor Heritage Fund to the Commissioner of Natural Resources for an agreement with the Initiative Foundation to fund the implementation and evaluation of innovative AIS prevention strategies,

AND WHEREAS the Foundation has fully executed an agreement for \$4,040,000 with the Minnesota Department of Natural Resources as provided in Minnesota Statutes, Chapter 84.026;

NOW THEREFORE, it is agreed between the Foundation and the Program Partner as follows:

1.GENERAL CONDITIONS

The Foundation awards to the Program Partner up to \$60,000 for work to be completed on the (hereinafter referred to as the "Project"), as a component of the above mentioned "Centralized Inspection and Decontamination Station-Kandiyohi County Project Evaluate the Effectiveness of AIS Prevention Strategies," for the time period of this contract. The Program Partner acknowledges that these funds are proceeds from the State of Minnesota Outdoor Heritage Fund (hereinafter the "Fund"), which is subject to certain legal restrictions and requirements and are administered by the Department of Natural Resources in accordance with the above mentioned legislative appropriation and under agreement with the Foundation. The Program Partner is responsible for compliance with the terms of the agreement between the Department of Natural Resources and the Foundation and all other relevant state and federal laws and regulations promulgated pursuant to governing the proceeds of the Outdoor Heritage Fund and the administration of funds by the Minnesota DNR pursuant to Minnesota Statutes Chapter 84.026 in the fulfillment of the Project.

1.1 TERMS OF PROGRAM PARTNER CONTRACT

Effective Date: This contract shall be effective when signed and executed by both the Foundation and the Program Partner in Section 5.

Expiration Date: June 30, 2019 or until all obligations have been satisfactorily fulfilled, whichever occurs first.

Contract Amendments, Assignment, Waiver, and Complete Agreement:

a. **Amendments.** Any amendments to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract or their successors. Amendments to this contract must be consistent with the Foundation's contract agreement with the Minnesota Department of Natural Resources.

b. **Assignment:** The Program Partner may neither assign nor transfer any rights or obligations under this contract without prior consent of the Foundation and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this contract, or their successors in office.

c. **Waiver:** If the Foundation fails to enforce any provision of this contract, that failure does not waive the provision or its right to enforce it.

d. **Agreement Complete:** This contract contains all negotiations and agreements between the Foundation and the Program Partner. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

Survival of Terms: The following clauses survive the expiration or cancellation of this contract: 4.1 Liability; 4.2 State Audits; 4.3 Government Data Practices and Intellectual Property; 4.5 Acknowledgment and Endorsement; 4.6 Governing Law, Jurisdiction, and Venue; 4.7 Data Disclosure; 4.10 Monitoring; and 4.13 Program Requirements.

1.2 CONTACT PERSONS

The authorized contact person for the Foundation is:

Don Hickman, Project Manager
Initiative Foundation
405 First Street SE
Little Falls, MN 56345
320-631-2043
dhickman@ifound.org

The authorized agent for the Program Partner is:

Larry Kleindl, County Administrator
Kandiyohi County
2200 23rd Street NE, Suite 2020
Willmar, MN 56201
320-231-6215 x2108
larry_k@co.kandiyohi.mn.us

2. DESCRIPTION OF PROGRAM PARTNER PROJECT

The Program Partner agrees to complete the Project as specified in the approved Project Accomplishment Plan, budget, and timetable attached herein as Attachment A.

3. COMPENSATION AND PAYMENT

Consideration for all services performed by the Program Partner pursuant to this contract shall be paid by the Foundation as follows:

3.1 Compensation: Compensation for the Project in an amount not to exceed \$60,000 which shall not exceed 50% of total project cost. Program Partner will receive funding on the following schedule: \$48,000 (80%) of Outdoor Heritage funds once all accomplishment plans, contracts, and budgets are approved and fully executed. The final 20% Outdoor Heritage funds will be withheld until all final reporting is submitted to the Foundation and approved, and all Outdoor Heritage and matching fund expenditures documented.

3.2 Reimbursement of Eligible Expenses: Program Partner will be reimbursed for eligible travel and travel-related expenses based on the DNR Commissioner's Plan Travel Allowances. See Chapter 15 at:

<http://www.mmb.state.mn.us/doc/comp/contract/CommissionersPlan.pdf>. Eligible expenses are those expenses directly incurred through Project activities that are solely related to and necessary for producing the Project products described in Section 2 of this contract during the contract period. Travel records with mileage, destination and activity and all applicable receipts for allowable expenses must be presented with the semi-annual reports to the Foundation.

3.3 Subcontractors: The Program Partner agrees that if it subcontracts any portion of this project to another entity, the agreement with the subcontractor will contain all provisions of the agreement with the Foundation. The Program Partner will refer to the Subcontractors section of the current DNR Reimbursement Manual, as provided by the State.

4. OTHER CONTRACT CONSIDERATIONS IN ACCORDANCE WITH FOUNDATION'S CONTRACT AGREEMENT WITH THE STATE

4.1 Liability The Grantees (Foundation and Program Partner) must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this contract.

4.2 State Audits Under Minn. Stat. §16C.05, subd. 5, the Foundation's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this contract.

4.3 Government Data Practices and Intellectual Property

a. Government Data Practices. The Program Partner, Foundation, and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Program Partner and Foundation under this contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Foundation or the State. If the Foundation receives a request to release the data referred to in this Clause, the Foundation must immediately notify the State's authorized representative. The State's authorized representative will give the Foundation instructions concerning the release of the data to the requesting party before the data is released.

b. Ownership of Intellectual Property Rights and Materials (Minn. Stat. 116P.10) The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Projects and Documents *created and paid for under this contract*. Project means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Foundation, its employees, agents, and the Program Partner, either individually or jointly with others in the performance of this contract. Projects includes "Documents", which are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Foundation, its employees, agents, or the Program Partner, in the performance of this contract. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Foundation upon completion or cancellation of this contract. To the extent possible, those Projects eligible for copyright protection under the United States Copyright Act will be deemed to be "Projects

made for hire.” The Foundation assigns all right, title, and interest it may have in the Projects and the Documents to the State. The Foundation must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Projects and Documents. The Program Partner authorizes the State of MN and Foundation to duplicate, replicate and disseminate plans and results of the project without prior permission from the Program Partner.

c. Obligations:

1. Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Foundation, including its employees and the Program Partner, in the performance of this contract, the Foundation will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

2. Representation. The Foundation must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Projects and Documents are the sole property of the State, and that neither Foundation nor its employees, agents, or the Program Partner retain any interest in and to the Projects and Documents. The Foundation represents and warrants that the Projects and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Section 1.1, the Foundation will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Foundation’s expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Projects or Documents infringe upon the intellectual property rights of others. The Foundation will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Foundation’s or the State’s opinion is likely to arise, the Foundation must, at the State’s discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Projects or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

4.4 Workers Compensation Certification

The Program Partner certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to Workers’ compensation insurance coverage (if applicable). The Program Partner’s employees and agents will not be considered Foundation nor state employees. Any claims that may arise under the Minnesota Workers Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the Foundation’s or State’s obligation or responsibility.

4.5 Acknowledgment and Endorsement

a. Acknowledgment. The Foundation and the Program Partner receiving an appropriation from the Fund must acknowledge financial support from the Outdoor Heritage Fund in program publications, signage and other public communication and outreach related to Project completed using the appropriation. Acknowledgment may occur, as appropriate, through use of the Fund logo or inclusion of language attributing support from the Fund.

b. Endorsement The Foundation and the Program Partner must not claim that the State endorses its products or services.

4.6 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

4.7 Data Disclosure

Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, the grantee (Foundation and Program Partner) consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the grantee to file state tax returns and pay delinquent state tax liabilities, if any.

4.8 American Disabilities Act

The Foundation and Program Partner must comply with the accessibility guidelines. Structural and nonstructural facilities must meet the design standards in the Americans with Disabilities Act (ADA) accessibility guidelines, 18.1 Americans with Disability Act Accessibility Guidelines for Buildings and Facilities (ADAAG), 2002.

4.9 Reporting Requirements and Associated Costs

Program Partner will submit semi-annual project reports due January 15th and July 15th of each year online at the Foundation website. These reports will evaluate progress and results of the Project including the efficacy of education and information, inspection, and decontamination activities utilized. Costs incurred in preparing required project and budget-related reporting are reimbursable. Costs incurred in conducting required evaluations and preparing evaluation reports as part of the Project work are not reimbursable and must be paid using non-Outdoor Heritage matching funds.

4.10 Monitoring

The State shall be allowed at any time to conduct periodic site visits and inspections to ensure Project progress in accordance with the Foundation's contract with the State, including a final inspection upon program completion. At least one monitoring visit per grant period on all state grants of over \$50,000 will be conducted and at least annual monitoring visits on grants of over \$250,000. Following closure of the program, the State's authorized representatives shall be allowed to conduct post-completion inspections of the site to ensure that the site is being properly operated and maintained and that no conversion of use has occurred.

4.12 Invasive Species Prevention

Foundation and Program Partner must follow Minnesota DNR's Operational Order 113, which requires preventing or limiting the introduction, establishment and spread of invasive species during activities on public waters and DNR administered lands. This applies to all activities performed on all lands under this contract and is not limited to lands under DNR control or public waters. Duties are listed under Sections II and III (p. 5-8) of Operational Order 113 which may be found at http://files.dnr.state.mn.us/assistance/grants/habitat/heritage/oporder_113.pdf.

4.13 Program Requirements

The requirements in Attachment B, Excerpts from DNR Reimbursement Manual, are incorporated herein as part of this contract. The grantees (Foundation and Program Partner) must comply with Attachment F, Additional Outdoor Heritage Fund Requirements (available on request). The attachments are subject to change in law and the DNR Authorized Representative will notify Foundation of modifications.

4.14 Program Termination

The Foundation reserves the right to terminate the project before its completion, with cause, upon 30 days written notice to the Program Partner. Upon receipt of such notice, either verbally or in writing, Program Partner agrees to immediately discontinue incurring expenses against the project. Upon termination, the

