

**September 11, 2014**

**To: Mayor Bemrich and City Council**  
**From: David Fierke, City Manager**  
**Subject: Public Listening Session Contract**



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**ACTION: For Vote Monday, September 22, 2014**

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**Brief History**

The City has long studied the ultimate use of the old hydro-electric dam on the Des Moines River. The cumulative results of the studies show that the dam is not needed, or feasible for hydro-electric power, drinking water, or any other non-recreational use. The City is about to embark on a Comprehensive Planning process that will have a significant focus on the Des Moines River and adjacent land.

**Analysis of Issue**

The Iowa Department of Natural Resources has offered to pay a consultant to conduct a brief community listening and visioning session dealing primarily on the Des Moines River impacted by the hydro electric dam. DNR will hire Don Broshar Consulting, LLC and pay him directly. Mr. Brochar will however interact extensively with Fort Dodge Staff and community stakeholders.

In very general terms, the consultant has two key tasks. First, he will meet with stakeholders individually or in small groups in order to gather different perspectives on how the river could be utilized to positively impact the lives of the residents of Fort Dodge. The Contractor will summarize the ideas he will gather in the interviews and/or focus meetings.

Stakeholders include: Elected officials, appointed recreation commissioners, recreational staff, engineering and operations staff, emergency service providers, neighbors (commercial and residential), anglers, paddlers, winter sport enthusiasts and others.

Second, the Consultant will facilitate the meeting, and the objectives will be to: Share the ideas generated in the initial interviews/focus groups; Provide relevant information about those ideas; create the vision for how the river should be utilized.

The Vision will then lead to planning for what to do with the dam, and provide valuable guidance to the Comp Plan process on planning for adjacent land uses and capital investment associated with the river.

**Budget Impact**

No direct costs to the City but will consume some staff time.

**Recommendation**

I recommend the approval of the resolution to demonstrate to DNR that the, even though we are not paying for anything, the City Council is in favor of the process.

**Implementation**

Although the agreement state it will be complete by January 1, 2015, the taks should be complete by early November then fold well into the Comp Plan process.

Signed



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David Fierke  
City Manager

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION SUPPORTING A CONTRACT WITH THE IOWA DEPARTMENT OF NATURAL RESOURCES AND DON BROSHAR CONSULTING TO GUIDE A PUBLIC PROCESS TO DETERMINE GOALS FOR THE DES MOINES RIVER.**

Whereas, the Iowa Department of Natural Resources has offered to fully fund a public listening session about the Des Moines River, and;

Whereas, the session will enhance the upcoming Comprehensive Plan process, and;

NOW THEREFORE BE IT RESOLVED The City Council endorses this Contract entered into between the Iowa Department of Natural Resources (DNR) and Don Broshar Consulting, LLC (Contractor).

The above Resolution passed and adopted by the City Council of the City of Fort Dodge, Iowa this 22<sup>nd</sup> day of September, 2014.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Other: \_\_\_\_\_

CITY OF FORT DODGE

BY: \_\_\_\_\_

Matt Bemrich, Mayor

ATTEST:

\_\_\_\_\_  
Jeff Nemmers , City Clerk

IOWA DEPARTMENT OF NATURAL RESOURCES  
CONTRACT NUMBER **Contract Number**

Between

IOWA DEPARTMENT OF NATURAL RESOURCES  
And  
Don Broshar Consulting, LLC

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

**DEPARTMENT OF NATURAL RESOURCES**

\_\_\_\_\_  
By: Nate Hoogveen

\_\_\_\_\_  
Date

**CONTRACTOR**

\_\_\_\_\_  
By: Don Broshar Consulting, LLC

\_\_\_\_\_  
Date

**For DNR use only:**

1. Retain the original contract in the project file and send a hardcopy with the first invoice.
2. a) Fax contract to 515-281-8895 (check one box below before faxing)  
OR  
b) Email scanned copy to your Division's Contract Rep:

<b>DIVISION</b>	<b>DIVISION CONTRACT REP</b>
<input type="checkbox"/> Conservation & Recreation	Kim.Rasler@dnr.iowa.gov
<input type="checkbox"/> Director's Office	Karen.Fynaardt@dnr.iowa.gov
<input type="checkbox"/> Environmental Services	Jerah.Sheets@dnr.iowa.gov
<input type="checkbox"/> Management Services	Jennifer.StJohn@dnr.iowa.gov

If you do not have faxing or scanning/emailing capabilities, you may mail a copy of the contract to IA DNR, Wallace State Office Building, Attention: (your respective bureau's contract rep), 502 East 9<sup>th</sup> Street, Des Moines, IA 50319.

**SMALL CONTRACTS  
SPECIAL CONDITIONS**

This Contract is entered into between the Iowa Department of Natural Resources (DNR) and Don Broshar Consulting, LLC (Contractor). The parties agree as follows:

**Section 1      IDENTITY OF THE PARTIES**

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**1.1**      The DNR is authorized to enter into this Contract. The DNR's address is: 502 East Ninth Street, Des Moines, IA 50319. The Principal Contact for the DNR is:  
Nate Hoogeveen, River Programs Coordinator  
Bureau of Land and Waters, Conservation and Recreation Division  
502 E 9<sup>th</sup> St, Des Moines, IA 50319  
Phone: 515-205-2486  
Fax: 515-281-6794  
Email: nate.hoogeveen@dnr.iowa.gov

**1.2**      Don Broshar Consulting, LLC (Contractor) is a consulting firm authorized to do business in the state of Iowa. The Contractor's address is: 105 10<sup>th</sup> Avenue, Slater, IA 50244. The Principal Contact for the Contractor is:  
Don Broshar, Consultant  
105 10<sup>th</sup> Avenue  
Slater, IA 50244  
Phone: 515-228-3643 or 515-231-2630  
Email: donbrosharconsulting@gmail.com

**Section 2      PURPOSE**

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The parties have entered into this Contract to guide the public of Fort Dodge through a process to determine goals for the Des Moines River in the northern part of the city, from the mouth of Lizard Creek on the Des Moines River to the city limits and considering upstream water accesses. Goals from this processed will be used to aid determining the future of the Hydroelectric Dam, which has damaged gate structures.

**Section 3      DURATION OF CONTRACT**

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**3.1      Term of Contract.** The term of this Contract shall be 9/15/2014 until 1/1/2015 unless terminated earlier in accordance with the Termination section of this Contract. However, this Contract shall not begin until it has been signed by both parties.

**3.2      Extension.** DNR shall have the sole option to extend this Contract for subsequent periods, adding up to no more than six years total from the beginning date of the Original Contract, by executing a signed amendment prior to the expiration of this Contract.

**Section 4      STATEMENT OF WORK**

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**4.1      Statement of Work.** The Contractor shall perform the following Tasks by the Task Milestone Dates set out below:

<b>Obligation</b>	<b>Task Milestone Date</b>
Task 1: Interviews. The Contractor shall interview stakeholders identified by the city in order to gather different perspectives on how the river could be utilized to positively impact the lives of the residents of Fort Dodge. The Contractor will summarize the ideas he will gather in the interviews and/or focus meetings.	No later than 11/1/2014
Task 2: Education and vision meeting. The Consultant and the city shall establish a meeting date. The Consultant will facilitate the meeting, and the objectives will be to: Share the ideas generated in the initial interviews/focus groups; Provide relevant information about those ideas; Create the vision for how the river should be utilized.	No later than 12/1/2014
Task 3: Written report. The Consultant will provide the city and DNR with a written summary of the exercise.	No later than 1/1/2015

**4.2 Task Milestone Dates.** The Contractor shall complete its obligations by the Task Milestone Dates set out in section 4.1 above. Failure by the Contractor to complete its obligations by the Task Milestone Dates in this Contract shall constitute material breach of this Contract and shall be grounds for DNR to immediately terminate this Contract for cause.

**4.3 Monitoring Clause.** In compliance with the State of Iowa Accountable Government Act, the DNR will monitor the performance of the Contractor monthly by logging any complaints regarding Contractor's performance and meeting with Contractor, as necessary, to address those complaints to make sure that Contractor is complying with the terms of this Contract and achieving the desired results.

**4.4 Review Clause.** The DNR shall have the right to review and observe, at any time, completed work or work in progress. Contractor shall allow the State of Iowa or the DNR to, without cost, inspect its facilities and books and records relating to invoicing and time records for the purpose of monitoring and evaluating performance of this Contract.

**Section 5 COMPENSATION**

**5.1 Source of Funding.** The source of funding for this Contract is (fill in the source of funding).

**5.2 Compensation.** The Contractor will be paid for the services described in the Section 4.1 of this Contract in an amount not to exceed \$1,150. Payment shall be for satisfactory completion of the Statement of Work outlined in this Contract, provided that Contractor has complied with the terms of this Contract.

**5.3 Invoices.** The Contractor shall submit an invoice for services rendered in accordance with this Contract on a completion of the work basis. The invoice shall comply with all applicable rules concerning payment of such claims. The DNR shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514. Unless otherwise agreed to in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any services provided by or on behalf of the Contractor under this Contract. Payment will be issued to:

Don Broshar Consulting, LLC  
Attention: Don Broshar  
105 10th Avenue  
Slater, IA 50244

**5.4 Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the State any sum under the terms of this Contract, any other Contract, or pursuant to any judgment, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

**5.5 Delay of Payment Due to Contractor's Failure.** If the DNR determines that the Contractor has failed to perform or deliver any service or product required by this Contract, then the Contractor shall not be entitled to any compensation, or any further compensation if compensation has already occurred, under this Contract until such service or product is performed or delivered. The DNR shall withhold that portion of the invoice amount which represents payment for the Task that was not completed, delivered and successfully deployed.

**5.6 Erroneous Payments and Credits.** Contractor shall promptly re-pay or refund to the DNR the full amount of any overpayment or erroneous payment within ten business days after either discovery by Contractor or notification by the DNR of the overpayment or erroneous payment.

## **Section 6 TERMINATION**

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**6.1 Immediate Termination by the DNR.** The DNR may terminate this Contract immediately and without advance notice to the Contractor if the Contractor: breaches the Contract; becomes the subject of any bankruptcy or insolvency proceeding; has failed to comply with applicable state or federal laws, rules, ordinances, regulations or orders; has otherwise engaged in conduct that has or may expose the State or the DNR to liability, as determined in the DNR's sole discretion; has a license or certification that is revoked or otherwise lost if the Contractor is required to be certified or licensed as a condition precedent to providing services; or has furnished any statement, representation or certification in connection with this Contract which is materially false, deceptive, incorrect or incomplete. In addition, the DNR may terminate this Contract immediately and without advance notice to the Contractor if the DNR determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized. The DNR shall be liable to pay Contractor for services provided through the termination date of the Contract.

**6.2 Termination upon 30 Days' Notice.** The DNR may terminate this agreement, without penalty and for any reason, upon 30 days' notice to the Contractor. The DNR shall be liable to pay Contractor for services provided through the termination date of the Contract. In the event the DNR terminates this Contract, the Contractor upon receipt of notice of termination, shall cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs; immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor; cooperate in good faith with DNR, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and immediately return to DNR any payments made by DNR for services that were not rendered by the Contractor.

**6.3 The Contractor's Termination Duties.** The Contractor upon receipt of notice of termination or upon request of the DNR, shall cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, and conclusions resulting therefrom, any other matters the DNR may require. The Contractor upon receipt of notice of termination or upon request of the DNR, shall immediately cease using and return to the DNR any personal property or materials, whether tangible or intangible, provided by the DNR to the Contractor; and shall comply with the DNR's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

## **Section 7 REPRESENTATIONS AND WARRANTIES**

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**7.1 Property, Concepts, Materials, and Works Produced.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the DNR is good and that transfer of title or license to the DNR is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. The Contractor represents and warrants that all the concepts, materials and works produced, or provided to the DNR pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works.

**7.2 Professional Practices.** The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

**7.3 Authority to Enter into Contract.** The Contractor 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 DNR.

## **Section 8 DATA AND WORK PRODUCTS**

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**8.1 Rights in Data.** The DNR shall be and shall remain the owner of all data and records provided to the Contractor. The Contractor will not use the DNR's data and records for any purpose other than providing services under the contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed to third parties or commercially exploited by or on behalf of the Contractor.

**8.2 Ownership of Work Product.** The DNR shall own all work products and deliverables developed or furnished in connection with the Contract by the Contractor or any subcontractor to the extent that any work products or deliverables are generated as a result of this Contract. The Contractor shall require that all agreements with subcontractors provide for the irrevocable assignment of rights to the DNR, without additional consideration of all work products and deliverables of the subcontractors.

## **Section 9 INDEMNIFICATION**

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The Contractor 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 its acts. Indemnification obligation of the Contractor shall survive termination of this Contract.



## **Section 10      LIMITATION OF LIABILITY**

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The Contractor expressly acknowledges that the services procured by this Contract are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the services to be provided by this Contract, the Contractor shall not hold the DNR liable in any manner for the resulting changes. The DNR shall use best efforts to provide 30 days' written notice to the Contractor of any legislative change. During the 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 section shall affect or impair the DNR's right to terminate the Contract pursuant to the termination provisions.

## **Section 11      ADDITIONAL PROVISIONS**

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**11.1 Independent Contractor.** The status of the Contractor shall be that of an independent contractor. 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. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the DNR or the State of Iowa for federal or state tax purposes. The DNR will not withhold taxes on behalf of the Contractor (unless required by law).

**11.2 Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC, Sec 4.

**11.3 Conflict of Interest.** The Contractor covenants that the Contractor presently has no interest and shall not acquire any interest, direct and indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed. In addition, during the term of this Contract, Contractor shall not provide services that would create a conflict of interest with the Contractor's duties set out in this Contract.

**11.4 Amendments.** This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.

**11.5 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 Contract 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 Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate.

**11.6 Assignment and Delegation.** This Contract may not be assigned, transferred, conveyed, or delegated in whole or in part without the prior written consent of the other party.

**11.7 Supersedes Former Contracts or Agreements.** This Contract supersedes all prior contracts or agreements between the DNR and the Contractor for the services provided in connection with this Contract.

**11.8 Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the DNR 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.

**11.9 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; or by Federal Express, courier or other similar and reliable carrier, and shall be addressed to each party as set forth as 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.

**11.10 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.

**11.11 Public Records.** The Contractor shall comply with the requirements of Iowa Code Chapter 22 , including Iowa Code Section 22.7, which defines confidential records and prescribes confidential handling procedures and shall maintain all documents related to this Contract sufficiently and properly throughout the term of this Contract and for a period of at least five years following receipt of Contractor's final payment, whichever occurs last, and shall allow the DNR and any other representative of the state or federal government to access and examine, audit, excerpt and transcribe any directly pertinent documents at no cost to the state or federal government.

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

**11.13 Additional Provisions.** The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

**11.14 Delay or Impossibility of Performance.** The Contractor shall not be in default under this Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. 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 this Contract.

**11.15 Non-Exclusive Rights.** This Contract is not exclusive. The DNR reserves the right to select other contractors to provide services similar or identical to the Statement of Work described in this Contract during the term of this Contract.

**11.16 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 of from Contractor's and/or subcontractors' activities involving third parties arising from the Contract.

**11.17 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.