

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

**NOTICE
 TO
 CONTRACT NO. 071B9200071
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR Porath Contractors Inc. 960 S. Harrison Road Houghton Lake, MI 48629 steve@porathcontractors.com		TELEPHONE (989) 422-4730 Steve Nielson
		BUYER/CA (517) 373-1080 Melissa Castro
Contract Compliance Inspector: Dave Graham (989) 732-3541 Ext. 5006 Snow and Ice Removal Services – Grayling Field Office – Department of Natural Resources		
CONTRACT PERIOD: From: November 19, 2008 To: November 18, 2011		
TERMS 1% discount if paid within 10 days of invoice	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

The terms and conditions of this Contract are attached.

Current Authorized Spend Limit: **\$41,595.00**

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MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are attached. Current Authorized Spend Limit: \$41,595.00	

FOR THE CONTRACTOR: <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Porath Contractors Inc. Firm Name </div> <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Authorized Agent Signature </div> <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Authorized Agent (Print or Type) </div> <div style="text-align: center; border-bottom: 1px solid black;"> Date </div>	FOR THE STATE: <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Signature Melissa Castro, CPPB, Buyer Manager </div> <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Name/Title Services Division, Purchasing Operations </div> <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Division </div> <div style="text-align: center; border-bottom: 1px solid black;"> Date </div>
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STATE OF MICHIGAN
Department of Management and Budget (DMB) Purchasing Operations
For
Department of Natural Resources

CONTRACT #071B9200071

SNOW & ICE REMOVAL SERVICES
For
Office of Land and Facilities
Grayling Field Office



STATE OF MICHIGAN TERMS AND CONDITIONS

I. INTRODUCTION

Under this Contract, the Contractor shall provide Snow and Ice Removal Services for the Department of Natural Resources (DNR), Office of Land and Facilities, Grayling Field Office located at 1955 N. I-75 Business Loop, Grayling, MI 49738.

II. ENTIRE AGREEMENT

This Contract consists of the State's Terms and Conditions. The State's Terms and Conditions consist of the Work Statement and the General Contract Provisions. This Contract constitutes the complete and exclusive agreement and understanding of the parties as it relates to this transaction. This Contract supersedes all proposals, or other prior agreements, and all other communications between the parties relating to this transaction. If there is a conflict between the State's Terms and Conditions and the Contractor's Proposal, the State's Terms and Conditions shall take precedence.

STATEMENT OF WORK

I. INTRODUCTION

A. This section is designed to provide the Contractor with information on requirements associated with this Contract. Quantities specified are estimates. The State is not obligated to purchase in these or any other quantities.

- B. Contract Compliance Inspector: Dave Graham
Department of Natural Resources
Office of Land and Facilities
Grayling Field Office
1955 N. I-75 Business Loop
Grayling, MI 49738
(989) 732-3541 Ext. 5006
- C. DNR Procurement Officer: Ruth Thole
Department of Natural Resources
Procurement Services
530 W. Allegan, 6th Floor
Lansing, MI 48933
Phone: (517) 335-1553
- D. DMB Buyer/Contract Administrator: Melissa Castro, CPPB, Buyer Manager
Department of Management and Budget
Purchasing Operations
530 W. Allegan, 2nd Floor
Lansing, MI 48933
Phone: (517) 373-1080

**II. SPECIFIC REQUIREMENTS**

Services provided under this Contract are for snow and ice removal at the Michigan Department of Natural Resources, Grayling Field Office located at 1955 N. I-75 Business Loop, Grayling, MI 49738.

Contractor must meet with Contract Compliance Inspector within 30 days after Contract award and meet at the start of each season to establish the service schedule prior to starting snow and ice removal services

Description of area to be serviced: Parking lots and driveways entering the field office premises from N. I-75 Business Loop (see blackened area on site map, Attachment #1).

III. CONTRACT TERM

This Contract is for a period of three years beginning approximately November 19, 2008 through November 18, 2011.

This Contract may be renewed in writing by mutual agreement of the parties. This Contract may be renewed for up to two (2) additional one (1) year periods. Contractor performance, quality of service, price, cost savings, and the Contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by DMB Purchasing Operations to renew this Contract.

IV. SCOPE OF WORK

The Contractor shall provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform the snow and ice removal services as described in the specifications detailed herein. The required objective is to maintain the facility(s) in such a manner that provides a clean, healthy and safe environment for occupants and visitors of state owned or leased office facilities.

V. SNOW & ICE REMOVAL SPECIFICATIONS

- A. Snow and ice removal services shall be considered as both "automatic" and "on-call". The Contract Compliance Inspector shall provide the Contractor with a list of DNR contacts authorized to approve snow and ice removal activities.
- B. The Contractor shall furnish the Contract Compliance Inspector with a name and telephone number to be used as a 24 hour contact.
- C. Contractor shall only provide snow plowing services for snowfalls of three inches (3") or more or as requested by Contract Compliance Inspector or designee for all specified parking lots and sidewalk areas (see Attachment #1).
- D. All snow plowing, shoveling of sidewalk areas, applications of rock salt and/or ice melt, and snow removal services shall be completed before 7:30 a.m. on state working days. Holiday service, if required, shall be requested at least 24 hours in advance by the Contract Compliance Inspector or designee. If holiday service is not requested, service shall be done prior to 7:30 a.m. the next working day following the holiday. No snow removal services shall be performed on Saturdays or Sundays.



- E. If service is required after 7:30 a.m. due to snowfall or freezing rain conditions, Contractor shall provide service within two (2) hours after notification from Contract Compliance Inspector or designee.
- F. Contractor shall remove snow from the lot so that all parking spaces are continuously available and mail box is accessible for postal delivery.
- G. Contractor shall remove (shovel or snow blow) snow from all entrances and sidewalks.
- H. Ice removal shall be considered an “on-call” service and shall be performed when requested by Contract Compliance Inspector or designee. Upon request, Contractor shall de-ice parking lot, all entrances and sidewalks. Contractor shall apply rock salt or other ice melting compounds to all parking lot surfaces and specified sidewalk areas to ensure employee and public safety on State property. Applications shall be conducted prior to 7:30 a.m. The State will NOT provide ice-melting products to be applied by the Contractor. All rock salt and/or ice melt shall be provided by the Contractor as part of this Contract. The cost indicated on the Pricing Sheet for the application of ice melting products include the cost of the rock salt or specified product.
- I. The Contractor shall use equipment of sufficient size and type to ensure snow plowing/shoveling is done in a timely and efficient manner. Use of additional equipment such as front end loader, snow blower, etc. is to be included in the prices quoted on the Pricing Sheet.
- J. Contractor shall provide Contract Compliance Inspector a ‘**Notice of Service Provided Slip**’ to verify service was performed. Within 24 hours of each service call, a slip shall be left with the Gaylord Field Office receptionist to the attention of the Contract Compliance Inspector or faxed to the Contract Compliance Inspector to (989) 732-0794.
- K. Invoices must be submitted monthly and are to list **only** the exact services performed in the specified month, including the dates that services were performed. All work must be performed to the satisfaction of the Contract Compliance Inspector or payment will not be authorized.

VI. INSURANCE

Contractor shall have insurance coverage as outlined in the General Contract Provisions for injury to or destruction of property including loss of use there from, and carry automobile hazard insurance as required by law. Proof of Insurance must be provided to the Department of Management and Budget (DMB), Purchasing Operations upon Contract award.

VII. DAMAGE

The Contractor performing work on State property shall report all accidents and/or injuries to the Contract Compliance Inspector. The Contractor shall provide a verbal report to the Contract Compliance Inspector within one hour of occurrence followed by a written report within 24 hours of occurrence. Any and all damage to parking lot, office building, curbs, pavements, shrubs, etc. caused by snow plowing shall be repaired and/or replaced the following spring by the Contractor.

**VIII. MINIMUM EQUIPMENT REQUIRED**

The Contractor must have equipment and staff to adequately perform the specified services, and in the event of mechanical breakdown, will be expected to provide backup service so that snow and ice removal services are performed as requested. Equipment failure **WILL NOT** constitute an acceptable reason for not performing the snow plowing/ice removal service.

IX. PRICE ADJUSTMENTS

Prices quoted are the maximum for a period of 365 days from the date this Contract becomes effective.

Prices are subject to change at the end of each 365 day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. DMB Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). DMB Purchasing Operations also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the Contract period unless further revised at the end of the next 365 day period.

Requests for price changes shall be RECEIVED IN WRITING BY DNR PROCUREMENT SERVICES AT LEAST TEN DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance by DNR and DMB Purchasing Operations before becoming effective. In the event new prices are not acceptable, this Contract may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.



X. PRICING SHEET

The ‘Unit Price’ is the price per service occasion.

The ‘Amount’ is unit price multiplied by **estimated number** of service occasions for the contract period.

Description	Unit Price	Amount
Snow Plowing Parking Lots and Driving Areas. 3" TO 6" SNOW ACCUMULATION. Estimated 15 occasions per season for a total of 45 for the contract period.	<u>\$ 380.00</u> Per occasion	<u>\$17,100.00</u>
Snow Plowing Parking Lots and Driving Areas. 6" TO 12" SNOW ACCUMULATION. Estimated 7 occasions per season for a total of 21 for the contract period.	<u>\$ 525.00</u> Per occasion	<u>\$11,025.00</u>
Snow Plowing Parking Lots and Driving Areas. Over 12" SNOW ACCUMULATION. Estimated 1 occasion per season for a total of 3 for the contract period.	<u>\$ 525.00</u> Per occasion	<u>\$ 1,575.00</u>
Shoveling Sidewalks, Entrances, Elevated Handicap Ramp, and City Sidewalks Surrounding all Parking Lots and Building. 3" TO 6" SNOW ACCUMULATION. Estimated 15 occasions per season for a total of 45 for the contract period.	<u>\$ 75.00</u> Per occasion	<u>\$ 3,375.00</u>
Shoveling Sidewalks, Entrances, Elevated Handicap Ramp, and City Sidewalks Surrounding all Parking Lots and Building. 6" TO 12" SNOW ACCUMULATION. Estimated 7 occasions per season for a total of 21 for the contract period.	<u>\$ 90.00</u> Per occasion	<u>\$ 1,890.00</u>
Shoveling Sidewalks, Entrances, Elevated Handicap Ramp, and City Sidewalks Surrounding all Parking Lots and Building. Over 12" SNOW ACCUMULATION. Estimated 1 occasion per season for a total of 3 for the contract period.	<u>\$ 90.00</u> Per occasion	<u>\$ 270.00</u>
De-Icing All Parking Lots and Driving Areas with Salt. Estimated 4 occasions per season for a total of 12 for the contract period.	<u>\$ 450.00</u> Per occasion	<u>\$ 5,400.00</u>
De-Icing Sidewalks, Entrances, Elevated Handicap Ramp and City Sidewalks Surrounding all Parking Areas and Building (Ice-Melt). Estimated 4 occasions per season for a total of 12 for the contract period.	<u>\$ 80.00</u> Per occasion	<u>\$ 960.00</u>

TOTAL CONTRACT (3 years): \$ \$41,595.00

NOTE: A quick payment discount of 1% off invoice is offered if paid within 10 days.

**XI. CONTACT INFORMATION**Location of Services (Name and Address):

Michigan Department of Natural Resources
Grayling Field Office
1955 N. I-75 Business Loop
Grayling, MI 49738

Contract Compliance Inspector:

NAME: Dave Graham
TITLE: Administrative Manager
PHONE: (989) 732-3541 ext 5006
EMAIL: GrahamD1@michigan.gov

DNR Procurement Officer:

NAME: Ruth Thole
TITLE: Buyer
PHONE: (517) 335-1553
EMAIL: Tholer@michigan.gov

Contractor's contact person responsible for administering this Contract:

NAME: Steve Nielson
TITLE:
PHONE: (989) 422-4730
COMPANY NAME: Porath Contractors Inc.
COMPANY ADDRESS: 960 S. Harrison Road
Houghton Lake, MI 48629
EMAIL: steve@porathcontractors.com
CELL PHONE: (989) 965-4227



GENERAL CONTRACT PROVISIONS

I. MODIFICATIONS OF CONTRACT

This Contract may be modified provided that any changes proposed by either party are requested in writing and mutually agreed to by the official representative of the Contractor shown in this Contract, the Contract Compliance Inspector, and DMB Purchasing Operations.

If a proposed contract change is approved by the DNR Procurement Officer, the DNR Procurement Officer will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

This request is not valid until it is signed by all parties, a Contract Change Notice is issued by the Issuing Office and a Purchase Order may be issued by the Department of Natural Resources. A Contract Change Notice shall accompany any request for change and the Contractor will be provided with a copy of all Contract Change Notices once approved.

II. NO WAIVER OF DEFAULT

The failure of a party to insist upon strict adherence to any term of this Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of this Contract.

III. SEVERABILITY

Each provision of this Contract shall be deemed to be severable from all other provisions of this Contract and, if one or more of the provisions of this Contract shall be declared invalid, the remaining provisions of this Contract shall remain in full force and effect.

IV. HEADINGS

Captions and headings used in this Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

V. RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

**VI. APPLICABLE LAW**

This Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. Any dispute arising herein shall be resolved in the State of Michigan. The Contractor is required to be compliant with all applicable laws.

VII. COST LIABILITY

The State of Michigan assumes no responsibility or liability for costs incurred by the Contractor prior to the signing this Contract. Total liability of the State is limited to the terms and conditions of this Contract.

VIII. CONTRACTOR RESPONSIBILITIES

The Contractor is responsible for the performance of all of its obligations under this Contract, whether the obligations are performed by the Contractor or a subcontractor. The State reserves the right to approve any subcontractor hired to perform the Contractor's obligations under this Contract, and the right to require the Contractor to replace any subcontractor deemed unacceptable by the State. The Contractor is exclusively responsible for adherence by subcontractors to all provisions of this Contract.

Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including but not limited to payment of any and all costs resulting from this Contract.

IX. MEDIA RELEASES

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to this Contract, the Services or this Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

X. DISCLOSURE

All information in a bidder's proposal and this Contract are subject to the provisions of the Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq.

XI. ACCOUNTING RECORDS

The Contractor will be required to maintain all pertinent financial and accounting records and evidence pertaining to this Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time within the duration of this Contract and any extension thereof, and for three (3) years from the expiration date and final payment on this Contract or extension thereof.

**XII. AUDIT OF CONTRACT COMPLIANCE**

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of this Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the requirements of this Contract.

XIII. SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in this Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such safety requirements, rules, laws or regulations shall be a material breach of this Contract and shall be grounds for cancellation of this Contract in accordance with the cancellation provisions contained herein.

XIV. RIGHT TO KNOW ACT (1986 PA 80) – SERVICES

The "Right to Know Act" is intended to provide protection and information to employees who encounter hazardous substances in the workplace. To comply with this act, it is necessary that you fulfill the following:

Labels on all incoming containers of hazardous chemicals must (1) clearly state the identity of the contents, (2) display appropriate hazard warning(s), (3) include first aid information, and (4) list the name and address of the chemical manufacturer, importer, or other responsible party.

A service contractor must comply with the requirements of 1986 PA 80 with respect to the labeling of hazardous chemicals and the provision of Material Safety Data Sheets before such materials are introduced into the workplaces of a contracted service agency. Otherwise, such materials will not be allowed on the premises.

Material Safety Data Sheets related to hazardous chemicals must be presented to the appropriate State building supervisors prior to the introduction of such substances into buildings housing agencies of the State of Michigan. It is recommended that the format of OSHA Form 174 be used as a standard for Material Safety Data Sheets.

XV. WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see www.michigan.gov/mdcs.

XVI. TAXES

Contractor is expected to collect and pay all applicable Federal, State, and local employment taxes for all persons involved in the resulting Contract. Also, Contractor shall maintain appropriate payroll information on a system that can produce any reports that may be needed by the State.

**XVII. GENERAL INDEMNIFICATION**

For purposes of indemnification as set forth in this Contract, State means the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents.

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, expenses, liabilities, penalties, fines, damages, and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any claim, demand, action, citation or legal proceeding against the State arising out of or resulting from the performance of services provided by the Contractor, provided that any such loss, expense, liability, penalty, fine, damage, or claim 1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting there from and 2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

The Contractor's duty to indemnify continues in full force and effect, notwithstanding the expiration or early cancellation of this Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

XVIII. INSURANCE REQUIREMENTS

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

Insurance shall be written for not less than any minimum coverage herein specified or required by law, whichever is greater. All deductible amounts for any of the required policies are subject to approval by the State. (Note: for low risk projects, minimum coverage may be negotiable with State.)

The State reserves the right to reject insurance written by an insurer the State deems unacceptable.

BEFORE BOTH PARTIES SIGN THIS CONTRACT OR BEFORE THE PURCHASE ORDER IS ISSUED BY THE STATE, THE CONTRACTOR MUST FURNISH TO THE STATE, CERTIFICATE(S) OF INSURANCE VERIFYING INSURANCE COVERAGE. THE CERTIFICATE MUST BE ON THE STANDARD "ACCORD" FORM. THE CONTRACT OR PURCHASE ORDER NUMBER MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. All such Certificate(s) are to be prepared and submitted by the Insurance Provider and not by the Contractor.



All such Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED OR MATERIALLY CHANGED without THIRTY (30) days prior written notice having been given to the State. Such NOTICE must include the CONTRACT NUMBER affected.

The Contractor is required to provide the type and amount of insurance listed below:

- A. Commercial General Liability with the following minimum coverages:
1. \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 2. \$2,000,000 Products/Completed Operations Aggregate Limit
 3. \$1,000,000 Personal & Advertising Injury Limit
 4. \$1,000,000 Each Occurrence Limit
 5. \$500,000 Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability policy. All insurance coverage provided relative to this Contract/Purchase Order is PRIMARY to any comparable liability insurance (including self-insurances) carried by the State.

- B. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance for bodily injury and property damage as required by law.
- C. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- D. Employers liability insurance with the following minimum limits:
1. \$100,000 each accident
 2. \$100,000 each employee by disease
 3. \$500,000 aggregate disease

**XIX. NOTICE AND RIGHT TO CURE**

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

XX. CANCELLATION

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:

- A. **Material Breach by the Contractor.** In the event that the Contractor breaches any of its material duties or obligations under this Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling this Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in this Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of Contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a cancellation for convenience.

- B. **Cancellation For Convenience By the State.** The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the services or products specified in this Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make performance of the services under this Contract no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State.



The State may cancel this Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

- C. **Non-Appropriation.** The State may cancel this Contract in the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to annual appropriation or availability of funds for this Contract. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
- D. **Criminal Conviction.** In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity, the State may cancel this Contract.
- E. **Approvals Rescinded.** In the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Article 11, Section 5 of the Michigan Constitution of 1963, and Chapter 7 of the Civil Service Rules, the State may cancel this Contract. Notwithstanding any other provision of this Contract to the contrary, the State Personnel Director is authorized to disapprove contractual disbursements for personal services if the Director determines that disbursements under this Contract violate Article 11, Section 5 of the Constitution or violate applicable Civil Service rules or regulations. Cancellation may be in whole or in part and may be immediate as of the date of the written notice to the Contractor or may be effective as of the date stated in such written notice.

XXI. ASSIGNMENT

The Contractor shall not have the right to assign this Contract or to assign or delegate any of its duties or obligations under this Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this section shall be null and void. Further, the Contractor may not assign the right to receive money due under this Contract without the prior written consent of DMB Purchasing Operations.

**XXII. DELEGATION**

The Contractor shall not delegate any duties or obligations under this Contract to a subcontractor other than a subcontractor named in this Contract unless DMB Purchasing Operations has given written consent to the delegation.

XXIII. NON-DISCRIMINATION CLAUSE

In the performance of any Contract or purchase order resulting herefrom, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. The Contractor further agrees that every subcontract entered into for the performance of any contract or purchase order resulting herefrom will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2101, et seq, and the Persons with Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq, and any breach thereof may be regarded as a material breach of the Contract or purchase order.

XXIV. UNFAIR LABOR PRACTICES

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq, the State shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board.

A Contractor of the State, in relation to this Contract, shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 Public Act 278, MCL 423.324, the State may void any contract if, subsequent to award of the contract, the name of the contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the contractor appears in the register.

XXV. SURVIVOR

Any provisions of this Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of this Contract for any reason.

XXVI. PERFORMANCE REVIEWS

DMB Purchasing Operations and/or DNR may review with the Contractor their performance under this Contract. Performance reviews shall be conducted quarterly, semi-annually, or annually depending on Contractor's past performance with the State. Performance reviews shall include, but are not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of this Contract.



Upon a finding of poor performance, which has been documented by Procurement Services, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Procurement Services, this Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

XXVII. ELECTRONIC PAYMENT AVAILABILITY

Public Act 533 of 2004 requires that payments under this Contract be processed by electronic funds transfer (EFT). If not currently compliant, contractors may register for EFT payments at the Contract & Payment Express website www.cpexpress.State.mi.us. The recommended Contractor must be EFT compliant by the time this Contract is ready for final signatures. In the event that EFT compliance is not met, DNR Procurement Services may withdraw the original recommendation and award instead to a vendor which is compliant.



ATTACHMENT #1 GRAYLING FIELD OFFICE SITE MAP

