

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

January 8, 2009

**NOTICE**  
**OF**  
**CONTRACT NO. 071B9200120**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>North American Midway Entertainment</b> <b>576 Highland Colony Parkway</b> <b>One Paragon Centre, Suite 110</b> <b>Ridgeland, MS 39157</b>  Email: <a href="mailto:dhuston@namidway.com">dhuston@namidway.com</a>	TELEPHONE Danny Huston <b>(765) 468-7667</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-7374 <b>Joan Bosheff</b>
Contract Compliance Inspector: Steven Jenkins (313) 369-8250	
<b>Revenue Contract for Midway Rides, Games and Concessions—Michigan State Fair</b>	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: <b>January 1, 2009</b> To: <b>December 31, 2011</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are those of ITB #07118200062, this Contract Agreement and the vendor's quote dated April 18, 2008. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

This Contract value is a State revenue agreement, estimated to earn \$1,000,000 per fiscal year, or a total of \$3,000,000 for fiscal years 2009, 2010 and 2011.





STATE OF MICHIGAN  
Department of Management and Budget  
Purchasing Operations

**Contract No. 071B9200120**  
**Revenue Contract for**  
**Midway Rides, Games and Concessions**  
**Michigan State Fair, Detroit**

**Buyer Name: Joan Bosheff**  
**Telephone Number: (517) 373-7374**  
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**TABLE OF CONTENTS**  
*Michigan State Fair Midway Rides, Games and Concessions*

<b>Article1 – Statement of Work (SOW)</b> .....	<b>1</b>
<b>1.0 Introduction</b> .....	<b>1</b>
1.001 PROJECT TITLE AND DESCRIPTION .....	1
1.002 PROJECT CONTROL .....	1
1.003 COMMENCEMENT OF WORK .....	2
<b>1.1 Product Quality</b> .....	<b>2</b>
1.101 SPECIFICATIONS .....	2
1.102 RESEARCH AND DEVELOPMENT—DELETED, NOT APPLICABLE .....	7
1.103 QUALITY ASSURANCE PROGRAM .....	7
1.104 WARRANTY FOR PRODUCTS OR SERVICES—DELETED, NOT APPLICABLE .....	7
<b>1.2 Service Capabilities</b> .....	<b>7</b>
1.201 CUSTOMER SERVICE .....	7
1.202 TRAINING—Deleted, Not Applicable .....	7
1.203 REPORTING.....	7
1.204 SPECIAL PROGRAMS—Deleted, Not Applicable .....	7
1.205 SECURITY .....	7
<b>1.3 Delivery Capabilities</b> .....	<b>7</b>
1.301 TIME FRAMES .....	7
1.302 MINIMUM ORDER—Deleted, Not Applicable .....	7
1.303 PACKAGING—Deleted, Not Applicable .....	7
1.304 PALLETIZING—Deleted, Not Applicable .....	7
1.305 DELIVERY TERM—Deleted, Not Applicable .....	7
1.306 ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION--RESERVED .....	7
<b>1.4 Project Price</b> .....	<b>8</b>
1.401 PRICING .....	8
1.402 QUICK PAYMENT TERMS—Deleted, Not Applicable .....	8
1.403 PRICE TERM.....	8
<b>1.5 Quantity term—Deleted, Not Applicable</b> .....	<b>8</b>
<b>1.6 Other Terms and Conditions Needed for this Contract</b> .....	<b>8</b>
<b>Article 2 – General Terms and Conditions</b> .....	<b>9</b>
<b>2.0 Introduction</b> .....	<b>9</b>
2.001 GENERAL PURPOSE .....	9
<b>2.002 CONTRACT ELEMENTS</b> .....	<b>9</b>
2.003 ISSUING OFFICE AND CONTRACT ADMINISTRATOR .....	9
2.004 NOTICE .....	9
2.05 CONTRACT TERM.....	10
2.006 GOVERNING LAW .....	10
2.007 APPLICABLE STATUTES .....	10
2.008 RELATIONSHIP OF THE PARTIES .....	11
2.009 HEADINGS .....	11
2.010 MERGER .....	11
2.011 SEVERABILITY .....	11
2.012 SURVIVORSHIP .....	11
2.013 NO WAIVER OF DEFAULT .....	11
2.014 PURCHASE ORDERS--RESERVED .....	11
<b>2.1 Vendor/Contractor Obligations</b> .....	<b>11</b>
2.101 ACCOUNTING RECORDS.....	11
2.102 NOTIFICATION OF OWNERSHIP .....	11
2.103 SOFTWARE COMPLIANCE—Deleted, Not Applicable .....	12
2.104 LIABILITY INSURANCE .....	12
2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)—Deleted, Not Applicable .....	15
2.106 PREVAILING WAGE .....	15
2.107 PAYROLL AND BASIC RECORDS.....	15
2.108 COMPETITION IN SUBCONTRACTING—Deleted, Not Applicable .....	16
2.109 CALL CENTER DISCLOSURE—Deleted, Not Applicable .....	16
2.110 WORKPLACE DISCRIMINATION .....	16
2.111 LABOR RELATIONS .....	16

<b>2.2</b>	<b>Contract Performance</b>	<b>16</b>
2.201	TIME IS OF THE ESSENCE	16
2.202	CONTRACT PAYMENT SCHEDULE—Deleted, Not Applicable	16
2.203	POSSIBLE PROGRESS PAYMENTS—Deleted, Not Applicable	16
2.204	POSSIBLE PERFORMANCE-BASED PAYMENTS (ACTUAL PERFORMANCE RENDERED)—Deleted, Not Applicable	17
2.205	ELECTRONIC PAYMENT REQUIREMENT—Deleted, Not Applicable	17
2.206	PERFORMANCE OF WORK BY CONTRACTOR	17
<b>2.3</b>	<b>Contract Rights and Obligations</b>	<b>17</b>
2.301	INCURRING COSTS	17
2.302	CONTRACTOR RESPONSIBILITIES	17
2.303	ASSIGNMENT AND DELEGATION	17
2.304	TAXES	17
2.305	INDEMNIFICATION	18
2.306	LIMITATION OF LIABILITY	20
2.307	CONTRACT DISTRIBUTION	20
2.309	ASSIGNMENT OF ANTITRUST CAUSE OF ACTION	20
2.310	PURCHASING FROM OTHER STATE AGENCIES—Deleted, Not Applicable	20
2.311	TRANSITION ASSISTANCE—Deleted, Not Applicable	20
2.312	RESERVED	20
2.313	RESERVED	20
2.314	WEBSITE INCORPORATION	20
<b>2.4</b>	<b>Contract Review and Evaluation</b>	<b>21</b>
2.401	CONTRACT COMPLIANCE INSPECTOR	21
2.402	PERFORMANCE REVIEWS	21
2.403	AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS	21
<b>2.5</b>	<b>Quality and Warranties</b>	<b>21</b>
2.501	PROHIBITED PRODUCTS—Deleted, Not Applicable	21
2.502	QUALITY ASSURANCE—Deleted, Not Applicable	21
2.503	INSPECTION—Deleted, Not Applicable	21
2.504	GENERAL WARRANTIES—Deleted, Not Applicable	21
2.505	CONTRACTOR WARRANTIES	21
2.506	STAFF	23
2.507	RESERVED	23
2.508	EQUIPMENT WARRANTY—Deleted, Not Applicable	23
2.509	RESERVED	23
<b>2.6</b>	<b>Breach of Contract</b>	<b>23</b>
2.601	BREACH DEFINED	23
2.602	NOTICE AND THE RIGHT TO CURE	23
2.603	EXCUSABLE FAILURE	23
<b>2.7</b>	<b>Remedies</b>	<b>24</b>
2.701	CANCELLATION	24
2.702	RIGHTS UPON CANCELLATION	25
2.703	LIQUIDATED DAMAGES	28
2.704	STOP WORK	28
2.705	SUSPENSION OF WORK	29
<b>2.8</b>	<b>Changes, Modifications, and Amendments</b>	<b>29</b>
2.801	APPROVALS	29
2.802	TIME EXTENTIONS—Deleted, Not Applicable	29
2.803	MODIFICATION	29
2.804	AUDIT AND RECORDS UPON MODIFICATION	29
2.805	CHANGES	30



## Article 1 – Statement of Work (SOW)

### 1.0 Introduction

#### 1.001 PROJECT TITLE AND DESCRIPTION

**This is a Revenue Contract for Midway Rides, Games and Concessions for the 2009, 2010 and 2011 Michigan State Fair in Detroit with a Michigan licensed carnival company. Anticipated dates for 2009 Michigan State Fair are August 28, 2009 through September 7, 2009. Dates for 2010 and 2011 are expected to be approximately the same dates.**

**All properties of the Michigan State Fair are located in the City of Detroit, County of Wayne.**

**The goal of this contract is to maximize revenues, increase visitor satisfaction, and promote family values for the approximate 500,000 visitors annually to the Michigan State Fair.**

**Gross Receipts: Where used in this Contract, this term refers to the total amount of money taken in before any deductions including, but not necessarily limited to, taxes or expenses.**

**Concessions: Includes food and merchandise stands along with Games of Skill.**

**Front Footage: The longest single working side of the stand that is available for serving customers. The working side shall include barriers and protruding shelves that increase the length of the working side excluding awnings.**

**Front Footage: The longest single working side of the game stand available for customers to play, the working side shall include barriers and protruding shelves that increase the length of the working side excluding awnings.**

#### 1.002 PROJECT CONTROL

##### Project Control

- a. **The Contractor will carry out this project under the direction and control of the Michigan State Fair.**
- b. **Although there will be continuous liaison with the Contractor team, the Contractor's project manager will meet daily during the Fair and otherwise as requested by the Fair for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.**
- c. **The Contractor will submit to the Fair 60 days prior to the state of the annual Fair, for final approval, a work plan which shall include the following:**

**The Contractor's project organizational structure.**

- (1) **The Contractor's staffing table with names and title of personnel assigned to the project. This shall be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.**
- (2) **The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.**
- (3) **The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.**



### Reports

The Contractor shall be responsible for maintaining all required records. This shall include ride operation reports, ticket and armband inventories, ticket and armband sales accounting, and any other records requested by Michigan State Fair. The Contractor is responsible to maintain all records as required by Federal, State and/or local licensing agencies.

#### 1.003 COMMENCEMENT OF WORK

The Contractor shall show acceptance of the by signing two copies of the contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the contract, including the purchase of necessary materials, until both parties have signed the contract to show acceptance of its terms and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

#### 1.1 Product Quality

##### 1.101 SPECIFICATIONS

**Definite Specifications - All commodities and/or services to be furnished hereunder shall conform to the specifications as noted in the Contract and/or copies of specifications attached.**

### **MIDWAY, RIDES, GAMES AND CONCESSIONS**

#### Appearance and Conduct of Contractor Personnel

The Contractor shall be solely and absolutely responsible for the conduct and personal appearance of all personnel in its employ. Such employees shall be neatly dressed, orderly, and polite in their conduct and speech at all times. Intoxication of or illegal use of controlled substances on the part of the Contractor or its employees, or impolite, discourteous or obscene speech or conduct toward or in hearing or in view of the public shall not be allowed. The Contractor concessionaires and booked in operators shall also meet the requirements mentioned herein. The personal conduct of the Contractor's employees and agents shall, at all times while on the Michigan State Fairgrounds, conform to socially acceptable standards of conduct as determined by the Michigan State Fair. Any departure from these standards shall constitute grounds for the immediate removal or rejection from the fairgrounds.

#### Posting of Prices

The Contractor shall prominently display the price of all games, food, drink, and items offered for sale within the booths furnished pursuant to this contract. In addition, the coupon designation for each ride or device hereunder shall be prominently and legibly displayed for view by the public at the entrance of the ride or device and shall be readable from any approach to the ride or device. If wristbands are sold, the times when wristbands are and are not valid and any other limitations shall be prominently posted at each ticket booth selling wristbands.

The Contractor shall post in a conspicuous place each ride provided by the Contractor notice of the following:

- a. The name(s), location and hours of availability of an ombudsperson(s) who shall handle complaints, concerns, inquires and the like regarding the operation of the ride; and
- b. The purchase of, or receipt of, a ride coupon or wristband will not necessarily allow a fair patron to ride on all rides because of safety reasons.
- c. Signs as required by the Carnival-Amusement Safety Act, Public Act 225 of 1966; Rider Duties and Restrictions and Rider Responsibilities.

#### Admission Charges for Contractor Personnel

It is mutually understood that admission through the outside gates of the Michigan State Fair will be on an ID basis for the Contractor personnel. Passes or complimentary tickets will be provided as needed and requested by the Contractor. The cost of this privilege will be a flat fee of \$10,000 payable in advance to Michigan State Fair. All ID's shall be uniform and provided by the Contactor



at no cost to the Michigan State Fair. It is further understood that the Contractor will provide no passes or complimentary tickets for rides, games, or concessions to any individual or group without the expressed written consent of the Michigan State Fair General Manager.

#### Space for Contractor Trailers

Space for locating an office trailer for the Contractor shall be provided by the Michigan State Fair. There shall be no other office trailer or living trailer located in or around the midway area unless space is specifically designated by the Michigan State Fair.

#### Areas of Operation for Contractors

Area used by the Contractor shall be only in those areas designated by the Michigan State Fair.

#### Number of Rides and Concessions

For the Fair the Contractor shall provide a minimum of sixty (60) portable amusement rides and attractions, of which six (6) shall be "super spectacular" rides and shall include one (1) Roller Coaster, one (1) Giant Wheel ride and one (1) flume-type water ride, nine (9) shall be "spectacular" rides, twenty-two (22) major rides, and twenty-three (23) kiddie rides. There shall no be more than two (2) units of any one ride.

It is the Michigan State Fair's plan that the Contractor shall provide a total of 1,000 linear front feet for the operation of all games and concessions in the carnival midway area.

Space for the Contractor's concessions will not be allocated in non-midway areas unless specifically authorized by the Michigan State Fair Manager.

#### Provision of Ticket Takers and Sellers

The Contractor shall provide for booths and all ticket takers and ticker sellers for the rides and games.

#### Hours of Operation

Hours of operation for the Contractor rides, games and concessions shall be from 11 a.m. until 11 p.m. on Monday, Tuesday, Wednesday and Thursday; 11 a.m. until midnight on Friday, Saturday and Sunday. Hours are subject to change at the request of the Michigan State Fair General Manager.

#### Closing of Rides

The Michigan State Fair or the Contractor shall have the right to close any ride at any time due to weather conditions, for safety or other security reasons.

The Contractor shall provide a daily report of rides not in operation. The report shall include the reason for non-operation.

#### Price Approval of Contractor Prices

The price of and number of coupons to be charged for admission to each ride or device and the price of ride wristbands shall be approved by the Michigan State Fair General Manager before they are implemented. The Contractor understands and agrees that the price posted at the outside entrance of each ride and concession shall be the entire charge made to the public.

#### Furnishing of Tickets

The Contractor shall furnish all necessary ticket stock and/or coupons and wristbands of admission in all denominations for the Contractor rides for the 2009, 2010, and 2011 fairs. The Contractor shall solely pay for the printing costs of such stock. The Purchase Order/Contract between the Contractor and the printer shall specify that all Michigan State Fair tickets printed by the printer are to be delivered only to the Michigan State Fair and accepted by the Michigan State Fair. Original packing slips and manifests shall be included. Tickets and wristbands stock order cannot be duplicated. The Contractor shall buy and have delivered to the Michigan State Fair sealed boxes of tickets, coupons, and wristbands at least 10 days prior to the opening of the annual Michigan State Fair. The tickets, coupons and wristbands shall be numbered consecutively. After auditing the tickets, the Michigan State Fair shall distribute them to the Contractor.

**Contractor Responsibility for Licenses or Clearances**

**The Contractor, at the Contractor's expense, shall obtain any licenses and/or clearance required by law for music, dialogue or other material used in presenting shows, games, concessions and rides.**

**Restrictions on Types of Rides**

**The Contractor shall not bring to the Michigan State Fair or operate any ride, game or concession which may be deemed by the Fairgrounds General Manager to be immoral, illegal, inappropriate, unsafe, prohibited by Act 361 of 1978, Section 12(1), Appendix A, or otherwise objectionable. The Michigan State Fair designated personnel shall at all times have full access to all rides, games and concessions and shall have authority to immediately close any attraction that the Fairgrounds General Manager in his/her sole discretion deem objectionable. No sale or use of live animals, pets, fish, except goldfish, shall be permitted in game operations or as games prizes.**

**Sale of Novelty Items by Contractor**

**The Contractor is prohibited from offering for sale items commonly referred to as "novelties".**

**Contracts with Independent Concessionaires**

**The Michigan State Fair may separately contract with independent concessionaires for food, soft drinks, other concessions, special exhibits, entertainment, live animal rides and shows. The Contractor shall accept these independent concessionaires and in no way interfere with their operations.**

**Appearance of Rides, Games and Concessions**

**The Contractor concessionaires shall have equipment that is attractive, well maintained, and modern. The Contractor shall provide uniformity in the appearance of the game booths, including canvas that is clean and free of obvious tears and holes.**

**On-Site Presence of Owner**

**The physical, on-site presence of the current owner(s) or Michigan State Fair approved owner-representative of the Contractor is a condition precedent to the performance of this contract. In the event that the Contractor's company shall be sold in whole or in part to another party during the lifetime of this Contract, the Michigan State Fair, at its sole option, shall have the right to terminate this agreement by giving thirty (30) days written notice.**

**Rental Payments for Games, Concessions, Rides and Cleaning Deposit**

**Payments for games and concessions space rental shall be made by the Contractor to the Michigan State Fair in accordance with the following schedule:**

**The Contractor guarantees the Michigan State Fair a minimum non-refundable payment of \$1,000,000 per year for the three years of the contract. For the first year, the Contractor will provide the Michigan State Fair a payment of \$500,000 upon the signing of the contract and \$500,000 subsequent years on the Contract anniversary date of January 1. The second increment of \$500,000 will be automatically paid the day prior to the State Fair opening. In addition, Michigan State Fair will receive \$1,000,000 for each of the two one-year option years if the State chooses to exercise one or both of the option years.**

**Deposit for Cleaning**

**The amount of \$7,000 shall be paid to the Michigan State Fair ten days (10) before the start of the Fair to ensure that the Contractor properly cleans the grounds and disposes of trash in the proper manner at the conclusion of the Fair. This deposit shall be returned ten (10) days after the close of the Fair after an inspection indicates that cleanup has been appropriate. If upon inspection it is deemed that Contractor has not cleaned the grounds properly, then written notice shall be sent to contractor by registered mail stating the reason for the notice and what steps the contractor shall take to remedy the situation. If the Contractor does not remedy the situation within five (5) days of receiving written notice, the \$7,000 cleaning deposit shall be forfeited and the Michigan State Fair shall conduct the necessary clean-up. The Contractor shall be responsible for all costs of clean-up that is conducted by Michigan State Fair including any cost that exceed the amount of the deposit but shall not be entitled to any refund if cost is less than deposit.**



#### Security

The Michigan State Fair will supply security at the Fairgrounds at no expense to the Contractor. The fairgrounds are completely enclosed by chain link fence with security provided by a private contractor, Michigan State Police and Detroit Police Department. Access gates will be locked at 1:00 a.m. Entry to the fairgrounds after 1:00 a.m. will be through a gate designated by the Michigan State Fair.

#### Electrical Service

Electrical service shall not be provided to the Contractor by the Michigan State Fair. It is understood and agreed that the Contractor will provide an electrical generator sufficient to properly handle all the Contractor electrical requirements. The Michigan State Fair will, however, furnish general illumination street lighting in the Midway localities at no cost to the Contractor. The Michigan State Fair agrees to furnish to the Contractor, at no charge, water from stationary locations, as available.

#### Contractor Set-up and Tear-down Before and After the Fair

Move-in/set up may commence no earlier than ten (10) days preceding opening day of the Fair. Tear-down/removal shall be completed no later than five (5) days following Fair closing.

At the close of the Fair and upon dismantling and removal of games and exhibits, the Contractor shall restore the assigned Midway area to its original condition. Cleanup shall be completed within five (5) days following the closing day of the Fair. Any equipment remaining on the Fairgrounds after five (5) days without the Fairground's General Manager's approval will result in a charge of \$100 per day per vehicle or attraction until removed. In addition, if all grounds are not properly cleaned and rubbish disposed of properly, the Michigan State Fair shall not return the \$7,000 deposit provided before the start of the Fair.

#### Complimentary Ride Passes

At least 30 days prior to the opening day of the Fair, the Contractor shall provide the Michigan State Fair management with complimentary ride passes equivalent to no less than 500 rides.

#### TASKS

The following is a preliminary analysis of the major tasks involved for developing the end product of this project. The Contractor is not, however, constrained from supplementing this listing with additional steps, sub-tasks or elements deemed necessary to permit the development of alternative approaches or the application of proprietary techniques.

- a. At least 60 days prior to the start of the Michigan State Fair each year, the Contractor shall present to the State Fair General Manager for approval information which shall include, but not necessarily be limited to, the following:
  - (1) A diagram showing the proposed location and name of all rides, games and concessions.
  - (2) A listing describing the number, type, name and quality or rides, games and concessions to be provided.
  - (3) Photographs of all rides with a listing manufacturer, size, year of manufacturer and ride capacity per hour.
  - (4) Provide for each ride, game and non-food concession the price(s) that will be charged and for food concessions the price(s) of each menu item.
  - (5) The name and address of the owner of each ride, game and concession.
  - (6) The Contractor shall describe all other equipment which he/she proposes to provide including such items as electric generators, ticket booths, office/resident trailers, golf carts, etc.



These lists shall not be materially different from the lists provided with the Contractor's initial proposal. The Michigan State Fair has the final approval as to the layout of the Midway.

- b. The Contractor shall design, implement and oversee a ride safety program. The Contractor shall also provide the State Fair General Manager with accurate copies of all independent inspection reports and/or correction orders, including those of its insurance company and/or insurance underwriter, relating to the Contractor operations at the Michigan State Fair within four (4) hours after the Contractor receipt of such reports. Include a narrative description of your process for ensuring the safety of all rides.
- c. The Contractor will setup and operate portable amusement rides, games and concessions during all days of the 2009, 2010 and 2011 Michigan State Fair in areas as designated by the Fair.
- d. The Contractor shall oversee the operations of the rides, games and concessions to ensure a high level of conduct by employees/subcontractors.
- e. The Contractor shall provide an ombudsperson(s) to be available to the patrons of the fair at all times that the rides, games or concessions are scheduled to be in operation. The Contractor shall handle all complaints, comments, and concerns regarding the Contractor rides, games or concessions. The Contractor shall designate three (3) managers to serve as Ombudsperson to supervise and assist with all guest inquiries. All rides, games and food concessions shall have signs giving the name and location of the Ombudsperson during Fair operating hours.
- f. The Contractor shall provide the Michigan State Fair management with ideas for marketing the rides and shall assist management in implementing promotional ideas. All such support shall be made only with the approval of the State Fair General Manager.
- g. The Contractor shall be responsible for keeping the areas around their rides, games and concessions clean and shall routinely inspect the areas for cleanliness.
- h. The Contractor shall promptly take their rides, games and concessions down and move them off the fairground property at the close of the Fair as specified in this Contract.

#### Quality and Variety of Rides, Games and Concessions

It is the desire of the Michigan State Fair that a single Contractor own all of the rides proposed and has no plans to utilize outside contractors to provide rides for the annual Michigan State Fair. The Contractor shall notify Michigan State Fair if this situation changes and any non-contractor owned rides are to be used.

The Contractor shall have written contracts with each game and food concession owner that will be present at the Michigan State Fair. Each game and food concession will be identified during the run of the Michigan State Fair through the use of a posted assigned unit numbers and every employee will wear an identification badge designating name, employer, and assigned employee number. This information is on file with the Contractor's office and will be available to authorized Michigan State Fair officials as requested.

The Contractor shall provide the following additional equipment: office, ticket boxes, electric generators, cable, distribution boxes, lighting, employee living facilities, truck, tractors and other support equipment, cable covers, signs, employee education center and employee convenience center.

The Michigan State Fair has the final approval as to the layout of the Midway.

#### Technical Work Plans

The Contractor shall customize the carnival Midway layout on an annual basis. The Contractor shall work with the Michigan State Fair management to establish a layout that is attractive and safe as well as offering easy access to all involved. The Contractor shall implement a technical work plan that utilizes a full-time administrator to assure contract compliance. At least 90 days prior to the



start of each Fair, the Contractor’s manager shall visit the Fair to establish the carnival midway design. At that time, a diagram and complete list of rides, concessions and other equipment shall be provided.

1.102 RESEARCH AND DEVELOPMENT—*DELETED, NOT APPLICABLE*

1.103 QUALITY ASSURANCE PROGRAM

The Contractor agrees to maintain and administer a quality assurance and safety program and to make details of such program available to the State as requested. The Contractor also agrees to abide by all of the Contractor’s published training and safety materials such as “Employee Safety Guidelines”, “Safety Program Policy and Procedure Outline” and “Ride Admission Policy” handbooks. All such materials shall be submitted with the Contractor’s proposal.

1.104 WARRANTY FOR PRODUCTS OR SERVICES—*DELETED, NOT APPLICABLE*

1.2 Service Capabilities

1.201 CUSTOMER SERVICE

The Contractor shall have an accessible customer service department with an individual specifically assigned to the Michigan State Fair account.

1.202 TRAINING—*Deleted, Not Applicable*

1.203 REPORTING

The Contractor shall have the capability to provide various reports when requested by the Michigan State Fair.

1.204 SPECIAL PROGRAMS—*Deleted, Not Applicable*

1.205 SECURITY

The Contract will require the Contractor’s staff to use the Michigan State Fairgrounds facilities. The State may decide to perform a security background check. If so, the Contractor will be required to provide to the State a list of all people that will service the Michigan State Fair, including name and date of birth (social security number or driver license number would also be helpful).

The Contractor and its subcontractors shall comply with the security access requirements of the Michigan State Fair.

1.3 Delivery Capabilities

1.301 TIME FRAMES

Dates for the 2009 Michigan State Fair are subject to change but are anticipated to be August 29 through September 7, 2009. The 2010 and 2011 Fair dates will be announced when determined.

1.302 MINIMUM ORDER—*Deleted, Not Applicable*

1.303 PACKAGING—*Deleted, Not Applicable*

1.304 PALLETIZING—*Deleted, Not Applicable*

1.305 DELIVERY TERM—*Deleted, Not Applicable*

1.306 ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION--*RESERVED*



- 1.4 Project Price
  - 1.401 PRICING

**This is a revenue contract. See Attachment A for pricing.**

- 1.402 QUICK PAYMENT TERMS—*Deleted, Not Applicable*

- 1.403 PRICE TERM

**Percentage to be paid to the Michigan State Fair for percentage of gross ride receipts shall be firm for the duration of the Contract period. Price for fees paid to the Michigan State Fair for per front foot for games and concessions shall be firm for the duration of the Contract period.**

**Prices for costs of rides and games shall have approval of the Michigan State Fair management. The Contractor shall submit prices in writing at least sixty (60) days prior to each Fair.**

**Any requests for special promotional programs shall be submitted to the Fair management at least ninety (90) days prior to the Fair for review and action.**

**In the event of a preview night or similar promotional activity is held prior to the official opening of the Fair, the Fair General Manager shall have the right to negotiate a percentage of ride and games of skill gross revenues payable to the Michigan State Fair.**

- 1.5 Quantity term—*Deleted, Not Applicable*

- 1.6 Other Terms and Conditions Needed for this Contract
  - 1.601 Quality and Variety of Rides, Games and Concessions

**The Fairgrounds has the final say as to layout of midway and the Kiddieland lot.**



## Article 2 – General Terms and Conditions

### 2.0 Introduction

#### 2.001 GENERAL PURPOSE

This is a Revenue Contract for Midway Rides, Games and Concessions for the Michigan State Fair, State of Michigan, Department of Management and Budget. The Contractor will be required to furnish all such materials and services as defined in this RFP during the CONTRACT period.

#### 2.002 CONTRACT ELEMENTS

The terms and conditions of this Contract are as set forth in the RFP and in the Contractor's response thereto (the "Proposal"), which are hereby incorporated herein by reference and made part hereof. Any provisions herein modifying section of the RFP or Proposal are strictly limited to the specific reference and do not waive requirements or provisions of those documents unless specifically identified and referenced in the Contract. In the vent of any inconsistency between the RFP, the Proposal and this Contract, the documents will be interpreted in the following order of priority:

- This Contract
- The RFP
- The Proposal

#### 2.003 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing, for the Michigan State Fair. Where actions are a combination of those of Purchasing and Michigan State Fair, the authority will be known as the State.

Purchasing is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Purchasing is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Purchasing will remain the **SOLE POINT OF CONTACT** throughout the procurement process.

Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Purchasing and the listed contract administrator

All communications covering this procurement shall be addressed to contract administrator indicated as follows:

Department of Management and Budget  
Purchasing Operations  
Attn: [Joan Bosheff](#)  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
Telephone: (517) 373-7374  
Email: [bosheffj@michigan.gov](mailto:bosheffj@michigan.gov)

#### 2.004 NOTICE

Any notice given to a party under this Contract shall be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

**2.05 CONTRACT TERM**

**This Contract is for a period of three (3) years beginning January 1, 2009, through December 31, 2011. Contract.**

**Option. The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Contractor performance, quality of products, 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 Purchasing Operations to exercise an option year.**

**Extension. At the sole option of the State, the contract may also be extended. The Contractor performance, quality of products, 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 Purchasing Operations to exercise an option year.**

**Written notice will be provided to the Contractor within 30 days, provided that the State gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.**

**2.006 GOVERNING LAW**

**The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.**

**2.007 APPLICABLE STATUTES**

**The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.**

**MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)**

**MI OSHA MCL §§ 408.1001 – 408.1094**

**Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.**

**Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.**

**MI Consumer Protection Act MCL §§ 445.901 – 445.922**

**Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.**

**Department of Civil Service Rules and regulations**

**Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.**

**Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.**

**MCL §§ 423.321, et seq.**

**MCL § 18.1264 (law regarding debarment)**

**Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.**

**Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.**

**Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795**

**Rules and regulations of the Environmental Protection Agency**

**Internal Revenue Code**

**Rules and regulations of the Equal Employment Opportunity Commission (EEOC)**

**The Civil Rights Act of 1964, USCS Chapter 42**

**Title VII, 42 USCS §§ 2000e et seq.**

**The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.**

**The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.**

**The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.**

**The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.**

**The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.**

**Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106**



Sherman Act, 15 U.S.C.S. § 1 et seq.  
 Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.  
 Clayton Act, 15 U.S.C.S. § 14 et seq.  
 Carnival-Amusement Safety Act of 1966 Act 225 of 1966 as amended

2.008 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.**

2.009 HEADINGS

**Captions and headings used in the 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.**

2.010 MERGER

**This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.**

2.011 SEVERABILITY

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

2.012 SURVIVORSHIP

**Any provisions of the 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 the Contract for any reason.**

2.013 NO WAIVER OF DEFAULT

**The failure of a party to insist upon strict adherence to any term of the 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 the Contract.**

2.014 PURCHASE ORDERS--RESERVED

2.1 Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

**The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the 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 during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.**

2.102 NOTIFICATION OF OWNERSHIP

**The Contractor shall make the following notifications in writing:**



1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing Operations within 30 days.
2. The Contractor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Purchasing Operations or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 SOFTWARE COMPLIANCE—*Deleted, Not Applicable*

2.104 LIABILITY INSURANCE

A. Insurance

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.

All insurance coverage provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See [www.michigan.gov/cis](http://www.michigan.gov/cis)

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.



Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor shall furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage (“Certificates”). The Certificate shall be on the standard “accord” form or equivalent. THE CONTRACT OR PURCHASE ORDER NO. SHALL BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice shall include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State’s sole option, result in this Contract’s termination.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

- 1. Commercial General Liability with the following minimum coverage:

\$2,000,000	General Aggregate Limit other than Products/Completed Operations
\$2,000,000	Products/Completed Operations Aggregate Limit
\$1,000,000	Personal & Advertising Injury Limit
\$1,000,000	Each Occurrence Limit
\$500,000	Fire Damage Limit (any one fire)

The Contractor shall list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor shall have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor’s business for bodily injury and property damage as required by law.

The Contractor shall list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- 3. Workers’ compensation coverage shall 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 shall be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor shall provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees’ activities occur.

Any certificates of insurance received shall 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.



- 4. Employers liability insurance with the following minimum limits:
  - \$100,000 each accident
  - \$100,000 each employee by disease
  - \$500,000 aggregate disease
  
- 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
  
- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
  
- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
  
- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

B. Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor’s insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor’s liability or responsibility.

C. Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the “Certificates”). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer’s attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or



termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)—*Deleted, Not Applicable*

2.106 PREVAILING WAGE

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You shall also post, in a conspicuous place, the address and telephone number of the Michigan Department of Consumer and Industry Services, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.107 PAYROLL AND BASIC RECORDS

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Contractor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator



The Contractor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Contractor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

2.108 COMPETITION IN SUBCONTRACTING—*Deleted, Not Applicable*

2.109 CALL CENTER DISCLOSURE—*Deleted, Not Applicable*

2.110 WORKPLACE DISCRIMINATION

The Contractor represents and warrants that in performing services for the State pursuant to this Contract, 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 handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting here from 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 37.2201, 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.

Vendor hereby represents that in performing this contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.; the Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626 et seq.; the Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

2.111 LABOR RELATIONS

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. A Contractor of the State, in relation to the 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.

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

The Contractor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

2.202 CONTRACT PAYMENT SCHEDULE—*Deleted, Not Applicable*

2.203 POSSIBLE PROGRESS PAYMENTS—*Deleted, Not Applicable*



2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (ACTUAL PERFORMANCE RENDERED)—*Deleted, Not Applicable*

2.205 ELECTRONIC PAYMENT REQUIREMENT—*Deleted, Not Applicable*

2.206 PERFORMANCE OF WORK BY CONTRACTOR

**The Contractor shall perform on the site and with its own organization according to the statement of work of this Contract, work equivalent to at least one-hundred percent (100%) of the total amount of work to be performed under the Contract.**

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

**The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.**

2.302 CONTRACTOR RESPONSIBILITIES

**The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract shall include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors shall be approved by the State, in writing, prior to such change.**

2.303 ASSIGNMENT AND DELEGATION

**The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the 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 the Contract without the prior written consent of the Director of Purchasing Operations.**

**The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing Operations has given written consent to the delegation.**

2.304 TAXES

**Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.**

**Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.**

**The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.**



## 2.305 INDEMNIFICATION

**General Indemnification**

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

**Patent/Copyright Infringement Indemnification**

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.



### Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

### Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

### Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect not withstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

### Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent --that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the



State of Michigan, or any of its subdivisions pursuant to this Section, shall be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

#### 2.306 LIMITATION OF LIABILITY

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

#### 2.307 CONTRACT DISTRIBUTION

Purchasing Operations shall retain the sole right of Contract distribution to the Michigan State Fair unless other arrangements are authorized by Purchasing Operations.

#### 2.308 NEWS RELEASES

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

#### 2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

#### 2.310 PURCHASING FROM OTHER STATE AGENCIES—*Deleted, Not Applicable*

#### 2.311 TRANSITION ASSISTANCE—*Deleted, Not Applicable*

#### 2.312 *RESERVED*

#### 2.313 *RESERVED*

#### 2.314 WEBSITE INCORPORATION

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.



2.4 Contract Review and Evaluation  
 2.401 CONTRACT COMPLIANCE INSPECTOR

**Upon receipt at Purchasing Operations of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Purchasing Operations. The Contract Compliance Inspector for this project is:**

**Steven Jenkins  
 Michigan State Fair  
 1120 West State Fair Avenue  
 Detroit, MI 48203  
 Telephone: (313) 369-8250  
 Email: [jenkinss@michigan.gov](mailto:jenkinss@michigan.gov)**

2.402 PERFORMANCE REVIEWS

**Purchasing Operations in conjunction with the Michigan State Fair may review with the Contractor their performance under the Contract. Performance reviews shall be conducted annually depending on Contractor’s past performance with the State. Performance reviews shall include, but 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 the Contract.**

**Upon a finding of poor performance, which has been documented by Purchasing Operations, 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 Purchasing Operations, the 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.**

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

**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 the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.**

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS—*Deleted, Not Applicable*

2.502 QUALITY ASSURANCE—*Deleted, Not Applicable*

2.503 INSPECTION—*Deleted, Not Applicable*

2.504 GENERAL WARRANTIES—*Deleted, Not Applicable*

2.505 CONTRACTOR WARRANTIES

**The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:**

- 1. The Contractor will perform all services in accordance with high professional standards in the industry;**
- 2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;**



3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.
11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
13. The Contractor is qualified and registered to transact business in all locations where required.
14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.



2.506 STAFF

The State reserves the right to approve the Contractor’s assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.

The Contractor shall not remove or reassign, without the State’s prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor’s obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel shall be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel’s employment.

2.507 *RESERVED*

2.508 EQUIPMENT WARRANTY—*Deleted, Not Applicable*

2.509 *RESERVED*

2.6 Breach of Contract

2.601 BREACH DEFINED

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.

2.602 NOTICE AND THE 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.

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.



2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

## 2.7 Remedies

### 2.701 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:

1. **Material Breach by the Contractor.** In the event that the Contractor breaches any of its material duties or obligations under the 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 canceled 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 the 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 the 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 canceled.

In the event this Contract is canceled 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 the Contract for a cancellation for convenience.

2. **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 limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and



- (c) unacceptable prices for additional services requested by the State. The State may cancel the 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 canceled.
3. **Non-Appropriation.** 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 appropriation or availability of funds for this project. 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.
  4. **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.
  5. **Approvals Rescinded.** The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

## 2.702 RIGHTS UPON CANCELLATION

### A. Rights and Obligations Upon Termination

- (1) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (2) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for partially completed Deliverables, on a percentage of completion basis. All completed or partially completed Deliverables prepared by



Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

- (3.) If any such termination by the State is for cause, the State shall have the right to set-off against any amounts due Contractor the amount of any damages for which Contractor is liable to the State under this Contract or pursuant to law or equity.
- (4.) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under this Contract, and may further pursue completion of the Services under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

B. Termination Assistance

If the Contract (or any Statement of Work issued under it) is terminated for any reason before completion, Contractor agrees to provide for up to two-hundred seventy (270) calendar days after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of the Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. The State shall compensate Contractor for such termination assistance at the same rates and charges set forth in the Contract on a time and materials basis in accordance with the Labor Rates indicated within Contractor's pricing section. If the Contract is terminated by Contractor under Section 20, then Contractor may condition its provision of termination assistance under this Section on reasonable assurances of payment by the State for such assistance, and any other amounts owed under the Contract.

C. Reservation of Rights

Any termination of the Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

D. End of Contract Transition

In the event the Contract is terminated, for convenience or cause, or upon expiration, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of the Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 270 calendar days. These efforts shall include, but are not limited to, the following:

- (1) **Personnel** - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors.



- (2) **Knowledgeable Personnel.** Contractor will make available to the State or a Third Party Provider knowledgeable personnel familiar with the operational processes and procedures used to deliver products and services to the State. The Contractor personnel will work with the State or third party to help develop a mutually agreeable transition plan, work to transition the process of ordering, shipping and invoicing equipment and services to the State.
- (3) **Information -** The Contractor agrees to provide reasonable detailed specifications for all Services needed by the State, or specified third party, to properly provide the services required under the Contract. The Contractor will also provide any licenses required to perform the Services under the Contract.
- (4) **Software. -** The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services under the Contract. This shall include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level.
- (5) **Payment -** If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations). The hourly rates or fixed price to be charged will be agreed upon prior to the work commencing.
- (6) **Single Point of Contact.** Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.

E. Transition out of this Contract

- (1) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the Contractor agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
  - (i) Cooperating with any contractors, vendors, or other entities with whom the State contracts to meet its telecommunication needs, for at least two hundred and seventy (270) days after the termination of this Contract;
  - (ii) Reserved.
  - (iii) Providing the State with all asset management data generated from the inception of this Contract through the date on which this Contract is terminated, in a comma-delimited format unless otherwise required by the Program Office;
  - (iv) Reconciling all accounts between the State and the Contractor;
  - (v) Allowing the State to request the winding up of any pending or ongoing projects at the price to which the State and the Contractor agreed at the inception of the project;
  - (vi) Freezing all non-critical software changes;
  - (vii) Notifying all of the Contractor's subcontractors of procedures to be followed during the transition out phase;
  - (viii) Assisting with the communications network turnover, if applicable;
  - (ix) Assisting in the execution of a parallel operation until the effective date of termination of this Contract
  - (x) Answering questions regarding post-migration services;
  - (xi) Delivering to the State any remaining owed reports and documentation still in the Contractor's possession.
- (2) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:



- (i) Reconciling all accounts between the State and the Contractor;
- (ii) Completing any pending post-project reviews.

#### 2.703 LIQUIDATED DAMAGES

Liquidated damages will be assessed as follows:

The dates for the games of skill, rides, shows, and exhibits activity have been fixed so that the service covered by this contract is consistent with the schedule of the Michigan State Fair programs. Any delay will interfere with the proper implementation of the Michigan State Fair programs. From the nature of this case it would be impractical and extremely difficult to fix the actual damage sustained in the event of any such delay. The Fairgrounds and the Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be in the amount set forth below, and they agree that in the event of any such delay the Contractor shall pay such amount as liquidated damages and not as a penalty. If the Contractor does not have the rides, games and concessions ready for use on or before 11:00 a.m. of the opening day of the Fair, the Contractor shall pay to the Michigan State Fair as fixed and agreed, liquidated damages in the amount of \$1,000.00 for each ride and \$500 for each game and or concession that are not operational. In addition, the Contractor shall pay to the Michigan State Fair as fixed and agreed, liquidated damages in the amount of \$600 for each ride below the minimum of 60 required by this Contract if such ride(s) are not operational during a majority of each day of the Fair for each year of this Contract. A majority of the day shall be defined as seven hours. Operation shall be defined as 75% of the capacity of total patrons per ride cycle.

#### 2.704 STOP WORK

1. The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:
  - a) Cancel the stop work order; or
  - b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.
2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
  - a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to the performance of any part of this Contract; and
  - b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.



An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.

#### 2.705 SUSPENSION OF WORK

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

#### 2.8 Changes, Modifications, and Amendments

##### 2.801 APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

##### 2.802 TIME EXTENSIONS—*Deleted, Not Applicable*

##### 2.803 MODIFICATION

Purchasing Operations reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. **The item(s) may be included on the Contract, only if prior written approval has been granted by Purchasing Operations.**

##### 2.804 AUDIT AND RECORDS UPON MODIFICATION

**DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form**



Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Purchasing Operations. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

#### 2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
- (a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
  - (1) The date, circumstances, and source of the order; and
  - (2) That the Contractor regards the order as a change order.
- (b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.



ATTACHMENT A

PRICING SHEET  
ANNUAL MICHIGAN STATE FAIR

1. Rides:

% Fee	Gross Revenues
a. 100%	Up to and including \$250,000.00
b. 100%	\$250,000.01 through \$500,000.00
c. 100%	\$500,000.01 through \$750,000.00
d. 28%	\$750,000.01 through \$1,000,000.00
e. 0%	\$1,000,000.01 through \$1,250,000.00
f. 0%	\$1,250,000.01 through \$1,500,000.00
g. 0%	\$1,500,000.01 through \$3,000,000.00
h. 55%	Over \$3,000,000.01

For the exclusive Midway Ride and Game Operator and non-exclusive Food, Drink Sales and Direct Sales operator at the Michigan State Fair for the term of 2009, 2010 and 2011 inclusive offers the following guaranteed annual flat payment: 3 year pre-opening advance minimum guarantee to the State of Michigan of \$3,000,000.00, or \$1,000,000.00 per year.

2. Games & Concessions

- a. \$180.00 per linear foot X 700 linear feet = \$126,000.00 for Games
- b. \$180.00 per linear foot X 300 linear feet = \$54,000.00 for Concessions