

STATE OF MICHIGAN
 DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
 STATE OPERATIONS – PURCHASING AND CONTRACTS
 RESERVE FORCES SUPPORT CENTER
 3423 N. MARTIN LUTHER KING JR BLVD, SUITE 320
 LANSING, MI 48906

NOTICE OF CONTRACT NO. 511B6600054
 between
THE STATE OF MICHIGAN
DEPARTMENT OF MILITARY AND VETERAN AFFAIRS
 and

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|--|---------------------|-------------------------|
| Cornelli Acquisitions./L.C, Materials PO Box 83 McBain, MI 49657 | Adam Gilde | adam@lcmaterials.net |
| | TELEPHONE | CONTRACTOR #, MAIL CODE |
| | 231-825-2473 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|-------------------------|--------|----------------------|--------------|----------------------------|
| PROGRAM MANAGER: | DMVA | Caleb Allen | 989-344-6186 | Caleb.j.allen@us.army.mill |
| BUYER: | DMVA | Elizabeth Noffsinger | 989-344-6190 | noffsingere@michigan.gov |

| CONTRACT SUMMARY: | | | |
|---|-----------------------|--------------------------------|---|
| DESCRIPTION: Provide concrete materials to Camp Grayling Joint Maneuver Training Center | | | |
| INITIAL TERM | EFFECTIVE DATE | INITIAL EXPIRATION DATE | AVAILABLE OPTIONS |
| Three years | 6/1/2016 | 5/31/2019 | Two, One year options |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| Net 30 | N/A | N/A | N/A |
| ALTERNATE PAYMENT OPTIONS: | | | AVAILABLE TO MI/DEAL PARTICIPANTS |
| <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other | | | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |
| MINMUM DELIVERY REQUIREMENTS: | | | |
| N/A | | | |
| MISCELLANEOUS INFORMATION: | | | |

N/A

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$150,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation # **051116B0007432**
Orders for delivery will be issued directly by the Department of Military and Veteran Affairs through the issuance of a Purchase Order Form.

Notice of Contract #:

| FOR THE CONTRACTOR: | FOR THE STATE: |
|---------------------------------------|--|
| Cornillie Acquisitions/L.C. Materials | Signature |
| Firm Name | Kimberly Graham Buyer Manager, CPPB |
| Authorized Agent Signature | Name/Title |
| Joseph C. Cornillie | Department of Military and Veteran Affairs |
| Authorized Agent (Print or Type) | Enter Name of Agency |
| 5/17/2016 | 5/20/2016 |
| Date | Date |



STATE OF MICHIGAN
Department of Military and Veterans Affairs

Concrete Materials
CONTRACT NO. 511B6600054

DMVA, State Operations, Purchasing and Contracts

Buyer Name: Elizabeth Noffsinger
Telephone Number: 989-344-6190
Fax: 989-344-6118
E-Mail Address: noffsingere@michigan.gov

STATE OF MICHIGAN

Contract No. 511B6600054

Concrete Materials

STATEMENT OF WORK CONTRACT ACTIVITIES

In accordance with the DMVA, Camp Grayling Joint Maneuver Training Center annual cyclic maintenance and improvements program, this contract is for the delivery of concrete products to Camp Grayling on an on-call basis. This contract will be for a three year period with possible two one year extension.

The materials will be required to be delivered on an on-call basis to work sites within Camp Grayling Joint Maneuver Training Center's 147,000 acres. It will be the responsibility of the DMVA and its employees to ensure that access to work site is maintained.

| Requirement | Response |
|---|---------------------------------|
| 1. Specifications | |
| 1.1 The Contractor must provide the following: | |
| 2500 PSI Concrete | Minimum cement content removed. |
| 3000 PSI Concrete 4" slump . | Minimum cement content removed. |
| 3500 PSI Concrete 4" slump | |
| 4000 PSI Concrete 4" slump | |
| 6sk 6 AA Sack Concrete Mix | |
| Mid-Range Water Reducer | |
| Sack mixes | |
| Retarder | |
| 1% Non-Chloride Accelerator | |
| Chloride Additive must meet the requirement for ASTM C 494, Type C and ASTM D 98. | |
| Fiber mesh (polypropylene) 1.5 lb. bag | |
| #5 Rebar Stick. Grade 60 20' stick. Metric grade of 420. Minimum yield strength in pounds per inch to be 60,000. Mega pascals strength of 420.e. Nominal diameter in inches (not including the deformations) to be .75. | |
| Two core 8x8x16 Concrete Block. Must conform to ASTM C 90. ASTM C-90. Units must have minimum compressive unit strength of 1900 psi (31.1Mpa). | |
| | |
| 1.2 Warranties | |
| Describe any warranties included in the bid and explain the process for reporting warranty issues and how the Contractor will handle any repairs or replacements. | |
| The State reserves the right to require additional warranties other than those identified by the Contractor in its response to this RFP. | |
| | |
| 1.3 Recall Requirements and Procedures | |

| | |
|--|--|
| Describe any recall requirements and procedures. (OR) The Contractor must describe any recall procedures. | |
| 1.4 Quality Assurance Program | |
| Explain your Quality Assurance Program(s). | We routinely spot check the products we manufacture to ensure they meet industry standards. |
| 1.5 Incentives | |
| Explain any special incentives or services including, but not limited to, return policies, trade-in programs, quantity discounts, etc. | |
| 2. Service Levels | |
| 2.1 Time Frames | 8:00 am-4:00 pm |
| 2.2 Delivery | |
| Delivery of all products will be expected within 8 hours calendar days upon date of order. Delivery will be made at building specified at time of request. | We require 24 hours notice to schedule deliveries. We can not guarantee delivery within 8 hours of notice. |
| Contractor must immediately contact the requestor if the lead time of a product is prohibitive of the 8 hour delivery. | N/A |
| 2.7 Reporting | |
| The Contractor must submit, to the receiver of materials at the time of delivery a delivery slip showing building location and amount/type of materials provided. | |
| 2.8 Meetings | |
| The State may request meetings as it deems appropriate. | |
| 3. Staffing | |
| 3.1 Contractor Representative | |
| The Contractor must appoint a Contract Representative specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative"). | |
| The Contractor must notify the Contract Administrator at least 30 calendar days before removing or assigning a new Contractor Representative. | |
| 3.2 Customer Service Number | 231-825-2473 |
| The Contractor must specify its telephone number for the State to make contact with the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST and provide a telephone number for ordering material after normal business hours | |
| 3.3 Disclosure of Subcontractors | |
| **SUBCONTRACTING IS NOT PERMITTED ON THIS CONTRACT** | |
| 3.4 Security | |
| The Contractor will be subject the following security procedures: Each employee or representative of the vendor must have a valid form of picture identification on their person to present to Camp Grayling JMTC security and staff | |

| | |
|--|---------------------|
| The Contractor must explain any additional security measures in place to ensure the security of State facilities. | |
| The bidder's staff may be required to make deliveries to or enter State facilities. The bidder must: (a) explain how it intends to ensure the security of State facilities, (b) whether it uses uniforms and ID badges, etc., (c) identify the company that will perform background checks, and (d) the scope of the background checks. The State may require the Contractor's personnel to wear State issued identification badges. | |
| | |
| 4. Pricing | |
| 4.1 Price Term | |
| Pricing is firm for the entire length of the Contract. The first pricing period begins on the Effective Date. Adjustments may be requested, in writing, by either party and will take effect no earlier than the next Pricing Period. | |
| | |
| 5. Ordering | |
| 5.1 Authorizing Document | |
| The appropriate authorizing document for the Contract will be a blanket purchase order | |
| | |
| 5.2 Order Verification | |
| The Contractor must have internal controls, approved by DMVA-Procurement, to verify abnormal orders and to ensure that only authorized individuals place orders. | |
| | |
| 6.0 Delivery | |
| 6.1 Delivery Programs | |
| The Contractor must explain in detail its delivery programs (e.g., standard delivery and quick-ship), including any limitations such as quantity. | |
| The Contractor to provide details of the items below: | |
| -After hours delivery requests. What is considered after hours? What is the cost? What is the procedure? | |
| -Is there a special delivery charge for Saturdays | yes |
| -Is delivery available on Sundays? If so what costs are involved? | no |
| -Is there an extra cost for mileage fee beyond JMTC Cantonment area? If so how is it calculated? | |
| -Are there winter service charges? If so what are the months considered winter months? | yes, November-March |
| -What is considered a small load? | less than 4 yards. |
| 6.2 Packaging and Palletizing | |
| Packaging must be optimized to permit the lowest freight rate. Shipments must be palletized whenever possible using manufacturer's standard 4-way shipping pallets. | |
| | |
| 7. Acceptance | |
| 7.2 Acceptance, Inspection and Testing | |
| | |
| Final Acceptance | |
| Final acceptance language to be developed by agency. | |

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| | |
| 8. Invoice and Payment | |
| 8.1 Invoice Requirements | |
| All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. | |
| | |
| 8.2 Payment Methods | |
| The State will make payment for Contract Activities via EFT Vendor must be a registered vendor with the State at the time of the bid award. | |
| | |
| 9. Additional Requirements | |
| 9.1 Environmental and Energy Efficient Products | |
| The Contractor must identify any energy efficient, bio-based, or otherwise environmental friendly products used in the products. Contractor must include any relevant third-party certification, including the verification of a United States department of agriculture certified bio based product label. | |
| | |
| 9.2 Hazardous Chemical Identification | |
| In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, <i>et seq.</i> , as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. The Contractor must identify any hazardous chemicals that will be provided under any resulting contract. | |
| | |
| Mercury Content | |
| Pursuant to MCL 18.1261d, mercury-free products must be procured when possible. The Contractor must explain if it intends to provide products containing mercury, the amount or concentration of mercury, and whether cost competitive alternatives exist. If a cost competitive alternative does exist, the Contractor must provide justification as to why the particular product is essential. All products containing mercury must be labeled as containing mercury. | |
| | |
| 9.4 Brominated Flame Retardants | |
| The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs. | |
| | |
| Licensing Agreement | |
| The Contractor must provide a copy of any applicable licensing agreement. | |
| 9.3 | |
| 9.6 Key Personnel | |

| | |
|---|--|
| <p>The Contractor must appoint a Contract Representative. An individual who will be directly responsible for the day to day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 12 hours.</p> | <p>Tom Chrispell</p> |
| <p>The Contractor may not remove or assign Key Personnel without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. The State may request a résumé and conduct an interview before approving a change. The State may require a 30 calendar day training period for replacement personnel.</p> | |
| <p>The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.</p> | <p>Grayling Plant / Dispatcher Has been dispatcher for last 10 years</p> |
| <p>9.4</p> | |
| <p>9.7 Non-Key Personnel</p> | |
| <p>The Contractor must notify the Contract Administrator at least 10 calendar days before removing or assigning non-key personnel.</p> | |
| <p>9.8 Organizational Chart</p> | |
| <p>Provide an overall organizational chart that details staff members, by name and title.</p> | <p>Rob Cherry - President</p> |
| | <p>Adam Gilde – General Manager</p> |
| | <p>Tom Chrispell – Plant Manager/Dispatcher</p> |
| | |
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STATE OF MICHIGAN

Contract # **511B6600054**
Concrete Materials

PRICING

1. The Contractor must provide a pricing schedule for the proposed Contract Activities using the form listed below. The pricing schedule should be submitted in a modifiable format (e.g., Microsoft Word or Excel); however, you may also submit an additional pricing schedule in a non-modifiable format (e.g., PDF). Failure to complete the pricing schedule as requested may result in disqualification of your proposal.
2. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
3. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms: _____ % discount off invoice if paid within _____ days after receipt of invoice.

4. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

| Line Item | Product | Unit | Unit Price |
|-----------|-----------------------------|------|------------|
| 1 | 2500 PSI concrete | PCY | \$97.50 |
| 2 | 3000 PSI Concrete 4" slump | PCY | \$100.50 |
| 3 | 3500 PSI Concrete 4" slump | PCY | \$103.50 |
| 3 | 4000 PSI Concrete 4" slump | PCY | \$106.50 |
| 5 | 6sk Sack 6AA Concrete Mix | PCY | \$114.50 |
| 6 | Mid-Range Water Reducer | PCY | \$3.50 |
| 7 | Sack mixes(over psi mix) | PCY | +\$3.00 |
| 8 | Retarder | PCY | \$3.00 |
| 9 | 1% Non-Chloride Accelerator | PCY | \$4.50 |

| | | | |
|----|---|-------------|-----------------|
| 10 | Chloride Additive | Pounds | |
| 11 | Fiber mesh (polypropylene) | 1.5 lbs. | \$8.00/yd. |
| 12 | #5 Rebar Stick. Grade 60 | 20' Stick | \$14.00 |
| 13 | 8x8x16 Concrete Block(400 Min. for Delivery) | EA | \$1.45 |
| 14 | Small/short load charge | Load | \$100 |
| 15 | Delivery charge for after hours | PCY | \$6.00 |
| 16 | Delivery charge for Saturdays | PCY | \$6.00 |
| 17 | Delivery charge for Sundays | PCY | \$50.00 |
| 18 | Mileage fees | Per mile | |
| 19 | Winter service charges | PCY | \$6.50 |
| | Additional charges, if any Block Load delivery | Load | \$175 |
| | Concrete delivered 01/01/2017-12/31/2017(Annual escalator) | PCY | +\$6.00 |
| 20 | Concrete delivered 01/01/2018-12/31/2018(Annual Escalator) | PCY | +\$12.00 |
| | | | |

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

Contract No. 511B6600054
Concrete Materials

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and TBD (“**Contractor**”), a Cornillie Acquisitions/L.C. Materials. This Contract is effective on June 1, 2016 (“**Effective Date**”), and unless terminated, expires on May 31, 2019.

This Contract may be renewed for up to 2 one year of Renewal Options] additional. Renewal must be by written agreement of the parties and will automatically extend the Term of this Contract.]

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

| | |
|---|--|
| If to State: | If to Contractor: |
| Elizabeth Noffsinger Camp Grayling JMTC 1000 M-93, Bld 4 Grayling, MI 49738] noffsingere@michigan.gov | LC Materials PO Box 83 Mc Bain, MI 49657 adam@lcmaterials.net 231-825-2473 |

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

| | |
|---|--|
| State: | Contractor: |
| Elizabeth Noffsinger Camp Grayling JMTC 1000 M-93, Bld 4 Grayling, MI 49738] noffsingere@michigan.gov | LC Materials PO Box 83 Mc Bain, MI 49657 adam@lcmaterials.net 231-825-2473 |

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

| | |
|---|--|
| State: | Contractor: |
| Caleb Allen Roads and Grounds Supervisor Camp Grayling-JMTC Facility Engineering, Bldg 36 Camp Grayling, MI 49739 Caleb.j.allen@us.army.mil 989-344-6186 | LC Materials PO Box 83 Mc Bain, MI 49657 adam@lcmaterials.net 231-825-2473 |

- 5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
- 6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better.

| Required Limits | Additional Requirements |
|--|---|
| Commercial General Liability Insurance | |
| <u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence | Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0. |
| Umbrella or Excess Liability Insurance | |
| <u>Minimal Limits:</u> \$5,000,000 General Aggregate | Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds. |
| Automobile Liability Insurance | |
| <u>Minimal Limits:</u> \$1,000,000 Per Occurrence | Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage. |
| Workers' Compensation Insurance | |
| <u>Minimal Limits:</u> Coverage according to applicable laws governing work activities. | Waiver of subrogation, except where waiver is prohibited by law. |
| Employers Liability Insurance | |
| <u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease. | |

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain

coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. Administrative Fee and Reporting

8. Extended Purchasing Program. Reserved

9. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. Background Checks. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

14. Change of Control. Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control

does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.
18. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
19. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

- 20. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 21. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 22. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 23. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

- 24. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

- 25. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against 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.
- 26. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 27. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 28. RESERVED**
- 29. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in

- writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State’s Confidential Information in confidence. At the State’s request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party’s possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.
- 30. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any

extension (“**Audit Period**”). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

31. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
32. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
33. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
34. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
35. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
36. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

37. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
38. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
39. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
40. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
41. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
42. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
43. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
44. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
45. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
46. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").