

STATE OF MICHIGAN
 DEPARTMENT OF NATURAL RESOURCES
 PROCUREMENT
 P.O. BOX 30028, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 01
 to
CONTRACT NO. 751B6600003
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
ICF Jones & Stokes, Inc 9300 Lee Hwy Fairfax, VA 22031	Jodi Young	Jodi.Young@icfi.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(707) 992-0768	0361/001

STATE CONTACTS	DIVISION	NAME	PHONE	EMAIL
PROJECT MANAGER	Wildlife	Mary Rabe	517-243-3122	RabeM@michigan.gov
CONTRACT ADMINISTRATOR	Finance and Operations	Jana Harding-Bishop	517-284-5938	HardingJ3@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Habitat Conservation Plan for Four Cave-Dwelling Bat Species in Michigan, Minnesota and Wisconsin			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
10/6/15	9/30/18	2 – 1 year	9/30/18
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$693,500.00	\$0.00	\$693,500.00
DESCRIPTION: Revise Section 4.03 Reporting for the Environmental Assessment Section to reflect items 4-7 of the administrative draft as 2017 rather than 2014. Revise Exhibit A – Pricing to reflect correct per chapter, per task costs for items 5 through 11 under each task.		

Section 4.03 Reporting

Environmental Assessment (EA) Chapter Deadlines (chapters are spelled out in Section 3a: Prepare Administrative Draft EA)

Chapters	Administrative Draft	Public Draft
1	December 2016	September 2017
2	February 2017	September 2017
3	May 2017	September 2017
4	July 2017	September 2017
5	July 2017	September 2017
6	July 2017	September 2017
7	July 2017	September 2017

Exhibit A - Pricing

HCP CHAPTERS	Task 1 Cost to Draft Each Chapter Preliminary Administrative Draft For State Agency Review: Year 1	Task 2 Cost to Revise Each Chapter Prepare Administrative Draft For Steering Committee Review: Year 1	Task 3 Cost to Revise Each Chapter Public Review Draft For Public Review: Year 2	Task 4 Cost to Finalize Each Chapter Final Document Prepare Final HCP: Year 3
1. Executive Summary	\$3,440	\$435	\$2,900	\$1,235
2. Introduction and Background	\$10,385	\$940	\$5,995	\$2,280
3. Project Description/Activities Covered by Permit	\$41,150	\$3,910	\$25,628	\$7,615
4. Environmental Settings/Biological Resources	\$57,104	\$6,919	\$31,184	\$16,375
5. Potential Biological Impacts/Take Assessment	\$137,589	\$9,648	\$47,385	\$21,013
6. Conservation Program	\$95,567	\$7,871	\$37,703	\$17,745
7. Plan implementation	\$16,440	\$2,300	\$8,100	\$4,585

8. Funding	\$15,670	\$1,690	\$7,870	\$4,965
9. Alternatives	\$8,130	\$900	\$3,180	\$2,260
10. Literature Cited	\$7,710	\$395	\$925	\$1,355
11. Appendices	\$4,321	\$650	\$2,030	\$2,300
TOTAL COST FOR HCP DOCUMENT	\$397,506	\$35,658	\$172,900	\$81,728

Change Notice Number: 01
Contract Number: 751B6600003

FOR THE CONTRACTOR:

ICF Jones & Stokes, Inc.

Company Name

Authorized Agent Signature

Jodi Young

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Laura Gyorkos, Manager

Name & Title

Finance and Operations Division, Procurement Section

Division/Section

Date

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CONTRACT SUMMARY

DESCRIPTION:

Habitat Conservation Plan for Four Cave-Dwelling Bat Species in Michigan, Minnesota and Wisconsin

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	10/6/2015	9/30/2018	2 – 1 year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45	N/A	N/A	

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	\$693,500
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Notice of Contract #: **751B6600003**

For the Contractor:

On-file in DNR Procurement

10/12/15

Jodi Young,
Contract Administrator
ICF Jones & Stokes, Inc.

Date

For the State:

On-file in DNR Procurement

10/12/15

Laura Gyorkos,
Manager
State of Michigan

Date

Habitat Conservation Plan for Four Cave-Dwelling Bat Species in Michigan, Minnesota and Wisconsin

**EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES**

1.0 **Project Identification**

1.01 Background/Project Description

ICF will in cooperation with the Michigan Department of Natural Resources (MI DNR), the Minnesota Department of Natural Resources (MN DNR), the Wisconsin Department of Natural Resources (WI DNR), and in consultation with the U.S. Fish and Wildlife Service (FWS) (these four agencies make up what is hereafter referred to as the Steering Committee (SC)) develop a Habitat Conservation Plan (HCP), in preparation to submit an Incidental Take Permit (ITP) application pursuant to the Federal Endangered Species Act (ESA), ICF will work in conjunction with the Steering Committee to draft and submit the National Environmental Policy Act (NEPA) documentation.

The MI DNR is the lead agency for this contract and has a full time person on staff as the project coordinator to coordinate activities on behalf of the Steering Committee with the Contractor. The Steering Committee will be the decision making body for content of the HCP.

The HCP will request the authorization for the incidental take of four cave-dwelling bat species; Indiana bats (*Myotis sodalis*), the northern long-eared bat (*Myotis septentrionalis*), the little brown bat (*Myotis lucifugus*) and the tri-colored bat (*Perimyotis subflavus*) that may result from management activities on lands in Michigan, Minnesota, and Wisconsin.

The lands in Michigan, Minnesota and Wisconsin provide potential foraging, roosting, maternity colony, and fall swarming, and winter habitat for all bat species that occur in these states, except for Indiana bat in Minnesota. The HCP will clarify the activities associated with management activities which may cause incidental take of covered bat species and analyze the likely result from such takings. This information will be used to develop an adaptive management strategy by identifying the measures the three states will take to minimize and mitigate direct and indirect impacts to the four covered bats.

For forest management activities, the current USFWS's Forest Management Practices for Conserving Indiana Bats apply particular restrictions on forest management practices down to the stand level. Seasonal harvesting restrictions and canopy retention guidelines in particular inhibit the ability of the Agencies to implement strategies that will ensure sustainable and diverse forest habitat conditions at the landscape scale. ICF will use existing data to the greatest extent possible and a compilation of known data, including existing digital products, maps, survey data, etc. The three partnering states will provide any pertinent data they have available.

1.02 Contract Activities

The cave dwelling bat HCP for forest management activities on state land in Michigan, Minnesota and Wisconsin must meet all of the requirements set forth in the Federal Endangered Species Act (ESA) as well as the National Environmental Policy Act (NEPA) documentation. In addition to these laws, the project process and plan must meet and be consistent with other applicable Federal, State and local policies, and regulations.

Work on the HCP and EA will be collaborative effort between the contractor and the Steering Committee to meet the objectives of this project.

The ICF team project approach is divided into three main sections:

1. Project management covers coordination of bi-weekly calls, project updates, meeting support, oversight of budget and schedule for the HCP process.

2. HCP development includes an assessment of additional lands in each state as well as the delivery of a preliminary administrative draft (task 1), an administrative draft (task 2), a public review draft (task 3) and a final HCP (task 4).
3. NEPA document development addresses the necessary components of an EA and associated public outreach. A final EA is not required by the USFWS.

Section 1: Project Management:

The ICF team will provide project coordination, process management, meeting support, and oversight of the budget and schedule. Meeting and coordination assumptions for each of these groups are summarized below. Progress reports will be provided every other week at conference calls. These will include progress updates on each chapter, including data compilation and analysis and meetings attended for each chapter. In addition, ICF will provide quarterly reports that summarize progress made in all key deliverables.

The MIDNR Project Manager will be responsible for the following project management duties:

- Coordinate biweekly calls with ICF for project updates.
- Develop and maintain contacts list (agencies, organizations, the public, and any entities receiving emails or mailings).
- Schedule, organize and facilitate meetings of the Bat HCP SC as well as any other meetings associated with the HCP; this includes logistics, organizing webinars, inviting attendees, preparing agendas and meeting summaries, and production of all related materials and handouts.
- Ensure full participation of Bat HCP SC members; confirm attendance of members or their alternates; and manage decision making process as needed.
- Facilitate document review process. Consolidate all comments on draft documents; assist with identification and resolution of disagreements among the states.
- Provide hosting services for all webinars.

The ICF team will be responsible for the following project management duties: attend meetings as requested by the Steering Committee.

- Attend biweekly teleconference calls.
- Attend kick-off meetings, Steering Committee meetings, stakeholder meetings and assist the DNR Project Manager with meeting facilitation as determined necessary.
- Preparation and distribution of preliminary administrative draft and administrative draft HCPs by chapter.
- Preparation of the draft HCP for public review.
- Preparation of the final HCP.
- Preparation of the Environmental Assessment (EA) materials for submission to the USFWS.

Meetings associated with public outreach are addressed separately as part of the NEPA process.

The first steering committee meeting will also serve the dual purpose of a kick-off meeting. This meeting would initiate ICF's work and focus on key issues; it would also establish lines of communication and clarify technical requirements.

The Steering Committee will determine with input from ICF exactly what types of meetings to be held (Webinar vs in-person) and how many ICF staff are needed for each meeting scheduled. The cost of ICF's participation in each meeting will be determined using the pricing provided in Exhibit C.

In addition to steering committee and stakeholder meetings, members of the ICF team, as determined by the Steering Committee will attend FWS and technical committee meetings.

Section 2: HCP Development:

Assessment of additional lands

ICF will do an assessment for each state to determine if non-federal public lands and private lands should be included in the HCP. There are two general approaches to cover additional lands in the

three states under the HCP.

- One is to allow for Private or Non-Federal Public landowners to voluntarily opt-in to the HCP through a certificate of inclusion process or something similar. This is an agreement between the landowner and the state for the landowner to uphold the terms of the HCP in exchange for limited take authorization.
- The second approach is to use the state’s forestry permit system to extend its take permit to private or local landowners under their “direct control.” This approach may only be available in some states and with some landowners, depending on the scope and legal framework of the state’s permit system.

ICF will evaluate the two general approaches described above as well as assess other important considerations associated with obtaining take coverage for the additional lands, including but not limited to the following:

- What other federal mechanisms exist that could build on the Incidental Take Permit process (e.g. Section 7 Memorandum of Understanding, Low Effect HCP) to provide take coverage for private lands?
- Does each state have a forestry permit process that allows the state to meet the USFWS definition of having “direct control” over private, corporate, or local public agency timber operations?
- Are private or local timber operations that are subject to this permit process extensive enough and in locations to have impacts to listed bats and therefore need take coverage?
- Do private or local timber operators want take coverage under the state’s HCP, and are they willing to pay an additional fee for the regulatory certainty it provides?
- Are the locations and amounts of private or local timber operations that would be covered predictable over the permit duration to allow estimates of take of each covered species?

The general extent of the additional timber lands to be evaluated are summarized in table A.1 below.

The analysis would utilize information obtained from other work elements associated with HCP development (e.g., environmental baseline, covered species, covered activities).

The assessment would focus only on ESA and NEPA compliance requirements.

ICF will prepare a draft memo subject to one revisions based on input from the states and optional input from USFWS. The States will have up to 2 weeks to review the draft and provide input.

ICF would prepare a final technical memo that includes the options for addressing the additional timberlands, as well as the potential cost and schedule for providing take coverage.

The assessment will include up to 3 phone meetings with the states to discuss the results of the analysis and one phone meeting with USFWS.

The assessment will be completed within 10 weeks from contract start date.

Upon completion of the assessment each state will determine which land types will be covered under the HCP and will adjust the contract as needed to reflect the changes from State Owned only lands being covered in the HCP.

Table A.1 Summary of Forest Lands by State and Type

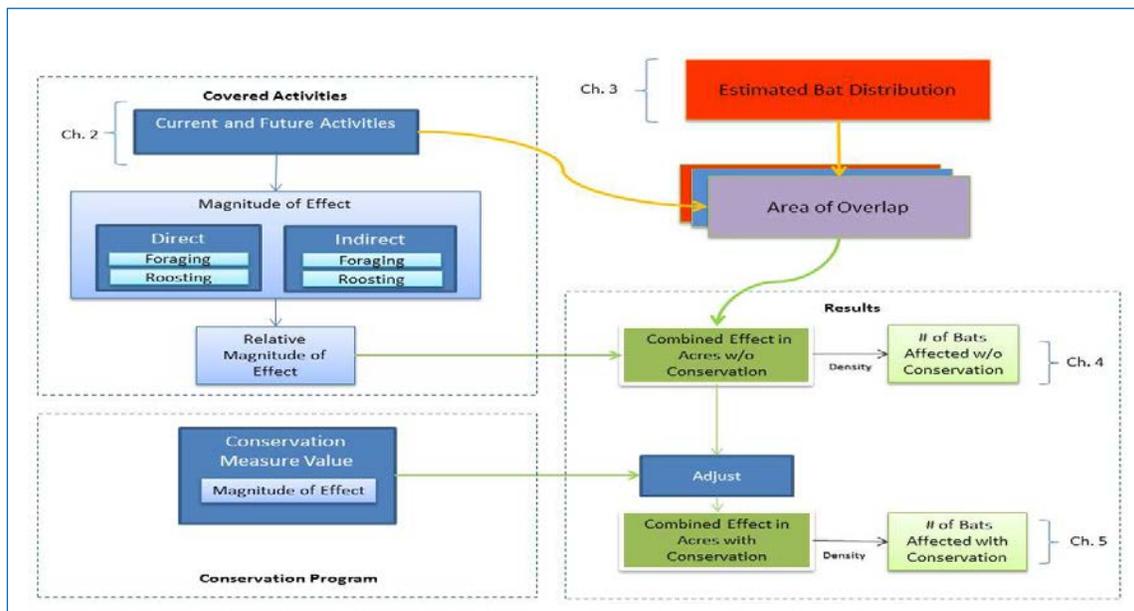
Summary of Forest Lands to Potentially be Included in the HCP				
Forest Lands (acres X 1 million)				
Forest Lands	Michigan	Wisconsin	Minnesota	All States
State Owned (included in HCP)	4.2	1.1	3.4	8.7

Other Public (Non-Federal)	0.8	2.4	2.9	6.1
Private	12.6	10.9	7.6	31.1
All Potential HCP Lands	17.6	14.4	13.9	45.9

HCP Development:

Figure A.2 illustrates chapter integration for a similar HCP EIS. The figure demonstrates how the various chapters fit together to complete the required analyses for major portions of the HCP.

Table A.2 Chapter Integration



The following sections describe specific approaches for preparing the HCP document and project deliverables.

Assumptions

The HCP Development task will include the following components:

Deliverables:

Task	Due Date
Task 1 : Preliminary Administrative draft (for state personnel review)	8/31/16
Task 2: Administrative draft (for Steering Committee Review)	8/31/16
Task 3: Public draft	8/31/17
Task 4: Final HCP	9/30/2018

HCP shall include the following chapters:

Chapter 1: Executive Summary

Chapter 2: Introduction and Background

Chapter 3: Project Description/Activities Covered by permit

Chapter 4: Environmental Settings/Biological Resources
Chapter 5: Potential Biological Impacts/Take Assessment
Chapter 6: Conservation Program
Chapter 7: Plan Implementation
Chapter 8: Funding
Chapter 9: Alternatives
Chapter 10: Literature Cited
Chapter 11: Appendices

Chapter 1: Executive Summary

The ICF team will prepare an executive summary for the HCP that highlights relevant information contained in the document. The executive summary typically includes sections addressing overview, plan area, covered species, permit term, covered activities, conservation program, net effects, monitoring and adaptive management, implementation, cost, and funding.

Assumptions

The executive summary will be prepared after the other chapters have been completed.

Chapter 2: Introduction and Background

The HCP introduction will provide a discussion of relevant background information such as the need for the plan; permit duration, and overview of covered activities. To provide readers with an understanding of the regulatory purpose and need for the plan, the chapter will also include an overview of the requirements of Section 10 of ESA and other policies and regulations relevant to covered bats and the activities addressed by the HCP.

Chapter 3: Project Description/Describe Activities Covered by Permit

This HCP will cover more than 11 million acres of lands managed by the State Agencies with the potential for additional non-federal public and private lands. State Forests within these areas are managed chiefly for the purposes of timber production, recreation, and wildlife.

Covered activities are described in the HCP and are those actions for which the State Agencies will receive a permit. A potential list and description of covered activities was provided by the State Agencies. The ICF team will review the list and descriptions of covered activities and will develop the draft text for the covered activity descriptions in the HCP. The list will also enable ICF team biologists and foresters to focus review of existing information, develop specific questions, and identify specific gaps in the data potentially needed to address critical uncertainties. Having worked on State Lands with forest issues and on numerous HCPs, ICF will provide a streamlined process for developing and refining this list that includes a programmatic approach to each activity. For example, the ICF team will work proactively with foresters in each of the State Agencies to understand the state-specific underlying forest practices and crosswalk terms up front to expedite the effects analysis, grouping activities in a way that functionally affect bats. In addition, based on experience, ICF will use a landscape approach in lieu of site-specific canopy retention guidelines to leverage benefits of a programmatic HCP.

A **programmatic HCP** is an HCP prepared for broad categories of covered activities, such as state or regional policies or programs. Programmatic HCPs address covered activities occurring over large areas and may include groupings of similar actions or repeating actions over longer periods of time than project-specific HCPs.

Potential covered activities will include:

- Cutting trees for regeneration: clearcut, clearcut with residual, overstory removal, seed-tree harvest, shelterwood, group tree selection, and individual tree selection
- Cutting trees for stand improvements: crop-tree release, cleaning, and thinning
- Using equipment for felling, skidding, chipping, and processing trees

- Earth moving associated with road construction and maintenance and landing-area development
- Spraying herbicides and pesticides in association with invasive species management
- Prescribed fire for fuel reduction, vegetation management, and invasive species control
- Construction of deer exclosure fencing
- Planting seedlings
- Cutting firewood
- Trail construction and maintenance activities
- Soil supplements
- Biological controls

From the list of activities provided, use of herbicides and pesticides is not an activity that can currently be permitted because the FWS has not reached agreement with the EPA on the effects on listed species of registered pesticides. For the purposes of the HCP, the FWS typically assumes that herbicides and pesticides should not cause take if used in accordance with guidelines. In addition, planting seedlings will not require coverage because it is not an impact on covered bats. Installation of other fencing and road use are activities that the State Agencies may consider adding to the covered activities list.

Assumptions

To the extent available data regarding covered activities will be provided by the State Agencies. The coverage area includes the States of Michigan, Minnesota, and Wisconsin with the lands to be determined based on the initial assessment.

Chapter 4: Environmental Setting/Biological Resources

This chapter will address the environmental setting of the plan area and provide information on the biological resources within the three states, with a focus on describing the four covered species.

Environmental Settings

The ICF team will describe the environmental setting of the larger plan area (likely the entirety of all three states) and the permit area. This environmental setting section will include the following topics: data, vegetation types, location, topography, geology and physiography, soils, climate, and hydrology.

Based on the Forest Service Level III Ecoregion Map by Bailey, all three states are characterized by the Laurentian Mixed Forest Province (212) and Eastern Broadleaf Forest Province (222). Portions of western Minnesota and a small discrete area in southern Wisconsin are also characterized by the Prairie Parkland Province (251). The boundary between the Eastern Broadleaf Forest and Laurentian Mixed Forest Provinces generally runs northwest to southeast.

Several general characteristics are common to all three states north of this boundary:

- State Land acreage tends to be greater.
- Forest cover is more extensive, forests contain more conifers, and wetlands are more abundant.
- Urban and agricultural development is significantly lower.
- Landscape conditions related to these ecological zones affect the distribution and abundance of cave-dwelling bats.

In addition, geological conditions related to known and potential locations of bat hibernacula vary across the three states, with exposures of bedrock occurring in discrete locations (e.g., igneous rocks of the Canadian Shield extend from Michigan's western Upper Peninsula to northeastern Minnesota, and karst formations are found in the Driftless Area of southwestern Wisconsin and southeastern Minnesota). Together, these and other factors create complex and diverse landscape conditions that can be aggregated and used in data analyses.

Each state has a robust and centralized data set of GIS and other information, including recent aerial imagery, land cover, wetlands, infrastructure, parcels and ownerships, rare species and plant communities, soils, and related content (see Project Controls "Access to and Use of Existing Biological Data" below). These data can be used to remotely determine the distribution and abundance of suitable habitat for the four cave-dwelling bats species. Collaborations between federal and state agencies concerned with these bats

have also produced proprietary data sets that could be obtained through data use and licensing agreements, which, among other items, constrain how data may be presented publicly. This information will be integrated with the bat-specific analytical approach described below and lead to a qualitative model of bat distribution and abundance.

Covered Species – Four Cave-Dwelling Bats

The Indiana bat is a "tree bat" in summer and a "cave bat" in winter. There are four ecologically distinct components of the annual life cycle: winter hibernation, spring staging and autumn swarming, spring and autumn migration, and the summer season of reproduction. The first step proposed by the ICF team is to produce habitat models for each life cycle stage in the three-state region. This critical step will allow us to determine where there is a realistic chance that covered bats (especially maternity colonies) occur. ESI has existing models for Indiana and northern long-eared bats that can be tailored to the area and additional species covered by the Three State Forestry HCP. Models are and will be based on previous studies and habitat associations and will include an evaluation of bat use at low elevations, as well as areas where patches of large trees occur in proximity to open areas, such as meadows, wetlands, and agricultural fields (especially hay fields and grazing lands, as opposed to row crops). Habitat models will be used by our team in three ways—first, to identify approaches to avoid and minimize impacts to bats; second, to calculate take; and third, proposed forest management scenarios will be tested to determine the effect of future conditions on the covered bats. The understanding of how models (i.e., estimated bat distribution) interact with other chapters of the HCP is critical to successful execution of the plan. Figure A.3 above demonstrates how species modeling provides the building blocks for HCP development.

Assumptions:

Data or information gaps will not hinder the progress of the HCP to meet the desired timeframe. However, if data or information gaps are identified that will not be able to be obtained during the timeframe of the HCP; the ICF team proposes that this information be gathered during implementation of the HCP as part of an adaptive management program.

Chapter 5: Potential Biological Impacts/Take Assessment

The following steps will be used to develop a realistic understanding of how each of the covered activities will affect each of the bat species.

- ***Describe covered activities in ecological terms.*** The ICF team will work with the State Agencies to evaluate each of the covered activities in terms of how it affects bats—this will allow us to combine activities with similar impacts, which in turn leads to a simpler product.
- ***Describe impact mechanisms for covered activities.*** The ICF team will evaluate each of the covered activities to identify mechanisms that could result in impacts to each of the bat species and its habitats.
- ***Evaluate the level of impacts for cave-dwelling bat (including habitat impacts).*** The ICF team will evaluate impact mechanisms to identify appropriate methods for measuring anticipated levels of take for each covered activity (e.g., area of habitat affected, number of individuals taken). ICF will then evaluate covered activities and associated impact mechanisms to estimate level of take.
- ***Describe indirect impacts of covered activities.*** Because forest management actions alter forest composition and structure at varying rates, an understanding of the long-term effects of a particular action is critical. For example, the same prescribed fire may destroy one potential roost tree, but greatly improve the overall value of that stand for foraging bats. The HCP must address the net effect of forestry actions on covered species.
- ***Describe cumulative impacts of covered activities.*** Cumulative impacts on covered species and habitats as a result of implementing covered activities in association with non-federal actions within

the plan area will be evaluated (cumulative effects of federal actions will be evaluated in the NEPA document).

The manner in which take is measured depends on the ability to determine, to the extent possible, the number of individual animals of a covered species occupying an affected area of habitat. Depending on available information, the ICF team anticipates expressing take levels for the HCP primarily in terms of overall habitat (amount of forest and its quality), but the number of bats or the percent of population at risk will be an important technique for evaluating different avoidance and minimization measures.

The ICF team will describe and quantify take for each of the bat species. The description of take will be consistent with habitat goals and objectives identified for the species and with the conservation measures. ICF anticipates that the description of take will be an iterative process and will be largely dependent on avoidance and minimization actions and the level of impact associated with implementing the HCP. Consequently, the level of take and the associated impacts from implementing the HCP will be subject to revision as the HCP is developed.

Assumptions:

The ICF team assumes that the data or information gaps will not hinder the progress of the HCP to meet the desired timeframe. However, if data or information gaps are identified that will not be able to be obtained during the timeframe of the HCP, ICF proposes that this information be gathered during studies associated with conservation measures and/or an adaptive management program.

Chapter 6: Conservation Program

This chapter will describe the conservation program for the HCP and is expected to be one of the more time-consuming and complex chapters of the plan. It will require an analysis and approach that balances the need for forest management practices, including timber harvest, and conservation of covered bat species to the maximum extent practicable. The ICF team will address regulatory requirements for biological goals and objectives, conservation measures, and mitigation and monitoring.

The ICF team will develop and describe appropriate conservation measures for the HCP that avoid, minimize, and/or mitigate for the effects of covered activities on covered bat species. Initially, ICF will review potential conservation measures from previous reports and recovery plans to develop a list of ecosystem-wide conservation measures that could be implemented to achieve the biological goals and objectives. Each will be reviewed for adequacy in achieving the species and habitat goals and objectives of the HCP. ICF will revise the existing conservation measures and develop additional conservation measures, as necessary. ICF anticipates that development of conservation measures will be an iterative process and will be largely dependent on the various types and quantities of habitat for each species. Consequently, conservation measures may be subject to revision as information about potential bat habitat is identified through the HCP process. Conservation measures will largely be grouped according to seasonal habitat for each bat species.

Current guidelines require postponing timber harvest in potential summer habitat areas to those months when bats are hibernating. This has been used as a conservation measure in the past. However, this is very restrictive when applied across all covered bat species. To address this issue, the ICF team will develop conservation measures by incorporating the following concepts:

- Large portions of the plan area may not be suitable for the formation of maternity colonies or may be only marginally suitable. Potential areas where habitat may not be suitable for summer bats include the following:
 - Areas of high elevation
 - Areas with trees too small to serve as primary roosts (noting that forest succession may cause these areas to shift through time)
- Some areas may be improved by allowing some level of timber management.
 - In some cases, bat populations may be constrained by a lack of suitable foraging habitat; such habitat can be created through timber harvest.

- Some timber stands may be too dense for use by some covered bat species; some thinning or harvest may improve habitat for these species.
 - It is known that prescribed fire kills trees that then become viable roost trees, thus enhancing habitat for bats; snags can also be created during timber harvest.
- Using the habitat suitability models to time management activities in high-risk areas (i.e. where bats are most likely to be present) such that they have the lowest risk
- Considering how current timber management practices will impact future habitat quality for bats, as different types of timber harvest will create different successional stages of forest over time

In addition, as required by the 5-Point Policy, the ICF team will develop a monitoring and adaptive management program for the HCP. The monitoring element of the plan will include compliance and effectiveness monitoring activities. After the conservation program, monitoring is often one of the most expensive components of implementing an HCP. Compliance monitoring will be conducted to verify that the permittees are carrying out the terms of the HCP and its permit. Effectiveness monitoring will be conducted to evaluate the effects of the permitted action and determine if the HCP's biological goals and objectives are being achieved. The adaptive management element of the plan will be developed to address the uncertainties that exist regarding effective conservation measures and the outcome of conservation.

The ICF team will design a standardized monitoring and reporting program to ensure a consistent approach across the covered lands. This program will use the latest effective survey techniques and provide greater certainty regarding monitoring costs.

Chapter 7: Plan Implementation and Assurances

Implementation

Under the ESA, HCP implementation begins when the Section 10(a)(1)(B) ITP is issued. Primary responsibility for HCP implementation rests with the permittees (the State Agencies).

This chapter describes the overall implementation policies of the HCP, including institutional arrangements, organizational structure, approval processes, and roles and responsibilities of the State Agencies, FWS, and other stakeholders, as appropriate. A description of the entity, or entities, responsible for implementing the conservation measures, monitoring, and adaptive management actions will be described in the HCP. The ICF team will work with the steering committee to identify the implementing entity and describe the implementing process for the HCP.

Assurances

The Federal No Surprises Regulation provides assurances to Section 10 permit holders that no additional money, commitments, or restrictions of land or water will be required should unforeseen circumstances requiring additional mitigation arise once an ITP is in place. Unforeseen circumstances are defined by federal regulation as changes in circumstances affecting a species or geographic area covered by an HCP that could not reasonably have been anticipated by the applicant or the FWS at the time of the HCP's development and that result in a substantial and adverse change in the status of the covered species. Under "No Surprises," as long as ITP permit holders are properly implementing an HCP that has been approved by the FWS, no additional commitment of resources will be required beyond those specified in the plan. Should unforeseen circumstances occur, the permit holder will work with the FWS to address them, to the extent feasible, within the existing funding and other constraints outlined in the HCP. Conversely, changed circumstances are defined by federal regulation as those circumstances affecting a species or geographic area covered by the HCP that can be reasonably anticipated by the applicant or FWS and to which the parties can plan a response. Permit holders are required to budget resources to respond to changed circumstances should they occur. As a result, an important component of the HCP will be clearly defining those circumstances that are considered unforeseen or changed for the purposes of the plan.

Changed Circumstances

Under Section 10 of the ESA, the HCP is required to identify anticipated and possible changed circumstances relative to the implementation of the HCP (e.g., the listing of new species, modifications to conservation measures or covered activities, modifications to the monitoring program). The HCP should identify strategies and protocols for addressing such anticipated changes, thus allowing appropriate program adjustments without having to amend the plan.

ICF will describe a process for addressing changed circumstances. Work conducted under this task includes:

- Review of other approved HCPs in the region to identify changed circumstances and unforeseen circumstances and possible approaches for addressing these plan elements
- Development and recommendation of strategies and protocols for addressing changed circumstances and unforeseen circumstances based on the review of other HCPs and information about anticipated changed circumstances provided to the ICF team by the steering committee

Plan Amendment Process

Under Section 10 of the ESA, an HCP may be amended to accommodate changes in how the HCP is implemented (e.g., changes in schedule, geographic scope, funding levels) or changes that are necessitated by unforeseen circumstances. Unforeseen circumstances are future circumstances that were not anticipated by the steering committee or FWS and that result in a substantial and adverse change in the status of a covered species. The process used to amend the permit or the HCP largely depends on the type and magnitude of the proposed change. ICF will describe an amendment process for the Three State Forestry HCP.

Chapter 8: Funding

The funding chapter outlines the estimated costs to implement the HCP over the permit term and the State Agencies with funding assurances. The federal ESA requires that HCPs specify “the funding that will be available to implement” conservation actions that minimize and mitigate impacts on covered species. The ICF team will estimate costs to implement the HCP by working closely with the State Agencies and with the registered foresters on our team. With the assistance of the steering committee, ICF will describe the funding mechanisms for the plan. The ICF team has included an economist with a background in forestry to aid with this analysis.

Chapter 9: Alternatives

The ESA requires that applicants specify alternative actions to the take of federally listed species. Because all species covered by the plan will be treated as listed, all four cave-dwelling bat species must be addressed in this chapter. Alternatives commonly included in the alternatives chapter of an HCP are the no-action or no-take alternative and any specific alternatives that would reduce or increase the level of take below or above levels anticipated for the proposed HCP. To meet requirements for an HCP, the ICF team will provide a brief description of the HCP alternatives: these can be different from the NEPA alternatives.

Chapter 10: Literature Cited

The ICF team will compile the literature used for this project into a final chapter.

Chapter 11: Appendices

The ICF team will prepare appendices that include the appropriate relevant information. Examples of potential appendices include a methods appendix for the species models and species accounts for the bats.

Section 3: NEPA Document Development:

This task addresses the approach for preparing the NEPA compliance documentation and process for an EA. For the purpose of this contract, ICF assumes State Agencies will obtain concurrence from the FWS before directing the consultant to prepare an EA, or proceed with an EA with the understanding that, at the end of the EA process, FWS may determine the development of an EIS is required.

Should the USFWS determine that an EIS is required rather than an EA, the Steering Committee will determine how to proceed and the contract will be adjusted accordingly.

Assumptions

- The NEPA document will be an EA.
- Formal public scoping will not be conducted.
- The FWS will provide direction on the content, scope, and approach to the EA analysis in compliance with NEPA and FWS NEPA policy.
- Information, including GIS data from the HCP, will be made available to the NEPA team for incorporation into the EA.
- The ICF team will prepare an administrative draft EA, a public draft EA, and written response to comments on the draft EA.
- During the public comment period on the draft EA, it is anticipated there may be up to three public meetings in each state.
- Public comments on the draft EA will not exceed 50 unique substantive comment letters and no more than 500 pages of unique substantive comment letters.
- The EA will analyze no more than three alternatives, including the HCP, the no-action alternative, and possibly another alternative.

Section 3a: Prepare Administrative Draft EA

The ICF team will prepare an administrative draft EA in accordance with the requirements of NEPA, FWS, and Council on Environmental Quality regulations and guidance and other applicable federal laws and regulations. We will compile the best available scientific information to assess the potential impacts of the proposed action and alternatives, including the no-action alternative. ICF proposes to use existing data from the HCP, data provided by the State Agencies, and other relevant sources and databases to characterize and map (as appropriate) the affected environment for each resource considered in the EA. It is assumed the resource areas addressed in the EA are likely to include biological resources (birds, bats, threatened and endangered species, and vegetation); wetlands; socioeconomic and environmental justice; cultural resources; noise; air quality and climate; and soils. ICF will work with the FWS to refine the analytical approaches to use in the EA and to dismiss resource areas from detailed analysis as appropriate.

The administrative draft EA will include the following chapters and any necessary supporting appendices:

- Chapter 1: Introduction and Purpose and Need
- Chapter 2: Proposed Action and Alternatives
- Chapter 3: Affected Environment
- Chapter 4: Environmental Consequences
- Chapter 5: Cumulative Impacts
- Chapter 6: List of Preparers and Agencies Consulted
- Chapter 7: Literature Cited

The ICF team will submit draft chapters for FWS (and any cooperating agencies) review on a rolling basis, as shown in the supporting project schedule (see Attachment A). This will allow for the preparation of a public draft EA in a timely manner.

ICF will address comments from the FWS and any cooperating agencies on the draft chapters and prepare a final administrative draft EA. ICF will address and respond to one set of consolidated and reconciled comments from FWS and any cooperating agencies for each preliminary draft chapter that ICF submits for review.

Section 3b: Prepare for and Participate in Public Meetings on the Draft EA

ICF will execute up to nine public meetings on the draft EA. ICF will ensure each meeting facility meets the criteria of being affordable (\$400 or less per facility rental), accessible (i.e. parking, Americans with Disabilities Act compliant), and available, as well as ensuring they are located in safe, neutral, appropriate areas for maximum public participation. ICF will staff each of the public meetings, which will encompass three meetings per state over a three-week period, to ensure early set-up, organization, proper flow to the room and meeting, and enough people in attendance to handle crowds, information requests, and mailing list registration. ICF is assuming three meetings on the draft EA in each state (Michigan, Minnesota, and Wisconsin). Meeting locations will be determined in conjunction with the Steering Committee. ICF will prepare meeting materials to include up to nine large displays, six small displays, a comment form, registration card, and other materials as requested by the FWS. Additionally, ICF will oversee the development and maintenance of a computerized mailing list of resource agencies, local media contacts, elected officials, community/environmental groups, and other members of the public who express interest in the project. The initial list will be developed in collaboration with the FWS, and ICF assumes the FWS will provide some initial data for ICF to maintain. ICF assumes that a project website, email account, and hotline will be managed and developed by the FWS.

ICF will do the following tasks in preparation for EA Public Meetings:

- Prepare draft public ad campaigns in newspapers, etc.
- Prepare draft public notices for the federal register
- Development of public information materials
- Coordination of public information campaign.

Section 3c: Respond to Public Comments

The ICF team will compile and organize comments on the draft EA, including comments received at the public meetings. If needed, ICF will work with the FWS to develop a project-specific coding structure that will allow comments to be sorted and organized. The comments will be compiled into a report to facilitate responses by the FWS, cooperating agencies, or our technical experts, as appropriate. The final product will be a response to comments report. As in Task 3a, ICF will address and respond to one set of consolidated and reconciled comments from the FWS and any cooperating agencies on the response to comments report.

Section 3d: Submit Working File in Support of the Administrative Record

The FWS will verify the proposed content and format of the working file and request any changes prior to the start of work on the EA. Following submittal of the final version of the response to comments report, ICF will compile and submit to the FWS the working file in support of the administrative record for the NEPA process. The following types of files will be included:

- Internal team meeting and conference call agendas, handouts, and draft notes
- Public comment materials, including copies of all public meeting materials and comment letters
- Draft sections of the EA, including FWS comments on draft deliverables
- Public draft EA, including all Federal Register and other legal notices
- Copies of all public comments and responses to public comment
- Copies of references cited in the public draft EA

1.03 Out of Scope Activities

The following activities are considered out of scope for the HCP portion of this contract as the Project manager will assume these responsibilities:

- Organize the Steering Committee for this project
- Organize, coordinate and put together the steering committee and stakeholder committees
- Schedule steering committee, stakeholder, or public meetings
- Communicate with the media

1.04 State Review, Acceptance and Testing Process and Criteria

Each chapter of the HCP identified in Section 1.02 must be reviewed and approved by the Steering Committee.

- Upon completion of a chapter the Contractor must submit the proposed draft to the Project Manager
- The Steering Committee has 14 calendar days to review and provide feedback to the Contractor.
- The Contractor will have 14 calendar days to incorporate the requested changes into the document and re-submit for review and approval.

1.05 Final Acceptance

2.0 Contractor Responsibilities

2.01 Transition – N/A

2.02 Training – N/A

2.03 Technical Support, Repairs and Maintenance – N/A

3.0 Staffing

3.01 Project Manager

The Contractor must appoint a Project Manager who will be directly responsible for the day-to-day operations of the Contract. The Project Manager must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 2 business days.

Contractor's Project Manager must respond to inquiries from the DNR Project Manager within 48 hours of request.

The Contractor may not remove or assign a new Project Manager 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.

3.02 Customer Service Toll-Free Number – N/A

3.03 Technical Support, Repairs and Maintenance – N/A

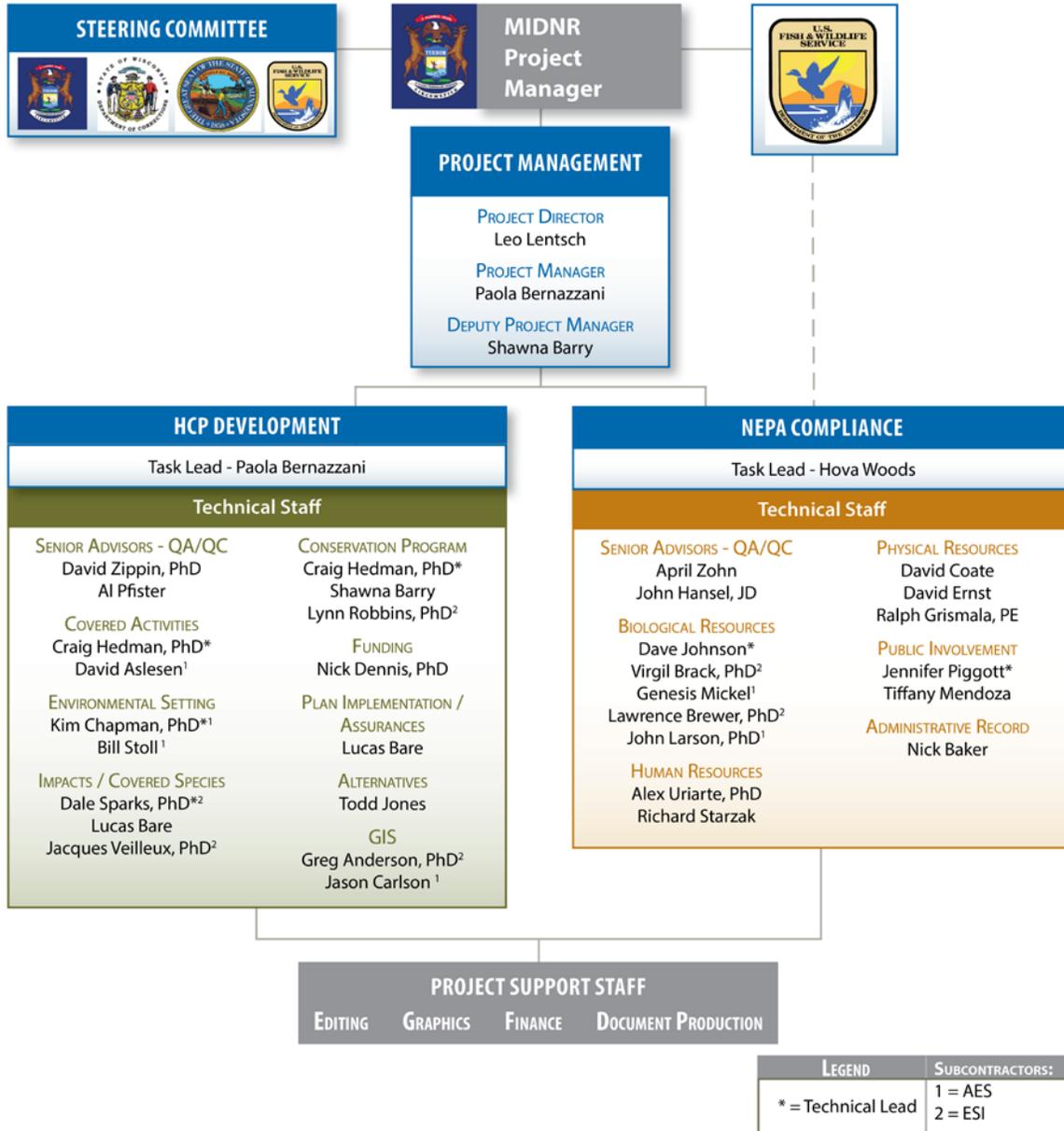
3.04 Project Staffing

Name, Role	Key Staff	Firm	Years of Experience	Education	Percent Availability	Location	Issuance of ITPS	NEPA Compliance	Large Scale Projects	Midwest Resources	State and Federal Clients	Multiple Stakeholders
Project Management Team												
Leo Lentsch, Project Director	■	ICF	33	MS	50	SC	✓	✓	✓	✓	✓	✓
Paola Bernazzani, Project Manager	■	ICF	20	MS	75	OH	✓	✓	✓	✓	✓	✓
Shawna Barry, Deputy Project Manager		ICF	10	MA	35	VA	✓	✓	✓	✓	✓	✓
HCP Development Technical Staff												
David Zippin, PhD,		ICF	25	PhD	15	CA	✓	✓	✓	✓	✓	✓

Name, Role	Key Staff	Firm	Years of Experience	Education	Percent Availability	Location	Issuance of ITPS	NEPA Compliance	Large Scale Projects	Midwest Resources	State and Federal Clients	Multiple Stakeholders
Senior Advisor and QA/QC												
Al Pfister, Senior Advisor and QA/QC		ICF	36	MS	25	CO	✓	✓	✓	✓	✓	✓
Craig Hedman, PhD, Lead Covered Activities and Conservation Program	■	ICF	26	PhD	75	FL	✓	✓	✓	✓	✓	✓
David Aslesen, Project Description / Covered Activities		AES	19	BS	25	WI	✓	✓	✓	✓	✓	✓
Kim Chapman, PhD, Lead Environmental Setting	■	AES	30	PhD	15	MN	✓	✓	✓	✓	✓	✓
Bill Stoll, Environmental Setting		AES	5	MA	25	IL		✓	✓	✓	✓	✓
Dale Sparks, PhD, Lead Impacts and Covered Species	■	ESI	20	PhD	40	OH	✓	✓	✓	✓	✓	✓
Lucas Bare, Implementation, Assurances, Impacts		ICF	13	MES M	35	CO	✓	✓	✓	✓	✓	✓
Todd Jones, Alternatives		ICF	3	MS	35	NC	✓	✓	✓	✓	✓	✓
Lynn Robbins, PhD, Conservation Strategy		ESI	47	PhD	25	MO	✓	✓	✓	✓	✓	✓
Nick Dennis, PhD, Funding		ICF	16	PhD	25	CA	✓	✓	✓	✓	✓	✓
Jacques Veilleux, PhD, Conservation Program		ESI	15	PhD	25	NH		✓	✓	✓	✓	✓
Greg Anderson, PhD, GIS		ESI	5	PhD	75	OH	✓	✓	✓	✓	✓	✓
Jason Carlson GIS		AES	15	MS	20	WI			✓	✓	✓	✓
NEPA Compliance												
Hova Woods, NEPA Compliance Task Lead	■	ICF	14	MPA	50	IN	✓	✓	✓	✓	✓	✓
April Zohn, Senior Advisor and QA/QC		ICF	15	BS	15	OR	✓	✓	✓	✓	✓	✓
John Hansel, JD, Senior Advisor and QA/QC		ICF	38	JD	25	VA	✓	✓	✓	✓	✓	✓
Dave Johnson, Lead Biological Resources	■	ICF	15	BS	35	DC	✓	✓	✓	✓	✓	✓

Virgil Brack, PhD, Biological Resources (Bats)		ESI	35	PhD	35	OH	✓	✓	✓	✓	✓	✓
Genesis Mickel, Biological Resources (Threatened and Endangered Species)		AES	11	MS	40	MN	✓	✓	✓	✓	✓	✓
Lawrence Brewer, PhD, Biological Resources (Vegetation)		ESI	37	MS	25	OH		✓	✓	✓	✓	✓
John Larson, PhD, Biological Resources (Wetlands)		AES	23	PhD	35	WI		✓	✓	✓	✓	✓
Alex Uriarte, PhD, Human Resources (Socioeconomic and Environmental Justice)		ICF	15	PhD	35	VA	✓	✓	✓	✓	✓	✓
Richard Starzak, Human Resources (Cultural Resources)		ICF	35	MA	20	CA	✓	✓	✓	✓	✓	✓
David Coate, Physical Resources (Noise)		ICF	35	MS	35	VA		✓		✓	✓	✓
David Ernst, Physical Resources (Air Quality/Climate)		ICF	35	MCR P	20	MA	✓	✓	✓	✓	✓	✓
Ralph Grismala, PE, Physical Resources (Soils)		ICF	36	MS	25	TN	✓	✓	✓	✓	✓	✓
Jennifer Piggott, Lead Public Involvement	■	ICF	13	BA	40	MA	✓	✓	✓	✓	✓	✓
Tiffany Mendoza, Public Involvement		ICF	10	BA	50	VA	✓	✓	✓	✓	✓	✓
Nick Baker, Administrative Record		ICF	9	MEM	35	NC	✓	✓	✓	✓	✓	✓

3.05 Organizational Chart



3.06 Disclosure of Subcontractors

Business Address:	4525 Este Avenue, Cincinnati, Ohio 45232
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Email Address:	vbrack@envsi.com , Dsparks@envsi.com
Phone #:	513.451.1777
Services to be provided under this contract:	Lead Bat Biological Modeling; Lead Bat Species Accounts; Lead HCP Impact Analysis; Conservation Strategy Support; Co-Lead NEPA Impact Analysis; Lead GIS Mapping/Analysis
	
Business Address:	21938 Mushtown Road., Prior Lake, Minnesota
Email Address:	kim@appliedeco.com , genesis.mickel@appliedeco.com
Phone #:	952.447.1919
Services to be provided under this contract:	Lead Environmental Setting; Support Covered Activities; Support GIS Mapping; NEPA Support, Local Resources Experts

Contractor must provide percent of work to be performed by each subcontractor:

ESI = 35%

AES = 15%

3.07 Security

The Contractor will be subject to the following security procedures:

- Clearly identifying uniforms
- Name Badges

4.0 Project Management

4.01 Project Plan

Understanding of the Project Scope

An HCP will outline when, where, and how to avoid practices that may take Indiana, northern long-eared, little brown, and tri-colored bats and, when avoidance is not possible, will identify measures to minimize and compensate for unavoidable impacts. The HCP and its associated NEPA compliance will allow the State Agencies to manage their forests in ways that are both beneficial to bats and other wildlife while meeting their own strategic forest management plans and missions.

The ICF team will prepare two drafts of the HCP for Steering Committee review, public draft and a final HCP. The ICF team will ensure that the HCP conforms to the federal guidelines and policies set forth in the *Endangered Species Habitat Conservation Planning Handbook*.

(<http://www.fws.gov/endangered/hcp/hcpbook.html>), as amended by the 5-Point Policy and other more recent policies.

ICF has scoped for the preparation of an EA, as indicated in the responses to questions provided by the State Agencies. However, an EIS may be necessary, given the geographic size of the plan area and FWS precedent. ICF will work with State Agencies (and the FWS) to help determine what level of NEPA compliance is required to avoid costly and time-consuming missteps. Because the current proposal is

scoped as an EA, an administrative draft EA and public draft EA are planned. A final draft is not required for an EA, but typically the FWS will provide written response to comments to include in its findings of no significant impact (FONSI). The interaction of the HCP and NEPA processes and the anticipated timeline are provided in Table A.3: HCP and NEPA Development Approach. In addition to development of the administrative and public draft HCP and EA, the ICF team will perform the following tasks:

- Compile existing relevant data
- Determine permit duration in consultation with FWS
- Refine State Agency activities that have the potential to take covered bat species
- Determine anticipated levels of take of the covered species
- Identify and evaluate the measures the State Agencies will implement to avoid, minimize, and mitigate potential direct and indirect impacts
- Develop a monitoring and implementation plan to ensure compliance and gauge the effects and effectiveness of the HCP
- Determine compliance needs under NEPA
- Respond to public comments on the NEPA document
- Maintain and submit the working file in support of the administrative record

Collaborative Work Style with Partners

The ICF team will use a positive, problem-solving approach that encompasses internal processes, FWS involvement, and stakeholder input. With respect to all interactions involved in HCP development, ICF will aim to address multiple points of view and achieve consensus. Components of the process will include the following:

- Sharing relevant information, which is critical for effective solutions
- Focusing on issues, not personalities
- Focusing on the present and future, not the past
- Focusing on the interests underlying the issues
- Focusing on mutual interests and helping to satisfy the other party's interests as well as your own
- Developing options to satisfy those interests that should be evaluated by objective criteria, rather than power or leverage

For critical decisions where it is difficult to obtain consensus, the Steering Committee shall have a pre-determined process which will be implemented to lead to a decision.

In addition to established processes for collaboration, the ICF team will maintain strong working relationships with FWS offices and staff. Central to ICF's our approach is providing FWS with a technical document that is clear, well organized, and scientifically sound.

Table A.3: HCP/NEPA Development Approach

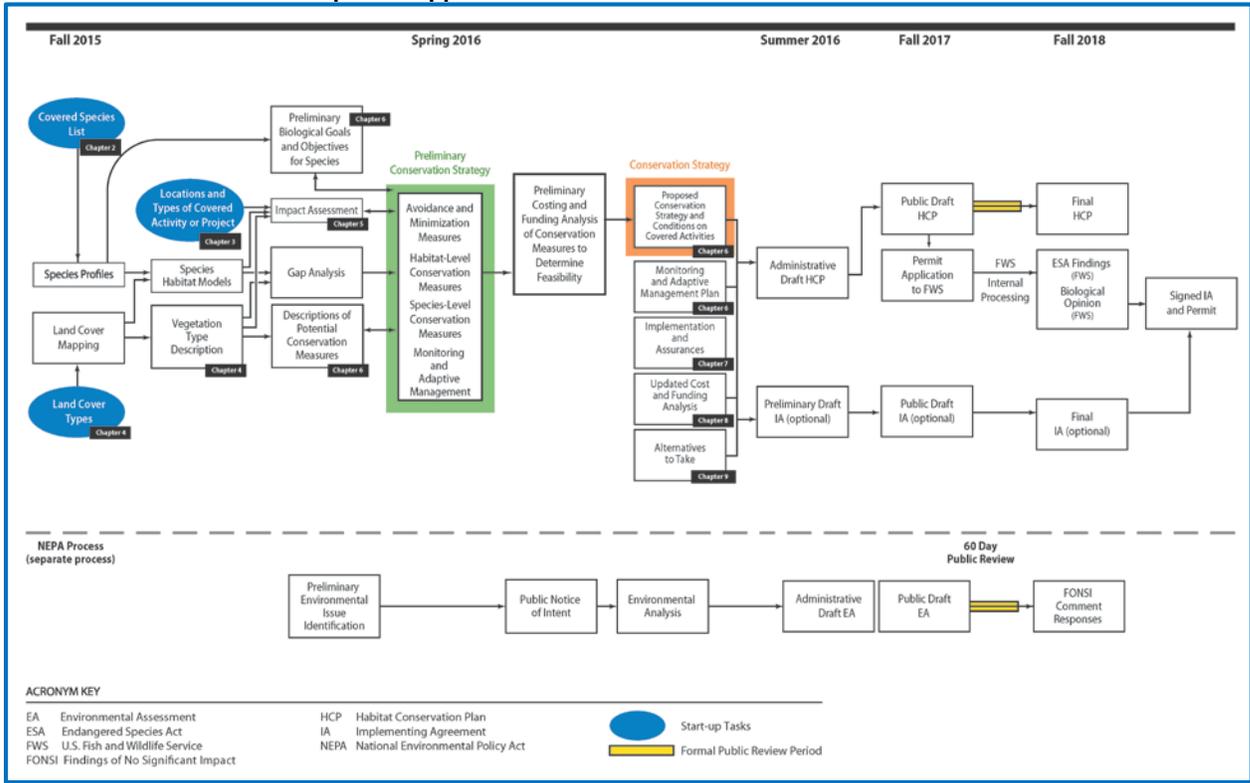
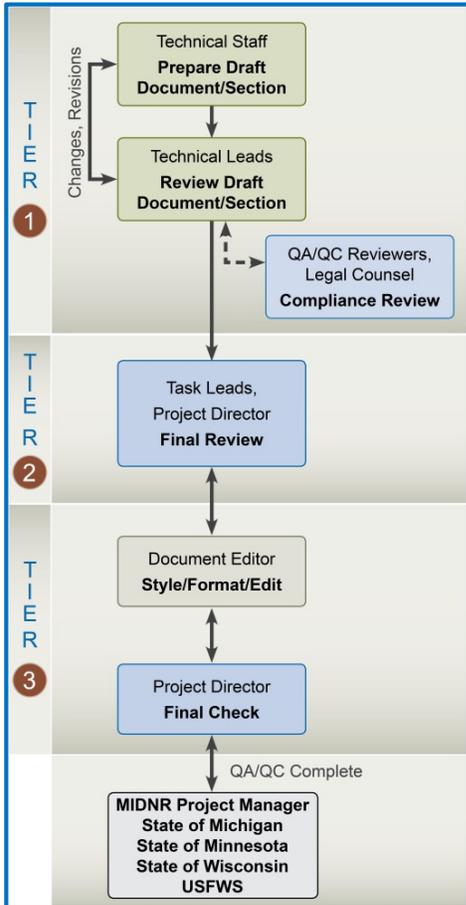


Table A.4: Three Tiered QA/QC Process



Quality Assurance/Quality Control and Technical Procedures

ICF uses mutually agreed-upon objectives. For this project, ICF will tailor their standard QA/QC program to directly respond to State Agency expectations and internal process. As illustrated in Table A.4, ICF's 3 tiered system serve as the foundation for our QA/QC program and it will be modified as needed to reflect changing needs or requirements. The process consists of three tiers—technical team review, management review, and production/delivery review. The QA/QC program will be applied to a variety of services and deliverables, as listed below. Each step in the process includes documentation of the comments, response to comments, and sign off by the appropriate reviewer.

Tier 1

- Technical document review. To ensure scientific accuracy and completeness, senior technical experts conduct peer reviews of all technical documents before they are submitted to the task order manager for review and approval. In addition, before documents are published, they are reviewed by a technical writer/editor to ensure analytical information in the document is presented in a readable format, is understandable to the general public, and is presented in a clear and informative writing style.
- Regulatory process/permitting review. Our regulatory compliance experts review documents to ensure that they meet all content and procedural requirements and guidelines and are legally defensible according to case law. QA/QC also includes review of permit applications and supporting analyses and documents.

Tier 2

- During Tier 2, the task leads, the project manager, and the project director will review the product.

Tier 3

- Tier 3 includes final review of the document by a technical editor, followed by a final check and approval of the document for distribution to the client. The project director will provide final approval for distribution to Michigan DNR and the FWS.

Project Controls

Cost Control and Scheduling

ICF recognizes that adherence to project budgets and schedules is critical to meeting the needs of this project. ICF uses Deltek Vision, a customized accounting system that accurately allocates costs and provides real-time project management information by project task. The system is a flexible database with robust reporting functions that support a standard suite of reports and custom-designed reports. Weekly financial updates are available through the online system to project managers for each contract, task, and subtask. ICF will set up period of performance, budget, and hourly allocations for each staff member and subcontractor by task for the contract in the Deltek system. Project Manager Paola Bernazzani will communicate budgets and allocated hours to each of the staff members assigned to the project.

With oversight from Project Director Leo Lentsch, Paola will be responsible for tracking and maintaining the budget. She will track level of effort and costs incurred on a weekly basis through ICF's online system. For a cost-sensitive project such as this one, the ICF system will provide cost-tracking data against a deliverable/milestone schedule for each task. This information will be used to prepare the monthly budget report for Michigan DNR. The system is designed to effectively provide multiple controls on project budgets and schedules. On a monthly basis, financial administrative staff will prepare a budget summary and invoice, which Paola will review and approve. She will also prepare a progress report to accompany these documents in our submittal to Michigan DNR.

Paola will closely monitor the progress of the project in relation to the schedule, ensure that deadlines are met successfully, and respond to changes in events as they are encountered. She will ensure that the schedule is regularly updated. The schedule will include important milestones, such as dates of task initiation and completion, as well as due dates of major deliverables.

Project schedule and budget control will occur in a hierarchical, two-step process. The first step will be a critical understanding of the scope of work that is required to successfully complete the project and a concomitant ability to accurately budget, in terms of time and money, for the cost-effective completion of the identified scope of work. ICF has found that most cost overruns and project delays result from a poor or unrealistic understanding of the required project scope and time and costs to complete. ICF's experience in HCP development provides us with the ability to not only appropriately scope and budget to prepare the HCP and NEPA documents, but to provide meaningful guidance on anticipated estimates of subsequent costs and funding needs to complete the ITP process. Once an appropriate budget and schedule have

been established, cost and schedule control requires hands-on participation of the ICF project manager, team leads, and project staff.

ICF uses project management systems and a critical path-scheduling program such as Microsoft Project® to track and control the schedule of each significant activity. The system is an integrated cost accounting and project management program designed to rapidly and accurately track a project's status.

Costs accrued are entered into the accounting system each Monday in the form of labor hours from timesheets, invoices from subcontractors, and expenses from expense reports. This information can be accounted for in the system by task for each phase of the project. Following entry, budget data is available to project managers and staff in real time on a task-by-task basis and include the following:

- Weekly expenditures
- Expenditures to date
- Hours charged by individual
- Itemized accounting of subcontractors and other direct charges

With the project management system, the project manager and task leads can quickly monitor the performance of any task for the preceding week. In this way, ICF will efficiently and cost-effectively track the performance and budget status of all work assignments.

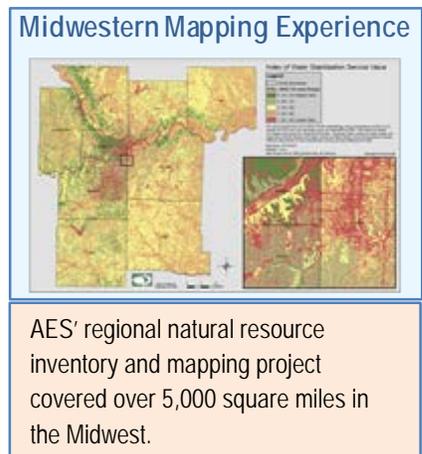
Access to and Use of Existing Biological Data

As required by NEPA and the ESA, the ICF team will compile the best available scientific information to assess the impacts of natural resource and recreation facilities development, management, and maintenance on the northern long-eared bat. ICF will use or modify existing data obtained from the three State Agencies and data from other county, state, and national sources of natural resource data (see Table A.6 below) to characterize and map the affected environment for covered species. These data will be used to:

- Define the location of covered lands
- Describe the nature of covered activities
- Develop a programmatic effects analysis that considers impact mechanisms typical of natural resource and recreational facilities development and management (e.g., habitat disturbance during management or harvest of forest resources, road construction for timber sales, construction and maintenance of parks and recreation facilities, mineral extraction permitting)
- Identify and evaluate the effectiveness of conservation measures in avoiding, minimizing, and mitigating impacts to covered species
- Define and describe additional measures necessary to avoid, minimize, or mitigate impacts to other resources identified in the scoping process

Accurate and adequate GIS mapping of resources will be critical to completing the EIS analysis and will largely be based on the existing GIS datasets identified in Table A.5. The ICF team's ability to have available and incorporate data from the State Agencies, as well as county, state and federal GIS data sets, will be critical for reducing costs and meeting timelines.

Accordingly, under this task, ICF will work with Michigan DNR as the lead agency to refine the sources of data and analytical approaches that may be used for the HCP, including data developed in support of any related analyses that may be applicable, such as forest inventory and analysis (FIA) datasets. To the extent necessary, ICF will identify data gaps and potential implications of these gaps on the HCP analysis, budget, and schedule. This understanding will be used to determine the most efficient process for accurately characterizing and mapping resources, including pertinent biological or physical resources and areas of potential disturbance. Potential natural resource development areas, identified by such measurements as past and anticipated future timber sales, parks and recreational facility siting and development, and mining permits, will also be included in the HCP to establish a baseline. Both AES and ESI will play a critical role in this process, given their extensive experience working in the three



states and the Great Lakes region and their specific expertise with the ecosystems and land cover types, forest management and other development activities, human effects on the environment, and covered bat species that will be incorporated in the HCP.

Table A.5. Existing Data Sources Proposed for Use in the HCP

Resource Area	Data Sources
Geology and Mineral Resources	Mine permit, reclamation, and mineral resource inventory for the three states; generalized geologic maps (U.S. Geological Survey [USGS] and State Geologic Survey GIS data); hazard (fault zones, seismic hazards, landslide incidence) data (USGS and National Atlas of the U.S. [NAUS] GIS data)
Soils	Soils inventories (STATSGO or SSURGO); Natural Resources Conservation Service GIS data)
Socioeconomics	U.S. Census Bureau, Bureau of Economic Analysis, Bureau of Labor Statistics, Energy Information Administration and state data and reports on demographics, employment and income, energy production, fiscal revenues and local livelihoods and values
Biological Resources	FIA (Forest Service); county and state forest inventory and assessment databases; National Land Cover Database (EPA/USGS); Ecoregions (Forest Service and state natural resource agencies); State Wildlife Action Plans; Audubon Important Bird Areas; Nature Conservancy Ecoregional Conservation Areas; State Natural Heritage datasets and NatureServe rare features data; other scientific and expert papers on wildlife, sensitive habitats, forest management practices.
Water Resources	Regional and sub-regional watersheds (Hydrologic Unit System); National Wetland Inventory data; National Hydrography dataset; sensitive groundwater aquifers (EPA and NAUS GIS data); National Water Information System (USGS data); FEMA Flood Insurance Rate Maps
Land Ownership, Land Use, and Recreation	State GAP parcel dataset; county and state land parcel inventories for the three states; Utilities data (Environmental Systems Research Institute GIS data); roads and airport data (NAUS GIS data); federal land ownership data (NAUS GIS data); National Park Service ownership data; NRCS and State Department of Agriculture data
Visual Resources / Aesthetics	BLM/Forest Service/National Park Service visual resource inventories; state DOT scenic highway guidelines
Air Quality	Air quality attainment information (EPA, U.S. Department of Transportation GIS data)
Noise	California Department of Transportation Construction-Induced Vibration Guidance Manual
Cultural and Paleontological Resources	National Register of Historic Places; SHPOs; federally listed tribes
Public Safety	State repositories for hazardous waste; CERCLA contaminated sites database; National Priorities List
Climate Change	North Central Forest Experiment Station state-level and regional reports on expected climate change effects to natural resources; Intergovernmental Plan on Climate Change and Midwest Regional Climate Center data estimates; state natural resource agency climate

Resource Area	Data Sources
adaptation strategies	

Contractual Changes and Amendments

ICF’s experience preparing HCP and NEPA documents of all sizes and complexity allows us to accurately estimate anticipated scope, schedule, and cost when bidding on a project. However, during the course of a project, a variety of items can affect scope, schedule, and cost, including changes in regulations and policy, additional effort in response to public and cooperating agency input, changes in project descriptions, and other items. ICF will make every effort to maintain scope, schedule, and budget, but understand the importance of implementing a clear and agreed-upon process for dealing with unanticipated changes in project scope, schedule, and cost, if they do arise. ICF will use the following approach to identify and address requested changes in project scope, schedule, and budget.

- *Step 1 – Propose Change:* As soon as a change in scope is identified or requested, ICF will fill out columns 1-5 in the change management matrix (Table A.6 below) identifying the proposed change in scope and the justification. ICF will send the change management matrix to the Michigan DNR project manager to review the proposed change in scope and justification.
- *Step 2 – Review of Change:* The Michigan DNR project manager will review the proposed scope and justification and provide revisions or approval to ICF. ICF will document Michigan DNR approval in column 7 of the change management matrix.
- *Step 3 – Determination of Approval:* Depending on the level of effort, cost, and other factors, Michigan DNR will determine if the change in scope can be approved via email or if a formal contract modification is required.
- *Step 4 – Documentation of Approval if Modification is not Required:* If a formal contract modification is not required, ICF will document Michigan DNR approval of the change in scope and cost in column 7 of the change management matrix.
- *Step 5 – Preparation of Contract Modification:* If a formal contract modification is required, ICF will prepare a detailed statement of work (SOW) for Michigan DNR review and approval to ensure the effort is consistent with expectations.
- *Step 6 – Clarify Implications:* Michigan DNR will provide revisions or approval of the formal SOW for the modification.
- *Step 7 – Approval of Modification:* Upon Michigan DNR approval of the SOW for the modification, ICF will transmit the SOW, the change management matrix, and a detailed cost estimate for review and approval. Upon approval, Michigan DNR will supply to ICF a modification for signature, and ICF and Michigan DNR will incorporate the modification into the contract.

Table A.6. Change Management Matrix

1	2	3	4	5	6	7
Reference ¹	Requirement ²	Baseline ³	Change	Justification	Cost and Schedule Implications	Change Approval ⁴

¹ *Reference #* – Refers to the SOW task or other unique identifying feature of the proposed change.

² *Requirement* – Refers to the requisite condition as described (or not) in the contract, SOW, or other feature identified under Reference #.

³ *Baseline* – Refers to the existing performance condition prior to implementing the proposed change.

⁴ *Change Approval* – Documents the date and authorized approval of the proposed change by members of the Change Control Board.

Schedule

Our approach and scope are designed to meet an aggressive schedule and produce an administrative draft HCP in 12 months, final HCP within two years, and completed NEPA compliance within three years. ICF will ensure that the plan maintains momentum, costs are contained, and permits are issued as soon as practicable. ICF manages aggressive schedules by understanding the project’s critical paths, such as agency turnaround time, client needs, key issues and decisions, internal coordination, and mandatory comment periods. ICF will work in parallel on multiple issues and anticipate project needs before they occur. Our proposed schedule is presented in Attachment A.

The ICF team has provided some minor modifications to the schedule to account for joint delivery of the NEPA and HCP documents, including the public draft documents.

4.02 Meetings

The Contractor must attend the following meetings:

- Every other week teleconference/webinar with MI DNR project manager
- Contractor should plan on attending a kick-off meeting in person within 60 days of contract signing.
- The Steering Committee will schedule other meetings, as it deems appropriate

The DNR Project Manager must approve in writing all contractor costs (travel, lodging, meals, staff time) in writing for meetings at least two weeks prior to any meeting.

The Contractor will be expected to make travel arrangements as far in advance as possible, travel in the most economical means to ensure the most cost effective meetings as possible.

The MIDNR will make arrangements and cover the cost of all web based meetings.

4.03 Reporting

The Contractor must submit, to the MI DNR project manager.

HCP Chapter Deadlines(chapters are spelled out in HCP Development – above):

Chapter	Task 1 – Preliminary Administrative Draft for State Agency		Task 2 – Administrative Draft for Steering Committee	Task 3 – Public Review Draft		Task 4 – Final HCP	
	2015	2016	2016	State Review Draft 2017	Final Draft 2017	State Review Draft 2017 2018	Final Draft 2018
1		June	July	Jan	July	Nov	July
2	Dec		Jan	Jan	July	Nov	July
3		Jan	Feb	Feb	Aug	Dec	Aug
4		Feb	March	Feb	Aug	Dec	Aug
5		April	May	March	Aug		Jan Sept
6		May	June	March	Aug		Jan Sept
7		June	June	April	July	Nov	Sept

8		June	July	April	July	Dec		Sept
9		July	July	April	July	Dec		Aug
10		Aug	Aug	April	July			
11		July	July	April	July	Dec		Aug

Task 1 and 2 are to be completed by August 2016

Task 3 is to be completed by August 2017

Task 4 is to be completed by September 2018

Environmental Assessment (EA) Chapter Deadlines (chapters are spelled out in Section 3a: Prepare Administrative Draft EA)

Chapters	Administrative Draft	Public Draft
1	December 2016	September 2017
2	February 2017	September 2017
3	May 2017	September 2017
4	July 2014	September 2017
5	July 2014	September 2017
6	July 2014	September 2017
7	July 2014	September 2017

5.0 Pricing

5.01 Price Term

Pricing is firm for a 365 day period ("Pricing Period"). 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.

5.02 Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

6.0 Ordering

6.01 Authorizing Document

The state shall authorize and commit to the contractor by issuance of a purchase order.

7.0 Invoice and Payment

7.01 Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) description of the Contract Activities; (d) price per item according to Exhibit C; and (f) total price.

If an invoice includes travel the Contractor must submit actual invoices for reimbursement for airfare, rental cars (including gas), parking, and lodging. Contractor must also include departure and return times for staff to attend meetings for the purpose of meal reimbursement. For mileage reimbursement requests, Contractor must provide departing city, destination and total mileage round trip.

7.02 Payment Methods

The State will process payment for services completed in the following manner:

ICF may bill in the according to the pricing table in Attachment A at the following intervals:

Item:	When payment will be made
Meetings	Expenses may be submitted monthly for payment
Cost for Assessment and Recommendations	Upon receipt and acceptance of report
HCP Chapters	May bill upon acceptance by chapter per task
EA Chapters	May bill upon acceptance by chapter for each draft (Administrative and Public Review)
Preparation for EA Meetings	Upon completion of the first EA meeting

8.0 Liquidated Damages

Late or improper completion of HCP Chapters covered by Task 1, 3 and 4 in the pricing table will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities stated above the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

Unauthorized Removal of the Project Manager will interfere with the timely and proper completion of the Contract, to the loss and *damage of the State, and it would be impracticable and extremely difficult to fix the actual damage* sustained by the State. Therefore, the State may assess liquidated damages against Contractor as specified below.

The State is entitled to collect \$1,000 per individual per day for the removal of the Project Manager without prior approval of the State.

The State is entitled to collect \$1,000 per individual per day for an unapproved or untrained key personnel replacement.

Attachment A

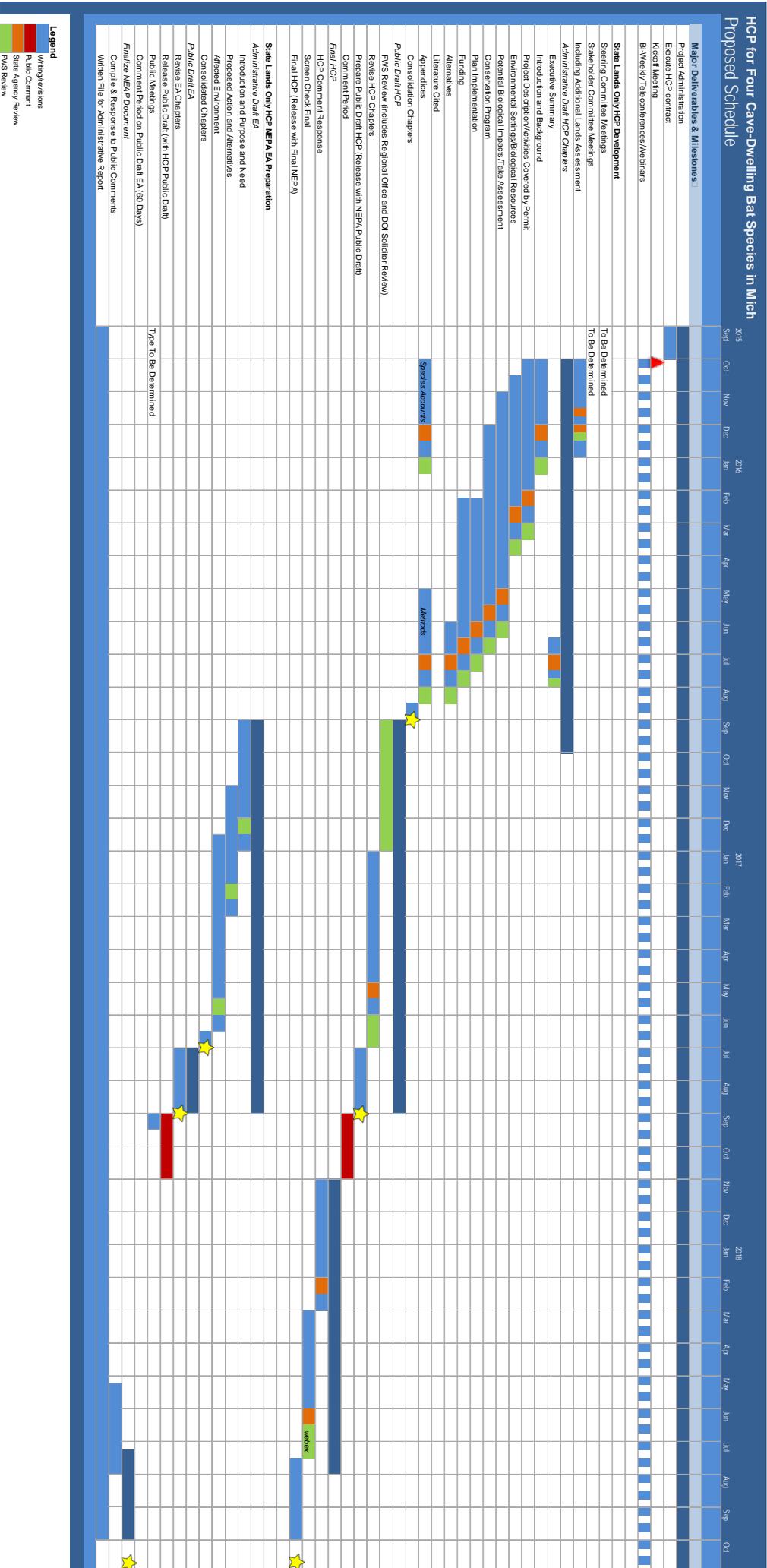


Exhibit A

Assessment and Recommendations for including additional lands in the three state forest practices HCP: To include: Non-Federal Public Lands in all states, then private forestry lands in each of the three states.	
TOTAL COST FOR ASSESSMENT AND RECOMMENDATIONS	\$24,545

HCP CHAPTERS	Task 1 Cost to Draft Each Chapter Preliminary Administrative Draft For State Agency Review: Year 1	Task 2 Cost to Revise Each Chapter Prepare Administrative Draft For Steering Committee Review: Year 1	Task 3 Cost to Revise Each Chapter Public Review Draft For Public Review: Year 2	Task 4 Cost to Finalize Each Chapter Final Document Prepare Final HCP: Year 3
1. Executive Summary	\$3,440	\$435	\$2,900	\$1,235
2. Introduction and Background	\$10,385	\$940	\$5,995	\$2,280
3. Project Description/Activities Covered by Permit	\$41,150	\$3,910	\$25,628	\$7,615
4. Environmental Settings/Biological Resources	\$57,104	\$6,919	\$31,184	\$16,375
5. Potential Biological Impacts/Take Assessment	\$95,567	\$7,871	\$37,703	\$17,745
6. Conservation Program	\$15,670	\$1,690	\$7,870	\$4,965
7. Plan implementation	\$8,130	\$900	\$3,180	\$2,260
8. Funding	\$7,710	\$395	\$925	\$1,355
9. Alternatives	\$4,322	\$650	\$2,030	\$2,300
10. Literature Cited	\$0	\$0	\$0	\$0
11. Appendices	\$0	\$0	\$0	\$0
TOTAL COST FOR HCP DOCUMENT	\$397,506	\$35,658	\$172,900	\$81,728

HCP Development Assumptions:

- ✓ Costs for biweekly coordination calls with MIDNR PM are included in the costs of preparing the documents.
- ✓ Costs for biweekly calls exclude the cost of preparing agendas for the calls and call summaries that document any PM decisions made during the calls (See general assumptions associated with meetings below).
- ✓ Costs for Steering Committee and Stakeholder Meetings are estimated separately (See meetings below).
- ✓ Costs for consolidating the chapters into a single document are included in the cost per chapter.

- ✓ Costs for including private lands in the HCP are not included in the cost estimate to prepare the documents. Costs would be determined based on the results of the Optional Task to evaluate options for including private lands in the HCP.
- ✓ Costs for including the USFWS solicitor and final Steering Committee review of the administrative draft are included in the estimate to prepare the public review draft.
- ✓ Costs for printing for the Administrative Review, Public Review, and Final documents for distribution are not included.
- ✓ Costs for maintaining websites, mailings, outreach, or newsletters are not included.
- ✓ MIDNR will consolidate all comments on draft documents.

NEPA BASE COSTS (STATE LAND ONLY)		
Preparation for a EA Public Meeting (one-time fee)		\$9,750
Chapter	Administrative Draft of EA	Public Review Draft of EA
Chapter 1: Introduction and Purpose and Need	\$6,815	\$3,945
Chapter 2: Proposed Action and Alternatives	\$7,835	\$11,195
Chapter 3: Affected Environment	\$43,090	\$27,730
Chapter 4: Environmental Consequences	\$50,242	\$21,577
Chapter 5: Cumulative Impacts	\$7,200	\$6,440
Chapter 6: List of Preparers and Agencies Consulted	\$3,005	\$3,125
Chapter 7: Literature Cited	\$2,000	\$940
TOTAL COST FOR EA DOCUMENT	\$120,187	\$74,952

NEPA EA Document Assumptions:

- ✓ Costs for biweekly coordination calls with MIDNR PM are included in the costs of preparing the documents.
- ✓ Costs for biweekly calls exclude the cost of preparing agendas for the calls and call summaries that document any PM decisions made during the calls (See general assumptions associated with meetings below).
- ✓ Costs for consolidating the chapters into a single document are included in the cost per chapter.
- ✓ As requested, we have assumed that an EA, not an EIS will be required by the USFWS.
- ✓ Costs for preparing a FONSI are not included. USFWS typically does this.
- ✓ Costs (labor and travel) associated with meetings (e.g., in person coordination, scoping, public) are not included. These are detailed separately.
- ✓ Costs for printing of the Administrative Review and Public Review documents for distribution are not included.
- ✓ Costs for maintaining websites, mailings, outreach, or newsletters and not included.
- ✓ Costs for preparing a Final EA are not included. A final EA document is not required under NEPA. However, USFWS may request this.
- ✓ NEPA compliance costs could change based on USFWS direction.

**Meetings (Kick-off, Steering, Stakeholder and Public)
(Cost per day Contract Staff to attend)**

Lodging	<i>To be reimbursed at actual rate</i>
Rental Car (includes gas)	<i>To be reimbursed at actual rate</i>
Airfare	<i>To be reimbursed at actual rate</i>
Parking	<i>To be reimbursed at actual rate</i>
Mileage for non-rented vehicles	<i>\$.390 per mile</i>
Meals	<i>\$44 per day (\$10.25 each for breakfast and lunch, \$23.50 for dinner)</i>
Administrative mark up on travel costs	<i>5% (based direct travel costs lodging, rental car, airfare, parking and mileage)</i>

Labor costs will be billed at the hourly rate for the staff person who attends the meeting.
Labor costs will include meeting time as well as actual travel time in the amount not to exceed 4 hours per staff person.

Labor Rates for meetings:

Individual Staff	Working Title	Team Assignment	Labor Category	Initial Hourly Rate
ICF STAFF				
Leo D Lentsch	Project Director	HCP and NEPA	Senior Project Director	\$225
David Zippin	HCP QA/QC	HCP	Technical Director	\$225
Richard Starzak	NEPA Cultural Resources	NEPA EIS	Technical Director	\$225
David Coate	NEPA Noise	NEPA EIS	Technical Director	\$225
John Hansel	NEPA QA/QC	NEPA	Technical Director	\$225
David Ernst	NEPA Air/Climate	NEPA EIS	Technical Director	\$225
Allan Pfister	HCP QA/QC	HCP	Managing Consultant	\$210
Paola Bernazzani	HCP Project Manager	HCP	Senior Consultant III	\$205
Hova Woods	NEPA Deputy Project Manager	NEPA	Managing Consultant	\$185
David Johnson	NEPA Biology Lead	NEPA	Senior Technical Analyst	\$185
Jennifer Piggott	NEPA Public Outreach	NEPA	Senior Consultant III	\$185

April Zohn	NEPA QA/QC	NEPA	Senior Consultant III	\$185
Nick Dennis	HCP Funding Lead	HCP	Senior Consultant II	\$170
Alex Uriate	NEPA Social and EJ	NEPA	Senior Consultant I	\$155
T Mendoza	NEPA Public Involvement	NEPA	Senior Consultant I	\$155
Madeline Terry	NEPA Project Manager	NEPA	Managing Consultant	\$150
Lucas Bare	HCP Modeling Support	HCP	Senior Consultant II	\$150
Shawna Barry	HCP Deputy Project Manager	HCP	Senior Consultant I	\$135
Brent Read	NEPA GIS	NEPA EIS	Senior Consultant II	\$135
Jessica Feldman	NEPA Cultural	NEPA EIS	Senior Consultant II	\$135
Nick Baker	NEPA Biology	NEPA	Senior Consultant II	\$125
Todd Jones	HCP Technical Support	HCP	Associate Consultant I	\$115
Generic Support Staff	HCP Technical Support	HCP	Associate Consultant I	\$115
Anne Morley	Graphic Support	NEPA EIS	Senior Consultant II	\$115
Generic Support Staff	HCP GIS	HCP	GIS Coordinator	\$105
Elyse Mize	NEPA EIS Project Coordinator	NEPA EIS	Senior Consultant I	\$105
Generic Support Staff	NEPA Publication Specialist	NEPA EIS	Technical Editor	\$105
John Rogers	NEPA EIS Administrative File and Research	NEPA EIS	Associate Consultant II	\$95
Generic Technical Editor	HCP and NEPA Documents	HCP and NEPA	Technical Editor	\$95
Generic Invoicing Support	HCP and NEPA	HCP and NEPA	Finance Project Administrator	\$70
ESI STAFF*				
Virgil Brack	NEPA Biology	NEPA	Lead Biologist	\$183.75
Dale Sparks	HCP Covered Species Lead	HCP	Lead Biologist	\$157.50
Wendy Baltzersen	NEPA Biology	NEPA	Senior Biologist	\$157.50
Jacques Veilleux	HCP Covered Species Biologist	HCP	Senior Biologist	\$147
Lynn Robbins	HCP Biologist	HCP	Biologist	\$131.25
Lawrence Brewer	NEPA Biologist	NEPA	Biologist	\$131.25

Version (12/27/13)

Rob Dean	HCP Support Biologist	HCP	Biologist	\$110.25
John Spaeth	NEPA Support Biologist	NEPA	Biologist	\$110.25
Jason Damm	HCP Support Staff	HCP	Biologist	\$94.50
Greg Anderson	HCP Support Staff	HCP	Biologist	\$86.10
Mike Bunning	NEPA Support Staff	NEPA	Biologist	\$86.10
Jo Gaofalo	HCP Support Staff	HCP	Biologist	\$75.60
David Tull	HCP Support Staff	HCP	Biologist	\$68.25
AES STAFF*				
Kim Chapman	Lead HCP Biologist	HCP	Lead Avian Biologist	\$183.75
John Larson	NEPA Wetland Biology	NEPA	Wetland Biologist	\$157.50
Jason Carlson	HCP Biologist	HCP	Biologist	\$120.75
Genesis Mickel	NEPA Biology	NEPA	Biologist	\$120.75
David Aslesen	HCP Biologist	HCP	Biologist	\$110.25
F4 Tech/Forestry Innovation*				
Craig Hedman	HCP Covered Activities	HCP	Forester	\$204.75



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and ICF Jones & Stokes, Inc. (An ICF International Company), a Limited Liability Company. This Contract is effective on October 6, 2015 (“**Effective Date**”), and unless terminated, expires on September 30, 2018.

This Contract may be renewed for up to two (2) additional one (1) year period(s). 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: <i>Jana Harding-Bishop</i> 525 W. Allegan St Lansing, MI 48933 HardingJ3@michigan.gov 517-284-5938	If to Contractor: <i>Jodi Young</i> PO Box 654 Penngrove, CA 94951 Jodi.Young@icfi.com 707-992-0768
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

State:	Contractor:
<i>Jana Harding-Bishop 525 W. Allegan St Lansing, MI 48933 HardingJ3@michigan.gov 517-284-5938</i>	<i>Jodi Young PO Box 654 Penngrove, CA 94951 Jodi.Young@icfi.com 707-992-0768</i>

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

State:	Contractor:
<i>Mary Rabe 525 West Allegan Street Lansing, MI 48909-7944 rabem@michigan.gov 517-243-3122</i>	<i>Leo Lentsch 8310 S Valley Hwy #240 Englewood, CO 80112 Leo.Lentsch@icfi.com 843-544-0125</i>

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.
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 an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	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.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
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.	
Professional Liability (Errors and Omissions) Insurance	

<u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss	
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If any of the required policies provide **claim-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 – N/A.

8. Extended Purchasing Program – N/A

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. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

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, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
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 Project 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 - N/A**
18. **Risk of Loss and Title – N/A**
19. **Warranty Period - N/A**
20. **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.

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.
22. **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.
23. **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.

24. **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.
25. **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.

- 26. 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.

- 27. 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.
- 28. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 29. 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.
- 30. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the

State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.

31. 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 non-State Data Confidential Information is not feasible, such party must destroy

the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

32. Data Privacy and Information Security – N/A

33. Payment Card Industry Data Security Standard – N/A

34. CEPAS Electronic Receipt Processing Standard – N/A

- 35. 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.

- 36. 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.

- 37. 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.

- 38. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

39. Prevailing Wage – N/A

- 40. 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.

41. **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.
42. **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.
43. **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.
44. **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.
45. **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 Project 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.
46. **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.
47. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
48. **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.
49. **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.
50. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
51. **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.

52. **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**").