

AUTHORITY: Act 431 of 1984
 COMPLETION: Required

STATE OF MICHIGAN
 DEPARTMENT OF NATURAL RESOURCES
 PROCUREMENT SERVICES

525 W. Allegan St.
 Lansing, MI 48933

PO Box 30028
 Lansing, MI 48909

NOTICE OF CONTRACT NO. 751B660008

between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Affordable Neon Enterprises, Inc. PO Box 427 Marquette, MI 49855	Eric Keough	allneon@yahoo.com
	TELEPHONE	VENDOR ID#, MAIL CODE
	906-360-9960	2XXXXX9157 / 001

STATE CONTACT	DNR DIVISION	NAME	TELEPHONE	EMAIL
Program Manager	Parks & Recreation	Doug Barry	906-339-4461	Barryd1@michigan.gov
Contract Administrator	Procurement Services	Ruth Thole	517-284-5973	tholer@michigan.gov

CONTRACT SUMMARY

Firewood – for Little Presque Isle Cabins

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Approx. 5 years	12/15/2015	11/31/2020	Two 1-year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45 days	Destination	Marquette County	
MINIMUM DELIVERY REQUIREMENTS		DELIVERY TIMEFRAME	
N/A		48 hours after request	
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	

MISCELLANEOUS INFORMATION

First delivery under this Contract will be Fall, 2016.

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$31,500.00

FOR THE CONTRACTOR:

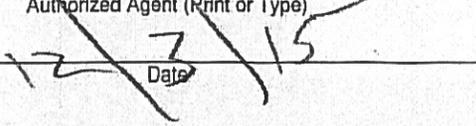
Affordable Neon Enterprises, Inc.



Authorized Agent Signature

Eric Keough / President

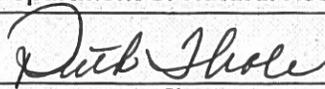
Authorized Agent (Print or Type)



Date

FOR THE STATE:

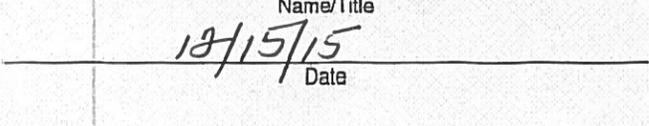
Department of Natural Resources



Signature

Ruth Thole / Buyer

Name/Title



Date



STATE OF MICHIGAN STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Affordable Neon Enterprises, Inc. (the “**Contractor**”), a Michigan corporation. This Contract is effective on December 15, 2015 (“**Effective Date**”), and unless terminated, expires on November 31, 2020.

This Contract may be renewed for up to two (2) additional one (1) year periods. Renewal must be by written agreement of the parties.

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) 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; and (h) 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 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:

Ruth Thole, Buyer
Department of Natural Resources
Procurement Services
PO Box 30028
Lansing, MI 48909
tholer@michigan.gov
517-284-5973

If to Contractor:

Eric Keough, President
Affordable Neon Enterprises, Inc.
112 Vista Hills Trail
PO Box 427
Marquette, MI 49855
allneon@yahoo.com
906-360-9960

- 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:

Ruth Thole, Buyer
Department of Natural Resources
Procurement Services
PO Box 30028
Lansing, MI 48909
tholer@michigan.gov
517-284-5973

Contractor:

Eric Keough, President
Affordable Neon Enterprises, Inc.
112 Vista Hills Trail
PO Box 427
Marquette, MI 49855
allneon@yahoo.com
906-360-9960

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

State:

Doug Barry
 Department of Natural Resources
 Parks and Recreation Division
 Van Riper State Park
 851 County Road AKE
 Champion, MI 49814
barryd1@michigan.gov
 906-339-4461

Contractor:

Eric Keough, President
 Affordable Neon Enterprises, Inc.
 112 Vista Hills Trail
 PO Box 427
 Marquette, MI 49855
allneon@yahoo.com
 906-360-9960

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.
Motor Vehicle 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> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	

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 work; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the contract of work; 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. 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.
- 8. 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.
- 9. 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.
- 10. 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.
- 11. Ordering.** Contractor is not authorized to begin performance until receipt of a purchase order issued by the State.
- 12. 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 19, Termination for Cause.

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

obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

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

- 13. Delivery.** Contractor must deliver all Contract Activities F.O.B. Destination, within the State premises with transportation and handling charges paid by Contractor. All containers and packaging becomes the State's exclusive property upon acceptance.
- 14. Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
- 15. Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
- 16. 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.

- 17. 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 18, 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.

- 18. 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 the Contractor must cease performance of the Contract Activities immediately. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State.
- 19. 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.

- 20. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 21. 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.
- 22. 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 7 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.

- 23. 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 are merchantable and fit for the specific purposes identified in the Contract; (d) the Contract signatory has the authority to enter into this Contract; (e) 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 (f) 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 17, Termination for Cause.
- 24. 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.
- 25. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 26. 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.
- 27. 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.
- 28. 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.
- 29. 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.
- 30. 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.

31. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

32. 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.

33. 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.

34. 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.

35. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

36. 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.

37. 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**").

CONTRACT 751B6600008 - FIREWOOD FOR LITTLE PRESQUE ISLE CABINS

EXHIBIT A - STATEMENT OF WORK CONTRACT ACTIVITIES

This exhibit identifies the requirements of the Contract.

1. Contract Activities Specifications:

The purpose of the Contract is to purchase seasoned firewood for the heating of rustic cabins at Little Presque Isle campgrounds. Any quantities specified are estimates based upon prior or anticipated use.

A. Deliverables: All Firewood must conform to the following specifications.

- 1) Firewood must be cut to a length of 12" to 14"; length must not exceed 14" to fit wood stoves in use.
- 2) Firewood must have a diameter of 2" to 5"; logs exceeding 5" in diameter must be split.
- 3) Firewood must be northern hardwood species of oak, maple, beech, ironwood or birch and may be a mixture of these species.
- 4) Firewood delivered in the first year of the contract term must have had at least one summer to dry (season). Thereafter and for the remainder of the contract term, firewood must have had at least two summers but no more than five summers to dry.

B. Delivery Requirements.

- 1) Firewood must comply with and be transported in compliance with the Michigan Department of Agriculture and Rural Development's quarantine restrictions to prevent the spread of Emerald Ash Borer. Note: Marquette County is a non-quarantined area under the State's interior quarantine to restrict the spread of Emerald Ash Borer (EAB). Firewood provided under this Contract must be harvested from a non-quarantined area or, if from a Level I or Level II restricted area, Contractor must provide a copy of a valid MDARD Compliance Agreement.
- 2) Firewood will be delivered by the face cord quantity; face cord equals 4 feet x 8 feet x 12 to 14 inches.
- 3) Firewood will be delivered to Little Presque Isle Rustic Cabin sites located on Harlow Road off County Road 550, in Marquette County.
- 4) Deliveries will typically occur between September 1 and December 31 each year of the contract term. Annual purchase is typically 70 face cords of firewood.
- 5) DNR will contact the Contractor to request delivery and specify the delivery location.
- 6) Contractor must respond to DNR's delivery request within 48 hours. Contractor must provide DNR Program Manager or designee with date and time of scheduled delivery. DNR will not accept or pay for any deliveries made without prior notification.
- 7) Wood must be unloaded – "dump" deliveries only, no stacking is required – to three woodsheds located near rustic cabins.
 - a) One woodshed near Cabins 1, 2, and 3.
 - b) One woodshed near Cabins 4 and 5.
 - c) One woodshed near Cabin 6.
- 8) The minimum order requirement is 35 face cords.

2. Disclosure of Subcontractors

No subcontractors will be utilized for the performance of this Contract:

3. Pricing

A. Price term

Pricing is firm for a 365 day period ("Pricing Period"). The first pricing period begins on the Effective Date

of the Contract. Adjustments may be requested, in writing, by either party and will take effect no earlier than the next Pricing Period.

B. Price Changes

Adjustments will be based on changes in actual Contractor costs. ***Any request by the Contractor for a price increase 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.

4. Ordering

A Purchase Order is the appropriate authorizing document for ordering and payment of Contract Activities. Quantities specified, if any, are estimates and the State is not obligated to purchase in these or any other quantities. The Contractor is not authorized to begin performance until receipt of a Purchase Order.

5. Invoicing and Payment

- A.** All invoices submitted to the State must include: (a) date; (b) purchase order number; (c) quantity; (d) description of the Contract Activities; (e) unit price; and (f) total price.
- B.** Payment terms are Net 45 days.
- C.** The State will only disburse payments through Electronic Funds Transfer (EFT).

CONTRACT 751B660008 - FIREWOOD FOR LITTLE PRESQUE ISLE CABINS

EXHIBIT B – STATEMENT OF WOOD ORIGIN

REQUIRED UNDER AUTHORITY OF ACT 72, P.A. 1945

PREVENTING THE SPREAD OF EMERALD ASH BORER (EAB):

To contain and halt the spread of EAB, the Michigan Department of Agriculture and Rural Development (MDARD) has issued a quarantine on all ash trees, ash materials, and all species of hardwood firewood, for the affected counties.

Under Land Use Order 8.2 as issued by the Director of the Department of Natural Resources on February 3, 2005 and the Interior quarantine issued by MDARD under the authority of Act No. 72 of the Public Acts of 1945:

- (1) A person shall not possess ash wood upon any state lands unless the ash wood is without bark attached.
- (2) A person shall not possess regulated deciduous cut firewood on state lands outside of a regulated area.
- (3) A regulated area means those areas as defined by the emerald ash borer interior quarantine, Level I and Level II.
- (4) Regulated articles include ash wood with bark and firewood of any non-coniferous (hardwood) species.
- (5) The movement of regulated articles out of the Quarantine Level I area is prohibited unless done so under the stipulations of a valid MDARD Compliance Agreement.
- (6) The movement of regulated articles out of a Quarantine Level II area is prohibited without a valid MDARD Compliance Agreement. Regulated articles may be moved from the Quarantine Level II area in the eastern portion of the Upper Peninsula into Quarantine Level I of the Lower Peninsula without a Compliance Agreement.
- (7) Regulated articles may be moved out of a non-quarantined area into a Quarantine Level I or Level II area without a Compliance Agreement.

Quarantine Level I regulated areas include all 68 counties of the Lower Peninsula.

Quarantine Level II regulated areas include the Upper Peninsula counties of Alger, Chippewa, Delta, Houghton, Keweenaw, Luce, Mackinac and Schoolcraft.

Non-Quarantined Areas include the Upper Peninsula counties of Baraga, Dickinson, Gogebic, Iron, Marquette, Menominee, and Ontonagon.

VIOLATIONS AND PENALTIES:

Individuals or businesses found violating the state's EAB quarantine are subject to fines ranging from \$1,000 to \$250,000 and jail time of up to five years for moving regulated ash materials, including hardwood firewood.

Any regulated article from the quarantined area, moved within Michigan in violation of this quarantine shall be removed from the non-regulated area immediately or destroyed at the expense of the owner or owners.

Under penalty of law, I certify that the firewood products offered for sale at **Little Presque Isle in Marquette, Michigan** were obtained from:

Marquette, Baraga

County(s)

I also certify that the firewood products offered for sale do not include ash wood containing bark.

Signed: _____

[Signature]
Contractor

Dated: _____

11-16-15

**CONTRACT 751B6600008 - FIREWOOD FOR LITTLE PRESQUE ISLE CABINS
EXHIBIT C - PRICING**

PRICE PROPOSAL				
Description	U/M	Est. 5 yr Qty	Unit Price	Extended Price
Firewood, delivered to Little Presque Isle cabins per contract specifications	Face cord	350	\$ <u>90.00</u>	\$ <u>31,500.00</u>