



# STATE OF MICHIGAN PROCUREMENT

## Department of Natural Resources

525 West Allegan, Constitution Hall, Third Floor  
Lansing, MI 48933

### CONTRACT CHANGE NOTICE

Change Notice Number 2  
to  
Contract Number 751B6600006

<b>CONTRACTOR</b>	Spodeck Contracting
	P.O. Box 166
	Skandia, Michigan 49855
	Paul Spodek
	906-249-1546
	spodecksnow@aol.com
	CV0044027


<b>STATE</b>	Program Manager	Debra Gill	DNR
		906-339-4461	
		GillD2@michigan.gov	
	Contract Administrator	Lisa Crozier-Green	DNR
		517-284-5938	
		CrozierGreenL@michigan.gov	

CONTRACT SUMMARY				
<b>DESCRIPTION: Snow Removal Services, DNR Blueberry Ridge Pathway</b>				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
November 9, 2015	October 31, 2020	Two 1-Year Options to Renew	October 31, 2021	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS				EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	One Year	<input type="checkbox"/>		October 31, 2022
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$19,300.00		\$1,000.00	\$20,300.00	
<b>DESCRIPTION:</b> Effective November 1, 2021 this Contract is exercising the second available option year and the contract value is increased \$1,000.00 for DNR use. The revised Contract expiration date is October 31, 2022 and the revised contract value is \$20,300.00. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement.				

**FOR THE CONTRACTOR:**

**Spodeck Contracting**

**Company Name**



**Authorized Agent Signature**

**Paul Spodek** *SPODECK*

**Authorized Agent** (Print or Type)

*9-13-21*

**Date**

**FOR THE STATE:**



**Signature**

**Lisa Crozier-Green, Contract Administrator**

**Name & Title**

**Department of Natural Resources**

**Agency**

**9/14/2021**

**Date**



# STATE OF MICHIGAN PROCUREMENT

## Department of Natural Resources

525 West Allegan, Constitution Hall, Third Floor  
Lansing, MI 48933

### CONTRACT CHANGE NOTICE

Change Notice Number 1

to

Contract Number 751B6600006

<b>CONTRACTOR</b>	Spodeck Contracting
	P.O. Box 166
	Skandia, Michigan 49855
	Paul Spodek
	906-249-1546
	spodecksnow@aol.com
	CV0044027

<b>STATE</b>	<b>Program Manager</b>	Debra Gill	DNR
		906-339-4461	
		GillD2@michigan.gov	
	<b>Contract Administrator</b>	Lisa Crozier-Green	DNR
		517-284-5938	
		CrozierGreenL@michigan.gov	

CONTRACT SUMMARY				
<b>DESCRIPTION: Snow Removal Services, DNR Blueberry Ridge Pathway</b>				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
November 9, 2015	October 31, 2020	Two 1-Year Options to Renew	October 31, 2020	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS				EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	One Year	<input type="checkbox"/>		October 31, 2021
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$15,500.00		\$3,800.00	\$19,300.00	
<b>DESCRIPTION:</b> Effective November 1, 2020 this Contract is exercising the first available option year. The revised Contract expiration date is October 31, 2021. Contract value is increased by \$3,800 to fund OY1. Revised contract value is \$19,300.00. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement.				

**FOR THE CONTRACTOR:**

**Spodeck Contracting**

\_\_\_\_\_  
Company Name

*Paul Spodeck*  
\_\_\_\_\_  
Authorized Agent Signature

**Paul Spodek**

\_\_\_\_\_  
Authorized Agent (Print or Type)

*1/28/20*  
\_\_\_\_\_  
Date

**FOR THE STATE:**

*Lisa Crozier-Green*

\_\_\_\_\_  
Signature

**Lisa Crozier-Green, Contract Administrator**

\_\_\_\_\_  
Name & Title

**Department of Natural Resources**

\_\_\_\_\_  
Agency

**8/3/2020**

\_\_\_\_\_  
Date

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. 751B6600006

between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Spodeck Contracting PO Box 166 Skandia, MI 49855	Tyler Lemire	<a href="mailto:spodecksnow@aol.com">spodecksnow@aol.com</a>
	TELEPHONE	VENDOR ID#, MAIL CODE
	906-249-1546	2XXXXX9639 / 002

STATE CONTACT	DNR AGENCY	NAME	TELEPHONE	EMAIL
Program Manager	Parks & Recreation Division	Barry Douglas	906-339-4461	<a href="mailto:barryd1@michigan.gov">barryd1@michigan.gov</a>
Contract Administrator	Procurement Services	Ruth Thole	517-284-5973	<a href="mailto:tholer@michigan.gov">tholer@michigan.gov</a>

CONTRACT SUMMARY			
Snow Removal Services – Blueberry Ridge Pathway			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years	11/09/2015	10/31/2020	Two 1-year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45 Days	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: \$15,500.00			

FOR THE CONTRACTOR:

Spodeck Contracting



Authorized Agent Signature

Tyler Lemire

Authorized Agent (Print or Type)

11/8/15

Date

FOR THE STATE:

Department of Natural Resources



Signature

Ruth Thole / Buyer

Name/Title

11/9/15

Date



**STATE OF MICHIGAN**  
**Department of Natural Resources**  
**Procurement Services**

Contract No. 751B6600006  
Snow Removal Services – Blueberry Ridge Pathway

Contract Administrator Name: Ruth Thole  
Telephone Number: 517-284-5973  
E-Mail Address: [tholer@michigan.gov](mailto:tholer@michigan.gov)

This is a Contract for Snow Removal Services as described in Exhibit A (the "Contract Activities").

# STATE OF MICHIGAN

## Contract 751B6600006 Snow Removal Services – Blueberry Ridge Pathway

### EXHIBIT A – STATEMENT OF WORK

This exhibit identifies the requirements of the Contract.

#### **1. Project Identification**

##### **1.1 Project Request**

This is a contract for snow removal services for the State of Michigan, Department of Natural Resources, Blueberry Ridge Pathway located in Sands Township, Marquette County, Michigan. Areas to be serviced are two parking lots and drives entering premises from M-553.

#### **2. Contract Activities**

##### **2.1 In Scope**

The Contractor shall provide all management, supervision, personnel and equipment required to satisfactorily perform all snow removal services required for Blueberry Ridge Pathway, in the manner and the frequencies set forth in the following specifications. The required objective is to maintain the facility(s) in such a manner that provides a safe environment for visitors of state owned facilities.

##### **2.2 Work and Deliverables**

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work as set forth below.

- A. Description Of Area To Be Serviced:** two parking lots – North Parking Lot and Lighted Loop Parking Lot – and drives entering Blueberry Ridge Pathway premises from M-553. Blueberry Ridge Pathway is located one mile south of the County Road 480/County Road 553 crossroads in Sands Township, Marquette County.
- B. Service Specifications:** All services to be furnished hereunder shall conform to the specifications as noted herein.
  - 1. Snow removal services shall typically be performed November 1 through March 31 each year. If weather conditions merit, the DNR Program Manager may request service beyond the normal season period.
  - 2. Snow removal services shall be considered as both “automatic” and “on-call”.
    - a) “Automatic” snow removal services shall be performed by the Contractor:
      - 1) On any day (Sunday through Saturday) when snowfalls of four (4) inches or more occur.
      - 2) Before 8:00 a.m.
    - b) “On-call” snow removal services shall be performed:
      - 1) When requested by the DNR Program Manager or authorized designee. The DNR Program Manager will provide the Contractor with a list of DNR contacts authorized to approve snow removal activities.
      - 2) Within two hours of initial contact by DNR. “On-call” services may be requested at any time during the day, Sunday through Saturday.
  - 3. Snow must be plowed on all driving areas and must be cleared from roadway entrances and exits to DNR property driveways to maintain clear vision onto roadway.
  - 4. Snow must be removed/plowed from parking lots so that all parking spaces are continuously available.

5. If accumulated snow impedes the performance of snow removal services, the Contractor may be required to use heavy equipment (front end loader, dump truck, etc) to push or remove snow banks away from driving areas. Services requiring heavy equipment are priced separately from snow plowing; and performed only upon request by the DNR Program Manager or designee.

### 2.3 Equipment Requirements

The Contractor shall furnish, operate and maintain suitable and adequate equipment necessary to perform snow and ice removal services in an approved safe, competent manner without hindrance, delay or damage.

- A. All equipment shall meet all federal, state and local safety requirements.
- B. In the event of mechanical breakdown, the Contractor will be expected to provide backup equipment so that snow removal services are performed as requested. Equipment failure WILL NOT constitute an acceptable reason for not performing snow removal services.
- C. All equipment blades shall be properly adjusted for height as not to damage any road, curb, or parking areas. Parking curbs or bumper blocks located in parking areas must not be moved or damaged. Damage to parking lot, curbs, pavements, shrubs, fences, etc. caused during snow removal by the Contractor will be remedied (repairs or replacements) the following spring by the Contractor at the Contractor's expense.
- D. Contractor must use care and caution at all times while performing snow removal services on State property, especially when operating equipment near parked vehicles and pedestrians. Contractor is financially responsible for damage to State and private property and personal bodily injury caused by negligence, unsafe work practices, operator error, or misuse of equipment.
- E. Under no circumstances shall the DNR be responsible for any damage to the Contractor's equipment due to obstacles encountered on State property.

### 2.4 Contractor Personnel

- A. The Contractor will furnish the DNR Program Manager with the name and telephone number of a person to be used as a 24 hour contact.
- B. Trained and qualified persons will operate all equipment. The State reserves the right to approve personnel for this project and to require replacement of personnel found to be unacceptable at any time during the term of the Contract.
- C. Contractor shall be responsible for repair, replacement, reimbursement or cleanup as necessary due to carelessness or negligence on the part of the Contractor and its personnel.

### 2.5 Contractor Responsibilities

- A. **Supervision:** Contractor shall provide all supervision as may be necessary to oversee its personnel. Contractor shall exercise all supervisory control and general control over all day-to-day operations of his/her employees including control over all worker duties and worker performance.
- B. **Damage to State Property:** The Contractor performing the work on State of Michigan property shall immediately report all accidents and/or injuries to the DNR Program manager or authorized designee. Any and all damage to parking lot, vehicles, fences, curbs, pavements, etc. caused by snow plowing will be repaired and/or replaced the following spring by the Contractor.
- C. **Service Verification:** Contractor must provide the agency location a '**Notice of Service Provided Slip**' to verify service was performed. Within 24 hours of each service call, a slip shall be mailed to the attention of the DNR Program Manager, Van Riper State Park, 851 County Road AKE, Champion, MI 49814 or emailed to [brandm2@michigan.gov](mailto:brandm2@michigan.gov).

## 3. Acceptance

### 3.1 Criteria

The DNR Program Manager or designee will conduct inspections and will determine acceptance based upon the Contractor performance of timely removal of snow and services meeting specifications stated in **Section 2.2 Work and Deliverables**.



#### **4. Proposal Pricing**

##### **4.1 Proposal Pricing**

For authorized Services and Price List, see Exhibit B.

##### **4.2 Price Term**

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

Prices are subject to change at the end of each 365-day period. Such changes must be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. DNR Procurement Services reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). DNR Procurement Services also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes must be firm for the remainder of the Contract period unless further revised at the end of the next 365-day period. Requests for price changes must be RECEIVED IN WRITING AT LEAST 30 DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. **The Contractor remains responsible for performing according to the Contract terms at the Contract price for all orders received before price revisions are approved or before the Contract is cancelled.**

#### **5. Ordering**

##### **5.1 Authorizing Document**

A Purchase Order is the appropriate authorizing document for ordering and payment of Contract Activities. The State will issue a blanket Purchase Order each year to authorize Contract activities during the current fiscal year.

#### **6. Invoices and Payment**

##### **6.1 Invoices**

- A. Invoices must be submitted on a monthly basis and must reflect actual work done during the previous month. Services must not be invoiced in advance of performance.
- B. All invoices submitted to the State must include: (a) date; (b) purchase order number; (c) quantity; (d) description of the Contract Activities; (e) date Contract Activities performed; (f) unit price; and (g) total price.

##### **6.2 Payment**

- A. The State will only disburse payments for Contract Activities through Electronic Funds Transfer (EFT).
- B. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

# STATE OF MICHIGAN

## Contract 751B6600006 Snow Removal Services – Blueberry Ridge Pathway

### EXHIBIT B - PRICING

Description	Unit Price	Estimated 5-Year Quantity	Total Estimated Contract Cost
Plow snow in North Parking Lot and Lighted Loop Parking Lot and in drives entering Blueberry Ridge Pathway premises from M-553.  Services performed when snowfalls of 4 inches or more occur or when requested by DNR Program Manager or designee.	\$ <u>80.00</u> Per Occurrence	175	\$ <u>14,000.00</u>
Use of heavy equipment (front end loader, dump truck, etc.) to push or remove snow banks away from driving areas.	\$ <u>150.00</u> Per Occurrence	10	\$ <u>1,500.00</u>
<b>TOTAL ESTIMATED CONTRACT VALUE</b>			\$ <u>15,500.00</u>



## STATE OF MICHIGAN STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Spodeck Contracting (the "**Contractor**"), a Michigan sole proprietorship. This Contract is effective on November 9, 2015 ("**Effective Date**"), and unless terminated, expires on October 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 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; and (j) 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 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 receipt 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](mailto:tholer@michigan.gov)  
517-284-5973

If to Contractor:

Tyler Lemire, Office Manager  
Spodeck Contracting  
PO Box 166  
Skandia, MI 49855  
[spodecksnow@aol.com](mailto:spodecksnow@aol.com)  
906-249-1546

- 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

Contractor:

Tyler Lemire, Office Manager  
Spodeck Contracting  
PO Box 166

PO Box 30028  
Lansing, MI 48909  
[tholer@michigan.gov](mailto:tholer@michigan.gov)  
517-284-5973

Skandia, MI 49855  
[spodecksnow@aol.com](mailto:spodecksnow@aol.com)  
906-249-1546

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:

Douglas Barry, Supervisor 10  
Department of Natural Resources  
Van Riper State Park  
851 County Road AKE  
Champion, MI 49814  
[barryd1@michigan.gov](mailto:barryd1@michigan.gov)  
906-339-4461

Contractor:

Tyler Lemire, Office Manager  
Spodeck Contracting  
PO Box 166  
Skandia, MI 49855  
[spodecksnow@aol.com](mailto:spodecksnow@aol.com)  
906-249-1546

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
<b>Commercial General Liability Insurance</b>	
<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.
<b>Automobile Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	

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. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 10. 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.
- 11. Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 12. 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.
- 13. Ordering.** Contractor is not authorized to begin performance until receipt of an authorizing Purchase Order.
- 14. 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 17, 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.

- 15. 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.

- 16. 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.

- 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 whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 19, 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.

**19. 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.

**20. 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.

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

**22. 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.

**23. 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.

**24. 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.

**25. 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.

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

**27. 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.

**28. 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.

**29. 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.



- 30. 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.
- 31. 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.
- 32. 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.
- 33. 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.
- 34. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 35. 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.
- 36. 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.
- 37. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 38. 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.
- 39. 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**").