



STATE OF MICHIGAN PROCUREMENT
 Department of Natural Resources
 525 W Allegan, Lansing, MI 48933

CONTRACT CHANGE NOTICE

Change Notice Number 2
 to
 Contract Number 21000000041

CONTRACTOR	Superior Forestry Service, Inc.
	23 Interstate Ave
	Russellville, AR 72802
	Andrew Harnage
	479-219-5263
	aharnage@superiorforestry.com
	CV0062176

STATE	Program Manager	Jason Hartman	DNR
		989-275-5151 Ext 2722247	
		Hartmanj@michigan.gov	
STATE	Contract Administrator	Kip Conley	DNR
		517-388-5956	
		Conleyk1@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Planting on State land to maintain forest health				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
11/17/20	11/16/24	4 – 1-year options	11/16/24	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		NA		
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				
NA				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		11/16/25
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$2,882,076.08		\$0.00	\$2,882,076.08	
DESCRIPTION: Effective 2/13/25 pricing on this Contract has been decreased and consolidated per the updated Schedule B. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.				

FOR THE CONTRACTOR:

Superior Forestry Services, Inc.
Company Name

Authorized Agent Signature

Andrew Harnage

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Laura Gyorkos, Procurement Manager
Name & Title

Department of Natural Resources
Agency

Date

Schedule B

1. Price include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).

2. Quick payment terms: .5 % discount off invoice if paid within 15 days after receipt of invoice.
The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Planting - Service Description	Estimated Annual Quantity*	Upper Peninsula or Lower Peninsula	Unit Price (Per Thousand)	New Combined Price (Per Thousand)
Initial Plant – Furrowed first plant Spacing: 8x6 Estimated Trees Per Acre: 800-1,000 Range of Stand Size: 25-00	1,650,000	Upper Peninsula	\$ 69.50 Per thousand	\$ 74.25
Initial Plant – Furrowed first plant Spacing: 8x6 Estimated Trees Per Acre: 800-1,000 Range of Stand Size: 25-00	3,350,000	Lower Peninsula	\$ 67.00 Per thousand	
Unfurrowed Plant – Medium to high slash Volume Spacing: 8x6 Estimated Trees Per Acre:800-1,000 Range of Stand Size: 25-100	82,500	Upper Peninsula	\$ 106.40 Per thousand	\$ 113.85
Unfurrowed Plant – Medium to high slash Volume Spacing: 8x6 Estimated Trees Per Acre:800-1,000 Range of Stand Size: 25-100	42,500	Lower Peninsula	\$ 100.50 Per thousand	
Replant** – Furrowed supplemental plant Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-500	330,000	Upper Peninsula	\$ 124.95 Per thousand	\$ 137.50
Replant** – Furrowed supplemental plant Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-500	670,000	Lower Peninsula	\$ 124.95 Per thousand	
Interplant** - Unfurrowed supplemental plant Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-500	396,000	Upper Peninsula	\$ 137.00 Per thousand	\$ 161.50

Planting - Service Description	Estimated Annual Quantity*	Upper Peninsula or Lower Peninsula	Unit Price (Per Thousand)	New Combined Price (Per Thousand)
Interplant** - Unfurrowed supplemental plant Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-500	204,000	Lower Peninsula	\$ 137.00 Per thousand	
Underplant – Unfurrowed under timber Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-100	19,800	Upper Peninsula	\$ 164.45 Per thousand	
Underplant – Unfurrowed under timber Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-100	10,200	Lower Peninsula	\$ 164.45 Per thousand	
KW weave first plant (High) – Furrowed Spacing: 6x5 Estimated Trees Per Acre: 1,000-1,200* Range of Stand Size: 200-500 *Includes ¼ acre openings in calculations	770,000	Lower Peninsula	\$ 60.30 Per thousand	\$ 66.15
KW weave first plant (Medium) – Furrowed Spacing: 6x6 Estimated Trees Per Acre: 800-1,000* Range of Stand Size: 200-500 *Includes ¼ acre openings in calculations	630,000	Lower Peninsula	\$ 62.35 Per thousand	
KW weave first plant (Low) – Furrowed Spacing: 8x6 Estimated Trees Per Acre: 600-800* Range of Stand Size: 200-500 *Includes ¼ acre openings in calculations	490,000	Lower Peninsula	\$ 64.60 Per thousand	
1-0 plug hardwood – Furrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: 20-50	27,500	Upper Peninsula	\$ 129.25 Per thousand	\$ 187.00

Planting - Service Description	Estimated Annual Quantity*	Upper Peninsula or Lower Peninsula	Unit Price (Per Thousand)	New Combined Price (Per Thousand)
1-0 plug hardwood – Furrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: 20-50	27,500	Lower Peninsula	\$ 129.25 Per thousand	
1-0 plug hardwood – Unfurrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: .1-2	15,000	Upper Peninsula	\$ 164.45 Per thousand	
1-0 plug hardwood – Unfurrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: .1-2	15,000	Lower Peninsula	\$ 150.75 Per thousand	
12-24" bareroot hardwood – Furrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: 20-50	27,500	Upper Peninsula	\$ 180.90 Per thousand	
12-24" bareroot hardwood – Furrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: 20-50	27,500	Lower Peninsula	\$ 164.45 Per thousand	
4-6 ft tall hardwood saplings – Holes must be dug Spacing: Variable Estimated Trees Per Acre: 100-500 per Stand Range of Stand Size: 25-100	3,300	Upper Peninsula	\$ 3,768.75 Per thousand	
4-6 ft tall hardwood saplings – Holes must be dug Spacing: Variable Estimated Trees Per Acre: 100-500 per Stand Range of Stand Size: 25-100	1,700	Lower Peninsula	\$ 3,015.00 Per thousand	
Protectors				\$1,850.00
Low Density Furrowed			\$85.00	\$92.50
Low Density Unfurrowed			\$118.00	\$129.00
Hourly work per man hour				\$40.00



STATE OF MICHIGAN PROCUREMENT
 Department of Natural Resources
 525 W Allegan, Lansing, MI 48933

CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **21000000041**

CONTRACTOR	Superior Forestry Service, Inc.
	23 Interstate Ave
	Russellville, AR 72802
	Andrew Harnage
	479-219-5263
	aharnage@superiorforestry.com
	CV0062176

STATE	Program Manager	Jason Hartman	DNR
		989-275-5151 Ext 2722247	
		Hartmanj@michigan.gov	
Contract Administrator		Kip Conley	DNR
		517-388-5956	
		Conleyk1@michigan.gov	

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Net 45		NA		
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<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				
NA				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$2,882,076.08		\$0.00	\$2,882,076.08	
DESCRIPTION: Effective 1/16/23 pricing on this Contract has been increased and consolidated per the updated Schedule B. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.				

FOR THE CONTRACTOR:

Superior Forestry Services, Inc.
Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Laura Gyorkos, Procurement Manager
Name & Title

Department of Natural Resources
Agency

Date

Schedule B

1. Price include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
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4-6 ft tall hardwood saplings – Holes must be dug Spacing: Variable Estimated Trees Per Acre: 100-500 per Stand Range of Stand Size: 25-100	1,700	Lower Peninsula	\$ 3,015.00 Per thousand	
Protectors				TBD per quote from vendor
Low Density Furrowed			\$85.00	\$102.00
Low Density Unfurrowed			\$118.00	\$142.00



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

525 W. Allegan, Lansing, MI 48933
PO Box 30028

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 210000000041

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Superior Forestry Service, Inc.
	23 Interstate Ave
	Russellville, AR 72802
	Andrew Harnage
	479-219-5263
	aharnage@superiorforestry.com
	CV0062176

STATE	Program Manager	Jason Hartman	DNR
		989-275-5151 ext. 2722247	
	HartmanJ@michigan.gov		
	Contract Administrator	Kip Conley	DNR
517-388-5956			
ConleyK1@michigan.gov			

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Net 45		NA	
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			
NA			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation (RFP) No. 2000000002031. Orders for delivery will be issued directly by the Michigan Department of Natural Resources.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$2,882,076.08

FOR THE CONTRACTOR:

Superior Forestry Services, Inc.
Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Laura Gyorkos, Procurement Manager
Name & Title

Department of Natural Resources
Agency

Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Superior Forestry Services, Inc. (“**Contractor**”). This Contract is effective on November 17, 2020 (“**Effective Date**”), and unless terminated, expires on November 16, 2024.

This Contract may be renewed for up to 4 additional 1-year option period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule 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 Schedule A.

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

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

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

If to State:	If to Contractor:
Kip Conley 525 W Allegan Lansing, MI 48933 Conleyk1@michigan.gov	Andrew Harnage 23 Interstate Ave Russellville, AR 72802 aharnage@superiorforestry.com

517-284-5975	479-219-5263
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State: Kip Conley 525 W Allegan Lansing, MI 48933 Conleyk1@michigan.gov 517-284-5975	Contractor: Andrew Harnage 23 Interstate Ave Russellville, AR 72802 aharnage@superiorforestry.com 479-219-5263
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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: Jason Hartman 8717 N. Roscommon Road Roscommon, MI 48653 hartmanj@michigan.gov 989-275-5151	Contractor: Andrew Harnage 23 Interstate Ave Russellville, AR 72802 aharnage@superiorforestry.com 479-219-5263
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum 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 04.
Automobile Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and

	agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled 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 delivery 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 to 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. **Reserved**
8. **Reserved**
9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor’s employees and any subcontractors. Prior performance does not modify Contractor’s status as an independent contractor
10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State’s Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal

government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in Schedule A, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
14. **Change of Control.** Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, 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 Schedule 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 Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

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

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

17. **Reserved.**
18. **Reserved.**
19. **Reserved.**
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 Schedule 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. All prices are exclusive 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/SIGMAVSS> 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 Schedule 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 delivery 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 and Disclaimer of Damages.** **IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** 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. **Reserved.**
32. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain

injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

- e. **Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

33. **Reserved.**

34. **Reserved.**

35. **Reserved.**

36. **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.

37. **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; (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; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. 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.

38. **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.

39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
40. **Reserved.**
41. **Reserved.**
42. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). 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 (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
43. **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.
44. **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.
45. **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.
46. **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.
47. **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.

48. **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.

49. **Website Incorporation.** The State is not bound by any content on Contractor’s website unless expressly incorporated directly into this Contract.
50. **Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A

Statement of Work

Schedule B

Pricing Matrix

51. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR’S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
52. **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.
53. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
54. **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.
55. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a “**Contract Change Notice**”). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

Federal Provisions Addendum

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Equal Employment Opportunity

If this Contract is a "**federally assisted construction contract**" as defined in [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally

assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Davis-Bacon Act (Prevailing Wage)

If this Contract is a **prime construction contracts** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- (1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- (2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

- (3) Additionally, contractors are required to pay wages not less than once a week.

3. Copeland “Anti-Kickback” Act

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland “Anti-Kickback” Act ([40 USC 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- (1) Contractor. The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Contractor agrees as follows:

- (1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as

may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal “funding agreement” as defined under [37 CFR §401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement

[Executive Orders 12549 \(51 FR 6370; February 21, 1986\)](#) and 12689 ([54 FR 34131; August 18, 1989](#)), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under [2 CFR 200.322](#), Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA’s Comprehensive Procurement Guidelines web site:
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

(1) Access to Records. The following access to records requirements apply to this contract:

- a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

(3) DHS Seal, Logo, And Flags

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(4) Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(5) No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.”

(6) Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

Exhibit 1 - Byrd Anti-Lobbying Certification

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

BACKGROUND

The Michigan Department of Natural Resources (DNR) Forest Resources Division conducts an annual cultivation program that entails planting 5 million to 8 million tree seedlings per year as the primary planting project. Work will typically occur from April 15-May 15. Lifting of bareroot seedlings was previously part of this operation, but the Department recently transitioned into purchasing and planting containerized stock for all conifer plantings.

Typical planting sites:

- Are accessible via County and forest roads, or two-tracks that were used for logging
- Are on level to gently rolling sandy soils
- Most sites will have been prepared for planting via trenching (e.g. trees will be planted in furrows).
- Site preparation for most forestry plantings will also have included an herbicide application

SCOPE

Conifer Planting: The Contractor shall be responsible for hand planting containerized tree seedlings (primarily red pine and jack pine). Planting will occur on State Forest lands and Federal lands in Michigan's Northern Lower Peninsula (NLP) and Upper Peninsula (UP). Approximately two-thirds of the annual planting work occurs in the NLP planting sites.

Forestry plantings are typically planted at 906 trees per acre using 6 feet between seedlings. Forestry sites are trenched with straight rows at 8 foot spacing. Sites generally range from 25 acres to 100 acres

Sites planted for Kirtland's warbler (KW) habitat typically range from 200-500 acres in size and are trenched following a "weave" pattern leaving diamond shaped $\frac{1}{4}$ acre openings stratified evenly across 25% of the acreage. KW planting density will fall into 3 categories due to a research project.

- (5 ft seedling spacing x 6 ft trench spacing) x .75 of the area trenched = 1,089 trees per acre
- (6 ft seedling spacing x 6 ft trench spacing) x .75 of the area trenched = 900 trees per acre
- (6 ft seedling spacing x 8 ft trench spacing) x .75 of the area trenched = 680 trees per acre

Annual planting work may also require replanting some sites. "Replants" are fill-in plantings to replace dead trees from previous furrowed plantings. The Contractor's planting crew is expected to skip live trees and plant only in spaces occupied by dead seedlings or where seedlings are missing. Planted seedling volume will typically range between 300 and 600 trees per acre. The technique of planting defines the category for invoicing. Seedling volume is a typical range. Average annual replant work will generally be less than 1,000,000 seedlings per year.

Small volumes of interplanting may also occur on an annual basis. This may involve a few sites each year. Interplanting is a supplemental planting technique similar to replanting that requires the planter to skip over live trees. The difference is that interplanting is implemented without trenches. Scenarios are the result from a natural regeneration failure or extensive mortality from an unfurrowed planting. Interplanting may occur using conifer or hardwood seedlings, but they would always be 1-0 plugs.

Underplanting may also be utilized for the planting of conifer seedlings on a limited basis. These are unfurrowed situations where planting is prescribed beneath timber. The typical seedling volume will be similar to an interplanting ranging from 300 to 600 trees per acre. Underplanting may occur using conifer or hardwood seedlings, but they would always be 1-0 plugs.

Hardwood Planting: The Contractor may also be responsible for hand planting of hardwood seedlings and saplings. There aren't any hardwood planting needs in 2021, but they gradually increase starting in 2022. The types of hardwood planting will fall into one of these categories;

- Containerized seedlings on unfurrowed sites: Stock would be 1-0 50mm plugs with stems less than 12" in height. Planting areas could be in gaps as small as 100 ft in diameter ranging up to 2 acres. Seedlings would be planted on 8 x 8 ft spacing. Some sites could be behind deer exclusion fencing.
- Containerized seedlings on furrowed sites: Stock would be 1-0 50mm plugs with stems less than 12" in height. Row widths would be 8 ft and seedling spacing would be 8 ft. The majority of this work would be in the northern part of the UP where browsing is less abundant. Every 3rd row would be planted to with 1-0 conifer plugs.
- Bareroot seedlings on furrowed sites: Stock would be 12-24" in size. Row widths would be 8 ft and seedling spacing would be 8 ft. The majority of this work would be in the northern part of the UP where browsing is less abundant. Every 3rd row would be planted to with 1-0 conifer plugs.
- Bareroot saplings: Stock will be 4-6 ft in height. Planting locations may be clumped or scattered through a stand. A map of locations will be provided by the DNR. The number of saplings per stand would generally range 100-200 in open areas and 200-500 when planting in northern hardwood gaps. Volume will range from 3-7 thousand saplings per year.

REQUIREMENTS

The Contractor shall provide all personnel, equipment, tools, materials, supervision and other items and services to do all things necessary for or incidental to the performance of work, as set forth in this document.

1. General Requirements

1.1. General Requirements

- The Contractor must have the capacity to plant 150,000 seedlings per day in order to complete the conifer seedling volume on schedule in a busy season
- The Contractor's crews must be prepared to work long days. Planting crews frequently work 10 to 12 hours per day, six days a week. The schedule for precommercial thinning is less rigid due to the timeframe of the year that the work can be completed, and fewer acres of work being treated.
- The Contractor's crew must be prepared and outfitted to work in inclement weather conditions including rain, snow, sleet, and freezing rain. Planting will be performed unless the weather is unusually severe; any delay in work will be determined by the DNR designee.
- The Contractor must provide transportation for their personnel to and from worksites.
- No alcohol or controlled substances are allowed while working on State owned or State managed lands.
- The Contractor is required to furnish the following:
 - All tools and other accessories necessary to meet Contract requirements.
 - A foreman for each crew. The foreman will coordinate the activity in the field as well as perform quality control. The foreman will not be a laborer and will not transport trees or tools to workers unless given prior approval by the DNR designee.
 - Appropriate legal documentation for all migrant workers.

1.2. Conifer and Hardwood Planting Requirements

Tree Spacing

- Tree spacing requirements for each worksite will be specified in the General Specifications information provided by the DNR designee to the Contractor's Key Personnel prior to start of work.
- For planting in furrows, tree seedlings shall be planted in trenches at the intervals prescribed in the General Specifications provided for that site. For individual tree seedlings, the average spacing may be varied by as much as 50% in any direction in the trench to find a suitable planting spot. If encountering a spot that the contractor is not able to plant, the planter shall plant in the closest suitable spot; however, average spacing shall be maintained. Average spacing shall not vary from the spacing requirements by more than 6 inches.
- For planting in areas that have not been furrowed, the planter will follow the spacing and planting requirements as specified in the General Specifications.

Spot Selection and Preparing the Planting Hole

- For planting in furrows, the planter shall create a hole deep enough to fully accommodate the root of the tree seedling. The hole shall be located near the center of the furrow or in some cases, located at the side of the furrow. The DNR designee will advise when variation is necessary. The planting location shall be in areas free of vegetation, if possible.
- For planting in areas that have not been furrowed, the planter shall create a hole deep enough to fully accommodate the root of the tree seedling or sapling.

Tree Placement

- Bare Root Tree Seedlings shall be suspended with roots in a natural arrangement at a depth that after filling, packing and leveling, the root collar is to a point even with or slightly below ground level.
 - The tree shall be planted in a vertical position; the root system shall be aligned with the axis of the planting hole with roots extending downward.
 - The roots shall not be doubled up (J-root), twisted, spiraled, or bunched.
 - No portion of the roots should be exposed, nor any needles or branches covered with soil.
- Container Stock Tree Seedlings shall be planted so that the root plug is firmly buried in mineral soil.
 - The seedling shall be planted in an upright position.
 - A properly planted seedling will have the top of the plug slightly covered, but without any needles buried.

Filling and Firming

- Mineral soil shall be filled in and firmed around tree roots. Dry topsoil, ash, organic matter, rock and other material shall be kept out of planting holes. The planting hole shall be closed and filled and firmed so no loose soil, air pockets, or adjacent planting tool holes remain. After planting, the tree stem shall be erect and free to grow. The tree shall not be weighted down with mud and debris.

1.3. Care of Trees and Other Responsibilities

Upon delivery of trees to the distribution point, the Contractor shall be responsible for meeting the following specifications for the care and protection of tree seedlings:

- Trees must be protected at all times from drying, heat exposure, crushing, abrasion or contact with gas, oil or other injurious substances.
- Trees shall be not removed from shipping packaging (bag or box) until needed for planting unless the packaging is damaged.
- Packaged (bagged or boxed) trees must not be exposed to direct sunlight. If trailer or overhead shade is not available, trees stockpiled on site must be covered with shade cloth.
- Packaged (bagged or boxed) tree seedlings shall have only their tops exposed. Root systems shall be kept enclosed in packaging to retain moisture. If drying is evident, roots must be kept moist by immersion in water or use of burlap, moss or other moisture retaining material.
- Trees carried in planting bags shall not exceed the amount that can be carried and removed without injury, or which can be planted before critical heating or drying occur.
- Trees are to be planted as received without further root or top pruning or culling. If pruning or culling appears necessary, or if mold, dry roots or evidence of injury or dying is seen, the condition shall immediately be reported to the DNR designee. If further root pruning is necessary, it will be performed under the direct supervision of the DNR designee.
- Empty shipping bags or boxes shall be returned to the trailer at the distribution point. DNR will dispose of empty shipping packaging.
- The Contractor must keep accurate planting records of all sites. Information to be recorded will include the foreman's number, treatment number, type of tree planted, seed lot number, number of bags or boxes, and number of planted trees.

2. Services Levels

2.1. Time Frames

All Contract Activities must be completed by June 1st annually for planting and September 15th for pre-commercial thinning. The receipt of order date is pursuant to Section 2, Notices, of the Standard Contract Terms.

2.2. Quality Control for Planting

Contractor's Responsibilities:

The Contractor's foreman must be on the planting site at all times to oversee proper planting techniques by the planting crew and perform quality checks.

- The foreman for each planting crew will perform checks on each individual planter to evaluate the quality of work.
- The foreman will perform check procedures four (4) times per day for each individual planter. Each check procedure will include 10 tree seedlings per planter (a total of 40 tree seedlings per day per planter). The 10 checked tree seedlings will be contiguous and in one furrow.
- The foreman will check the following categories – see Liquidated Damages section for the acceptable error/variance allowed for each of these categories:
 - Tree spacing – measure of tree seedlings deviating more than six (6) inches from the in-furrow spacing goal.
 - Stem angle – measure of tree seedlings with stem angles exceeding a 30-degree angle from true vertical.
 - Planting depth – measure of tree seedling planted outside the “allowable depth zone”.
 - Firmness – measure of tree seedlings planted too loose in the ground.
 - J/L-root – measure of tree seedlings planted with doubled up/twisted roots or bent plugs. During each check procedure for each individual planter, one tree seedling out of the 10 being measured will be dug up and checked for J/L-rooting.
- The foreman will mark checked furrows with flagging and will identify on the flagging the planter being checked.

Buried/Disposed of Tree Seedlings

If the foreman discovers or is notified by the DNR designee that a crew member has deliberately BURIED, HID, or THROWN AWAY/DISPOSED OF tree seedlings, work on that site will stop immediately. No work will continue until the report is verified and the involved crew member(s) has been identified. Once the DNR designee has determined the extent of the problem, the crew minus the involved member(s) may return to the planting site. At the discretion of the DNR designee the entire crew at that planting site may be dismissed from working on state lands for the remainder of the season. Liquidated damages will be assessed.

Planting Error

It will be the responsibility of the crew foreman to ensure each tree planter maintains the levels of quality to meet planting specifications. Errors/variances found during the foreman's quality checks or by the DNR designee's checks must be addressed immediately with the crew to avoid assessment of Liquidated Damages.

3. Acceptance

3.1. Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities:

- Compliance with specifications will be monitored by the foreman and the DNR designee through continuous observations, inspections and quality control checks. Foreman's Record of Planter Quality Checks & Stocking and records of DNR designee's inspections will be utilized to determine compliance.
- Errors or variances fall within acceptable range. Foreman's Record of Planter Quality Checks & Stocking and records of DNR designee's inspections will be utilized to determine if errors or variances fall within specified ranges for acceptable without assessment of liquidated damages. See Liquidated Damages for acceptable ranges and deduction to be assessed for each range of error or variance.

Inspection and Initial Acceptance:

The following inspection/initial acceptance process will be used by the State to determine Acceptance of the Contract Activities provided under the Contract:

- Initial inspection for satisfactory completion of the Contract Activities shall be made within 14 calendar days of the DNR designee receiving notification.
- If the initial inspection results are unacceptable to the Contractor, the Contractor may request a re-inspection of the sites. The request for re-inspection must indicate the sites that the Contractor is disputing. The DNR designee will re-inspect the disputed sites. The same inspection procedure will be used; however, new plots will be selected. If the re-inspection indicates a variance from the first inspection, the results of the two inspections will be averaged to determine payment.

3.2. Final Acceptance

Within 24 hours of completion, the Contractor shall notify the DNR designee that work is completed for the season. The notification may be verbal but must be followed up by written notification via email.

Final acceptance will be made in writing within 21 days of receipt of the Contractor's notice that work is complete unless the Contractor requests a re-inspection. The Contractor will be notified of final acceptance in writing. The Final Acceptance notification will indicate the amounts of final payment authorized and deductions for Liquidated Damages assessed, if applicable. A revised invoice may be required prior to final payment.

4. Staffing

4.1. Contractor Representative

The Contractor must appoint one (1) Contract Manager individual, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

Andrew Harnage
Telephone: 479-219-5263
E-mail: aharnage@superiorforestry.com

4.2. Customer Service Toll-Free Number

The Contractor must specify its toll-free number for the State to contact the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST.

Toll-Free Number: 800-541-1060

4.3. Work Hours

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday, 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project. Planting crews frequently work 10 to 12 hours per day, six days a week.

4.4. Key Personnel

The Contractor must appoint an individual who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 24 hours.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual

reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

4.5. Organizational Chart

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.

4.6. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor. Whether the Contractor has a previous working experience with the subcontractor. Provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.

5. Project Management

5.1. Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager and/or a consulting firm hired to provide oversight. In the latter case the oversight company would provide the project plan.

5.2. Meetings

The state will require an annual pre-season and post season action review meeting.

The State may request meetings, as it deems appropriate.

5.3. Reporting

The Contractor must submit, to the Program Manager or designee, the following written and verbal reports:

- Written, typed, or spreadsheet records of all quality control checks must be submitted with invoicing
- Within 2 weeks of project completion, a brief (1-2 page) written After Action Review (AAR) that summarizes things that went well and that need improvement from the perspective of the Contractor
- If a dispute surfaces about the quality of work and payments received, the Contractor must submit a written request for re-inspection of a portion, or all the work completed during the season. The Contractor must indicate by treatment number the planting sites in dispute

6. Pricing

6.1. Price Term

Pricing is firm for the entire length of the Contract.

6.2. 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.

7. Ordering

7.1. Authorizing Document

The appropriate authorizing document for the Contract will be a delivery order (DO).

8. Invoice and Payment

8.1. Invoice Requirements

Invoices may be submitted following completion of each region (Upper and Lower Peninsula) and the Kirtland Warbler habitat. Final invoices must be received by the DNR within 14 calendar days of completion of the work. Invoices should be sent to the Program Manager or designee with a copy to the appropriate office indicated on the delivery order.

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

8.2. Payment Methods

The State will make payment for Contract Activities through Electronic Funds Transfer (EFT).

9. Liquidated Damages

The parties acknowledge that late or improper completion of Contract Activities will cause loss and damage to the State, and that it would be impractical and extremely difficult to determine the actual damage sustained by the State as a result. Therefore, the Contractor and the State agree that if there is late or improper completion of the work and the State does not elect to exercise its rights under the Terminate for Cause section of the Standard Terms and Conditions, the State is entitled to collect liquidated damages.

The DNR designee will inspect each planting, by treatment number, and examine the check furrows established by the crew foreman (see Quality Control section) to determine compliance with specifications and determine final acceptance. If the DNR designee finds planting deviates from the specifications, liquidated damages may be assessed for each individual treatment site planted incorrectly. If the Contractor disputes the inspection results, the Contractor may submit a written Request for Re-Inspection (see Reporting section). Attempt at correction by lifting and replanting the seedlings will not be permitted.

Tree Spacing

Liquidated damages will be assessed for average in furrow tree spacing that varies from the General Specifications as provided to the Contractor when works begins. Damages will be based on the percent of measured trees within the check furrows found to exceed the average spacing for the treatment as follows:

% of measured trees exceeding average tree spacing	Deduction from treatment payment price
0 inches – 6.0 inches	No deductions
6.1 inches – 7.5 inches	10% deduction from total treatment payment price
7.6 inches – 10.0 inches	25% deduction from total treatment payment price
10.1 inches – 12.0 inches	33% deduction from total treatment payment price
Greater than 12.1 inches	50% deduction from total treatment payment price

Planting Depth

Liquidated damages will be assessed for trees planted outside the “allowable depth zone”. Damages will be based on the percent of measured trees within check furrows found to exceed allowable depth zone as follows:

% of measured trees exceeding allowable depth zone	Deduction from treatment payment price
0% - 20%	No deductions
21% - 30%	5%
31% - 40%	10%
41% - 50%	20%
Greater than 50%	33%

Stem Angle

Liquidated damages will be assessed for trees planted that vary from true vertical. Damages will be based on the percent of measured trees within check furrows found to exceed a 30-degree angle from true vertical as follows:

% of measured trees exceeding 30% angle from true vertical	Deduction from treatment payment price
0% - 20%	No deductions
21% - 30%	10%
Greater than 30%	25%

Firmness

Liquidated damages will be assessed for trees planted that are loosely planted. Damages will be based on the percent of measured trees within check furrows found with planting holes not properly filled and soil not firmed as follows:

% of measured trees found loosely planted	Deduction from treatment payment price
0% - 10%	No deductions
10.1% - 25%	25%
25.1% - 50%	33%
Greater than 50%	50%

“J” Rooting or “L” Rooting

Liquidated damages will be assessed for trees planted with “J” or “L” roots. Damages will be based on the percent of measured trees within check furrows found with “J” or “L” roots as follows:

% of measured trees found with “J” roots	Deduction from treatment payment price
0% - 20%	No deductions
21% - 30%	20%
31% - 50%	50%
Greater than 50%	No payment

Buried/Hidden/Thrown Away Trees

Liquidated damages will be assessed if it is discovered that a Contractor's crew member buried, hid or otherwise deliberately disposed of seedlings. Damages will be based on the quantity of trees determined to have buried/thrown away/disposed of multiplied by three. Damages equal to the cost of the time, travel expenses and materials of the DNR or DNR designee to investigate the incident will be applied.

10. Additional Requirements

Decertification of Tree Planter(s)

- In the event that the DNR designee is dissatisfied with the quality of the work of a tree planter, the issue(s) and reasons for dissatisfaction will be brought to the foreman's attention and discussed. The DNR designee will outline appropriate improvements and spend reasonable time as necessary and available with the foreman to resolve the issue(s).
- If the DNR designee remains dissatisfied with the planter's work and feels further time in the field would be unproductive, the planter may be decertified and will no longer be allowed to plant trees.
- A planter will be immediately decertified if it is found that the planter deliberately disposed of trees.

Decertification of Tree Planting Crew(s)

- If after one day's planting, 50% or more of the tree planters of any one crew fail two or more of the four measured quality categories (spacing, stem angle, firmness, depth), the DNR designee will immediately notify the Contractor to improve the quality of the planting. Failure is defined as any liquidate damages assessed due to not meeting specifications.
- If the failed crew does not improve the quality of planting within one consecutive workday after the Contractor receives the notice of unsatisfactory planting, the crew may be decertified. Improvement is 50% or more of the planters of the crew passing two or more of the four measured quality categories.
- A decertified crew will not be allowed to proceed with work until the Contractor replaces the poor performing planters.

SCHEDULE B PRICING

1. Price include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
2. Quick payment terms: .5 % discount off invoice if paid within 15 days after receipt of invoice. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Price Proposal				
Planting - Service Description	Estimated Annual Quantity*	Upper Peninsula or Lower Peninsula	Unit Price (Per Thousand)	Extended Price
Initial Plant – Furrowed first plant Spacing: 8x6 Estimated Trees Per Acre: 800-1,000 Range of Stand Size: 25-00	1,650,000	Upper Peninsula	\$ 69.50 Per thousand	\$ 114,675.00
Initial Plant – Furrowed first plant Spacing: 8x6 Estimated Trees Per Acre: 800-1,000 Range of Stand Size: 25-00	3,350,000	Lower Peninsula	\$ 67.00 Per thousand	\$ 224,450.00
Unfurrowed Plant – Medium to high slash Volume Spacing: 8x6 Estimated Trees Per Acre:800-1,000 Range of Stand Size: 25-100	82,500	Upper Peninsula	\$ 106.40 Per thousand	\$ 8,778.00
Unfurrowed Plant – Medium to high slash Volume Spacing: 8x6 Estimated Trees Per Acre:800-1,000 Range of Stand Size: 25-100	42,500	Lower Peninsula	\$ 100.50 Per thousand	\$ 4,271.25
Replant** – Furrowed supplemental plant Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-500	330,000	Upper Peninsula	\$ 124.95 Per thousand	\$ 41,233.50
Replant** – Furrowed supplemental plant Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-500	670,000	Lower Peninsula	\$ 124.95 Per thousand	\$ 83,716.50
Interplant** - Unfurrowed supplemental plant Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-500	396,000	Upper Peninsula	\$ 137.00 Per thousand	\$ 54,252.00
Interplant** - Unfurrowed supplemental plant Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-500	204,000	Lower Peninsula	\$ 137.00 Per thousand	\$ 27,948.00

Underplant – Unfurrowed under timber Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-100	19,800	Upper Peninsula	\$ 164.45 Per thousand	\$ 3,256.11
Underplant – Unfurrowed under timber Spacing: Variable Estimated Trees Per Acre: 300-600 Range of Stand Size: 25-100	10,200	Lower Peninsula	\$ 164.45 Per thousand	\$ 1,677.39
KW weave first plant (High) – Furrowed Spacing: 6x5 Estimated Trees Per Acre: 1,000-1,200* Range of Stand Size: 200-500 *Includes ¼ acre openings in calculations	770,000	Lower Peninsula	\$ 60.30 Per thousand	\$ 46,431.00
KW weave first plant (Medium) – Furrowed Spacing: 6x6 Estimated Trees Per Acre: 800-1,000* Range of Stand Size: 200-500 *Includes ¼ acre openings in calculations	630,000	Lower Peninsula	\$ 62.35 Per thousand	\$ 39,280.50
KW weave first plant (Low) – Furrowed Spacing: 8x6 Estimated Trees Per Acre: 600-800* Range of Stand Size: 200-500 *Includes ¼ acre openings in calculations	490,000	Lower Peninsula	\$ 64.60 Per thousand	\$ 31,654.00
1-0 plug hardwood – Furrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: 20-50	27,500	Upper Peninsula	\$ 129.25 Per thousand	\$ 3,554.38
1-0 plug hardwood – Furrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: 20-50	27,500	Lower Peninsula	\$ 129.25 Per thousand	\$ 3,554.38
1-0 plug hardwood – Unfurrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: .1-2	15,000	Upper Peninsula	\$ 164.45 Per thousand	\$ 2,466.75
1-0 plug hardwood – Unfurrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: .1-2	15,000	Lower Peninsula	\$ 150.75 Per thousand	\$ 2,261.25
12-24" bareroot hardwood – Furrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: 20-50	27,500	Upper Peninsula	\$ 180.90 Per thousand	\$ 4,974.75
12-24" bareroot hardwood – Furrowed Spacing: 8x8 Estimated Trees Per Acre: 600-800 Range of Stand Size: 20-50	27,500	Lower Peninsula	\$ 164.45 Per thousand	\$ 4,522.38

4-6 ft tall hardwood saplings – Holes must be dug Spacing: Variable Estimated Trees Per Acre: 100-500 per Stand Range of Stand Size: 25-100	3,300	Upper Peninsula	\$ 3,768.75 Per thousand	\$ 12,436.88
4-6 ft tall hardwood saplings – Holes must be dug Spacing: Variable Estimated Trees Per Acre: 100-500 per Stand Range of Stand Size: 25-100	1,700	Lower Peninsula	\$ 3,015.00 Per thousand	\$ 5,125.50
Total Estimated Annual Cost				\$ 720,519.02
Total Estimated Contract Value (Total Annual Cost x 4 Years)				\$ 2,882,076.08

***These quantities are estimates only, and actual amounts can vary from year to year.**

****Replanting and Interplanting can occur on both forestry and KW sites.**

*****Every 3rd row would be planted to pine in stand scale hardwood plantings**

******Interplanting and underplanting will most often occur using conifer but could include hardwood. This will always be 1-0 plugs**