



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

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

CONTRACT CHANGE NOTICE

Change Notice Number **2**
to
Contract Number **210000000679**

CONTRACTOR	Potter-Belmar Labs, LLC d/b/a Flutter & Wow Museum Project
	738 Airport Boulevard, Suite 1
	Ann Arbor, MI 48104
	Jason Stevens
	734-224-3727
	jason@flutterwow.com
	VS0193407

STATE	Program Manager	Melissa Sharp	DNR
		313-396-6873	
		SharpM7@michigan.gov	
Contract Administrator		Brooke Jones	DNR
		517-388-6833	
		JonesB30@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: DNR Outdoor Adventure Center (OAC) Small Exhibit Repair, Maintenance and Upgrades				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
April 1, 2021	March 31, 2024	Two 1-Year Options to Renew	March 31, 2025	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 ARI		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	One Year	<input type="checkbox"/>		March 31, 2026
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$45,000.00		\$40,000.00	\$85,000.00	
DESCRIPTION: Effective March 31, 2025, the DNR is adding \$40,000.00 to the current contract value, making the estimated aggregate value \$85,000.00. The DNR is also exercising the second available Option Year. The revised Contract expiration date is March 31, 2026. In addition, the contract administrator has been updated to Brooke Jones. All other terms, conditions, specifications and pricing remain the same. Per Contractor and DNR agreement.				

FOR THE CONTRACTOR:

Potter-Belmar Labs, LLC d/b/a Flutter & Wow Museum Project

Company Name

E-SIGNED by Jason Stevens
on 2025-04-01 10:42:33 EDT

Authorized Agent Signature

Jason Stevens

Authorized Agent (Print or Type)

Date

FOR THE STATE:

E-SIGNED by Laura Gyorkos
on 2025-04-01 10:50:04 EDT

Signature

Laura Gyorkos, Procurement Services Manager

Name & Title

Department of Natural Resources

Agency

Date



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

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

CONTRACT CHANGE NOTICE

Change Notice Number **1**
to
Contract Number **21000000679**

CONTRACTOR	Potter-Belmar Labs, LLC d/b/a Flutter & Wow Museum Project	STATE	Program Manager	Melissa Sharp	DNR
	738 Airport Boulevard, Suite 1			313-396-6873	
	Ann Arbor, MI 48104		Contract Administrator	SharpM7@michigan.gov	
	Jason Stevens			Lisa Crozier-Green	DNR
	734-224-3727			517-388-6626	
	jason@flutterwow.com			CrozierGreenL@michigan.gov	
	VS0193407				

CONTRACT SUMMARY				
DESCRIPTION: DNR Outdoor Adventure Center (OAC) Small Exhibit Repair, Maintenance and Upgrades				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
April 1, 2021	March 31, 2024	Two 1-Year Options to Renew	March 31, 2024	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 ARI		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	One Year	<input type="checkbox"/>		March 31, 2025
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$45,000.00		\$0.00	\$45,000.00	
DESCRIPTION: Effective March 31, 2024 this Contract is exercising the first available Option Year. The revised Contract expiration date is March 31, 2025. All other terms, conditions, specifications and pricing remain the same. Per Contractor and DNR agreement.				

FOR THE CONTRACTOR:

Potter-Belmar Labs, LLC d/b/a Flutter & Wow Museum Projects

Company Name

E-SIGNED by Jason Stevens
on 2024-06-10 10:31:17 EDT

Authorized Agent Signature

Jason Stevens

Authorized Agent (Print or Type)

2024-06-10 10:31:17 UTC

Date

FOR THE STATE:

E-SIGNED by Lisa Crozier-Green
on 2024-06-10 10:45:53 EDT

Signature

Lisa Crozier-Green, Contract Administrator

Name & Title

Department of Natural Resources

Agency

2024-06-10 10:45:53 UTC

Date



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

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

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 210000000679

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Potter-Belmar Labs, LLC d/b/a Flutter & Wow Museum Projects
	738 Airport Boulevard, Suite 1
	Ann Arbor, MI 48104
	Jason Stevens
	734-224-3727
	jason@flutterwow.com
	VS0193407

STATE	Program Manager	Linda Walter	DNR
		313-396-6876	
		WalterL4@michigan.gov	
Contract Administrator		Lisa Crozier-Green	DNR
		517-388-6626	
		CrozierGreenL@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: DNR Outdoor Adventure Center (OAC) Small Exhibit Repair and Maintenance			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 1, 2021	March 31, 2024	Two 1-Year Options to Renew	March 31, 2024
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
<p>The terms and conditions of this Contract are those of RFP 210000001227, this Contract Agreement and the vendor's quote dated March 26, 2021. In the event of any conflicts between the specifications and / or terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p>			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$45,000.00

FOR THE CONTRACTOR:

**Potter-Belmar Labs, LLC d/b/a
Flutter & Wow Museum Projects**

Company Name



Authorized Agent Signature

Jason Stevens

Authorized Agent (Print or Type)

8 APRIL 2021

Date

FOR THE STATE:


Signature

Lisa Crozier-Green, Contract Administrator

Name & Title

Department of Natural Resources

Agency

April 8, 2021

Date

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Department of Natural Resources
Small Exhibit Repair
DNR Outdoor Adventure Center, Detroit, MI
Contract Number 210000000679

SCOPE

This Contract is a three-year agreement for the repair and improvements of small exhibits, as needed, when needed, at the OAC in Detroit, MI.

REQUIREMENTS

1. Requirements

1.1. General Requirements

- A. The Contractor agrees to provide all personnel, equipment, tools, materials, supervision, and other items and / or services necessary to perform the repairs (Contract Activities) as required, to maintain the exhibits in a presentable and safe condition for use by OAC visitors.
- B. The OAC Program Manager will notify the Contractor when exhibits require repair or improvement. The Contractor will inspect the exhibits and provide a written quote for the Program Manager to review and approve prior to beginning the Contract Activities. The quote will include the exhibit name, a description of the work required, an estimate of the hours required, the materials required and any materials mark-up percentage, and estimated start and completion dates.
- C. The Contractor will be responsible for repairing or replacing any items or portions of exhibits damaged by the Contractor, the Contractor's employees, or the Contractor's subcontractor(s) in the course of performance of the Contract Activities.
- D. The State of Michigan will not pay for unperformed services, or for services performed on State Holidays unless pre-approved in writing (email acceptable) by Program Manager or designee.
- E. State Holidays include:
 - New Year's Eve / New Year's Day
 - Martin Luther King, Jr. Birthday
 - Presidents Day
 - Memorial Day
 - Independence Day
 - Labor Day
 - Veteran's Day
 - Election Day (even numbered years)
 - Thanksgiving Day (Thursday and Friday)
 - Christmas Eve / Christmas Day

SCHEDULE A – STATEMENT OF WORK

CONTRACT ACTIVITIES

1.2 Specifications

A. Project Management

1. The Contractor agrees to carry out all Contract Activities under the direction and control of the OAC Program Manager.
2. The Contractor agrees all Contract Activities will be performed in a timely, professional manner with little or no disruption to OAC events or visitor activities.

B. Exhibits

1. The Exhibits included in this contract are examples of the Contract Activities that may be required from time-to-time.
2. Waterfall Exhibit:
 - a. Repairs may include damage to fish, bodies and broken fins, sanding, priming and realistic refinishing, creating and installing realistic life size painted turtles,
1. Turkey Hunt Exhibit:
 - a. Turkey Hunter Mannequin – repairs may include adjusting / replacing clothing, repositioning mannequin, securing articulated joints with hardware to eliminate movement, anchoring mannequin to prevent movement, paint or touching up portions of the mannequin, fabricating / replacing portions of mannequin.
 - b. Tom Turkey Mount – repairs may include damage to taxidermy (head, feathers, feet, gobbler, etc.), fabricating / adjusting metal armature, relocation / tree limbs, etc.
 - c. Three-Dimensional Exhibit Items – Pine trees or tree limbs – fabrication, relocation, positioning, securing to prevent movement, touch up / resurfacing to maintain appearance, etc.
2. Taxidermy Raccoon Exhibit
 - a. Raccoon Mount – repairs may include anchoring racoon mount to an existing tree limb, repairing damage to taxidermy, fabricating / adjusting metal armature, relocation, etc.
3. Smokey the Bear Exhibit
 - a. Smokey the Bear – repairs may include removing the suite from the wire armature used as a mannequin, modifying the current armature to eliminate movement or maintain position, anchoring armature to base, repair / replace base, reattaching / repositioning portions of wire armature, repair / replace portions of the Smokey the Bear suit, etc.
4. Sustainable Living Exhibit
 - a. Kitchen – repairs may include anchoring / replacing drip pans / burners at stove, touch up finish on appliances, replace clear poly carbonate plastic refrigerator cover, add or update sound interactive with songs about healthy eating and / or healthy eating tips, etc.
5. Marine Animal Exhibit

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

- a. Posts and Rope – repairs may include securing / replacing existing group of posts, securing to concrete floor, touch up finish, etc.
6. Small Mammal Exhibits (eight exhibits located on multiple floors)
 - a. Small Mammal Drawers – repairs may include removing items from drawers, replacing bottom surface of drawers, adjusting skills and track paths, repairing “sculpted scat” or paw prints, repair or touch up color coded name plates, etc.
7. Exhibit Foliage – repairs and / or improvements may include Turkey Hunt, Pine Forest, Waterfall, Duck Blind, Elk exhibit, etc., repairing or adding life-like Michigan native plants to match existing foliage, etc.
8. General Exhibit Three-Dimensional Items – repairs and touch up to trees, rocks, waterfall, bur oak tree, etc.

1.3. Warranties

- A. The Contractor has not provided any specific warranties.
- B. The State reserves the right to require additional warranties other than those identified by the Contractor.
- C. **Damage to State-owned, Leased or Citizen-owned Property**
 1. In all instances where State-owned or Citizen-owned property (private vehicles, etc.) or equipment is damaged, the Contractor agrees to notify the Program Manager or designee of the facts and extent of the damage:
 - a. Verbally – within one hour of the damage or discovery of damage, and
 - b. In writing within 24 hours of the damage or discovery of damage.
 2. Contractor shall be responsible for repair, replacement or cleanup as necessary to any State-owned or Citizen-owned property due to carelessness, misuse or neglect of the Contractor or any of the Contractor’s personnel or subcontractors.
 3. In the event of Contractor liability for damages, the Contractor agrees:
 - a. The State will repair, replace or cleanup the damage.
 - b. The State will provide the Contractor with documentary evidence (i.e. invoices, etc.) of the costs associated with the repair, replacement or cleanup, and
 - c. The Contractor will reimburse the State for the full amount of the repair, replacement or cleanup either by:
 - i. Forwarding payment in full within 45 days of receipt of documentary evidence, or
 - ii. By agreeing, in writing, to allow the State to hold back contractual payments until the cost for the repair, replacement or cleanup has been fully reimbursed to the State.
- D. **Health, Safety and Environmental Protection**
 1. The Contractor agrees to conform to all applicable federal, state and local laws and to the requirements of this contract.
 2. In performing the Contract Activities, the Contractor shall:

SCHEDULE A – STATEMENT OF WORK

CONTRACT ACTIVITIES

- a. Take all reasonable precautions to prevent the release of hazardous chemicals into the environment.
- b. Take all additional precautions the Program Manager or designee requires.
3. Any violation of the health, safety and environmental rules may be grounds for termination of this contract.

1.4. Quality Assurance Program

- A. The Contractor shall remain responsible for the repair and maintenance of all equipment used in the performance of the Contract Activities.

1.5. Incentives

- A. **The Contractor is offering a 2.5% discount if invoice is paid within 30 days.**

2. Service Levels

2.1. Time Frames

- A. All Contract Activities must be performed in compliance with all Schedule A requirements or as requested by the Program Manager or designee.
- B. Contract Activities may commence from receipt of Delivery Order.
- C. The Contractor is not authorized to begin performance until receipt of Delivery Order.
- D. The receipt of order date is pursuant to Section 2, Notices, of the Standard Contract Terms.
 1. The Contractor agrees to complete and provide any additional reports or DNR required forms. The Program Manager or designee will provide Contractor with DNR required forms.
 - a. Reports and forms may include, but are not limited to:
 - i. Damage Reports
 - ii. Accident / Incident Reports
 - c. The State reserves the right to require other reports or completion of additional forms.
 2. Damage Reports
 - a. In all instances where State property or equipment is damaged, the Contractor shall submit to the Program Manager or designee a Damage Report containing the facts and extent of the damage. Damage reports must be submitted verbally within one hour of the damage, and in writing within twenty-four (24) hours of the damage.
 3. Accident Reports
 - a. The Contractor shall comply with State of Michigan, OSHA, and other regulatory agency requirements for record keeping and reporting of all accidents resulting in death, trauma, or occupational illness.

SCHEDULE A – STATEMENT OF WORK

CONTRACT ACTIVITIES

- b. The Contractor must provide a verbal report to the Program Manager or designee within one hour of the accident, and a written report within twenty-four (24) hours of the accident.

2.3. Meetings

- A. The Contractor agrees to attend any meetings requested by the State.
- B. Meetings may include:
 - 1. Kick-off meeting within 30 calendar days of the Effective Date of the contract to discuss the Contract Requirements, Terms and Contractor work plan.
 - 2. Annual Service Review and Progress Meeting to discuss services provided and Contractor’s service quality.
 - 3. Quarterly Program Manager Meeting to discuss progress and provide guidance solving issues that arise.
- C. The State may request other meetings as it deems appropriate.

3. Staffing

3.1 Key Personnel

- A. The Contractor agrees to designate at least one Key Personnel who will be directly responsible for the day-to-day operations of the Contract. Key Personnel may be the same individual as the Contractor Representative.
- B. Key Personnel must be:
 - 1. Knowledgeable of the contractual requirements
 - 2. Respond to emergency situations within two (2) hours, and
 - 3. Respond to State inquiries within eight (8) business hours
 - 4. Trained and qualified to directly supervise the day-to-day Contract Activities.
- C. General employees or attendants may not be substituted for Key Personnel.
- D. The State reserves the right to:
 - 1. Require more than one Key Personnel to adequately supervise the day-to-day Contract Activities.
 - 2. Approve Key Personnel and / or
 - 3. Require replacement of Key Personnel, if necessary, to successfully perform the Contract Activities.
 - 4. Request a résumé and conduct an interview before approving a change.
 - 5. Require a 30 calendar-day training period for replacement personnel.
- E. The Contractor agrees not to remove or assign Key Personnel without prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor’s control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause.

Key Personnel:	Jason Stevens
Location:	738 Airport Blvd, Ste. 1, Ann Arbor, MI 48108
Telephone Number:	734-224-3727

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Email Address:	jason@flutterwow.com
Organizational Role:	Principal

3.2 Contractor Representative

- A. The Contractor agrees to designate one Contractor Representative assigned to any resulting Contract who will be available to receive calls for service prior to 7:00 a.m. Monday – Friday, respond to notice of unacceptable conditions within four (4) business hours and respond to State inquiries regarding the Contract Activities. The Contractor Representative and Key Personnel may be the same individual.
- B. The Contractor agrees to notify the Contract Administrator at least ten (10) calendar days before removing or assigning a new Contractor Representative. The Contract Administrator will draft a Change Notice for signature by the Contractor.
- C. The Contractor must identify the Contractor Representative, indicate where they will be physically located, provide contact information and describe the functions they will perform.

Contractor Representative:	Jason Stevens
Location:	738 Airport Blvd, Ste. 1, Ann Arbor, MI 48108
Telephone Number:	734-224-3727
Email Address:	jason@flutterwow.com
Organizational Role:	Principal

3.3. Disclosure of Subcontractors

- A. The Contractor does not intend to utilize subcontractors.
- B. In the event the Contractor requires the use of a subcontractor, the Contractor agrees to remain responsible for the management of any subcontractors utilized for the performance of Contract Activities. Subcontractors will be bound to the Contractor by the terms of any resulting Contract.
- C. Subcontractors are any individual, organization or company who may be present on State property to perform or supervise Contract Activities, or who assist in the performance of the Contract Activities on or off-site and may include temporary employment agencies, rental companies, delivery companies, etc.
- D. The State reserves the right to review and approve subcontractors or require replacement of unacceptable subcontractors. The State’s written approval of any subcontractor does not relieve the Contractor of any obligation or performance required under any resulting Contract.
- E. Any change in named subcontractor(s) should be pre-approved, in writing (email is acceptable) by the Program Manager, with notice to the Contract Administrator.
- F. The State will direct payments for Contract Activities only to the Contractor.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

G. If the Contractor intends to utilize a subcontractor for any portion of the Contract Activities the Contractor must provide the following:

<p><i>Bidder Response:</i></p> <p>Subcontractor: Business Name: Address: Telephone: Email: Description of organization: Services provided: Detail on Subcontractor’s ability to provide Contract Activities: Previous working relationship with Contractor: Description of Contract Activities to be performed:</p>

3.4. Security

A. Contractor Responsibilities

1. All persons assigned by the Contractor to perform Contract Activities must be employees of the Contractor or a named subcontractor and fully qualified to perform the work assigned to them.
2. The Contractor agrees all persons performing Contract Activities will be readily identifiable as Contractor employees by wearing uniforms or ID badges.
3. The State may require Contractor employees to wear State issued ID badges.
4. The Contractor agrees to ensure the safety of State facilities by performing background checks and / or drug screening on employees.
5. Upon request, the Contractor and/or sub-contractors must share background check results / documentation with DNR Human Resources, or their designee.
6. The State reserves the right to request additional background checks at the discretion of state agencies or branches of state government as outlined in the Standard Contract Terms document.

B. DNR Human Resources Responsibilities

1. DNR Human Resources, or designee, is the sole contact to view background check or drug testing results on behalf of the State.
2. DNR Human Resources contact person is Amy Abdo, AbdoA@michigan.gov. (517) 284-5017.

C. State Employee Responsibilities

1. State employees are required to report any potential concerns regarding security, theft, requests for reasonable suspicion testing, or substance abuse issues regarding the Contractor’s employees to: T/B/D at Contract.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

4. Pricing

4.1. Price Term

- A. Pricing is firm for a 365-day period (“Pricing Period”) which begins on the Effective Date of any resulting Contract. Adjustments may be requested in writing by either party, effective no earlier than the next Pricing Period.

4.2. Price Changes

- A. Adjustments will be based only on actual changes in 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.
- B. 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.
- C. 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.

5. Ordering

5.1. Authorizing Document

- A. The appropriate authorizing document to begin Contract Activities will be properly executed delivery order (DO) and a Contractor quote approved by the OAC Program Manager. Delivery orders will be provided to the Contractor via the email address in their SIGMA VSS account. Approved Contractor quotes will be provided by the OAC Program Manager via email.

6. Service Levels

6.1. Days and Times of Service

- A. The Contractor agrees to adhere to the days and times of service as requested by the Program Manager or designee.

6.2. Acceptance, Inspection and Testing

- A. The Program Manager or designee is the only individual authorized to determine whether the Contract Activities are acceptable. Notice of unacceptable service or conditions by anyone other than the Program Manager or designee should be forwarded to the Program Manager for verification.
- B. If the Program Manager or designee determine any portion of the Contract Activities are unacceptable, the Program Manager or designee will immediately

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

notify the Contractor Representative by telephone with follow up written notice by email.

- C. Acceptance of Contract Activities is pursuant to Section 14 of the Standard Contract Terms.

7. Invoice and Payment

7.1. Invoice Requirements

- A. Invoices must reflect actual work completed.
- B. Invoices for service must not be submitted in advance of actual performance.
- C. All invoices submitted to the State must include:
 - a. Date
 - b. Delivery Order number (DO or Doc I.D.)
 - c. Quantity – Service Area and Acres
 - d. Description of the Contract Activities
 - e. Unit price / Price Per Occurrence
 - f. Total price

7.2. Payment Methods

- A. The State will make payment for Contract Activities by Electronic Funds Transfer (EFT) only.

7.3. Procedure / Payment Terms

- A. Payment terms are Net 45 Days after receipt of invoice (ARI).

8. Transition

- A. Contract Execution:** The Contractor agrees to sign and date the Contract by the estimated Contract Start Date and provide a current certificate of liability insurance with the required coverage and limits of liability as stated in Section 6 of the Standard Contract Terms.
- B. Post-Contract Transition:**
 - 1. Invoices must be received by the State within 45 days after expiration of the contract. Any invoices received after 45 days of contract expiration may result in a non-payment of invoice.
 - 2. The Contractor agrees, if required, to continue providing Contract Activities for the length of time specified in Section 21 of the Standard Contract Terms.

9. Liquidated Damages

- A. Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State.
- B. If there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$500 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

SCHEDULE B - VENDOR PRICE QUOTE

Department of Natural Resources
Small Exhibit Repair
DNR Outdoor Adventure Center, Detroit, MI
Contract Number 21000000678

The Contractor is offering quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms: 2.5% discount off invoice if paid within 30 days

Hourly Rate	Material Mark Up	Total Annual Not to Exceed Amount	TOTAL CONTRACT
\$128.00	10%	\$15,000.00	\$45,000.00

SCHEDULE B - VENDOR PRICE QUOTE

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Potter-Belmar Labs, LLC DBA Flutter & Wow Museum Projects (“**Contractor**”), a Michigan S corporation.

Contract is effective April 1, 2021 (“**Effective Date**”), and unless terminated, expires March 31, 2024.

This Contract may be renewed for up to TWO 1-Year Options to Renew. Renewal is at the sole discretion of the State and subject to appropriation.

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 contacting / communicating with the State.

SCHEDULE B - VENDOR PRICE QUOTE

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:
Lisa Crozier-Green 525 West Allegan Constitution Hall, Third Floor Lansing, MI 48933 CrozierGreenL@michigan.gov 517-388-6626	Jason Stevens Flutter & Wow 738 Airport Blvd, Ste 1 Ann Arbor, MI 48014 Jason@flutterwow.com 734-224-3727

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

State:	Contractor:
Lisa Crozier-Green 525 West Allegan Constitution Hall, Third Floor Lansing, MI 48933 CrozierGreenL@michigan.gov 517-388-6626	Jason Stevens Flutter & Wow 738 Airport Blvd, Ste 1 Ann Arbor, MI 48014 Jason@flutterwow.com 734-224-3727

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

State:	Contractor:
Linda Walter, Director Michigan Department of Natural Resources Parks and Recreation Division Outdoor Adventure Center 1801 Atwater Street Detroit, MI 48207-4020 WalterL4@michigan.gov (313) 396-6876 (p) (313) 567-0160 (f)	Jason Stevens Flutter & Wow 738 Airport Blvd, Ste 1 Ann Arbor, MI 48014 Jason@flutterwow.com 734-224-3727

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 – Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.

SCHEDULE B - VENDOR PRICE QUOTE

6. Insurance Requirements. Contractor, at its sole expense, must maintain the insurance coverage identified below. 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	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate Deductible Maximum: \$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.
Umbrella or Excess Liability Insurance	
Minimum Limits: \$5,000,000 General Aggregate	Contractor must have their policy follow form.
Automobile Liability Insurance	
Minimum Limits: \$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	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$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

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

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

- 8. Subcontracting.** Contractor may utilize subcontractors for Contract Activities, but 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

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Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

9. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
10. **Background Checks.** 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.
11. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
12. **Change of Control.** Contractor will notify 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.
13. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.

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- 14. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in 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 19, Termination for Cause.

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

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

- 15. Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.
- 16. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in 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

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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.

- 17. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
- 18. 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.
- 19. 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

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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.

- 20. 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 21, 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.
- 21. 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.
- 22. 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

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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.

- 23. 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.
- 24. 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.
- 25. 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

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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.

- 26. 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.
- 27. 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

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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

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by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

- 28. 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.

- 29. 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 19, Termination for Cause.

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- 30. 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.
- 31. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 32. Prevailing Wage.** Contractor must comply with prevailing wage requirements to the extent applicable to this Contract.
- 33. 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.
- 34. 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.
- 35. 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.
- 36. 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.

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- 37. 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.
- 38. 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.

- 39. 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.
- 40. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 41. 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	Vendor Price Quote

- 42. 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

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– 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.

- 43. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 44. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 45. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
- 46. 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.