



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

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **220000001143**

between

THE STATE OF MICHIGAN

and

<b>CONTRACTOR</b>	Michigan State University
	426 Auditorium Rd, Room 2 301 Administration Building
	East Lansing, MI 48824
	Diane Cox
	517-884-4243
	coxd@osp.msu.edu
	CV0048200

<b>STATE</b>	Program Manager	Kevin Sayers	DNR
		517-582-3209	
		sayersk@michigan.gov	
<b>STATE</b>	Contract Administrator	Kip Conley	DNR
		517-388-5956	
		Conleyk1@michigan.gov	

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION: Sustaining an Urban and Community Forestry Initiative for Michigan</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
9/1/2022	9/30/2027	5 - 1 year options	9/30/2027
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45		NA	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
NA			
<b>MISCELLANEOUS INFORMATION</b>			
This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation ITN 22*0050. Orders for delivery will be issued directly by the Michigan Department of Natural Resources. In the event of any conflicts between the specifications, and terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION</b>			<b>\$410,114.00</b>

By signing this Contract, the Contractor certifies and assures to the state that they will comply with the Anti-Trust Lobbying Act 31 USC 1352, as revised by the Lobbying Disclosure Act of 1995, 2 USC 1601 et seq, Federal Acquisition Regulations 52.203.11 and 52.203.12, and Section 503 of the Department of Labor, Health & Human Services and Education, and Related Agencies section of the current fiscal year Omnibus Consolidated Appropriations Act.

**FOR THE CONTRACTOR:**

**Michigan State University**  
Company Name

\_\_\_\_\_  
Authorized Agent Signature

**Diane Cox**  
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 Michigan State University (“**Contractor**”), a Michigan public university. This Contract is effective on 9/01/2022 (“**Effective Date**”), and unless terminated, expires on 9/30/2027.

This Contract may be renewed for up to 1 additional one-year period. 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, except for normal wear and tear, as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State, except Contractor may release this information as required by institutional policy; (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 applicable State physical and IT security policies and standards when using State Facilities, accessing, possessing or controlling State Data or accessing State IT systems, which will be made available upon request. 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 517-388-5956	Stacy Salisbury Contract and Grant Administration Michigan State University 426 Auditorium Rd., Room 2 East Lansing, MI 48824 awards@cga.msu.edu 517-355-5040

- 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:
Kip Conley 525 W Allegan Lansing, MI 48933 Conleyk1@michigan.gov 517-388-5956	Diane Cox Office of Sponsored Programs Michigan State University 426 Auditorium Rd., Room 2 East Lansing, MI 48824 contractteam2@osp.msu.edu 517-355-5040

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:
Kevin Sayers 525 W Allegan Lansing, MI 48933 Sayersk@michigan.gov 517-582-3209	Dr. Asia L Dowtin Department of Forestry Michigan State University 480 Wilson Rd East Lansing, MI 48824 dowtin@msu.edu 517-355-2380

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request.

6. **Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (b) except for self-insured plans, be provided by a company with an A.M. Best rating of "A-" or better and financial size of VII or better. Contractor may self-insure with respect to the insurance types and coverage limits set forth in this section.

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<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	
<b>Automobile Liability Insurance</b>	
If one or more motor vehicles are used to perform the Contract Activities, the Contractor must have vehicle liability insurance on any and all motor vehicles for bodily injury and property damage coverage as required by law.	Contractor must have their policy include Hired and Non-Owned Automobile coverage.

<b>Workers' Compensation Insurance</b>	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	
<b>Employers Liability Insurance</b>	
<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 twenty (20) calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurance 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.

- 8. Intellectual Property Rights and Licenses.** For research related Contract Activities, State acknowledges that Contractor will be the sole and exclusive owner to all right, title, and interest in Contractor Data, and research related Contract Activities, excluding State Data. “Contractor Data” shall be defined as data collected from sources other than the State or data generated as the result of the research related Contract Activities. Contractor grants the State a royalty-free, perpetual, non-exclusive, irrevocable, and unlimited license to use, publish, or otherwise distribute all such research related Contract Activities, Contractor Data, materials, or ideas created and developed by Contractor under this Contract for non-commercial purposes, throughout the world. Ownership of anything created by Contractor shall be subject to 37 CFR Part 401. For Contract Activities that are Works Made for Hire as defined in Section 101 of the Copyright Act of 1976, 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.
- 9. 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.
- 10. Staffing.** The State’s Contract Administrator may request, in good faith, Contractor to remove or reassign personnel by providing a notice to Contractor.
- 11. 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, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment under this Contract. 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. Any background checks required by the State will be specified in the Statement of Work.

- 12. 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.
- 13. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
- 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 18, 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 acceptable Contract Activities to the State. "Acceptable" and "Acceptance" shall mean that the work has been performed in accordance with the terms of the Contract. 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.

- 15. Terms of Payment.** Invoices must conform to the requirements as outlined in the terms of the Contract. 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.

- 16. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
- 17. 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.
- 18. 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 written 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 25, 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, and transition costs.

- 19. Termination for Appropriation or Budgetary Reasons.** The State may immediately terminate this Contract, in whole or in part without penalty for, non-or negative 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 26, Transition Responsibilities. If the State terminates this Contract for budgetary reasons, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 20. Termination for Convenience.** The State may terminate this Contract with 30 days written notice to the Contractor, in whole or in part without penalty and for any reason. 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 26, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, including non-cancellable obligations, as determined by the State, for State approved Transition Responsibilities.
- 21. Termination for Impossibility.** If, for any reason, the Principal Investigator (identified in the Statement of Work) is unable or unwilling to continue to serve, Contractor will first attempt to find a successor acceptable to the State, whose approval shall not be unreasonably withheld. If, however, after diligent efforts and a reasonable time, Contractor is unable to find an acceptable successor, Contractor may terminate this Contract with 30 days written notice to the State.
- 22. 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. 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, copies of 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.

- 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 30 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, and only as it relates to the Contract or Contractor's ability to perform under 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 is the exclusive property of the State ("**State Data**"). 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. State Data.**

- a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data provided, used, processed, or stored as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. Extraction of State Data. Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. Backup and Recovery of State Data. Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A,

Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.

- e. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party,

including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this Section are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract.

- f. Security Accreditation Process. If Contractor or any of its subcontractor's IT systems will contain, store or receive any State Data, Contractor must assist the State at no additional cost with development, completion and on-going maintenance of a system security plan (SSP) using the State's automated governance, risk and compliance platform, which requires Contractor to submit evidence, upon request from the State, in order to validate Contractor's security controls. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system's controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames based on the risk level of the identified risk. For all findings associated with the Contractor's solution, Contractor will be required to create or assist with the creation of State approved POAMs and perform related remediation activities. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk.

**28. 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; (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, though, or on behalf of, the receiving party); or, (f) as required by law. 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 five (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's 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.

## **29. Data Privacy and Information Security.**

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of State Data; (b) protect against any anticipated threats or hazards to the security or integrity of State Data; (c) protect against unauthorized disclosure, access to, or use of State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards or their acceptable equivalent as solely determined by the State, when accessing, possessing or controlling State Data or accessing State IT systems.
- b. Reserved.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any safeguards required by the contract as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

**30. 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 four (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 and cannot be supported by the Contractor, 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.

**31. 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 knowingly 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 in accordance with the terms of 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 18, Termination for Cause.

**32. 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.

- 33. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 34. 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.
- 35. 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.
- 36. 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.
- 37. 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.
- 38. 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.

**39. 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.

**40. 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.

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

**42. 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:

<b>Schedule A</b>	Statement of Work
<b>Schedule B</b>	Pricing Matrix
<b>Schedule C</b>	Federal Provisions Addendum

**43. 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.

- 44. 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.
- 45. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 46. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, and confidentiality, will survive the expiration or termination of this Contract.
- 47. 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.

## SCHEDULE C

### 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 contract 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.**

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**Signature of Contractor's Authorized Official**

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**Name and Title of Contractor's Authorized Official**

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**Date**

# **SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES**

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## **SCOPE**

The purpose of this contract is to obtain the services of the Department of Forestry at Michigan State University (MSU) to develop and enhance a research, education, and outreach/service program in urban and community forestry (UCF). This will be accomplished in part by committing funding from Michigan Department of Natural Resources (MDNR's) Forest Development Fund (FDF) to help continue a tenure-stream faculty member in UCF through the Partnership for Ecosystem Research and Management (PERM) agreement between MDNR and MSU. A total of \$410,114 in funding will be committed from FY22 budget year for an initial 5-year to support salary, fringe and operating costs associated with this program. The program aims to engage diverse audiences in research, education and outreach related to measuring, understanding, managing and enhancing the current and future conditions of urban natural resources and forests throughout the state.

## **1. Requirements**

### **1.1. General Requirements and Background**

The Michigan Department of Natural Resources (MDNR) Forest Resources Division (FRD) is a national leader in the management of public forest resources. With an increasingly urban population, the management of urban trees, forests and other natural resources are of increasing importance to the MDNR, especially because urban forest cover and related natural resources provide an array of important benefits and ecosystem services to human populations. Ecosystem services associated with urban trees and forests include functional and physical effects such as cleaning air and water, mitigating urban heat extremes, human health effects such as reducing psychological and physiological stress, and societal effects such as reduced crime rates and improved learning outcomes in schools. It is a priority of MDNR to provide equitable assistance to help all Michigan communities grow and maintain urban forest resources that will result in improved quality of life for Michigan's citizens.

Furthermore, to maintain public trust and diversify its workforce, the MDNR recognizes the need to connect urban populations with forest and natural resources management. Greening urban environments and elucidating the associated ecosystem services they provide are important ways to connect urban human populations on these topics. In addition, efforts to reach urban and under-represented audiences with focused assistance will help increase diversity in the workforce, an ongoing need expressed by the professional tree care and forestry industries in Michigan and nationally.

To address these needs, MSU, in partnership with the MDNR, will continue to support a tenure-stream faculty member in urban and community forestry through the PERM

agreement. This statement of work encompasses and facilitates the ongoing work and deliverables related to the supported faculty member's research, extension and teaching programs.

## **1.2. Objectives and Tasks**

MSU will complete the following tasks:

1. Sustain a tenure-stream faculty member in urban and community forestry (UCF).
2. Coordinate initial project meeting between MDNR PM, MSU PI and MSU Co-PI.
3. The faculty member will continue to maintain a detailed work plan for their PERM research, extension, and teaching program. The work plan will include:
  - a. Conduct research relevant to MDNR's mission related to UCF.
  - b. Secure external funding to support UCF research and extension.
  - c. Publish in competitive, peer-reviewed journals on the issues related to UCF (e.g. ecosystem services, workforce development, human health, citizen engagement, etc.).
  - d. Teach an advanced undergraduate course in UCF.
  - e. Support training of graduate students in UCF teaching and research at MSU.
  - f. Contribute to building and maintaining UCF and arboriculture education and jobs training programs and pathways with educational institutions, leading to certificates, associate's and/or bachelor's degrees (e.g. MSU Institute for Agricultural Technology partnership with Bay and Muskegon Community Colleges; Medgar Evers College 3+2 degree program; Detroit U-Prep Science and Math High School curriculum development, etc.).
  - g. Develop and maintain relationships with urban natural resource professionals in the tree care industry, governmental and non-governmental agencies, utility sectors, community-based organizations and others.
  - h. Investigate opportunities to establish urban forestry research and extension programs as part the MSU – Detroit Partnership for Food, Learning and Innovation.
  - i. Make presentations at local, state and national meetings pertaining to UCF topics including completed and ongoing research and management, especially as related to this project.

- j. Work with MDNR and stakeholders to develop UCF outreach and education messages and facilitate place-based and/or citizen science learning opportunities.
  - k. Identify opportunities and implement strategies to address diversity, equity, inclusion and environmental justice issues through UCF (e.g. Tree Equity Score).
  - l. Support MDNR's efforts to develop, revise and implement its Forest Action Plan related to UCF goals and objectives.
  
  - m. Recognize MDNR and the Forest Resources Division as a contributing sponsor in outreach, publication, teaching and research as facilitated through the PERM agreement.
4. Provide written annual project report and conduct in person presentation(s) to MDNR Project Manager and staff.

### **1.3. Deliverables and Reporting**

The MDNR-FRD will have access to professional advice based on technical and laboratory resources, research information, and data interpretation services, so as to better understand the structure, function and distribution of urban forest resources and consequences of management. Management planning will be better informed so that advice and outcomes can become a more routine objective of resource management goals.

Written report and presentation are due annually beginning **September 30, 2023**.

### **1.4. Project Control**

The Contractor will carry out this project under the direction and control of the MDNR, Forest Resources Division.

The MDNR-PM will meet as needed with the MSU-PI for the purpose of reviewing progress and providing necessary guidance in solving problems that arise.

The MSU-PI will submit deliverables as described in the Statement of Work and identify any problems, real or anticipated, which should be brought to the attention of the MDNR-PM to ensure that the Contract remains on schedule and will be completed as scheduled.

## **2. Staffing**

### **2.1. Contractor Representative**

The Contractor must appoint one Principal Investigator individual specifically assigned to State of Michigan accounts, who will respond to State inquiries regarding the Contract Activities, answer 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.

The MSU Principal Investigator (MSU-PI) and Co-Principal Investigator (MSU Co-PI) for this project are listed below. MSU-PI (60%) is primarily responsible for the program delivery including research, teaching, and extension, workplan deliverables and reports. The MSU Co-PI (40%) will be responsible for the overall partnership and project administration including budgets, deliverables, and reporting as needed. Neither the MSU-PI or MSU Co-PI will have the authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, and specifications of the project as that authority is retained by MSU – Office of Sponsored Programs.

Principal Investigator	Co-Principal Investigator
<p style="text-align: center;">Dr. Asia L. Dowtin            Department of Forestry            Michigan State University            126 Natural Resources            East Lansing, MI 48824            Telephone: (517) 355-2380            Email: dowtin@msu.edu</p>	<p style="text-align: center;">Dr. Richard K. Kobe            Department of Forestry            Michigan State University            126 Natural Resources            East Lansing, MI 48824            Telephone: (517) 355-0093            Email: kobe@msu.edu</p>

**2.2. 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.

**2.3. 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. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.

**2.4. Security**

The State may require the Contractor’s personnel to wear State issued identification badges when entering State facilities.

### **3. Project Management**

#### **3.1. Project Plan**

The Contractor will carry out this project under the direction and control of the MDNR Program Manager.

The MSU PI will demonstrate completion of work items and deliverables as listed and identify any problems, real or anticipated, which should be brought to the attention of the MDNR Project Manager to ensure that the project remains on schedule and will be completed as scheduled.

Within 30 calendar days of the Effective Date, the Contractor must submit a final project plan to the Program Manager for approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, timeline, and resources required.

#### **3.2. Meetings**

The MDNR Project Manager will meet monthly, or as needed, with the MSU PI and/or co-PI for the purpose of reviewing progress and providing necessary guidance in solving problems that arise. The State may request other meetings, as it deems appropriate.

### **4. Pricing**

#### **4.1. Price Term**

Pricing is firm for the entire length of the Contract.

#### **4.2. 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.

### **5. Ordering**

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

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

## **6. Invoice and Payment**

### **6.1. Invoice Requirements**

This is a fixed price project contract of \$410,114 for an initial 5-yr period beginning October 1, 2022 (thru September 30, 2027). MSU may invoice at the end of each fiscal quarter (December 31, March 31, June 30, and September 30) for 25% of the annual MDNR contribution to the study. MSU's fiscal contribution to this study (34%) is the waiver of normal overhead charges per the PERM Agreement between MSU and MDNR, executed September 5, 2013, and amended in October 2015.

Budget: The budget breakdown is listed in Schedule B.

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); (g) vendor-generated invoice number and (h) total price. Overtime, holiday pay will not be paid. Travel will be reimbursed at current state travel rates.

### **6.2. Payment Methods**

The State will make payment for Contract Activities via EFT.

### **6.3. Procedure**

Invoices will be sent to the PM for review and approval.

## **7. Liquidated Damages**

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. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

## SCHEDULE B - PRICING

Price includes 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).

Urban and Community Forestry Project 10/01/2022 – 9/30/2023 (FY23)	
Salaries and Wages – PERM Faculty	\$57,974
Benefits/Fringe – PERM Faculty	\$18,876
Total Direct (FY23)	\$76,850
Urban and Community Forestry Project 10/01/2023 – 9/30/2024 (FY24)	
Salaries and Wages – PERM Faculty	\$59,713
Benefits/Fringe – PERM Faculty	\$19,610
Total Direct (FY24)	\$79,323
Urban and Community Forestry Project 10/01/2024 – 9/30/2025 (FY25)	
Salaries and Wages – PERM Faculty	\$61,754
Benefits/Fringe – PERM Faculty	\$20,441
Total Direct (FY25)	\$82,195
Urban and Community Forestry Project 10/01/2025 – 9/30/2026 (FY26)	
Salaries and Wages – PERM Faculty	\$64,379
Benefits/Fringe – PERM Faculty	\$20,608
Total Direct (FY26)	\$84,987
Urban and Community Forestry Project 10/01/2026 – 9/30/2027 (FY27)	
Salaries and Wages – PERM Faculty	\$65,667
Benefits/Fringe – PERM Faculty	\$21,092
Total Direct (FY27)	\$86,759
<b>TOTAL Contract Value Estimate</b>	<b>\$410,114.00</b>