



STATE OF MICHIGAN PROCUREMENT
 Department of Natural Resources
 525 West Allegan, Constitution Hall, Third Floor
 Lansing, MI 48933

CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **230000000172**

| | |
|-------------------|-------------------------------|
| CONTRACTOR | Jack Millikin, Inc. |
| | 4680 W. North Down River Road |
| | Grayling, MI 49738 |
| | JC Millikin |
| | 989-348-8411 |
| | jcmillikin@jackmillikin.net |
| | CV0021738 |

| | | | |
|--------------|------------------------|-------------------------|-----|
| STATE | Program Manager | Aaron Crawford | DNR |
| | | 517-243-0922 | |
| | | CrawfordA4@michigan.gov | |
| STATE | Contract Administrator | Brooke Jones | DNR |
| | | 517-388-6833 | |
| | | Jonesb30@michigan.gov | |

| CONTRACT SUMMARY | | | | |
|--|-------------------------|-----------------------------|---|-------------------|
| DESCRIPTION: Snow Removal Service – Grayling Field Office | | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW | |
| November 1, 2022 | October 31, 2025 | TWO 1-Year Options to Renew | October 31, 2025 | |
| PAYMENT TERMS | | DELIVERY TIMEFRAME | | |
| Net 45 | | N/A | | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | |
| <input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other | | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| MINIMUM DELIVERY REQUIREMENTS | | | | |
| N/A | | | | |
| DESCRIPTION OF CHANGE NOTICE | | | | |
| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE |
| <input checked="" type="checkbox"/> | 1 Year | <input type="checkbox"/> | | October 31, 2026 |
| CURRENT VALUE | | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE | |
| \$65,500.00 | | \$0.00 | \$65,500.00 | |
| DESCRIPTION: Effective 10/10/2025, the DNR is exercising the first available option year. The revised contract expiration date is 10/31/2026. In addition, the contract administrator has been updated to Brooke Jones. All other terms, conditions, specifications, and pricing remain the same. | | | | |

FOR THE CONTRACTOR:

Jack Millikin, Inc.

Company Name

Signed copy with DNR Procurement

Authorized Agent Signature

JC Millikin

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signed copy with DNR Procurement

Signature

Brooke Jones, Buyer

Name & Title

Department of Natural Resources

Agency

Date



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

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

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 230000000172

between

THE STATE OF MICHIGAN

and

| | |
|-------------------|-------------------------------|
| CONTRACTOR | Jack Millikin, Inc. |
| | 4680 W. North Down River Road |
| | Grayling, MI 49738 |
| | JC Millikin |
| | 989-348-8411 |
| | jcmillikin@jackmillikin.net |
| | CV0021738 |

| | | | |
|--------------|------------------------|----------------------------|-----|
| STATE | Program Manager | David Graham | DNR |
| | | 517-243-0922 | |
| | | GrahamD1@michigan.gov | |
| | Contract Administrator | Lisa Crozier-Green | DNR |
| | | 517-388-6626 | |
| | | CrozierGreenL@michigan.gov | |

| CONTRACT SUMMARY | | | |
|--|-------------------------|-----------------------------|---|
| DESCRIPTION: Snow Removal Service – Grayling Field Office | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
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| PAYMENT TERMS | | DELIVERY TIMEFRAME | |
| Net 45 | | N/A | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING |
| <input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other | | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| MINIMUM DELIVERY REQUIREMENTS | | | |
| N/A | | | |
| MISCELLANEOUS INFORMATION | | | |
| <p>THIS IS NOT AN ORDER: Orders will be placed directly by the DNR via the authorized document established in Schedule A, Section 5.1. Authorizing Documents and per the terms, conditions, specifications, and pricing of this Contract.</p> <p>The terms and conditions of this Contract are those of RFP 22000003229, this Contract Agreement and the vendor's quote dated October 7, 2022. In the event of any conflicts between the specifications and / or terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> | | | |
| ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION | | | \$65,500.00 |

CONTRACT NO. 23000000172

FOR THE CONTRACTOR:

Jack Millikin, Inc.

Company Name

E-SIGNED by JC Millikin
on 2022-10-28 09:08:05 EDT

Authorized Agent Signature

JC Millikin

Authorized Agent (Print or Type)

2022-10-28 09:08:05 UTC

Date

FOR THE STATE:

E-SIGNED by Laura Gyorkos
on 2022-10-28 11:35:32 EDT

Signature

Laura L. Gyorkos, Procurement Services Manager

Name & Title

Department of Natural Resources

Agency

2022-10-28 11:35:32 UTC

Date

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Earthworks Enterprises, Inc. (“**Contractor**”), a Michigan Sub S Corporation. This Contract is effective on November 1, 2022 (“**Effective Date**”), and unless terminated, will expire on October 31, 2025 (the “**Term**”).

This Contract may be renewed for up to TWO 1-Year Options to Renew. 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 (the “**Contract Activities**”) described in a Statement of Work; the initial Statement of Work is attached as Schedule A – Statement of Work. 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 unless otherwise specified in a Statement of Work.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) 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; (i) comply with all State physical and IT security policies and standards which will be made available upon request; and (j) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever contacting 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 received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

| If to State: | If to Contractor: |
|---|--|
| Lisa Crozier-Green 525 West Allegan, Constitution Hall, 3 rd Floor Lansing, MI 48933 CrozierGreenL@michigan.gov 517-388-6626 | JC Millikin 4680 North Down River Road Grayling, MI 49738 jcmillikin@jackmillikin.net 989-348-8411 |

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

| State: | Contractor: |
|---|--|
| Lisa Crozier-Green 525 West Allegan, Constitution Hall, 3 rd Floor Lansing, MI 48933 CrozierGreenL@michigan.gov 517-388-6626 | JC Millikin 4680 North Down River Road Grayling, MI 49738 jcmillikin@jackmillikin.net 989-348-8411 |

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: |
|---|--|
| David Graham GrahamD1@michigan.gov 517-243-0922 | JC Millikin 4680 North Down River Road Grayling, MI 49738 jcmillikin@jackmillikin.net 989-348-8411 |

5. **Performance Guarantee.** Contractor must always have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in a Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

TABLE 6.1

| Required Limits | Additional Requirements |
|--|--|
| Commercial General Liability Insurance | |
| Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate | Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19. |
| Automobile Liability Insurance | |

| Required Limits | Additional Requirements |
|--|--|
| Minimum Limits: \$1,000,000 Per Accident | Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage. |
| Workers' Compensation Insurance | |
| Minimum Limits: Coverage according to applicable laws governing work activities. | Waiver of subrogation, except where waiver is prohibited by law. |
| Employers Liability Insurance | |
| Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease | |
| Minimum Limits: \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate | |

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 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 3 years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurance contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting, or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

- 7. Relationship of the Parties.** The relationship between the parties is that of independent contractors. 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. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

- 8. Intellectual Property Rights.** If a Statement of Work requires Contractor to create any intellectual property, Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.
- 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 require Contractor to remove or reassign personnel providing services 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, or as may be specified in a Statement of Work, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- 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. Change of Control.** Contractor will notify the State, within 30 days of any public announcement or otherwise once legally permitted to do so, of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control

means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

- 14. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in a Statement of Work.
- 15. 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 a Statement of Work. 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 24, Termination for Cause.

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

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

- 16. Invoices and Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities provided as specified in a Statement of Work. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all fees 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 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.

Excluding federal government charges and terms, Contractor warrants and agrees that each of the fees, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent fees, economic or product term or warranty being offered to any commercial or government customer (including any public educational institution within the State of Michigan) of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract will be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor will immediately notify the State of such fee and formally memorialize the new pricing in a change notice.

- 17. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in a Statement of Work. The parties understand and agree any liquidated damages (which includes, but is not limited to, applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under Section 24 and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Amounts due the State as liquidated damages may be set off against any fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.
- 18. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The

State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

19. Termination for Cause. (a) The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (i) endangers the value, integrity, or security of any facility, data, or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (iii) engages in any conduct that may expose the State to liability; (iv) breaches any of its material duties or obligations under this Contract; or (v) fails to cure a breach within the time stated by the State in a notice of breach, if in its sole discretion the State has chosen to provide a time to cure. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b) If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Contract Activities accepted by the State under this Contract or (ii) 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. Contractor must promptly reimburse to the State any fees prepaid by the State prorated to the date of such termination, including any prepaid fees. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

20. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason or no reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due Contractor for Contract Activities accepted by the State under this Contract, 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, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

21. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period specified by the State (not to exceed **90** calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or

adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) 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 (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

22. Return of State Property. Upon termination or expiration of this Contract for any reason, Contractor must take 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 the Contractor by any entity, agent, vendor, or employee of the State.

23. Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

The State is constitutionally prohibited from indemnifying Contractor or any third parties.

- 24. 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.
- 25. 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.
- 26. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (3) any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 27. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing or commercial purposes.
- 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.
- 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; or, (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 or is: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, though, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party’s possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State

determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

- 29. Records Maintenance, Inspection, Examination, and Audit.** Pursuant to MCL 18.1470, 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 records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 30. Representations and Warranties.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.

- 31. 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.
- 32. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 33. Prevailing Wage.** Contractor must comply with prevailing wage requirements, to the extent applicable to this Contract.
- 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 the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.
- 37. Non-Exclusivity.** Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. 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 the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.

41. Schedules. All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

| Document Title | Document Description |
|-------------------|--|
| Schedule A | Statement of Work |
| Schedule B | Location Specifications and Vendor Price Quote |
| Exhibit A | Aerial View of Location |

42. Entire Agreement and Order of Precedence. This Contract, which includes Statement of Work, and schedules and exhibits, 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 Statement of Work; (b) second, 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, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE STATE'S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

- 43. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 44. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 45. Survival.** Any right, obligation, or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Department of Natural Resources
Grayling Field Office
Snow and Ice Removal Services
Contract No. 23000000172

SCOPE

This Contract is for Snow and Ice Removal Services at the DNR Grayling Field Office, 1955 Hartwick Pines Road, Grayling, Michigan 49738.

REQUIREMENTS

1.1 General Requirements

- A. The Contractor agrees to carry out this project under the direction and control of the Program Manager.
- B. The Contractor agrees to provide all personnel, equipment, tools, materials, supervision, and other items and / or services necessary to perform the Contract Activities as described in Section 1.1 Specifications, and the Location Specification Sheet. The required objective is to maintain the facility parking lot and sidewalks in a safe condition for use by State employees and DNR customers.
- C. The State reserves the right to modify the services required under this RFP and / or any resulting contract to meet the State of Michigan's future needs.
- D. Refer to Location Specification Sheet for days and hours of snow removal services.
- E. The State of Michigan will not pay for unperformed services.

1.2 Specifications

A. Contract Activities – General Information

- 1. The Contractor agrees to provide all equipment and staff required to adequately perform the Contract Activities. In the event of mechanical breakdown, the Contractor agrees to provide backup equipment to complete service. Equipment failure will not constitute an acceptable reason for failure to perform Contract Activities.
- 2. Areas to be serviced are noted in Exhibit A – Aerial View of Location
- 3. Snow and ice removal services required are both “automatic” and “on-call.”
- 4. The Contractor agrees all snow removal services shall be performed according to Schedule A – Statement of Work Specifications and any schedules mutually agreed upon by the Contractor and Program Manager.
- 5. The Contractor agrees:
 - a. Automatic snow removal / plowing service will be performed for snowfalls of THREE (3) inches or more. On-Call service may be requested by the Program Manager or designee for additional snowfall, de-icing or parking lot sand application.
 - b. All automatic snow removal services shall be completed prior to 7:00 a.m., Monday – Friday, excluding State Holidays.

- c. On-Call snow removal services shall be completed within two (2) hours of the request for service.
- d. Holiday service, if required, shall be requested at least 24 hours in advance by the Program Manager or designee. No Contract Activities will be required on Saturdays or Sundays.
- 6. The Contract Administrator or Program Manager shall provide the Contractor with a list of DNR contacts authorized to approve snow and ice removal activities.
- 7. The Contractor shall provide the Contract Administrator with a contact name and telephone number to be used as a 24-hour contact.
- 8. Exact snow and ice removal requirements are unknown. The Contractor shall be responsible for providing services as described and / or as requested.
- 9. The State is not obligated to purchase these services in any specific amounts.

B. Snow Removal Specifications

- 1. The Contractor agrees to use care and caution while performing snow plowing, shoveling, de-icing or snow removal near structures, landscaping, vehicles, and pedestrians to avoid personal injury or property damage.
- 2. The Contractor agrees to remain responsible for the repair, replacement, relocation, or cleanup of damages to or displacement of State managed property or private owned property resulting from Contract Activities. State managed or private owned property may include, but is not limited to, parking lot, curbs, parking curbs, bumper blocks, speed bumps, pavements, shrubs, fences, lawn, landscaping, vehicles, etc.
- 3. Under no circumstances shall the State of Michigan or the Department of Natural Resources be responsible for any damage to the Contractor's equipment due to obstacles encountered on State property.
- 4. The Contractor agrees to perform a **fall site inspection** of the parking lot and driveway entrances to the property prior to first snowfall (but not later than October 30th) each year, to verify the location of curbs, parking bumpers, speed bumps, walkways, obstructions, landscaping, site features, etc. which may incur damage during snow removal. Damage and / or defects noted at the fall site inspection must be documented and reported to the Program Manager. The Contractor may provide written and / or photographic documentation to establish conditions prior to beginning snow and ice removal each year.
- 5. The Contractor agrees to perform a **spring site inspection** of the parking lot and driveway entrances to the property by May 1st each year, or as soon as conditions permit, to determine whether damage has occurred during service and to schedule repair or replacement with the Program Manager or designee. Damage or defects noted during the spring site inspection which were not documented during the prior fall site inspection will be attributed to the Contractor.
- 6. The Contractor agrees to repair and / or replace damage or defects incurred as a result of Contract Activities. Repair / replacement will be completed by June 1st each year, or as soon as conditions permit. Failure to complete may result in an invoice credit per Section 1.6, below.
- 7. Snow and ice removal services shall be considered as both "automatic" and "on-call."
 - a. The Contractor agrees to provide "automatic" snow removal / plowing services prior to 7:00 a.m. Monday – Friday for snowfalls of THREE (3) inches or more.

- b. The Contractor agrees to provide “on-call” snow removal / plowing services, de-icing, and / or parking lot deicer or sand application within two (2) hours of request for service by the Program Manager or designee, and accumulated snow removal within 24 hours of request by Program Manager or designee.
- c. The Contractor agrees to plow snow from the parking lot and driving areas, leaving all parking spaces available for continuous use.
- d. The Contractor agrees to remove snow from building entrances and sidewalks. The Contractor may remove snow with a shovel or snow blower.
- e. The Contractor agrees to supply and spread Program Manager approved deicer at building entrances and sidewalks when a snowfall occurs, and / or icy conditions exist.
- f. The Contractor agrees to utilize best judgment when applying deicer to prevent slip and fall accidents and ensure the safety and security of the public and employees. NOTE: Spreading of Contractor supplied deicer may be required on a frequent basis, as often as necessary, and as requested by the Program Manager or designee. The Contractor and the Program Manager should discuss spreading of deicer prior to the start of snow removal season to clarify expectations.
- g. The Contractor agrees to provide and apply deicer for the parking lot and driving areas. Deicing of the parking lot and driving areas shall be performed on an “on-call” basis only, within two (2) hours of request for service by the Program Manager or designee.
- h. The Contractor agrees to provide and apply sand for sanding the parking lot and driving areas. Sand spreading shall be performed on an “on-call” basis only, within two (2) hours of request for service by the Program Manager or designee.
- i. The Contractor agrees to push or relocate accumulated snow when snowbanks interfere with traffic, parking, and / or clear vision to roadways. Removal of accumulated snow to be performed “on-call” within 24 hours of request for service by the Program Manager or designee. Service may require the use of heavy equipment (i.e., front-end loader). The Contractor may use owned or rented equipment or a subcontractor to remove accumulated snow. If a subcontractor is utilized, the Contractor agrees to provide the required subcontractor information.

1.3. Snow Removal Equipment

- A. The Contractor agrees to provide a variety of equipment in quantities necessary to adequately perform the Contract Activities. Equipment must meet all federal, state, and local safety requirements.
- B. Equipment failure **WILL NOT** constitute an acceptable reason for failure to perform Contract Activities. In the event of mechanical breakdown, the Contractor will be expected to provide backup so that snow and ice removal services are performed as requested.
- C. In the event of a mechanical breakdown, the Contractor must provide backup equipment so that grounds maintenance services are performed as requested.

| <i>Equipment</i> | <i>Quantity Owned or Rented</i> |
|-----------------------------------|--|
| Front end loader w/ snow push box | 4 |
| Pickup with V-plow | 5 |

| | |
|---|---|
| Sander unit | 3 |
| Snow blower | 2 |
| <i>Equipment Contingency Plan</i> | |
| Contractor has adequate equipment as back-up to cover breakdowns. | |

1.4 Contractor Roles and Responsibilities

- A. The Contractor agrees to provide all supervision necessary to oversee all Contract Activities performed by Contractor personnel or subcontractors.
- B. The State reserves the right to approval personnel and / or subcontractors for Contract Activities and to requirement replacement of personnel found unacceptable.

1.5 Inspection and Correction of Deficiencies

- A. The Program Manager will provide the Contractor with written notice (email is acceptable) of any deficiencies in the performance of Contract Activities.
- B. The Contractor agrees to correct any deficiencies within 8 business hours of notification.
- C. Failure to perform or failure to correct deficiencies within the specified time may result in a deductible incident. Refer to Section 1.6 for information on deductible incidents.

1.6 Deductible Incidents, Escalation and Vendor Performance

- A. Contractual Deductions and Deductible Incidents
 - 1. Deductible Incidents include, but are not limited to:
 - a. Failure to Respond to Emergency Situations
 - b. Unsatisfactory / Incomplete Snow Removal
 - 2. Failure to Respond to Emergency Situations
 - a. In the event of an emergency, the Program Manager or designee will telephone the Contractor.
 - b. Contractor failure to respond to the Program Manager or designee within TWO (2) hours of the initial call may result in a \$75.00 invoice deduction and an additional deduction of \$25.00 for every ½ hour of delay.
 - 3. Unsatisfactory / Incomplete Snow Removal
 - a. The Program Manager or designee is authorized to determine whether Contract Activities are satisfactory.
 - b. If the Program Manager or designee determines any Contract Activity has not been adequately performed, the Program Manager or designee will immediately notify the Contractor of the unsatisfactory condition.
 - c. The Contractor must correct the unsatisfactory condition within eight (8) business hours from notice of the deficiency.
 - d. Failure to correct the unsatisfactory condition within eight (8) business hours may result in a \$25.00 invoice deduction.
- B. Escalation (Contract Compliance)
 - 1. First Instance –
 - a. If the Program Manager or designee determines the Contractor is non-compliant with the terms, conditions and / or specifications of the contract, or a Deductible Incident or Condition has occurred, the Program Manager or designee will:
 - i. Verbally notify the Contractor of the situation or issue
 - ii. Provide a description of the non-compliance or Deductible Incident or Condition.
 - iii. Specify a date by which the issue must be resolved.

- b. The Contractor should provide the Program Manager or designee with a verbal root cause analysis and corrective action plan.
 - c. The Program Manager or designee will preserve a written record of the issue, proposed resolution, and time frame for inclusion in the annual Contract Compliance Report and provide a copy to the Contractor.
2. Second Instance –
- a. If resolution is not achieved, or the issue arises again, the Program Manager or designee will:
 - i. Schedule an in-person meeting with the Contractor and provide, in writing:
 - A description of the specific problem
 - A description of the actions the Contractor is expected to take to resolve the problem
 - A date by which the Contractor is expected to resolve the problem
 - Notify Contractor of the intent to exercise the Contractual Deduction
 - Request, in writing, the Contractor's root cause and corrective action plan.
 - ii. Program Manager or designee should preserve a written record of the meeting, expectations, and resolution for inclusion in the annual Contract Compliance Report and provide a copy for the Contractor.
 - iii. Exercise the Contractual Deduction as a deduction from the next invoice.
 - iv. Enter a Vendor Performance Report in SIGMA.
 3. If resolution is not achieved or the issue arises again, a written notice of termination may be sent to the Contractor.
 4. In the event a contract is cancelled, the State may award the contract to the next lowest qualified bidder.

1.7 Incentives

- A. The Contractor is not offering quick payment terms.

1.8 Transition

- A. **Post-Contract Transition:** The Contractor agrees all invoices will be sent within 45 days after expiration of contract. Any invoices received after 45 days will result in a non-payment of invoice.

2 Service Requirements

2.1 Reporting

A. Reports and Forms

1. The Contractor agrees to provide all required reports and complete all required forms. The Program Manager or designee will provide Contractor with DNR required forms.
2. Reports and forms may include, but are not limited to:
 - a. Notice of Service Provided Slip
 - b. Damage Reports
 - c. Accident / Incident Reports
 - d. Contractor Evaluation
3. The Contractor agrees to provide the Program Manager or designee with Notice of Service to verify service was performed. Within 24 hours of each service, a Notice of Service Provided must be emailed to GrahamD1@michigan.gov.
4. The State reserves the right to require other reports or completion of additional forms.
5. Damage Reports
 - a. In all instances where State property or equipment is damaged, the Contractor shall submit to the Program Manager or designee a Damage Report containing the facts and extent of the damage.
 - b. Damage reports must be submitted verbally within one hour of the damage, and in writing within twenty-four (24) hours of the damage.
6. Accident Reports
 - a. The Contractor shall comply with State of Michigan, OSHA, and other regulatory agency requirements for record keeping and reporting of all accidents resulting in death, trauma, or occupational illness.
 - b. The Contractor must provide a verbal report to the Program Manager or designee within one hour of the accident, and a written report within twenty-four (24) hours of the accident.

2.2 Meetings

A. The Contractor must attend the following meetings:

1. Service Review and Progress Meeting. The Program Manager or designee may request meetings with the Contractor to discuss Contract Activities provided. The Contractor's total service quality may be evaluated including responsiveness, timeliness of required reporting, or other terms of the contract. Unsatisfactory services may result in contract cancellation.
2. The State may request other meetings as it deems appropriate.

3 Staffing

3.1 Contractor Representative

- A. The Contractor has appointed one 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").
- B. The Contractor agrees to notify the Contract Administrator at least FIVE (5) calendar days before removing or assigning a new Contractor Representative.

| Contractor Representative | |
|----------------------------------|---|
| Name: | JC Millikin |
| Phone: | 989-348-8411 |
| Email: | jcmillikin@jackmillikin.net |
| Days Available: | M-F |
| Times Available: | 7:00 a.m. – 5:00 p.m. |
| Preferred Contact Method: | <input checked="" type="checkbox"/> Phone Call <input type="checkbox"/> Text <input type="checkbox"/> Email |

3.2 Key Personnel

- A. The Contractor has appointed one individual who will be directly responsible for the day-to-day operations of the Contract (“Key Personnel”). Key Personnel will be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 8 business hours.
- B. The Contractor agrees not to remove or assign Key Personnel without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor’s control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause.

| Key Personnel | |
|---------------------------|---|
| Name: | Brian Pratt |
| Phone: | 989-370-3134 |
| Email: | N/A |
| Days Available: | M-F |
| Times Available: | 6:00 a.m. – 4:00 p.m. |
| Preferred Contact Method: | <input checked="" type="checkbox"/> Phone Call <input type="checkbox"/> Text <input type="checkbox"/> Email |

3.3 Subcontractor(s)

- A. The Contractor does not intend to unitize subcontractors for the Contract Activities.
- B. In the even the Contractor requires a subcontractor, the Contractor agrees to remain responsible for Subcontractor during performance of sub-contracted Contract Activities. Subcontractor information must be provided, and Subcontractors must provide any required insurance certificates prior to performing Contract Activities.

| Subcontractor | |
|---|--|
| Name: | N/A |
| Phone: | |
| Email: | |
| Preferred Contact Method: | <input type="checkbox"/> Phone Call <input type="checkbox"/> Text <input type="checkbox"/> Email |
| Contract Activities to be performed by the Subcontractor: | |

4 Pricing

4.1 Price Term

- A. Pricing is firm for a 365-day period (“Pricing Period”). The first pricing period begins on the Effective Date of the Contract. Adjustments may be requested in writing by either party and will take effect no earlier than the next Pricing Period.

4.2 Price Changes

- A. 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.
- B. Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.
- C. The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

5 Ordering

5.1 Authorizing Document

- A. The appropriate authorizing document for the Contract will be a properly executed Delivery Order (DO).

6 Acceptance

6.1 Acceptance, Inspection and Testing

- A. The State will use the following criteria to determine acceptance of the Contract Activities:
 - 1. The Program Manager or designee will conduct inspections as necessary for compliance with the Contract terms. The Program Manager or designee will make the final determination as to whether any task has been satisfactorily performed.
 - 2. The Program Manager or designee will maintain a record of complaints from the agency or departmental staff and provide record of complaints to the Contractor. The record will identify areas requiring special attention, on the day the complaint was received, which must be completed by the Contractor within eight business hours of receipt.
 - 3. The Contractor agrees to remain responsible to make any necessary changes if the Program Manager or designee determines that any Contract Activity has not been performed adequately or satisfactorily. The Contractor agrees to correct the deficiency within 8 business hours.

7 Invoice and Payment

7.1 Invoice Requirements

- A. The Contractor agrees to submit Notice of Service Provided slips at completion of each service. Invoices will be submitted at the close of each calendar month. Services must not be invoiced in advance of performance.
- B. All invoices submitted to the State must include:
 - 1. Date

2. Delivery Order number
3. Quantity
4. Description of the Contract Activities
5. Unit price
6. Total price

7.2 Payment Methods

- A. The State will make payment for Contract Activities by Electronic Funds Transfer (EFT) as described in Standard Contract Terms, Section 16.
- B. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by EFT.

8 Project Plan

- A. The Contractor agrees to meet with the Program Manager or designee as needed to review progress and provide necessary guidance to the Contractor in solving problems that arise.
- B. Prior to Contract award, the Contractor agrees to provide to the Contract Administrator proof of insurance as defined in the Standard Contract Terms.
- C. Any misrepresentation by the Contractor of its ability to perform the Contract Activities described in the RFP may be grounds for immediate contract termination.
- D. If the contract is cancelled, the contract may be awarded to the next qualified bidder for this RFP.

9 Liquidated Damages

- A. Late or improper completion of the Contract Activities will cause loss and damage to the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$100 and an additional \$50 per day for each day Contractor fails to remedy the late or improper completion of the Work.

10 Additional Requirements

10.1 Hazardous Chemical Identification

- A. In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, *et seq.*, as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number.
- B. The Contractor agrees to identify any hazardous chemicals that will be provided under any resulting contract.

SCHEDULE B - PRICING

Department of Natural Resources
 Grayling Field Office
 Snow and Ice Removal Services
 Contract No. 230000000172

1. The price proposed includes all costs and potential costs the Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
2. The Contractor is not offering quick payment terms.
3. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

LOCATION SPECIFICATIONS AND VENDOR QUOTATION

A. Contract and Program Manager Information

| CONTRACT INFORMATION | | | |
|---|--|----------------------------|--------------------|
| CONTRACT TERM: | Three Years | OPTIONS: | Two 1-Year Options |
| CONTRACT START DATE: | October 14, 2022 | CONTRACT END DATE: | September 30, 2025 |
| CONTRACTING AGENCY: | Department of Natural Resources | | |
| BUILDING NAME and NUMBER: | Grayling Field Office | | |
| BUILDING ADDRESS: | 1955 Hartwick Pines Road, Grayling, Michigan 49738 | | |
| IS LOCATION ON CRO "SET ASIDE"? SCHEDULED TO BE IN FUTURE? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| PROSPERITY REGION and COUNTY: | Region: Northeast Prosperity Region | | County: rawford |
| PROCUREMENT CONTACT INFORMATION | | | |
| CONTACT | NAME | EMAIL | PHONE |
| Contract Administrator: | Lisa Crozier-Green | CrozierGreenL@michigan.gov | 517-388-6626 |
| Program Manager: | Dave Graham | GrahamD1@michigan.gov | 517-243-0922 |

B. Building Specification Information

| BUILDING LOCATION INFORMATION | | | |
|--|----------------------------|---|--|
| WORKING DAYS of BUILDING OCCUPANTS: | M - F | WORKING HOURS of BUILDING OCCUPANTS: | 8:00 am – 4:30 pm |
| NUMBER of EMPLOYEES: | 22 | DAILY VISITORS: | 5 |
| DAYS of SNOW REMOVAL / DE-ICER: | M – F AS NEEDED | HOURS BUILDING IS AVAILABLE FOR SNOW REMOVAL: | BEFORE 7:00 a.m. or AS NEEDED |
| HEAVY DE-ICING: | M – F AS NEEDED | SNOW PILE REMOVAL: | AS NEEDED |
| SQ. FT. OF PARKING LOT PLOWING: | 140,000 | NUMBER OF PARKING SPACES: | 35 |
| SQ. FT. OF SIDEWALK SNOW REMOVAL: | 3,700 | AREA(S): Curb and Gutter, All Sidewalks, Entries into Building, Approaches to Outbuildings, etc. | |

C. Contract Activities

| When Snow Accumulation Equals or Exceeds 3” | Frequency |
|---|-----------------------------------|
| Plow snow from parking lot and driving areas. Blow / shovel snow from sidewalks and entrances. Apply Contractor supplied, Program Manager approved, deicer to sidewalks and entrances. Approximately 20 Occasions per Year. | Daily or As Needed |
| Automatically BEFORE 7:00 a.m. | X |
| Anytime during the Working Days / Hours of Building Occupants | X |
| On-Call as requested by the Program Manager or Designee | X |
| When Hazardous Ice Conditions Occur | As Needed |
| De-Ice parking lot, driving areas, sidewalks, and entrances. apply Contractor supplied, Program Manager approved deicer on walkways and entrances. Apply Contractor supplied sand to parking lot and driveways. Approximately 4 Occasions per Year. | |
| Automatically BEFORE 7:00 a.m. | X |
| Anytime during the Working Days / Hours of Building Occupants | X |
| On-Call as requested by the Program Manager or Designee | X |
| Accumulated Snow Requires Removal to Maintain Adequate Parking | As Needed |
| Front-End Loader, Bucket Truck, Dump Truck, etc. on site to push accumulated snow to maintain adequate parking spaces. Snow accumulation pushed to Program Manager or designee specified location. Approximately 2 Occasions per Year. | |
| Automatically BEFORE 7:00 a.m. | X |
| Anytime during the Working Days / Hours of Building Occupants | X |
| On-Call as requested by the Program Manager or Designee | X |

*** ALL SNOW REMOVAL EQUIPMENT, DEICER AND SAND SUPPLIED BY THE CONTRACTOR ***

D. Pricing

| When Snow Accumulation Equals or Exceeds 3” | Price per Occasion | Estimated Occasions | Quote Per Year | Total Contract Term QUOTE PER YEAR X 5 |
|---|---------------------------|----------------------------|-----------------------|---|
| Plow snow from parking lot and driving areas. Blow / shovel snow from sidewalks and entrances. Apply Contractor supplied, DNR approved, deicer to sidewalks and entrances. Approximately 20 Occasions per Year. | \$500.00 | 20 Per Year | \$10,000.00 | \$50,000.00 |
| When Hazardous Ice Conditions Occur | | | | |
| De-Ice parking lot, driving areas, sidewalks, and entrances. Apply Contractor supplied, Program Manager approved deicer on walkways and entrances. Apply Contractor supplied sand to parking lot and driveways. Approximately 4 Occasions per Year. | \$525.00 | 4 Per Year | \$2,100 | \$10,500.00 |
| When Build Up of Accumulated Snow Requires Removal to Maintain Adequate Parking | | | | |
| Front-End Loader, Bucket Truck, Dump Truck, etc. on site to push accumulated snow to maintain adequate parking spaces. Snow accumulation pushed to Program Manager or designee specified location. Approximately 2 Occasions per Year. | \$500.00 | 2 Per Year | \$1,000.00 | \$5,000.00 |
| TOTAL ESTIMATED ONE YEAR SERVICE FEE | | | 13,100.00 | |
| YEARS IN CONTRACT TERM – 5 (3 Base Years, 2 Option Years) | | | 5 | |
| TOTAL CONTRACT TERM | | | | \$65,500.00 |

E. SUB-Contractor Company Information

| | |
|---|---|
| <p>Utilizing Subcontractors? If subcontractors will be utilized, list all subcontractors in the table below. Include firm name, address, contact person, description of work to be subcontracted, and descriptive information concerning subcontractor's organization and abilities. Include letter of acceptance from subcontractor detailing the Contract Activities to be provided by the subcontractor (i.e., heavy equipment to push accumulated snow).</p> | <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> |
|---|---|

| | |
|--------------------------------------|-------------|
| Subcontractor Information | |
| SUBCONTRACTOR: | |
| OFFICE ADDRESS: | |
| CITY, STATE, ZIP: | |
| CONTACT NAME: | |
| PHONE NUMBER: | () - |
| FAX NUMBER: | () - |
| E-MAIL ADDRESS: | |
| SERVICES TO BE SUBCONTRACTED: | |

EXHIBIT A – AERIAL VIEW OF LOCATION

