



STATE OF MICHIGAN PROCUREMENT
 Department of Natural Resources
 525 W. Allegan St, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1
 to
 Contract Number **230000001698**

CONTRACTOR	Michigan Geological Survey, Western Michigan University
	1903 W. Michigan Ave
	Kalamazoo, MI 49008
	Sara Pearson- Director, Michigan Geological Survey
	269-387-8611
	Sara.pearson@wmich.edu
	CV0048505

STATE	Program Manager	Peter Rose	DNR
		517-284-5901	
		Rosep1@michigan.gov	
STATE	Contract Administrator	Samantha Fusco	DNR
		517-388-5956	
		Fuscoss@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Statewide Aggregate Mapping				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
10/10/23	09/30/28	1-1 year option	09/30/28	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		NA		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
NA				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$5,000,000.00			\$5,000,000.00	
DESCRIPTION: Contractor PI has been updated to Sara Pearson. Please note DNR Contract Administrator has also been updated to Samantha Fusco. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.				

FOR THE CONTRACTOR:

Company Name

E-SIGNED by Sara Pearson
on 2025-10-27 13:43:50 EDT

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

E-SIGNED by Samantha Fusco
on 2025-10-27 14:27:55 EDT

Signature

Samantha Fusco- Buyer Manger

Name & Title

DNR

Agency

Date



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

525 W. Allegan St, Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **230000001698**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Michigan Geological Survey, Western Michigan University
	1903 W. Michigan Ave
	Kalamazoo, MI 49008
	John Yellich
	269-387-8611
	John.a.yellich@wmich.edu
	CV0048505

STATE	Program Manager	Peter Rose	DNR
		517-284-5901	
	Rosep1@michigan.gov		
	Contract Administrator	Kip Conley	DNR
517-388-5956			
Conleyk1@michigan.gov			

CONTRACT SUMMARY

DESCRIPTION: Statewide Aggregates Mapping

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
10/10/23	9/30/28	1 – 1 year option	9/30/28
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		NA	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
NA			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER. This Contract Agreement is awarded on the basis of the State's Legislative appropriation of funds is set forth in Public Act 119 of 2023. Orders for Delivery will be issued directly by the Departments through the issuance of a Deliver Order (DO).			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$5,000,000.00

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:

Western Michigan University - Michigan Geological Survey

Company Name

Colleen Scarff

Authorized Agent Signature

Colleen Scarff

Authorized Agent (Print or Type)

10/13/23

Date

FOR THE STATE:

E-SIGNED by Laura Gyorkos
on 2023-10-16 09:57:33 EDT

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 Western Michigan University (“**Contractor**”), a Michigan public university. This Contract is effective on 10/10/2023 (“**Effective Date**”), and unless terminated, expires on 9/30/2028.

This Contract may be renewed for up to one 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.

The Contractor must be clearly identifiable while on State property, which may include wearing identification issued by the State, and shall 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 48909 Conleyk1@michigan.gov 517-388-5956	Western Michigan University Office of Research and Innovation 1903 W. Michigan Ave, MS-5456 Kalamazoo, MI 49008-5456 ori-contracts@wmich.edu 269-387-8282 Jamie Baker 1903 W. Michigan Ave, Kalamazoo, MI 49008-5456 james.baker@wmich.edu 269-387-8272

- 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 48909 Conleyk1@michigan.gov 517-388-5956	Western Michigan University Office of Research and Innovation 1903 W. Michigan Ave, MS-5456 Kalamazoo, MI 49008 -5456 ori-contracts@wmich.edu 269-387-8282 Jamie Baker

	1903 W. Michigan Ave, Kalamazoo, MI 49008 james.baker@wmich.edu 269-387-8272
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4. Program Manager. The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State:	Contractor:
Peter Rose 525 W Allegan, Lansing, MI 48909 rosep1@michigan.gov 517-284-5901	John Yellich 1903 W. Michigan Ave, Kalamazoo, MI 49008 john.a.yellich@wmich.edu 269-387-8649

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
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	

Automobile Liability Insurance	
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.
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	
Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor's policy must include coverage for information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

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. RESERVED.

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:

Schedule A

Statement of Work

Schedule B

Pricing Matrix

- 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 A – STATEMENT OF WORK CONTRACT ACTIVITIES

SCOPE

The contractor will assess and map aggregate resources in Michigan – initially in identified priority areas, and eventually for the entire state – with the goal of developing a multifaceted approach (using standard, direct and indirect, remote sensing techniques) to locate aggregate deposits more accurately and at less expense. The contractor will begin with priority areas and compile and review all known data to develop an initial plan for where to look for aggregate potential. Then, using known methods, such as reviewing aerial imagery, LiDAR, geologic maps, and drone surveys, outline potential areas and plot this data in formats usable by the public, industry, researchers, and resource managers. Sampling and testing would be the next phase of the program to confirm the assessment process works. The last phase would be publishing the results of the work as regional maps prepared in a standard format, as used by the USGS, and making the maps publicly available to provide a better understanding of the occurrence and distribution of these resources relative to demand.

1. Requirements

1.1. General Requirements

This Aggregates Mapping Project involves the implementation and management of outreach meetings, data compilation and presentation of results in priority areas and to complete the assessment of aggregate resources for the entire state.

The contractor will utilize standard methods and test other methods to expedite compilation of the location of known and potential areas of these resources. The contractor will have five years to complete the aggregate assessment for the entire state in a priority phased approach and will utilize the funds do the following tasks:

- a. There are currently four permanent professional staff to initiate and direct this regional aggregate compilation. The contractor will hire additional permanent full time professional and support staff for this project that will interact with local, state, and federal departments or agencies to compile data in a phased approach of prioritized regions. This will include local and statewide surficial geologic data from known databases and the geology that defines surficial aggregate material. These staff may also attend local technical, and professional meetings, offer outreach and training, and prepare validated geologic data for presentation and publication. These staff will increase the efficiency of this program. The additional staffing needed includes at least the following roles:
 - Geomorphologists (at least two)
 - Geographic Information System (GIS) Specialists

- Field geologists (at least two)
 - Part-time student workers to support data entry and field validation
 - Part-time accounting support
- b. Collaborate with Legislators, DNR, MDOT, EGLE and other local and state departments and agencies to identify the priority areas of need for aggregate resources.
 - c. Communication and outreach supported by Legislators and stakeholders, to educate the public on the need for validated geologic data and the current state of data availability.
 - d. Establish teams to compile and present the validated data in formats acceptable to meet at least USGS and MGS standards for presentation and publication, which can include State government staff, consultants, and MGS.
 - e. Phased approach to identify priority regions having need for aggregates for local, regional, state, and Federal infrastructure and development projects. Developing a template for researching aggregate data and standardized data output format.
 - f. Utilize standard and new research data validation methods to identify, map and confirm the location of aggregate resources, one of the initial phases of the MGS mapping program.
 - g. Purchase equipment necessary for surficial field and office validation of data compilation of aggregates throughout the state.
 - h. Carry out day-to-day compilation and outreach.

2. Service Requirements

2.1. Timeframes

All Contract Activities must be delivered within 5 years of contract execution unless agreed upon by the DNR and the Contractor.

3. Acceptance

3.1. Acceptance, Inspection, and Testing

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.

4. Staffing

4.1. Contractor Representative

The Contractor must appoint 1 contract representative 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.

Contract Representative	John Yellich, Director Phone: 269-387-8611 Email: john.a.yellich@wmich.edu
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4.2. 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.

4.3. Security

The contractor may be required to enter state facilities and may require the Contractor’s personnel to wear State issued identification badges.

5. Project Management

5.1. Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager. The Contractor must submit a project plan and budget annually to the Program Manager for approval, not to exceed \$5,000,000.00 over the life of the contract. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project; and (b) the project breakdown showing sub-projects, tasks, timeline, and resources required.

Year-One Schedule and Deliverables

Quarters 1 and 2: October 1, 2023, to March 31, 2024

1. Identify and begin to fill key Aggregates Mapping Project positions to support the larger aggregate project.
2. Set up outreach strategy meetings and discussions with key recipients and contributors (Legislators, Industry, Local, State, and Federal agencies) to review the contractor's data and mapping compilation goals for the Aggregates Mapping Project.
3. Identify the annual project goals; review short-term (6-12 month) and long-term (12-24+ month) segments of the project.
4. Establish timetable, project milestones, and project deliverables and results after second quarter for balance of project.
5. Submit proposals for Federal, State or other grant opportunities to support Michigan aggregate mapping priorities, as appropriate.
6. Provide quarterly updates to Department of Natural Resources (DNR) and possibly others with detailed invoices regarding expenditures.

Quarters 3 and 4: April 1, 2024, to September 30, 2024

1. Hold follow-up meetings with key recipients and contributors.
2. Provide annual summary of major milestones and project deliverables and results, presented on the MGS website and within an annual publication.
3. Begin developing a list of priority areas.
4. Develop data warehouse and a plan for data sharing.

Indirect costs are not allowed under this agreement.

5.2. Meetings

The Contractor must attend the following meetings:

- A Kickoff meeting within 30-days of execution.
- Monthly status meetings

The State may request other meetings, as it deems appropriate.

5.3. Reporting

The contractor must complete and submit quarterly financial and/or progress reports in a format prescribed by the Program Manager and must include supporting documentation of eligible project expenses. These reports shall be due according to the following schedule:

REPORTING PERIOD	DUE DATE
January 1 – March 31	April 30
April 1 – June 30	July 31
July 1 – September 30	Before October 15
October 1 – December 31	January 31

6. Pricing

6.1. Price Term

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

6.2. Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

7. Ordering

7.1. Authorizing Document

The appropriate authorizing document for the Contract will be a Delivery Order.

8. Invoice and Payment

8.1. Invoice Requirements

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 and

holiday pay will not be paid. Travel expenses will be paid at current State of Michigan travel rates. <https://www.michigan.gov/dtmb/services/travel>

If the contractor cannot find a hotel or lodging that meets the state travel rates, the contractor will use the Western Michigan University travel contracts to find the best price available.

8.2. Payment Methods

The State will make payment for Contract Activities via EFT.

8.3. Procedure

Invoices will be submitted to the Program Manager or designee with the contract financial and progress report for review and final approval for payment. The contractor will invoice quarterly for work performed during the quarter. Quarters are as follows:

QUARTER	DUE DATE
January 1 – March 31	April 30
April 1 – June 30	July 31
July 1 – September 30	Before October 15*
October 1 – December 31	January 31

*Due to the State of Michigan's year-end closing procedures, there will be an accelerated due date for the report covering July 1- September 30. Advance notification regarding the due date for the quarter ending September 30th will be sent to the contractor. If the contractor is unable to submit this quarterly report according to the timeline, an estimate of expenditures through September 30th must be submitted to allow the DNR to complete its accounting for that fiscal year.

9. 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 \$10,000 and an additional \$1,000 per day for each day Contractor fails to remedy the late or improper completion of the Work.

SCHEDULE B - PRICING

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

Year 1 Budget

	Description	Year 1 DNR	Match
1	Salary and Fringe	\$379,250.00	
2	Contract Services	\$383,400.00	
3	Supplies and Materials	\$56,100.00	
4	Equipment	\$67,500.00	\$22,500.00
5	Other Direct Costs	\$5,200.00	
6	Travel	\$106,543.00	
Totals		\$997,993.00	\$22,500.00
Year 1 Project Total			\$1,020,493.00