



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Education
608 W. ALLEGAN ST., LANSING, MICHIGAN 48933
P.O. BOX 30008, LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1
to
Master Agreement **190000000505**

CONTRACTOR	Maxwell Associates, Inc. 8502 Bent Tree Court Indianapolis, IN 46260
	Margaret (Marnie) M. Maxwell, President
	317-626-4795
	MarnieM@mmaxwellassoc.com
	VXXXX5672

STATE	Program Manager	Randy Riley	LM
		517-335-1517	
STATE	Contract Administrator	RileyR1@michigan.gov	
		Ruth Thole	OFM
		517-241-2170	
		TholeR@michigan.gov	

CONTRACT SUMMARY

Strategic Planning Consultant – 3 Year Plan for Library of Michigan			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
04/01/2019	09/30/2019	One 1-year	09/30/2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45 Days		Final Plan due November 30, 2019	
MINIMUM DELIVERY REQUIREMENTS			
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

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	6 months	<input type="checkbox"/>		03/31/2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$32,400.00	\$2,500.00	\$34,900.00		

Effective August 1, 2019, the following changes are made to this Contract:

1. The due date for the final strategic plan is extended two months; the final plan is due by November 30, 2019.
2. Additional Scope of Work is added to the Contract:
 - a. If the collected data warrants further evaluation, the Contractor will form additional focus groups, as needed, to evaluate the Strategic Plan. Any additional focus groups will complete evaluations no later than March 31, 2020.
 - b. Timetable for Additional Scope of Work will begin upon execution of Change Notice and continue through March 31, 2020
3. The Contract Value is increased by \$2,500.00.

All other terms, conditions, and specifications remain the same per Contractor and Agency Agreement.



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Education
608 W. Allegan, Lansing MI 48933
P.O. Box 30008, Lansing, MI 48909

NOTICE OF CONTRACT

MASTER AGREEMENT NO. 19000000505

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Maxwell Associates, Inc. 8502 Bent Tree Court Indianapolis, IN 46260
	Margaret (Marnie) M. Maxwell, President
	317-626-4795
	MarnieM@mmaxwellassoc.com
	VXXXX5672

STATE	Program Manager	Randy Riley	LM
		517-335-1517	
	RileyR1@michigan.gov		
	Contract Administrator	Ruth Thole	OFM
517-241-2170			
TholeR@michigan.gov			

CONTRACT SUMMARY

Strategic Planning Consultant – 3-Year Plan for Library of Michigan

INITIAL TERM	INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS
6 Months	04/01/2019	09/30/2019	One 1-year
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45 Days		Final plan due September 30, 2019	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION		\$32,400.00	



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Maxwell Associates, Inc. (the “**Contractor**”), an Indiana Sub-S corporation. This Contract is effective on April 1, 2019 (“**Effective Date**”), and unless terminated, expires on September 30, 2019.

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

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Schedule A.

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

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

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

If to State:

Ruth Thole
Department of Education
608 W. Allegan Street
Lansing, MI 48933
TholeR@michigan.gov
517-241-2170

If to Contractor:

Margaret M. Maxwell
Maxwell Associates, Inc.
8502 Bent Tree Court
Indianapolis, IN 46260
MarnieM@maxwellassoc.com
617-626-4795

- 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:
 Ruth Thole
 Department of Education
 608 W. Allegan Street
 Lansing, MI 48933
TholeR@michigan.gov
 517-241-2170

Contractor:
 Margaret M. Maxwell
 Maxwell Associates, Inc.
 8502 Bent Tree Court
 Indianapolis, IN 46260
MarnieM@maxwellassoc.com
 617-626-4795

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:
 Randy Riley
 MDE – Library of Michigan
 702 W. Kalamazoo Street
 Lansing, MI 48933
RileyR1@michigan.gov
 517-335-1517

Contractor:
 Margaret M. Maxwell
 Maxwell Associates, Inc.
 8502 Bent Tree Court
 Indianapolis, IN 46260
MarnieM@maxwellassoc.com
 617-626-4795

5. Performance Guarantee. Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.

6. Insurance Requirements. Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	



If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled 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 purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

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

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

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

8. **Subcontracting.** Contractor may 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.
9. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
10. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
11. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
12. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control



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

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

- 13. Ordering.** Contractor is not authorized to begin performance until receipt of an authorizing Delivery Order.
- 14. Acceptance.** Contract Activities are subject to inspection 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 17, Termination for Cause.

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

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

- 15. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive 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. 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 purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

- 17. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 18, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 18. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 19, 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.
- 19. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 20. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).



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

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

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

21. **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.
22. **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.
23. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
24. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
25. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
 - a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b)



already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
 - c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
 - d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
 - e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.
- 26. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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



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

- 27. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 17, Termination for Cause.
- 28. 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.
- 29. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 30. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, 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, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 31. 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.
- 32. 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.
- 33. 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.
- 34. 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.



- 35. 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.

- 36. 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.
- 37. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 38. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated 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 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.
- 39. 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.
- 40. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 41. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
- 42. 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.



STATE OF MICHIGAN

Master Agreement No. 19000000505 Strategic Planning Consultant – 3-Year Plan for Library of Michigan

SCHEDULE A - STATEMENT OF WORK CONTRACT ACTIVITIES

This schedule identifies the requirements of the Contract.

BACKGROUND

The Library of Michigan (Library) is an agency within the Michigan Department of Education (MDE). The Michigan Legislature created the Library to serve as the one perpetual institution to collect and preserve Michigan publications, conduct reference and research, and support libraries statewide. Since 1828, the Library has served state government and the people of Michigan much as the Library of Congress works at the federal level. The Library's early task was to collect, compile and store Michigan territorial laws and other important documents that formed the basis for Michigan government. The responsibility has expanded to include a comprehensive collection of Michigan related publications including, but not limited to, government documents, histories, newspapers, fiction by Michigan authors, maps and directories.

The Library is structured to serve the information needs of the legislature and state government, libraries of all types across the state, and the citizens of Michigan accessing the unique and comprehensive Special Collections.

The Library has three distinct units that coordinate programs and services:

- I. The **Library Development** unit provides support for statewide programs, continuing education, resources, consulting, and grant funding to assist Michigan libraries of all types better serve their local communities. This unit coordinates the Loleta Fyan Small and Rural Library Conference, Beginning Workshop, New and Advanced Director Workshops, the Public Library Service Grants, and Collaborative Library Services Grants. In addition, this unit oversees the circulating Library Science Collection of professional library science materials made available to libraries statewide; coordinates state aid payments; coordinates the library certification program; etc. The Library Development unit coordinates the Michigan eLibrary and maintains relationships with various vendors and sponsors.
- II. The **Special Collections** unit provides reference services to state employees, libraries and the public; and provides programs highlighting various aspects of Michigan throughout the calendar year. This unit oversees the Michigan Collection, Michigan Documents, the Rare Book Room and the Law Library. Primary responsibilities include being the steward for the largest single collection of materials relating to Michigan. The unit conducts outreach to state employees, local and family history societies, and libraries with local history collections across the state.
- III. The **Access and Technical Services** unit catalogs purchases, oversees circulation, provides stack maintenance, and orders new materials for the collection. This unit coordinates digitization projects to preserve unique materials and make them more accessible to state employees and researchers.

The development of a strategic plan has become a high priority given the diverse priorities at the Library.

SCOPE

The Contractor shall provide consulting services for the development of a three-year strategic plan. The plan will include an evaluation of current services and a definition of future services, with special consideration given to an uncertain funding environment.

REQUIREMENTS

1. General Requirements

- A. The Contractor will lead the Library's management team and staff through the process of developing a three-year strategic plan. The plan must articulate the Library's vision/mission and must include goals,



objectives, and action steps that will guide the organization for the next three years. The plan must include a strategy for moving forward during times of financial challenges.

B. At a minimum, the Strategic Plan will address:

- 1) What should be the Library's areas of strategic focus?
- 2) How can the Library continue to add value through statewide programs?
- 3) What programming is considered by libraries and library users to be essential?
- 4) What partnerships can/should be developed?
- 5) What services can be delivered more efficiently and more economically?
- 6) What are new areas of programming that should be considered?
- 7) How will funding priorities be set?
- 8) How will budget be determined?
- 9) Are there new funding opportunities and/or new funding streams?

C. The Contractor's process for completing the project plan will include:

- 1) Assemble and work with a Strategic Planning Committee, made up of the State Library leadership team.
 - a) An organizational meeting with the Strategic Planning Committee will be held to lay out the overall timetable, taking advantage of times when various library organizations (e.g. MCLS, Michigan Library Association, Michigan Academic Library Association, etc.) may already be meeting.
 - b) The Contractor will talk with all Library of Michigan staff in one or more "town hall meetings" to gather their input about the strategic questions outlined above.
 - c) The Contractor will gather any existing program or service evaluation data that may be helpful in assessing current offerings and future needs.
- 2) Gather input about the strategic questions identified above from various types of libraries (public, academic, special) and library organizations in the state. A mix of research options will be used, potentially including in-person discussions at already-scheduled meetings, on-line focus groups, and electronic surveys. The specific mix will be finalized at the organizational meeting to ensure the broadest input.
- 3) In a Planning Committee retreat (4-6 hours), synthesize the input from stakeholder groups and to begin laying out the framework for the new strategic plan, including mission/vision, goals, objectives and action steps. This interactive meeting will engage participants actively in focusing on the future.
- 4) Develop a draft plan based on the Planning Committee's discussions.
- 5) In a 2- or 3-hour meeting with the Planning Committee, refine the plan and develop the specific metrics that will define progress and success. This meeting will also address any staff skills training that will be required to implement the plan as well as potential funding sources.
- 6) Develop a revised draft plan to test with various library stakeholder groups, including staff and various types of libraries and library organizations in the state. A mix of on-line focus groups and in-person meetings (to be determined at the organizational meeting) will gather feedback from important constituents before the plan is finally adopted.
- 7) Incorporate feedback into a final version of the plan.
- 8) In a final 2-hour meeting with the Planning Committee, review the feedback and finalize the plan.

2. Deliverables

The Contractor will provide a final strategic plan document by September 30, 2019. At a minimum, the Strategic Plan will include the following in detail:

A. Strategic areas of focus and service priorities for the next three years.

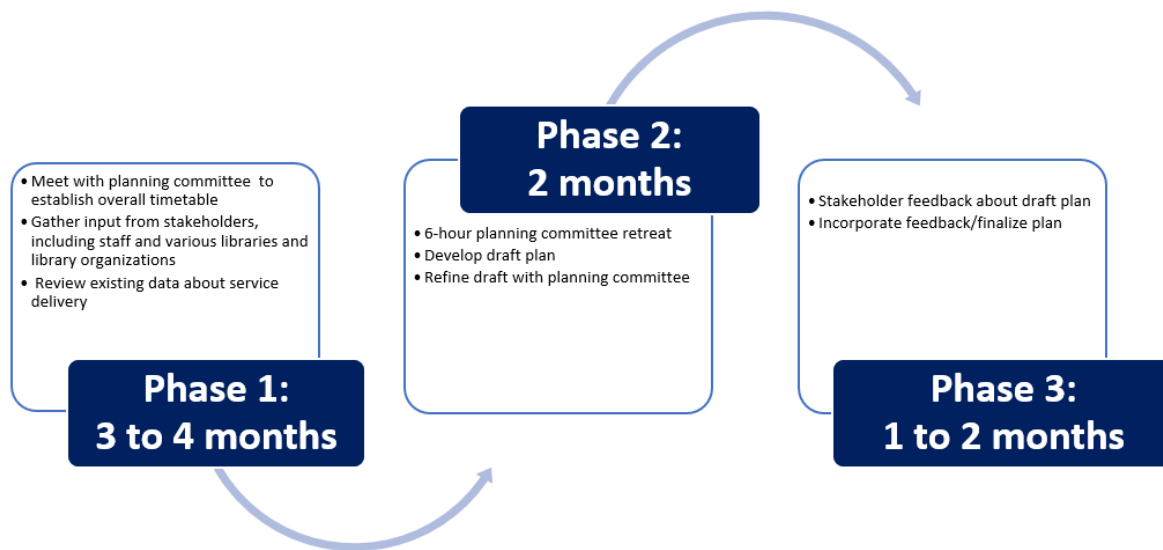


- B. Goals and objectives to meet the established priorities.
- C. Services and programs (both current and new) that will support goals, including partnerships with other organizations.
- D. Necessary training to meet professional needs and add value to existing and new services.
- E. Skills staff must have to carry out programs.
- F. Possible new funding streams.

3. Time Line

The Contractor will complete work in three phases:

- 1) Organizational/Research
- 2) Planning
- 3) Feedback/Adoption



4. Staffing

A. Key Personnel

Margaret (Marnie) Maxwell will be directly responsible for the day-to-day operations of the Contract (“Key Personnel”). She will be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 24 hours.

The Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor’s removal of Key Personnel without the prior written consent of the State is an unauthorized removal (“Unauthorized Removal”). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel’s employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Contract Terms.

B. Contractor’s Staff, Roles, and Responsibilities

The Contractor must appoint the appropriate number of individuals necessary to meet the project deadlines.

C. Disclosure of Subcontractors

Subcontractors will not be used in the performance of this Contract.



D. State's Responsibilities

- 1) The State's staff leadership will be available to meet with the Contractor:
 - a) 2 hours in early March for an organizational meeting.
 - b) 4-6 hours in June or July for a planning retreat.
 - c) 2-3 hours in July or August for a follow-up planning meeting.
 - d) 2 hours in September for a final planning session.
- 2) The State's Program Manager, or designee, will provide background documents and contact information for stakeholder involvement.

5. Project Management

A. Project Plan

The Contractor will carry out the project under the direction and control of the State's Program Manager.

B. Meetings

The Contractor must attend monthly, in-person meetings with the State.

The State (Library and/or Strategic Planning Committee) may request additional meetings as deemed appropriate. Requested meetings may be in-person or teleconference; the Contractor must attend in-person meetings as requested by the State.

C. Reporting

The Contractor must provide biweekly progress reports to the State's Program Manager or designee. Reports may be delivered via email or provided at the monthly scheduled meeting.

The final strategic plan report is due by September 30, 2019.

6. Order Authorizing Document

The appropriate authorizing document for the Contract will be a Delivery Order (DO) issued by the State.

7. Pricing

A. Price Schedule.

The price for services for the period ending September 30, 2019 shall not exceed \$32,400.00. See Schedule B – Pricing Matrix.

B. Price Term.

Pricing is firm for the term of the Contract period ending September 30, 2019. Adjustments may be requested, in writing, by either party at the time a renewal option is requested.

C. 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.



8. Invoice and Payment

A. Invoice Requirements

Invoices must be submitted to the State's Program Manager according to the Contractor's schedule:

- One-third upon engagement
- One-third upon conclusion of the first Planning Committee meeting
- One-third upon delivery of the final plan

All invoices submitted to the State must include: (a) date; (b) Delivery Order number; (c) description of the Contract Activities; (d) number of hours; (e) hourly rate; and (f) total price.

B. Payment Methods

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



STATE OF MICHIGAN

Master Agreement No. 19000000505

Strategic Planning Consultant – 3-Year Plan for Library of Michigan

SCHEDULE B - PRICING

Task/Activity	Project Staff	Expected Hours	Billing Rate	Total Price for Task
Phone meetings with Library of Michigan Program Manager	Marnie Maxwell	10	\$200.00	\$2,000.00
Prepare for, execute the organizational meeting with planning team; meet with library staff to gather feedback during same day	Marnie Maxwell	20	\$200.00	\$4,000.00
Front-end information gathering research	Marnie Maxwell	50	\$200.00	\$10,000.00
Initial planning committee retreat, including preparation time	Marnie Maxwell	20	\$200.00	\$4,000.00
Draft plan creation	Marnie Maxwell	8	\$200.00	\$1,600.00
2 nd planning committee meeting, including preparation time; re-draft plan, based on meeting	Marnie Maxwell	12	\$200.00	\$2,400.00
Test plan with stakeholders	Marnie Maxwell	20	\$200.00	\$4,000.00
Final draft plan review and adoption, including preparation time	Marnie Maxwell	12	\$200.00	\$2,400.00
Required meetings with State (monthly)	Marnie Maxwell	10	\$200.00	\$2,000.00
Total Price for Project				\$32,400.00

Payment for the services will be rendered in three equal payments at these milestones:

- One-third upon engagement
- One-third upon conclusion of the first Planning Committee meeting
- One-third upon delivery of the final plan