



**STATE OF MICHIGAN
ENTERPRISE PROCUREMENT**

Department of Technology, Management, and Budget

525 W. Allegan, Lansing MI 48913
P.O. Box 30026, Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **210000001457**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Ferrellgas
	603 US 41
	Negaunee, MI 49866
	Don Steckman
	(906) 250-2882
	donaldsteckman@ferrellgas.com
	CV0051103

STATE	Program Manager	Statewide	DTMB
		Phone Number	
	Email Address		
Contract Administrator	Yvon Dufour	DTMB	
	(517) 249-0455		
	dufour@michigan.gov		

CONTRACT SUMMARY			
DESCRIPTION: Liquefied Petroleum Gas (LPG)			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
10/1/2021	9/30/2026	Three – one year	9/30/2026
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		3 Days ARO	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
250 gallons			
MISCELLANEOUS INFORMATION			
<p>The terms and conditions of this Contract are those of RFP #210000002160, this Contract Agreement, and the vendor's quote. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>This contract is extended to local units of government through the MiDeal program.</p>			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$5,000,000.00

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name & Title

Agency

Date

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Ferrelgas (“**Contractor**”), a Delaware Company. This Contract is effective on October 1, 2021 (“**Effective Date**”), and unless terminated, expires on September 30, 2026.

This Contract may be renewed for up to **3 additional 1-year period(s)**. 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 by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

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

If to State:	If to Contractor:
Yvon Dufour Constitution Hall 525 W. Allegan St, 1st Floor, NE P.O. Box 30026 Lansing, MI 48909 dufoury@michigan.gov (517) 249-0455	Don Steckman, Director of Operations 603 US 41 Negaunee, MI 49866 DonaldSteckman@FerrellGas.com 906-250-2882

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:
Yvon Dufour Constitution Hall 525 W. Allegan St, 1st Floor, NE P.O. Box 30026 Lansing, MI 48909 dufoury@michigan.gov (517) 249-0455	Don Steckman, Director of Operations 603 US 41 Negaunee, MI 49866 DonaldSteckman@FerrellGas.com 906-250-2882

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:
TBD for each agency utilizing contract	Don Steckman, Director of Operations 603 US 41 Negaunee, MI 49866 DonaldSteckman@FerrellGas.com 906-250-2882

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

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

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
Minimum Limits: \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	
Environmental and Pollution Liability (Errors and Omissions)	
Minimum Limits: \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate	Contractor must have their policy: (1) be applicable to the work being performed, including completed operations equal to or exceeding statute of repose; (2) not have exclusions or limitations related to Transportation (upset overturn, spills during loading or unloading, Hazardous Materials Handling, and Non Owned disposal site liability); and (3) endorsed to add “the State of Michigan, its departments, division, agencies, offices, commissions, officers, employees, and agents” as additional insured.

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. Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card at: <https://www.thepayplace.com/mi/dtmb/adminfee>

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to MiDeal@michigan.gov.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

- 8. Extended Purchasing Program.** This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal.

Upon written agreement between the State and Contractor, this contract may also be extended to: (a) other states (including governmental subdivisions and authorized entities) and (b) State of Michigan employees.

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

- 9. 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.

- 10. 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.
- 11. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 12. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in Schedule A, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- 13. 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.
- 14. Change of Control.** Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or

merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

- 15. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
- 16. 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 23, 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.

- 17. Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.
- 18. Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must

reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.

- 19. Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Schedule A. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.
- 20. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of 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.

- 21. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
- 22. 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.
- 23. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed

against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this 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.

- 24. 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 25, 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.
- 25. 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 **180** 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.

- 26. 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.

- 27. 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.
- 28. 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.

- 29. 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.
- 30. 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.
- 31. RESERVED.**
- 32. 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.

33. RESERVED

34. RESERVED

35. RESERVED

- 36. 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.

- 37. 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 23, Termination for Cause.

- 38. 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.
- 39. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 40. RESERVED**
- 41. RESERVED**
- 42. 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.
- 43. 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.
- 44. 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.
- 45. 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.
- 46. 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.

47. 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.

48. 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.

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

50. 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
Schedule C	Prosperity Regional Map

51. 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.

- 52. 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.
- 53. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 54. 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.
- 55. 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.

FEDERAL PROVISIONS ADDENDUM

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Equal Employment Opportunity

If this Contract is a “**federally assisted construction contract**” as defined in [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers'

representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may

require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. **Davis-Bacon Act (Prevailing Wage)**

If this Contract is a **prime construction contract** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- 1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- 2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 3) Additionally, contractors are required to pay wages not less than once a week.

3. **Copeland "Anti-Kickback" Act**

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act ([40 USC 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- 1) **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- 2) **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- 3) **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. **Contract Work Hours and Safety Standards Act**

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Contractor agrees as follows:

- 1) **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 3) **Withholding for unpaid wages and liquidated damages.** The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- 4) Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal “funding agreement” as defined under [37 CFR §401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671g](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency

Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549 \(51 FR 6370; February 21, 1986\)](#) and [12689 \(54 FR 34131; August 18, 1989\)](#), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- 1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment
- 4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under [2 CFR 200.322](#), Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- 1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
- 2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- 3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

- 1) **Access to Records.** The following access to records requirements apply to this contract:
 - a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions
 - b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed
 - c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract
 - d. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
- 2) **Changes.**
See the provisions regarding modifications or change notice in the Contract Terms.
- 3) **DHS Seal Logo and Flags.**
The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- 4) **Compliance with Federal Law, Regulations, and Executive Orders.**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

5) No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.”

6) Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

EXHIBIT 1

BYRD ANTI-LOBBYING CERTIFICATION

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Ferrellgas LP, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Schedule A

Statement of Work Contract Activities

Contract No. 210000001457

Liquefied Petroleum Gas (LPG)

BACKGROUND and SCOPE

This contract may be utilized by all State agencies and Extended Purchasing Participants that include County and Local levels of Government. Delivery locations are located throughout the State of Michigan. Anticipated primary users of this Contract include: Department of Technology, Management, and Budget (DTMB), Department of Corrections (DOC), Department of Natural Resources (DNR), Department of Transportation (MDOT), and the Department of Health and Human Services (DHHS).

There are approximately 569 separate delivery locations with approximately 853 tanks for propane utilizing approximately 621,150 gallons per year throughout the state

REQUIREMENTS

Contractor must be able to provide Liquid Propane Gas (LPG) to all locations within the counties listed in **Schedule B – Pricing**.

1. General Requirements

1.1. Transition

For Propane Storage Tanks:

Transition In, if applicable:

The State assumes no liability for any contractor owned tank during the removal of old tanks and the installation of new tanks.

Contractors may be required to transition from the previous LPG provider. If the tank(s) are owned by the previous contractor, the contractor will be required to:

- Work with the State in contacting the previous contractor to coordinate the disconnection and removal of the previous vendors tank(s) and replace with new tanks. Previous Contractor will be allowed 15 calendar days from the date of notification to pick up tank(s).
- Work with the State to determine how many gallons of propane are still in previous Contractor's tank(s). If any LPG remains in the tank, the State will mutually agree with previous contractor for possible credit of the unused LPG or previous Contractor agrees to leave tank in place until empty.
- Lines connected to the tanks are considered the property of the State from the service valve to the appliance.

If the tank(s) are State owned, the contractor agrees to:

- Perform pressure check at no charge to the State.
- Check to determine if the regulator system is acceptable. If a new regulator is required, the cost will be incurred by the State.
- Existing fuel will not be required to be pumped from the tank prior to filling by the contractor.
- Check to insure that the tank has a legible data plate that identifies the following:
 1. Working pressure
 2. Year of manufacture
 3. Manufacturer
 4. Serial Number

Transition Out, if applicable:

- Outgoing Contractor will take a reading of the tank to determine how much propane is left. Contractor agrees to either credit the unused propane or leave tank in place until empty.
- The outgoing contractor reserves the right to be present during the disconnection and removal of their tanks. The State will make every effort to coordinate a time for both incoming and outgoing contractors to be present during the exchange.
- If outgoing contractor requests to be present, then outgoing contractor will be responsible for disconnecting and removing their tank. To avoid a disruption in the delivery of propane to the connected appliance, outgoing contractor will not remove their tank without the new contractor being on site and ready to install the new tank.

The installation and/or removal of storage tank(s) shall be subject to reasonable weather conditions and operating parameters.

1.2. Propane Specifications

A reliable source of fuel is essential. Contractors shall maintain, or have access to, an adequate inventory to provide delivery upon request. Contractors may be required to demonstrate their ability to provide the fuels specified and shall provide delivery method (type of truck used) and terminal information per **Schedule B – Pricing** for each location.

The propane furnished shall be commercial propane conforming to the specification and test methods as required by Federal Specification HD5.

The proposed contract shall be subject to such modifications or adjustments as may be necessary or desirable by reason of any action or regulation set forth by the Federal, State, or Local Government relating to the use, production or sale of the petroleum products during the contract period.

1.3. Warranties

The State recognizes that the Contractor is not the manufacturer propane. Contractor will extend any manufacturer's warranty to the State and will assist the State with any claims against the manufacturer.

The State reserves the right to require additional warranties other than those identified by the Contractor in its response to this RFP.

1.4. Recall Requirements and Procedures

In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, or adulterated by the packer, processor, manufacturer or by any State or Federal regulatory State Agency, the Contractor shall be responsible to notify the Contract Administrator, Program Manager, Extended Purchasing Participants, and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering entity, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering State Agency. At the option of the ordering entity, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal.

Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

1.5. Quality Assurance Program

At the option of the participating ordering entity, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of the testing when samples are found to be in compliance with the Contract.

If samples do not conform to the Contract, Contractor will bear the costs of testing and the ordering entity may apply the terms and conditions of the Termination provision of this Contract.

Contractor shall bear the cost of removing any contaminated fuel from the storage tanks or any fuel not meeting specifications.

Contractor shall be responsible for the containment, cleanup, and disposal of petroleum spills which occur on the State owned or leased property and State roadways as a result of the contractor's equipment, leased or owned, being faulty and/or the negligence of their employee. When contractor is on the State owned or leased property and State roadways, contractor's equipment shall carry petroleum spill cleanup materials and equipment on board for cleaning petroleum spill up to 20 gallons.

1.6. Contract Flexibility

The State reserves the right to add/delete Propane types, delivery locations, and end users during the contract term to meet the needs of the State. To make additions, the State shall adhere to the following procedure if applicable:

- Step 1 The location shall be offered to currently awarded contractors, beginning with the contractor serving the nearest location currently on the contract, for a price not to exceed the nearest location on contract. If not accepted, to that contractor serving the second closest site already on contract shall be offered the site, and so on.
- Step 2 If no contractor from Step 1 accepts the location, all currently awarded contractors shall be asked to bid on the site and awarded to the lowest cost contractor willing to make delivery to that location if pricing and delivery schedule proposed are deemed acceptable by the State.
- Step 3 If no contractors bid on the location, or responses in Step 2 were not deemed acceptable by the State, no award shall be made, and the State can find alternative means to procuring propane.

1.7. Site Inspection

It is the responsibility of the contractor to inspect any unfamiliar locations to determine the highway conditions, exact location, the size of the tank and the number of gallons that can be delivered at one time, and the accessibility of the storage tanks.

2. Service Requirements

2.1. New Service and Installation

Adding or deleting services to a new or existing location located within the awarded counties will not require a change notice. For new service, a purchase order will be issued. The new location will be added to the Contractor's service roster and submitted to the current Contract Administrator and Program Manager as identified on the most recent change notice. If services are to be discontinued, that location will remain on the service roster to identify usage only.

If service is required at a new location, Contractor will follow the same procedures as outlined in section 1.1 Transition.

Installation of all awarded locations will be expected within 30 calendar days upon date of order. Installation will be considered complete when tanks have been properly inspected.

2.2. Maintenance

On-site maintenance or emergency repair of storage tanks may need to be performed according to the recommended manufacturer maintenance schedule.

Contractor shall ensure they safety and compliance of tanks when onsite. If repairs are needed on State Owned tanks, Contractor shall notify the State and provide a quote for repairs. Repairs needed on Contractor owned tanks, shall be completed promptly.

Contractor shall respond to emergencies within 2 hours of notification.

2.3. Training

It is preferred that Contractor staff delivering propane be certified through the Certified Employee Training Program (CETP) for hauling and installation of propane fuel and storage tanks.

Training should include the following topics:

- How to check tank levels.
- How to recognize and identify leaks.
- How to handle emergencies.
- How to set up new service.
- How to recognize potential hazards.

The contractor shall have a training program for employees as required in the code of federal regulations number 49, part 172.700.

The Code of Federal Regulations Title 49: Transportation Subpart H – Training Paragraph §172.700 - Purpose and scope.

- (a) *Purpose.* This subpart prescribes requirements for training hazmat employees.
- (b) *Scope.* Training as used in this subpart means a systematic program that ensures a hazmat employee has familiarity with the general provisions of this subchapter, is able to recognize and identify hazardous materials, has knowledge of specific requirements of this subchapter applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures and accident prevention methods and procedures (see §172.704).
- (c) *Modal-specific training requirements.* Additional training requirements for the individual modes of transportation are prescribed in parts 174, 175, 176, and 177 of this subchapter.

2.4. Reporting

The State may periodically request reporting to show usage by State Agency and/or location being serviced. This report will be in Microsoft Excel format and would include, but not limited to, the following:

- Account Number
- State Agency/Account Name
- Delivery Location's Street Address, City, Zip Code, and County of physical location of tank
- Contract Number
- Purchase Order Number
- Order Date
- Tank Ownership – Contractor Owned or State Owned
- Number of Tanks at each location
- Capacity of each tank
- Product Description
- Number of Gallons Delivered

- Base Price Terminal
- Total Cost

Spot reporting for auditing purposes may also be requested to verify the following:

- Order Date
- Delivery Date
- Gallons Delivered
- Price Per Gallon for that delivery
- Base Price Terminal

2.5. Meetings

The **Contract Administrator** is responsible for scheduling and facilitating Contractor Progress Meetings. A “**Contract Progress Meeting**” is intended to assist the State and Contractor in, including but not limited to, reviewing the Contract Compliance Report, addressing outstanding items on the Issue Tracking Log and Contractor Performance with the State, reviewing overall contract compliance, discuss market trends that will assist the State in understanding changes in the industry, and solicit contractor recommendations for increasing contract efficiency and reducing costs.

Contract Progress Meetings can be held (in person or by conference call) at any time, but at a minimum the Contract Administrator should hold a Contract Progress Meeting at least yearly. The Contract Administrator, Program Manager and any individual identified by the parties should participate.

3. Staffing

3.1. Contractor Representative

The Contractor must appoint one individual, specifically assigned to State of Michigan accounts who will respond to State inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the “Contractor Representative”).

The Contractor must notify the Contract Administrator at least 14 Calendar days before removing or assigning a new Contractor Representative.

3.2. Customer Service, Technical Support, Repairs and Maintenance

The Contractor must specify its toll-free number for the State to contact the Contractor for technical support, repairs and maintenance. The Contractor must be available for calls and service during the hours of 8am to 5pm EST Monday through Friday at a minimum.

The Contractor must provide a 24/7 phone number for emergency deliveries or repairs.

Business hours (M-F 8a-5p) (906) 475-4144

After Hours (866) 708-8209

3.3. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor. Of the total cost, the price of the subcontractor's work. Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.

Contractor must provide detailed information as requested in the requirement(s):

The legal business name, address, telephone number of the subcontractor(s):	
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities:	
The relationship of the subcontractor to the Contractor:	
Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship:	
A complete description of the Contract Activities that will be performed or provided by the subcontractor:	
Of the total cost, the price of the subcontractor's work:	

3.4. Security

The Contractor must explain any additional security measures in place to ensure the security of State facilities.

The contractor's staff may be required to make deliveries to or enter State facilities. The contractor must: (a) explain how it intends to ensure the security of State facilities, (b) whether it uses uniforms and ID badges, etc., (c) identify the company that will perform background checks, and (d) the scope of the background checks. The State may require the Contractor's personnel to wear State issued identification badges.

The Contractor will be subject to the following security procedures as required by the Department of Corrections. Current versions of these policies are available through the Program Manager.

- a) Prison Rape Elimination Act (PREA).
- b) The Department of Corrections Contractor Handbook

4. Pricing

4.1. Price Term

Pricing is firm for the initial term of the contract ("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.

4.2. Price Changes

Adjustments in option years 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.

The State reserves the right to also request price decreases, in the event market conditions have changed during the contract terms. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; and any other data the State deems relevant.

4.3 Pricing

See Schedule B – Pricing for pricing requirements and instructions.

4.4 Tax Exempt

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. The Ordering Entity will furnish exemption certificates for sales tax upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, the Contractor's prices must not include the Federal Excise Tax.

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be the delivery order, which must be approved by the ordering State Agency's designee for that location, to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Delivery Order.

5.2. Order Verification

The Contractor must have internal controls approved by Central Procurement Services to verify abnormal orders and to ensure that only authorized individuals place orders.

6. Delivery

6.1. Delivery Time Frames

All Deliverable(s) must be delivered within three (3) business days after receipt of order, unless otherwise specified under special delivery requirements on the attached item listing for individual location. The receipt of order date is governed in the same manner as notices sent under Section 2, Notices, of the Standard Contract Terms.

Delivery will be made at the locations described in the solicitation for this contract, and any location(s) added by purchase order after the execution of the contract.

Will Call Program: Once State tanks get down to 30% full, the State location should call to place an order.

Keep Full: Contractor will install a tank monitor on tank and once the tank reaches the percentage set, it will automatically generate an order for fulfillment.

Back Orders: In the event of back orders for propane, the Contractor will rail in propane from the nearest location to fulfill orders.

6.2. Delivery Vehicles

Tank Wagon Deliveries will be in quantities of less than 9,000 gallons per location and will be fulfilled via bobtail.

Truck Transport Deliveries will be in quantities of 9,000 gallons or more per location and will be fulfilled via transport truck.

6.3. Delivery Term

Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.

6.4. Acceptance of Delivery

The State will use the following criteria to determine acceptance of the Contract Activities:

Propane will be delivered to the ordering entity within three (3) business days after receipt of a delivery order. The delivery location will be noted on the delivery order issued by the ordering entity. Acceptance (transfer of title) will occur upon the inspection and written confirmation by the ordering State Agency that the propane delivered conform to the requirements set forth in the Contract. Unless otherwise provided in the Contract, acceptance shall be conclusive except as regards to latent defects, fraud, or such gross mistakes as amount to fraud.

Unless it is an emergency delivery as requested by the ordering entity, delivery is to be during the location's normal working hours. It is the Contractor's responsibility to contact the Ordering Entity or delivery location to identify acceptable delivery hours. Delivery at other times may not be accepted, or if accepted and requires facility overtime wages, the facility's cost of paying overtime may be deducted from future invoices.

Cylinder exchange includes pickup of empty cylinders and return of filled cylinders within three (3) days after receipt of a delivery order. The Ordering Entity will issue a delivery order on an as needed basis when their tanks reach twenty-five percent (25%) or less.

The Ordering Entity may also issue a delivery order to establish a weekly, bi-monthly or other suitable delivery schedule to deliver such quantities as may be determined by inspection of storage containers/tanks.

6.5. Emergency Delivery Service

On occasion the need for emergency delivery service may be required.

On occasion the need for emergency delivery service may be required. Emergency delivery fee is \$200. Emergency is considered same day service after 2:00 pm EST, weekend or after normal business hours 8:00am – 5:00 pm EST

6.6. Keep Full Service

Contractors shall provide this service at locations as requested by an authorized representative of the using State Agency. Agencies currently requiring Keep Full Contractors shall be prepared to provide "keep full" (maximum 80% of volume) even if the usage is low. Contractors shall be held responsible for damage caused to any State property due to failure when on keep-full service, or as directed by the Ordering Entity.

6.7. Remote Monitoring

Some locations may require enhanced monitoring of tanks through a Remote Monitoring System. Pricing shall be a price per tank for a remote monitoring system per year per **Schedule B – Propane Pricing**. The State may request remote monitoring on a tank by tank basis.

7. Invoice and Payment

7.1. Invoice Requirements

All invoices shall contain the following information:

- ~~Contract Number~~
- ~~Delivery Order Date~~
- Ordering Entity
- Date of Sale
- Name and address of seller
- Name and address of purchaser
- Number of gallons purchased
- Delivered Price per gallon: (Mark-up Price plus the Terminal Price)
- ~~Price paid by the contractor at the terminal and the terminal name~~
- ~~Receipt of payment~~
- A copy of the delivery ticket for each delivery being invoiced shall be included

7.2. Payment Methods

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

8. Additional Requirements

8.1. Hazardous Chemical Identification

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

The Contractor must identify any hazardous chemicals that will be provided under any resulting contract.

8.2. Mercury Content

Pursuant to MCL 18.1261d, mercury-free products must be procured when possible. The Contractor must explain if it intends to provide products containing mercury, the amount or concentration of mercury, and whether cost competitive alternatives exist. If a cost competitive alternative does exist, the Contractor must provide justification as to why the particular product is essential. All products containing mercury must be labeled as containing mercury.

8.3. Brominated Flame Retardants

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs. Contractor must describe how products that meet these requirements are identified or otherwise labelled.

8.4. Spills

Accidental release or spillage during delivery of product by the contractor will result in the contractor being held responsible for all costs of cleanup and disposal of all contaminated soil. Cleanup and disposal must be conducted in accordance with state and federal EPA regulations and guidelines.

8.5. Damages

The Contractor shall be held liable for any damages due to equipment malfunctions that may occur due to furnishing contaminated product, furnishing fuel other than specified, or failure to make deliveries when ordered.

9. Service-Level Agreements (SLAs)

The Contractor will be held accountable to meet the requirements and the service level requirements established in this Contract. The State reserves the right to reconsider or amend SLA amounts for split awards should they occur.

Service Level Agreements for this Contract will be as follows:

SLA Metric 1. Timely Deliveries	
Definition and Purpose	All Deliverable(s) must be delivered within three (3) business days after receipt of order, unless otherwise specified under special delivery requirements on the attached item listing for individual location.

SLA Metric 1. Timely Deliveries

Acceptable Standard

1. All deliveries must occur in accordance with the approved delivery schedule for each Facility and Facility Receiving hours.
 2. Extenuating circumstances must be communicated by the Contractor to the Program Manager or agency contact prior to the scheduled delivery date and time.
 3. Items, and quantities delivered will match the Order Confirmation exactly.
 4. Signed and dated packing slips will be provided to agency at the time of delivery.
 5. The entire order must be delivered on the same day unless a partial delivery has been approved in advance by the Program Manager or agency contact.
 6. Orders not received in their entirety, as determined by a review of the Data Sources, will be considered inaccurate.
- The acceptable standard is 100% compliance.

Credit Due for Failing to Meet the Service Level Agreements

1. \$100.00 may be assessed for each of the first five occurrences of non-compliance in a given calendar year.
 2. \$500.00 may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year.
- Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed.
- At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.

SCHEDULE B - PRICING

Liquefied Petroleum Gas (LPG) Contract No. 210000001457

1. Price proposals 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.
2. Column descriptions are listed below by county for **Schedule B - Propane Pricing**.

Column ID	Description					
Column 1	Region					
Column 2	Counties					
Column 3	<p>The “Mark-up Price” shall be the amount in cents, or fractions of cents, per gallon that the contractor adds to the “Base Price” to arrive at the final delivered price to a destination. This “Mark-up Price” shall include all tank rental, transportation, handling costs, overhead, dye for off-road fuel, <u>inspection fee</u> and profit. No other costs for normal delivery shall be accepted, except for applicable taxes. The “Mark-up Price” which the contractor quotes shall be firm for the initial term of the contract. Contractors shall indicate only the “Mark-up Price” on their Schedule B Pricing Sheet. All bid prices are to be expressed as a decimal (four significant numbers). Prices listed shall be in U.S. dollars.</p> <p><u>Customer Owned Tank Mark-Up Price per Gallon:</u> The Mark-Up Price per Gallon, that will be charged for State owned tanks.</p> <p><u>Vendor Owned Tank Mark-Up Price per Gallon:</u> The Mark-Up Price per Gallon, that will be charged for tanks not owned by State.</p> <p>Example: If the Mark-up Price is nine and three quarter’s cent per gallon, it shall be expressed as .0975.</p> <p>If the Mark-up Price is three quarters of a cent per gallon, it shall be expressed as .0075.</p>					
Column 4	<p>“Base Price” Terminal</p>	<p>The daily price of propane will be determined from this location. Contractor’s do have the option of getting their propane from other terminals, but pricing will be based on this location plus the Mark-Up price per gallon.</p> <p>The "Base Price" for each destination shall be the Mt. Belvieu TET Daily Average” published for the Mount Belvieu – Texas terminal. A single base price terminal has been selected to allow for ease of cost evaluation and to simplify contract administration. The reporting terminal is located at:</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr style="background-color: #e0e0e0;"> <th style="text-align: left;">Base Price Terminal</th> <th style="text-align: left;">Abbreviation</th> </tr> </thead> <tbody> <tr> <td>Mount Belvieu – Texas</td> <td>MB</td> </tr> </tbody> </table>	Base Price Terminal	Abbreviation	Mount Belvieu – Texas	MB
Base Price Terminal	Abbreviation					
Mount Belvieu – Texas	MB					

Column 5	Location of Terminal that Bidder will be Delivering From	Contractor terminal that delivery of propane will originate from for each county.
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Total Price – The total price of the product delivered to destination shall consist of the combination of two components. These components are:

- A. The Base Price for the Base Terminal - Mount Belvieu – Texas.
- B. The Mark-up Price provided by the Bidder.

The "Base Price" will be based on the published price for Mount Belvieu – Texas. A consolidated price report will be generated and sent out to all agencies and contractors. In the event market prices are not available for a commodity in a location, the nearest available commodity prices shall be referenced for that location. In event Mount Belvieu – Texas is not published for a period greater than one week, the average rack price indicated in the last published edition shall apply until the next publication is received.

Mark-Up Price Per County

Note: This Mark-Up price will be added to the cost of propane to get to the total cost of the transaction.

FERRELL GAS - 21000001457

Region	Counties	Customer/Vendor Owned Tank Mark-Up Price per Gallon	Terminal	Customer Service Center for Each County
1a - Western UP Prosperity Region				
1a	BARAGA	\$0.5700	MB - Mount Belvieu	L'Anse, MI
1a	GOGEBIC	\$0.5700	MB - Mount Belvieu	Eagle River, WI
1a	HOUGHTON	\$0.5850	MB - Mount Belvieu	Houghton, MI
1a	IRON	\$0.5700	MB - Mount Belvieu	Eagle River, WI
1a	KEWEENAW	\$0.5950	MB - Mount Belvieu	Houghton, MI
1a	ONTONAGON	\$0.5700	MB - Mount Belvieu	Ontonagon, MI
1b - Central UP Prosperity Region				
1b	ALGER	\$0.5700	MB - Mount Belvieu	Newberry, MI
1b	DELTA	\$0.5700	MB - Mount Belvieu	Gladstone, MI
1b	DICKINSON	\$0.5700	MB - Mount Belvieu	Gladstone, MI
1b	MARQUETTE	\$0.5600	MB - Mount Belvieu	Negaunee, MI
1b	MENOMINEE	\$0.5600	MB - Mount Belvieu	Marinette, WI
1b	SCHOOLCRAFT	\$0.5600	MB - Mount Belvieu	Gladstone, MI
1c - Eastern UP Prosperity Region				
1c	CHIPPEWA	\$0.5900	MB - Mount Belvieu	Sault Ste Marie, MI
1c	LUCE	\$0.5700	MB - Mount Belvieu	Newberry, MI
1c	MACKINAC	\$0.5900	MB - Mount Belvieu	Sault Ste Marie, MI
2 - Northwest Prosperity Region				
2	ANTRIM	\$0.5800	MB - Mount Belvieu	Kalkaska, MI
2	BENZIE	\$0.5800	MB - Mount Belvieu	Traverse City, MI
2	CHARLEVOIX	\$0.5500	MB - Mount Belvieu	Indian River, MI
2	EMMET	\$0.5500	MB - Mount Belvieu	Indian River, MI
2	GRAND TRAVERSE	\$0.5800	MB - Mount Belvieu	Traverse City, MI
2	KALKASKA	\$0.5800	MB - Mount Belvieu	Kalkaska, MI
2	LEELANAU	\$0.5800	MB - Mount Belvieu	Traverse City, MI
2	MANISTEE	\$0.6000	MB - Mount Belvieu	Manistee, MI
2	MISSAUKEE	\$0.5700	MB - Mount Belvieu	Cadillac, MI
2	WEXFORD	\$0.5700	MB - Mount Belvieu	Cadillac, MI
3 - Northeast Prosperity Region				
3	ALCONA	\$0.5800	MB - Mount Belvieu	Alpena, MI
3	ALPENA	\$0.5800	MB - Mount Belvieu	Alpena, MI
3	CHEBOYGAN	\$0.5500	MB - Mount Belvieu	Indian River, MI
3	CRAWFORD	\$0.5800	MB - Mount Belvieu	Grayling, MI

3	IOSCO	\$0.5700	MB - Mount Belvieu	Tawas City, MI
3	MONTMORENCY	\$0.5800	MB - Mount Belvieu	Atlanta, MI
3	OGEMAW	\$0.5800	MB - Mount Belvieu	West Branch, MI
3	OSCODA	\$0.5800	MB - Mount Belvieu	Rose City, MI
3	OTSEGO	\$0.5500	MB - Mount Belvieu	Indian River, MI
3	PRESQUE ISLE	\$0.5500	MB - Mount Belvieu	Indian River, MI
3	ROSCOMMON	\$0.5800	MB - Mount Belvieu	Houghton Lake, MI
4a - West Central Prosperity Region				
4a	LAKE	\$0.5600	MB - Mount Belvieu	Baldwin, MI
4a	MASON	\$0.6000	MB - Mount Belvieu	Manistee, MI
4a	MECOSTA	\$0.5600	MB - Mount Belvieu	Remus, MI
4a	NEWAYGO	\$0.5600	MB - Mount Belvieu	Remus, MI
4a	OCEANA	\$0.5600	MB - Mount Belvieu	Baldwin, MI
4a	OSCEOLA	\$0.5800	MB - Mount Belvieu	Reed City, MI
4b - West Michigan Prosperity Region				
4b	ALLEGAN	\$0.5900	MB - Mount Belvieu	Holland, MI
4b	BARRY	\$0.5900	MB - Mount Belvieu	Hastings, MI
4b	IONIA	\$0.5900	MB - Mount Belvieu	Lowell, MI
4b	KENT	\$0.5800	MB - Mount Belvieu	Kentwood, MI
4b	MONTCALM	\$0.5600	MB - Mount Belvieu	Remus, MI
4b	MUSKEGON	\$0.5900	MB - Mount Belvieu	Holland, MI
4b	OTTAWA	\$0.5900	MB - Mount Belvieu	Holland, MI
5 - East Central Michigan Prosperity Region				
5	ARENAC	\$0.5800	MB - Mount Belvieu	Standish, MI
5	BAY	\$0.5100	MB - Mount Belvieu	Bay City, MI
5	CLARE	\$0.5800	MB - Mount Belvieu	Clare, MI
5	GRATIOT	\$0.5800	MB - Mount Belvieu	Clare, MI
5	ISABELLA	\$0.5800	MB - Mount Belvieu	Clare, MI
5	MIDLAND	\$0.5100	MB - Mount Belvieu	Bay City, MI
5	SAGINAW	\$0.5600	MB - Mount Belvieu	Saginaw, MI
6 - East Michigan Prosperity Region				
6	GENESEE	\$0.5000	MB - Mount Belvieu	Millington, MI
6	HURON	\$0.5100	MB - Mount Belvieu	Bad Axe, MI
6	LAPEER	\$0.5100	MB - Mount Belvieu	Lapeer, MI
6	SANILAC	\$0.5200	MB - Mount Belvieu	Cass City, MI
6	SHIAWASSEE	\$0.5400	MB - Mount Belvieu	Durand, MI
6	ST CLAIR	\$0.5200	MB - Mount Belvieu	Kimball, MI
6	TUSCOLA	\$0.5200	MB - Mount Belvieu	Unionville, MI
7 - South Central Prosperity Region				
7	CLINTON	\$0.5500	MB - Mount Belvieu	East Lansing, MI
7	EATON	\$0.5500	MB - Mount Belvieu	Eaton Rapids, MI
7	INGHAM	\$0.5500	MB - Mount Belvieu	East Lansing, MI

8 - Southwest Prosperity Region				
8	BERRIEN	\$0.6000	MB - Mount Belvieu	Cassopolis, MI
8	BERRIEN COUNTY	\$0.6000	MB - Mount Belvieu	Cassopolis, MI
8	BRANCH	\$0.6000	MB - Mount Belvieu	Marshall, MI
8	CALHOUN	\$0.6000	MB - Mount Belvieu	Marshall, MI
8	CASS	\$0.6000	MB - Mount Belvieu	Cassopolis, MI
8	KALAMAZOO	\$0.6000	MB - Mount Belvieu	Portage, MI
8	ST JOSEPH	\$0.6000	MB - Mount Belvieu	Portage, MI
8	VAN BUREN	\$0.6000	MB - Mount Belvieu	Portage, MI
9	HILLSDALE	\$0.5600	MB - Mount Belvieu	Addison, MI
9	JACKSON	\$0.5600	MB - Mount Belvieu	Jackson, MI
9	LENAWEE	\$0.5600	MB - Mount Belvieu	Addison, MI
9	LIVINGSTON	\$0.5600	MB - Mount Belvieu	Howell, MI
9	MONROE	\$0.5600	MB - Mount Belvieu	Monroe, MI
9	WASHTENAW	\$0.5400	MB - Mount Belvieu	Belleville, MI
10 - Detroit Metro Prosperity Region				
10	MACOMB	\$0.5300	MB - Mount Belvieu	Chesterfield, MI
10	OAKLAND	\$0.5400	MB - Mount Belvieu	Chesterfield, MI
10	WAYNE	\$0.5400	MB - Mount Belvieu	Belleville, MI

Remote monitoring: \$6.00 per year

Emergency/After Hours Service: \$200.00 flat fee (no additional cost per gallon)

FerrellGas Regional Customer Service Locations

Negaunee

603 US 41

Negaunee, MI 49866

800-530-0113

Director of Operations, Don Steckman, donaldsteckman@ferrellgas.com

Customer Service Manager, Lori Luokkala, loriluokkala@ferrellgas.com

West Branch

2147 I-75 Business Loop

West Branch, MI 48661

800-477-0170

General Manager, Sonya Grezeszak; sonyagrezszak@ferrellgas.com

Customer Service Manager, Courtney Maxson; courtneymaxson@ferrellgas.com

East Lansing

7777 Old M-78

East Lansing, MI 48823

800-677-8903

General Manager, Pat Cassidy; patrickcassidy@ferrellgas.com

Customer Service Manager, Courtney Maxson; courtneymaxson@ferrellgas.com

Exhibit C

Prosperity Regional Map

Contract No. 210000001457
 Liquefied Petroleum Gas (LPG)

