

## EQUIPMENT PURCHASE AGREEMENT

THIS CONTRACT AND AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_  
2024, by and between

### COUNTY OF ALPENA, MICHIGAN

hereinafter referred to as the "OWNER" and

### M-B COMPANIES, INC.

hereinafter referred to as the "VENDOR," witnesseth:

That for and in consideration of the payment in the amount of \$ **1,522,272.00** (Base bid + Bid Alternatives A1 and A3) to be made in accordance with the prices stipulated in the Proposal of the VENDOR, attached, the VENDOR hereby agrees to furnish all tools, labor, equipment, and materials, and to furnish equipment designated as:

### Snow Removal Equipment Procurement – Snowplow Trucks (2)

1. **Statement of Work:** The Vendor shall furnish labor, material and equipment for, and perform the work described herein for the consideration stipulated, and in compliance with Federal, State and local laws. Contract documents consist of the following together with any amendments that may be agreed to in writing by both parties.
2. **Indemnification and Insurance:** Vendor shall indemnify and save and hold harmless Owner from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses caused or incurred because of the acts or omissions of Vendor, its servants, agents employees, guests, and not caused by or arising out of the grossly negligent conduct of Owner or its employees. Nothing herein shall be construed as a waiver of Owner's rights with regard to governmental immunity. In addition, Vendor shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance, in which the Owner shall be named an additional insured in the minimum amount as specified herein. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless Owner; and if Owner becomes liable for an amount in excess of the insurance limits, herein provided, Vendor covenants and agrees to indemnify and save and hold harmless Owner from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. Vendor shall provide Owner with a Certificate of Insurance, or other proof of insurance evidencing Vendor's compliance with the requirements of this paragraph and file such proof of insurance with the Owner. In the event the insurance minimums are changed, Vendor shall immediately submit proof of compliance with the changed limits.

Additionally, the Vendor shall have and maintain during the life of this contract, statutory Workers Compensation, regardless of the number of employees, or lack thereof, to be engaged in work on the project under this agreement (including himself) in the statutory limits as required by law. In

case any such work is sublet, the Vendor shall require the subcontractor provide Workers Compensation Insurance for himself and any/all the latter's employees. Proof of insurance must be provided to Owner prior to the start of work.

Proof of all insurance shall be submitted to the County of Alpena.

3. Independent Vendor: In all matters pertaining to this agreement, Vendor shall be acting as an independent contractor, and neither Vendor, nor any officer, employee or agent of Vendor will be deemed an employee of the County of Alpena. The selection and designation of the personnel of the Owner in the performance of this agreement shall be made by the Owner.
4. Compensation: For performing the services specified in herein, Owner agrees to reimburse Vendor according to the attached bid specification. Payment will not include any sub- contract or other personal services pay except as may be agreed to in writing in advance by the parties. Change Orders may be issued, subject to Purchasing/Board approval.
5. Method of Payment: Vendor will invoice the County of Alpena for all current amounts earned under this Agreement. Owner will forward all invoices to MDOT for payment within forty-five (45) days after receipt.
6. Time is of the Essence: The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.
7. Force Majeure: Any delays in or failure of performance by Vendor shall not constitute a breach or default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Vendor, including but not limited to, acts of God or the public enemy; compliance with any order or request of any governmental authority; fires, floods, explosion, accidents; riots, strikes or other concerted acts of workmen, whether direct or indirect; or any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of Vendor. In the event that any event of force majeure as herein defined occurs, Vendor shall be entitled to a reasonable extension of time for performance of its Services under this Agreement.
8. Assignment: It is expressly agreed and understood by the parties hereto, that Vendor shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of Owner.
9. Discrimination Prohibited: In performing the Services required herein, the VENDOR, sub-recipient, or subcontractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, age or physical disability or any other class of individuals protected by law. It is the Vendor's responsibility to ensure that the sub-contractor is in compliance with this section.

Further, if this is a Department of Transportation assisted contract, the Vendor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of the contract. It is the Vendor's responsibility to ensure that all sub-contractors are in compliance with these requirements as well. Failure by the Vendor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate.

10. Reports and Information: At such times and in such forms as the Owner may require, there shall be furnished to the Owner such statements, records, reports, data and information as the Owner may request pertaining to matters covered by this Agreement.
11. Audits and Inspections: At any time during normal business hours and as often as the Owner may deem necessary, there shall be made available to the Owner for examination all of Vendor's records with respect to all matters covered by this Agreement. Vendor shall permit the Owner to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.
12. Compliance with Laws: In performing the scope of services required hereunder, Vendor shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.
13. Changes: The Owner may, from time to time, request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in Vendor's compensation, which are mutually agreed upon by and between the Owner and the vendor, shall be incorporated in written amendments to this Agreement.
14. Termination for Cause: If, through any cause, the vendor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the vendor shall violate any of the covenants, agreements, or stipulations of this Agreement, the Owner shall thereupon have the right to terminate this Agreement by giving written notice to the vendor of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. If this agreement is terminated for cause the vendor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder up to the date of termination.

Notwithstanding the above, the vendor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of this Agreement by the vendor, and the Owner may withhold any payments to the vendor for the purposes of set-off until such time as the exact amount of damages due the Owner from the vendor is determined. This provision shall survive the termination of this agreement and shall not relieve the vendor of its liability to the Owner for damages, provided that the amount of such damages shall not exceed the total compensation provided for in this agreement.

15. Termination for Convenience: The Owner may terminate this Agreement at any time by giving at least fifteen (15) days of notice in writing to the Vendor. If the Agreement is terminated by the Owner as provided herein, Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of Vendor covered by this

Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of Vendor, Section 15 hereof relative to termination shall apply.

16. Vendor to Pay or Secure Taxes: The Vendor in consideration of securing the business agrees: 1) To pay promptly when all taxes due (other than on real property), excises and license fees due the state, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing in accordance with conditions of this Agreement, whether or not the same shall be payable at the end of such term; 2) That if said taxes, excises and license fees are not payable at the end of said term, but liability for the payment thereof exists, even though the same constitute liens upon the Vendor's property, to secure the same to the satisfaction of the respective officers charged with the collection thereof; and that; 3) That, in the event of default in the payment or securing of such taxes, excises, and license fees, Owner may withhold from any payment due the vendor hereunder the estimated amount of such accrued taxes, excises and license fees for the benefit of all taxing units to which said Vendor is liable.
17. Severability: If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
18. Non-Appropriation: Should funding become unavailable, due to lack of appropriation or lack/denial of FAA AIP funding, the Owner may terminate this agreement upon 15 (fifteen) days of notice.
19. Entire Agreement: This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith. No term contained herein can be changed except upon the mutual written agreement of the parties.
20. Applicable Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Michigan.
21. Approval Required: This Agreement shall not become effective or binding until signed by the County of Alpena.
22. Acceptance and Final Payment: Upon receipt of notice that the material and/or equipment is ready for final acceptance and inspection, the Owner's representative will make such inspection and when they find the work acceptable and the contract fully performed, they will have the Vendor issue a final payment request.

WITNESS OUR HANDS, this \_\_\_\_ day of \_\_\_\_\_, 2024.

FOR THE OWNER:

FOR THE CONTRACTOR:

ALPENA COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_(Seal)  
(Company Name)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_  
(Name) (Title)

ATTEST

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Secretary

\* Contractor must indicate whether Corporation, Partnership, Company or Individual.

The person signing shall in their own handwriting sign the principal's name, their own name, and their title. Where the person signing for a corporation is other than the President or Vice President, they must, by affidavit, as contained herein show their authority to bind the corporation.

**END OF AGREEMENT**