

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

March 7, 2008

CHANGE NOTICE NO. 5
TO
CONTRACT NO. 071B0000737
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Martindale Consultants, Inc. Attn: W. Patrick Martindale, President 9500 Westgate Road, Suite 150 Oklahoma City, OK 73162-6250 p.martindale@marticons.com		TELEPHONE Pat Martindale (405) 728-3003
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-8622 Malynda Little
Contract Compliance Inspector: Lynne Boyd Natural Gas Producers Post Production Audits – Dept. of Natural Resources		
CONTRACT PERIOD: From: July 6, 2000 To: September 30, 2009		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE:

Effective immediately, this Contract is hereby **EXTENDED** through **September 30, 2009**. All other terms, conditions, specifications, and pricing remain the same.

AUTHORITY/REASON:

Per agency request, vendor agreement, and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$1,075,000.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

March 29, 2007

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B0000737
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Martindale Consultants, Inc. Attn: W. Patrick Martindale, President 9500 Westgate Road, Suite 150 Oklahoma City, OK 73162-6250 p.martindale@marticons.com		TELEPHONE Pat Martindale (405) 728-3003
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-8622 Malynda Little
Contract Compliance Inspector: Lynne Boyd Natural Gas Producers Post Production Audits – Dept. of Natural Resources		
CONTRACT PERIOD: From: July 6, 2000 To: September 30, 2008		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE:

This Contract is hereby EXTENDED through September 30, 2008, and CAR 2007-001 is hereby incorporated into the Contract (see attachment).

Note: The Buyer for this Contract is now Malynda Little. All other terms, conditions, specifications, and pricing remain the same.

AUTHORITY/REASON:

Per Agency request, vendor agreement, and DMB/Purchasing Operations approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,075,000.00

CHANGE AUTHORIZATION REQUEST

Contract No. 071B0000737

Change Authorization Request No. 2007-001

I. General

This Change Authorization Request is subject to all terms and conditions of the subject contract between Martindale Consultants, Inc. and the State of Michigan. Except as expressly specified herein, all terms and conditions of the Contract shall remain in full force and effect upon execution of this request. This request is not valid until all parties sign it, the Issuing Office prepares a Contract Change Notice and the Department of Natural Resources issues a Purchase Order.

II. Description of Change

The purpose of this change is to extend the expiration date pursuant to Section 2.004 of the contract, to September 30, 2008. This change is a no cost, time only extension. The value of the contract will remain the same.

III. Costs

Contract value: \$1,075,000.00

Remaining value: \$519,275

IV. Impact on Contract (\$ and Schedule)

Extend contract period: 9/30/2008

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 ACQUISITION SERVICES
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

February 7, 2005

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B0000737
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Martindale Consultants, Inc. Attn: W. Patrick Martindale, President 9500 Westgate Road, Suite 150 Oklahoma City, OK 73162-6250 p.martindale@marticons.com		TELEPHONE Pat Martindale (405) 728-3003
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 335-4804 Douglas Collier
Contract Compliance Inspector: Lynne Boyd Natural Gas Producers Post Production Audits – Dept. of Natural Resources		
CONTRACT PERIOD: From: July 6, 2000 To: September 30, 2007		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE:

Contract is hereby **EXTENDED** effective 10/1/04 through 9/30/07 with the option for three 1-year extensions.

Please see Attached New Terms and Conditions, Revised Statement of Work and Additional tasks including Audit services for oil and gas, Metallic and Non-metallic and underground gas storage.

Prompt Pay Discount Now Apply to this contract of 4%, Net 15 day from receipt of invoice.

Additional Dollars to be added to this contract is \$375,000.00

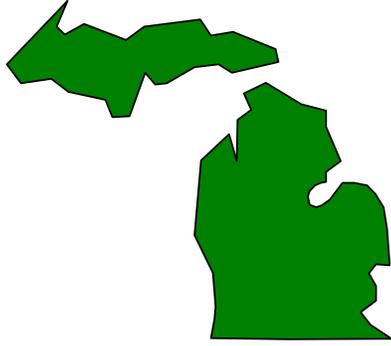
Please note: The buyer has been changed to Douglas Collier.

AUTHORITY/REASON:

Per DMB/Acquisition Services Approval.

INCREASE: \$375,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$1,075,000.00



**STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services**

Martindale Consultants, Inc.

**Auditing mineral operations
Revised Work statement Terms and Conditions**

Buyer Name: [Douglas Collier](#)
Telephone Number: (517) 335-4804
E-Mail Address: collierd1@michigan.gov

(DNR Audits)

ARTICLE 1 – STATEMENT OF WORK (SOW) 3

1.0	PROJECT IDENTIFICATION	3
1.001	PROJECT REQUEST	3
1.002	BACKGROUND	3
1.1	SCOPE OF WORK AND DELIVERABLES	4
1.101	IN SCOPE	4
1.102	OUT OF SCOPE	4
1.103	TECHNICAL ENVIRONMENT	4
1.104	WORK AND DELIVERABLE	4
1.2	ROLES AND RESPONSIBILITIES	5
1.201	CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES	5
1.202	STATE STAFF, ROLES, AND RESPONSIBILITIES	6
1.203	OTHER ROLES AND RESPONSIBILITIES	6
1.3	PROJECT PLAN	6
1.301	PROJECT PLAN MANAGEMENT	6
1.302	REPORTS	7
1.4	PROJECT MANAGEMENT	9
1.401	ISSUE MANAGEMENT	9
1.402	RISK MANAGEMENT	9
1.403	CHANGE MANAGEMENT	9
1.5	ACCEPTANCE	9
1.501	CRITERIA	9
1.502	FINAL ACCEPTANCE	9
1.6	COMPENSATION AND PAYMENT	9
1.7	ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW	10

ARTICLE 2 – GENERAL TERMS AND CONDITIONS 11

2.0	INTRODUCTION	11
2.001	GENERAL PURPOSE	11
2.002	ISSUING OFFICE AND CONTRACT ADMINISTRATOR	11
2.003	NOTICE	11
2.004	CONTRACT TERM	11
2.005	GOVERNING LAW	12
2.006	APPLICABLE STATUTES	12
2.007	RELATIONSHIP OF THE PARTIES	12
2.008	HEADINGS	12
2.009	MERGER	13
2.010	SEVERABILITY	13
2.011	SURVIVORSHIP	13
2.012	NO WAIVER OF DEFAULT	13
2.013	PURCHASE ORDERS	13
2.1	VENDOR/CONTRACTOR OBLIGATIONS	13
2.101	ACCOUNTING RECORDS	13
2.102	NOTIFICATION OF OWNERSHIP	13
2.103	SOFTWARE COMPLIANCE	14
2.104	IT STANDARDS	14
2.105	PERFORMANCE AND RELIABILITY EVALUATION (PARE)	14
2.106	PREVAILING WAGE	14
2.107	PAYROLL AND BASIC RECORDS	14
2.108	COMPETITION IN SUB-CONTRACTING	15
2.109	CALL CENTER DISCLOSURE	15
2.2	CONTRACT PERFORMANCE	15
2.201	TIME IS OF THE ESSENCE	15
2.202	CONTRACT PAYMENT SCHEDULE	15

2.203	<i>POSSIBLE PROGRESS PAYMENTS</i>	15	
2.204	<i>POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)</i>		15
2.205	<i>ELECTRONIC PAYMENT AVAILABILITY</i>	15	
2.206	<i>PERFORMANCE OF WORK BY CONTRACTOR</i>	16	
2.3	CONTRACT RIGHTS AND OBLIGATIONS	16	
2.301	<i>INCURRING COSTS</i>	16	
2.302	<i>CONTRACTOR RESPONSIBILITIES</i>	16	
2.303	<i>ASSIGNMENT AND DELEGATION</i>	16	
2.304	<i>TAXES</i>	16	
2.305	<i>INDEMNIFICATION</i>	16	
2.306	<i>LIMITATION OF LIABILITY</i>	19	
2.307	<i>CONTRACT DISTRIBUTION</i>	19	
2.308	<i>FORM, FUNCTION, AND UTILITY</i>	19	
2.309	<i>ASSIGNMENT OF ANTITRUST CAUSE OF ACTION</i>		19
2.310	<i>RESERVED</i>	19	
2.311	<i>TRANSITION ASSISTANCE</i>	19	
2.312	<i>WORK PRODUCT</i>	19	
2.313	<i>PROPRIETARY RIGHTS</i>	20	
2.314	<i>WEBSITE INCORPORATION</i>	20	
2.4	CONTRACT REVIEW AND EVALUATION	20	
2.401	<i>CONTRACT COMPLIANCE INSPECTOR</i>	20	
2.402	<i>PERFORMANCE REVIEWS</i>	20	
2.403	<i>AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS</i>		20
2.5	QUALITY AND WARRANTIES	21	
2.501	<i>PROHIBITED PRODUCTS</i>	21	
2.502	<i>RESERVED</i>	21	
2.503	<i>RESERVED</i>	21	
2.504	<i>GENERAL WARRANTIES (goods)</i>	21	
2.505	<i>CONTRACTOR WARRANTIES</i>	21	
2.506	<i>STAFF</i>	22	
2.507	<i>SOFTWARE WARRANTIES</i>	22	
2.508	<i>EQUIPMENT WARRANTY</i>	22	
2.509	<i>PHYSICAL MEDIA WARRANTY</i>	22	
2.6	BREACH OF CONTRACT	22	
2.601	<i>BREACH DEFINED</i>	22	
2.602	<i>NOTICE AND THE RIGHT TO CURE</i>		23
2.603	<i>EXCUSABLE FAILURE</i>	23	
2.7	REMEDIES	23	
2.701	<i>CANCELLATION</i>	23	
2.702	<i>RIGHTS UPON CANCELLATION</i>	24	
2.703	<i>LIQUIDATED DAMAGES</i>	27	
2.704	<i>STOP WORK</i>	28	
2.705	<i>SUSPENSION OF WORK</i>	28	
2.8	CHANGES, MODIFICATIONS, AND AMENDMENTS	29	
2.801	<i>APPROVALS</i>	29	
2.802	<i>TIME EXTENTIONS</i>	29	
2.803	<i>MODIFICATION</i>	29	
2.804	<i>AUDIT AND RECORDS UPON MODIFICATION</i>		29
2.805	<i>CHANGES</i>	29	
ARTICLE 3 – CERTIFICATIONS AND REPRESENTATIONS			31
3.0	VENDOR/CONTRACTOR INFORMATION	ERROR! BOOKMARK NOT DEFINED.	

Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The purpose of this INVITATION TO BID (ITB) is:

To establish a list of pre-qualified mineral (oil and gas, nonmetallic, metallic and/OR underground gas storage) industry Auditors for future audits during the period of October 15, 2004 to September 30, 2007.

It is the intent of the State of Michigan to pre-qualify those firms that have experience in auditing mineral operations (i.e., oil and gas, metallic, nonmetallic and/OR underground gas storage) as described within this ITB; THAT HAVE AN ADEQUATE NUMBER OF QUALIFIED STAFF EMPLOYED AND/OR AVAILABLE TO COMPLETE THE AUDIT WITHIN THE TIMEFRAME REQUIRED IN THIS ITB, and for the State and Contractors to agree on the terms and conditions contained herein.

For Fiscal Years 2005 through 2007 only Contractors who are pre-qualified will be given a “Request for Quotation” as they are released through the State, and responses will be due within a short period of time, usually one to two weeks. The goal is to allow the State to rapidly acquire auditing services as the need arises.

Acceptance onto the short list is not a guarantee that a Purchase Order will be issued. The Department of Natural Resources (DNR) anticipates that between 2 and 5 audits, INVOLVING BETWEEN 1 AND APPROXIMATELY 10 UNITS, I.E., 1 SAND AND GRAVEL PIT, OR 5 OIL AND GAS UNITIZED AREAS AND 3 INDIVIDUAL DRILLING UNITS, will be performed each year for the next three years. However, the DNR reserves the right to increase or decrease ~~that~~ THE number OF AUDITED UNITS at its discretion.

1.002 BACKGROUND

The DNR is the mineral leasing agent for the State of Michigan and is responsible for monitoring the payments of all mineral related revenues from all the various State leases (including oil and gas, metallic, nonmetallic and underground gas storage). The DNR is responsible for verifying that the royalty was paid on the correct volume, price, and royalty percentage or decimal interest, and that only costs specifically allowed, if any, are deducted. The costs allowed vary depending on the type of mineral lease, type of product (oil, gas, or other), formation, purchase contract, or any written agreement that may have been in effect at that time. For example: on March 8, 2002, the DNR Director issued the “*Audit Calculations Standards for Gas Post Production Costs Deductions Involving Pre-July 1996 State of Michigan Oil and Gas Leases*” (Standards). These Standards define the allowable Post Production Cost (PPC) deductions for gas production from State of Michigan Oil and Gas Leases issued before July 1996, unless there is another written agreement in place.

Copies of all relevant documents (such as leases, unitized area agreements, division orders, remittances, mining plans and correspondence) will be provided by DNR, as needed. Records to be examined are located at the Operators' offices, which may be at various locations within the United States.

1.1 Scope of Work and Deliverables

1.101 *IN SCOPE*

The audit scope shall encompass verification of all relevant documents which can include, but is not limited to: Production/Sales Volume, Sales Revenue and Reimbursements, Costs Deductions (if any), State Decimal Interest, timeliness of payments, Mining Plans and that transactions between Operators and related entities are proper and reasonable, by examining records of the Operator that affect or relate to the calculations of Royalties due the DNR. The audit shall be conducted in accordance with Generally Accepted Auditing Standards and, accordingly, include such tests of the records and such other auditing procedures as are considered necessary in the circumstances.

Additional information regarding the scope of an individual audit will be provided with each Request for Quotation.

1.102 *OUT OF SCOPE*

If the audited company contests any issues identified by the Contractor, the DNR will be responsible for handling the issue(s) and all post audit negotiations with the company.

1.103 *TECHNICAL ENVIRONMENT*

1.104 *WORK AND DELIVERABLE*

Contractor shall provide Services and staff **WITH APPROPRIATE EXPERTISE AND IN SUFFICIENT NUMBER**, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

The DNR has the following audit objectives:

- A. To assess the adequacy of Operators' internal control structure as it applies to accounting for production levels, revenues and costs, including applicable administrative controls related to the management of mineral operations.
- B. To assess the Operators' compliance with the terms of the State of Michigan DNR mineral leases and any other written agreement that pertains to the amount of Royalty due to the State of Michigan.
- C. To conduct an audit/examination of the Production/Sales Volumes, Sales Revenues, Marketing Contract Arrangements, Reimbursements Received, Costs Deducted, Royalty percentage or Decimal Interest Calculations, Mining Plans and other information filed by the Operator to determine if the royalty revenue paid and received by the State is correct and has been properly accounted for, to the DNR, in accordance with the State of Michigan's mineral lease(s) and other pertinent documents.

The following is a preliminary analysis of the major tasks involved for developing the end product of this project. The Contractor is not, however, constrained from supplementing this listing with additional steps, sub tasks or elements deemed necessary.

1. Verify applicable components of the royalty calculation including: Production/Sales Volumes, gross prices, and reimbursements which are the basis for royalty payments to production, sales, inventory records, mining plans, and other pertinent records.

2. Trace Sales prices to sales contracts to determine that prices reflect amounts obtainable through nonaffiliated third party transactions and that the sale price is reasonable, if applicable.
3. Verify any costs claimed to supporting documents, (i.e., invoices, statements, contracts, payroll records, and calculations) to determine eligibility.
4. Determine that all PPC deductions were in accordance with the appropriate DNR criteria such as the lease, Audit Calculation Standard or other agreement.
5. Review all company records to determine the appropriateness of allocations used.
6. Determine alternative approaches for allocations when no specific agreement exists for allocations or when company records are not sufficient to support their allocation. All allocations must reasonably reflect actual operation processes.
7. Calculate the amount of additional royalty due to the State of Michigan by calculating the difference between the amount of costs claimed, the amount of costs allowed after audit adjustments and the amount actually deducted from the State of Michigan royalty payments.
8. Verify the State of Michigan's royalty percentage or decimal interest is consistent with the amount stated in the lease or other applicable document.
9. The Contractor is responsible for the establishment and performance of the necessary audit procedures in conformance with the Generally Accepted Auditing Standards and/or Council of Petroleum Accountants Society (COPAS).

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

The Contractor must demonstrate that they understand the financial operations of the oil and gas, metallic, nonmetallic and gas storage industries and have the ability to make independent determinations of the appropriateness of the audited company's decisions effecting the royalty payments to the State of Michigan, such as determining accurate production volume, sales prices and post production cost allocations for both capital and operating expenses, if applicable.

The Contractor must have sufficient staff to issue a final Audit Report and Summary within nine (9) months from the date of the assignment. Contractor staff names to be determined; key personnel roles, QUALIFICATIONS and responsibilities INCLUDE AT LEAST THREE INDIVIDUALS as follows:

- The "Audit Manager" must have at least ten years of current accounting or auditing experience in the mineral (oil and gas, metallic, nonmetallic and/OR underground gas storage) industry. The Manager will directly oversee the audit process by supervising all elements of the audit. A Certified Public Accountant and/or Council of Petroleum Accountants Society experience is preferred.
- The "Senior Auditor" must have at least three years of current accounting or auditing experience in the mineral (oil and gas, metallic, nonmetallic and/OR underground gas storage) industry. A Certified Public Accountant and/or Council of Petroleum Accountants Society experience is preferred.
- The "Staff Auditor" must have a minimum of a Bachelor's degree with a major in accounting and one year experience in auditing. Experience with the mineral (oil and gas, metallic, nonmetallic and/OR underground gas storage) industry is preferred.
- The Audit Manager or the Senior Auditor must be on-site during the fieldwork phase of the audit.

\

**Contract Manager
Lynne M. Boyd, Manager
Mineral and Land Management Section
Forest, Mineral and Fire Management
Department of Natural Resources
P.O. Box 30452
Lansing, MI 48909-7952**

Additional State staff participation will be assigned by the Contract Manager to conduct day-to-day interactions, as needed, with the Contractor; answer Contractor questions related to the specific assignment(s); provide guidance to the Contractor should unusual issues arise, such as how to approach the audit if the company has/does not have a separate written agreement on allowable deductions; forward additional documentation as requested by the Contractor; monitor progress and completion of the audit, etc.

1.3 Project Plan

- A. The Contractor will carry out this project under the direction and control of the DNR, Forest Mineral and Fire Management.**
- B. Although there will be continuous liaison with the Contractor team and Contract Administrator, they will also meet either by telephone, email or in person at least monthly with the Contract Administrator or their designated representative for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which may arise. A staff person from DNR will be available most of the time to answer questions, provide DNR documents, and assist in interpretation deliberations. It is expected that the Contractor will follow professional discretion in their scope determination and selection of verification analysis and procedures.**
- C. The Contractor will provide monthly summaries either by telephone, email or in person of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the Contract Administrator; and notification of any significant deviation from previously agreed-upon work plans.**
- D. Within five (5) working days of the audit engagement notification, the Contractor is to notify the DNR, Forest, Mineral and Fire Management, if they are unable to perform the audit either in the required timeframe or due to a conflict of interest. If the Contractor can not perform the scheduled audit, the audit will be assigned to the second Contractor. The Contractor performing the audit must submit, within five (5) working days of notification, a work plan for final approval. This final implementation plan proposed by the bidder and accepted by the State for contract, must include the following:**
 - 1) The Contractor's project organizational structure.**
 - 2) The Contractor's staffing table with names, title and experience of personnel assigned to the project. This must be in agreement with staffing included in the accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.**
 - 3) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.**

- 4) An estimated number of hours and cost to complete the audit.
- 5) Minimum of two (2) meetings to discuss the audit draft report and the final report.
- 6) A timetable that gives completion dates for each phase of the audit, i.e. (preliminary, fieldwork, write-up, draft report, revisions and final report).
- 7) The project must be completed within nine (9) months of the date the audit assignment is accepted.

E. The audit working papers and supporting source documents which support the various audit report conclusions and exceptions will be made available by the contract auditor to DNR representatives if requested by the State. The contract auditor will keep the audit working papers and the supporting source documents for at least five (5) years from the Final Report date. These records will be made available upon request by the DNR, during that time period.

L.302 REPORTS

A. A draft and final Audit Report for each audited producing unit containing (if applicable):

- Oil and Gas:
 - A schedule that shows the PPC Schedules as originally filed, with an additional column for audit adjustments and then a column for the audited PPC allowed, if required.
 - A schedule showing comparison of the audited (allowed) PPC to the actual amount withheld on the Operator's monthly remittances, to determine over/under variance, if required.
 - A verified schedule of annual Gross Sales Volumes, Gross Price per Unit and Sales Measurement Basis (Mcf/Mmbtu/Bbl/other), State's Decimal Interest, net PPC amount charged against the State of Michigan's royalty and net royalty revenue for the audit period.
 - Schedules, analysis and narrative comments all audit adjustments or recommendations. Schedules should include detail listing of all relevant date including invoices, transaction or document numbers, volumes, sales levels etc.
 - A Schedule of Affiliated Companies including:
 - 1) A narrative regarding the extent of affiliation.
 - 2) The nature of the business conducted by the affiliates with their units/wells.
 - 3) The nature of the business conducted by affiliates with companies not affiliated with the Operator.
- Metallic, Nonmetallic and/or Underground Gas Storage:
 - Description of companies operation.
 - A detailed schedule of actual production by product including Gross Sales Volumes (Short ton/ounce/other), Gross Sales Price per unit, Gross Revenue, the State's Royalty percentage and the Net Royalty Revenue for the Audit period.

- Schedules, analysis and narrative comments for all audit adjustments or recommendations. Schedules should include detail listing of all relevant data including invoices, transaction or document numbers, volumes, sales levels etc.
- A Schedule of Affiliated Companies including:
 - 1) A narrative regarding the extent of affiliation.
 - 2) The nature of the business conducted by the affiliates with their mines/pits/projects.
 - 3) The nature of the business conducted by affiliates with companies not affiliated with the Operator.
- A Schedule showing the actual production and royalties paid, the effect of all audit adjustments, adjusted totals and the total amount due to (from) the State of Michigan.

B. A DRAFT AND FINAL SUMMARY REPORT OF ALL PRODUCING UNITS UNDER AUDIT FOR EACH OPERATOR SHALL BE (NOTE: this part of the sentence was moved from our version original sent & needs to be re-inserted here; see strike-thru next page.) **issued for the required period that includes but is not limited to the following:**

- **A written certification and/or attestation to the accuracy and appropriateness of the audited/adjusted revenues and deductions.**
- **A summary of the Audit Scope.**
- **A summary of the company's Internal Control.**
- **A summary of the audit results including schedules summarizing revenues and deductions, if any, for all units under audit for each year of the audit period.**
- **A written certification and/or attestation to the accuracy and appropriateness of net amount of royalties received by the State of Michigan.**
- **The report shall include narrative to explain any noncompliance of the unit Operators or Lessees with the terms and conditions of all agreements pertaining to the units between the Lessees and State of Michigan as royalty interest owner.**
- ***The audit shall state that the examination was made in accordance with Generally Accepted Auditing Standards and/or the Council of Petroleum Accountants Society for financial and compliance audits followed with agreed upon procedures.***

C. Number of Reports:

- **Three bound copies of a preliminary draft Audit Report, including a separate Summary Report, are to be issued to the DNR for review and comment.**
- **If needed, three bound copies of the corrected draft Audit Report and Summary are to be issued to the DNR who will forward the Report to the company for comment on any mathematical or grammatical errors. Any relevant comments will be forwarded to the Contractor for consideration.**
- **Five bound copies of the final Audit Report and Summary are to be issued once all adjustments have been made and approved by the DNR.**

D. Delivery of Reports:

- **For regular deliver:**

**Michigan Department of Natural Resources
Forest, Mineral and Fire Management
Mineral and Land Management Section
PO Box 30452
Lansing, MI 48909-7952**

- **For Overnight Delivery:**

**Michigan Department of Natural Resources
Forest, Mineral and Fire Management
Mineral and Land Management Section
530 W. Allegan, 5th Floor
Lansing, MI 48909-7952**

1.4 Project Management

1.401 ISSUE MANAGEMENT

To avoid a conflict of interest, the Contractor shall be independent from the company being audited. If the Contractor becomes aware that they are not independent, the Contractor must immediately notify the State within five (5) business days. The Contractor may be asked to resign from the particular audit where a conflict of interest exists.

1.402 RISK MANAGEMENT Reserved

1.403 CHANGE MANAGEMENT

If it becomes apparent to the Contractor that the audit can not be completed within a nine (9) month timeframe, the Contractor must notify the DNR Contract Manager, or their designee, in writing via electronic mail, facsimile or written letter outlining the complications encountered creating the delay; the proposed resolution to the complication and the proposed new completion date. The DNR Contract Manager or designee will determine if the circumstances presented warrant a new completion date; contact the Contractor for additional information, as may be needed and respond in writing via electronic mail, facsimile or written letter as to the decision made and any adjustment to the completion date as deemed appropriate.

1.5 Acceptance

1.501 CRITERIA

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW.

The State shall have the opportunity to review the preliminary draft Audit Report to determine if:

- 1) Errors are noted in the draft or,
- 2) The State does not agree with the audit adjustments or,
- 3) Additional adjustments or clarification is needed in the draft.

Once any corrections to the preliminary draft is completed and the corrected draft Audit Report is received by the DNR, the DNR will provide the draft Audit Report to the audited company for review and comment. Any relevant corrections will be forwarded to the Contractor for consideration and/or correction before the final Audit Report is issued.

1.502 FINAL ACCEPTANCE

Final Acceptance for the specific audit will occur when the final Audit Report has been issued and all Contractor invoices have been provided to the DNR.

1.6 Compensation and Payment

State shall pay Contractor an amount not to exceed the specified amount authorized within the Purchase Order release for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW.

The Contractor shall submit invoices for the four (4) stages of the audit as outlined below. All invoices should reflect the actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing, Department of Management & Budget. This activity will occur only upon the specific written direction from the Office of Purchasing with periodic payments authorized upon satisfactory completion of various phases of the audit.

Payment shall be processed upon:

1. 20% upon completion of planning and setup.
2. 30% upon completion of audit field work.
3. 20% upon issuance of the draft Audit Report and Summary, which is satisfactorily free of errors and correct and after meetings to review audit results with Contract Administrator.
4. 30% final payment upon issuance and acceptance of final Audit Report and Summary, which is satisfactorily free of errors and correct.

For additional services beyond the scope of the original assignment, i.e., providing testimony to the Natural Resources Commission or during litigation, the Contractor will be requested in each Request for Quotation (RFQ) to identify the Staff and Hourly Rate for the additional services, if/as needed, in the following format:

<u>Title</u>	<u>Rate per Hour</u>
Audit Manager	\$150.00
Senior Manager	\$100.00
Staff Auditor	\$75.00
Administrative Support	\$45.00

Each RFQ will also specify “Only actual travel costs and per diem will be reimbursed at rates not to exceed the current approved State of Michigan Travel Rates.”

1.7 Additional Terms and Conditions Specific to this SOW Reserved

Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for **Mineral Audit Services** for the State of Michigan. Orders will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form. Bids are due and will be publicly identified at the time noted on the Invitation To Bid (ITB) Form.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the **Department of Natural Resources**, hereinafter known as **DNR**. Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

Acquisition Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Acquisition Services is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the **SOLE POINT OF CONTACT** throughout the procurement process.

Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Acquisition Services and the listed contract administrator

All communications covering this procurement must be addressed to contract administrator indicated below:

**Department of Management and Budget
Acquisition Services
Attn: Douglas Collier, CPPB
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 335-4804
collierd1@michigan.gov**

2.003 NOTICE

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

2.004 CONTRACT TERM

The term of this Contract will be for **three (3) years** and will commence with the issuance of a Contract. This will be **for the period of October 1, 2004 through September 03, 2007**

Option. The State reserves the right to exercise **three (3)** one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the Contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to exercise an option year.

Extension. At the sole option of the State, the contract may also be extended. Contractor performance, quality of products, price, cost savings, and the Contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to exercise an option year.

Written notice will be provided to the Contractor within **30 days** , provided that the State gives the Contractor a preliminary written notice of its intent to extend at least **60** days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.

2.005 *GOVERNING LAW*

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

2.006 *APPLICABLE STATUTES*

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)
MI OSHA MCL §§ 408.1001 – 408.1094
Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.
Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.
MI Consumer Protection Act MCL §§ 445.901 – 445.922
Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.
Department of Civil Service Rules and regulations
Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.
Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.
MCL §§ 423.321, et seq.
MCL § 18.1264 (law regarding debarment)
Davis-Bacon Act (DBA) 40 USCU § 276(a), et seq.
Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.
Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795
Rules and regulations of the Environmental Protection Agency
Internal Revenue Code
Rules and regulations of the Equal Employment Opportunity Commission (EEOC)
The Civil Rights Act of 1964, USCS Chapter 42
Title VII, 42 USCS §§ 2000e et seq.
The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.
The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.
The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.
The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.
The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.
Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106
Sherman Act, 15 U.S.C.S. § 1 et seq.
Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.
Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 *RELATIONSHIP OF THE PARTIES*

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

2.008 *HEADINGS*

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

2.009 *MERGER*

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

2.010 *SEVERABILITY*

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

2.011 *SURVIVORSHIP*

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

2.012 *NO WAIVER OF DEFAULT*

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.

2.013 *PURCHASE ORDERS*

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

Acquisition Services has given the State Departments approval to make payments for commodities and services purchased from this contract through Direct Voucher. For this reason, the Contractor may be asked to reference the Blanket Purchase Order/Contract number rather than a Purchase Order Number when invoicing for payment.

2.1 **Vendor/Contractor Obligations**

2.101 *ACCOUNTING RECORDS*

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

2.102 *NOTIFICATION OF OWNERSHIP*

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.
2. The Contractor shall also notify the Acquisition Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;

2. Provide Acquisition Services or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 *SOFTWARE COMPLIANCE Reserved*

2.104 *IT STANDARDS Reserved*

2.105 *PERFORMANCE AND RELIABILITY EVALUATION (PARE) Reserved*

2.106 *PREVAILING WAGE*

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Consumer and Industry Services, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.107 *PAYROLL AND BASIC RECORDS*

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Contractor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator

The Contractor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Contractor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

2.108 *COMPETITION IN SUB-CONTRACTING*

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

2.109 *CALL CENTER DISCLOSURE*

Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this agreement.

2.2 Contract Performance

2.201 *TIME IS OF THE ESSENCE*

Contractor/Vendor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

2.202 *CONTRACT PAYMENT SCHEDULE*

All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Acquisition Services, Department of Management & Budget. This activity will occur only upon the specific written direction from Acquisition Services.

Payment shall be processed upon:

1. **20% upon completion of planning and setup.**
2. **30% upon completion of audit field work.**
3. **20% upon issuance of the draft Audit Report and Summary, which is satisfactorily free of errors and correct and after meetings to review audit results with Contract Administrator.**
4. **30% final payment upon issuance and acceptance of final Audit Report and Summary, which is satisfactorily free of errors and correct.**

2.203 *POSSIBLE PROGRESS PAYMENTS Reserved*

2.204 *POSSIBLE PERFORMANCE-BASED PAYMENTS Reserved*

2.205 *ELECTRONIC PAYMENT AVAILABILITY*

Electronic transfer of funds is available to State contractors. Vendors are encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at www.cpexpress.state.mi.us.

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

2.302 CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Acquisition Services.

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Acquisition Services has given written consent to the delegation.

Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in the bid.

2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all

related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the 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.

Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.306 *LIMITATION OF LIABILITY*

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

2.307 *CONTRACT DISTRIBUTION*

Acquisition Services shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Acquisition Services.

2.308 *FORM, FUNCTION, AND UTILITY*

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

2.309 *ASSIGNMENT OF ANTITRUST CAUSE OF ACTION*

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

2.310 *RESERVED*

2.311 *TRANSITION ASSISTANCE*

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to **one (1) year** after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

2.312 *WORK PRODUCT*

Work Products shall be considered works made by the Contractor for hire by the State and shall belong exclusively to the State and its designees, unless specifically provided otherwise by mutual agreement of the Contractor and the State. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by the State automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to the State and its designees the ownership of such Work Product, including all related intellectual property rights. The Contractor agrees to provide, at no additional charge, any assistance and to execute any action reasonably required for the State to perfect its intellectual property rights with respect to the aforementioned Work Product.

Notwithstanding any provision of this Contract to the contrary, any preexisting work or materials including, but not limited to, any routines, libraries, tools, methodologies, processes or technologies (collectively, the "Development Tools") created, adapted or used by the Contractor in its business generally, including any and all associated intellectual property rights, shall be and remain the sole property of the Contractor, and the State shall have no interest in or claim to such preexisting work, materials or Development Tools, except

as necessary to exercise its rights in the Work Product. Such rights belonging to the State shall include, but not be limited to, the right to use, execute, reproduce, display, perform and distribute copies of and prepare derivative works based upon the Work Product, and the right to authorize others to do any of the foregoing, irrespective of the existence therein of preexisting work, materials and Development Tools, except as specifically limited herein.

The Contractor and its subcontractors shall be free to use and employ their general skills, knowledge and expertise, and to use, disclose, and employ any generalized ideas, concepts, knowledge, methods, techniques or skills gained or learned during the course of performing the services under this Contract, so long as the Contractor or its subcontractors acquire and apply such information without disclosure of any confidential or proprietary information of the State, and without any unauthorized use or disclosure of any Work Product resulting from this Contract.

2.313 PROPRIETARY RIGHTS Reserved

2.314 WEBSITE INCORPORATION

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

Upon receipt at Acquisition Services of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Acquisition Services.** The Contract Compliance Inspector for this project is:

**Lynne M. Boyd, Manager
Mineral and Land Management Section
Forest, Mineral and Fire Management
Department of Natural Resources
P.O. Box 30452
Lansing, MI 48909-7952
boydlm@michigan.gov**

2.402 PERFORMANCE REVIEWS

Acquisition Services in conjunction with the **Department of Natural Resources** may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Acquisition Services, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Acquisition Services, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

The Contractor shall maintain audit work papers for a period of five (5) years. State may request documentation supplied from these work papers during this time period.

2.5 Quality and Warranties

2.501 *PROHIBITED PRODUCTS Reserved*

2.502 *RESERVED*

2.503 *RESERVED*

2.504 *GENERAL WARRANTIES (goods)*

2.505 *CONTRACTOR WARRANTIES*

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will perform all services in accordance with high professional standards in the industry;
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.

11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
13. The Contractor is qualified and registered to transact business in all locations where required.
14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

2.506 STAFF

The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.

The Contractor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

2.507 SOFTWARE WARRANTIES Reserved

2.508 EQUIPMENT WARRANTY Reserved

2.509 PHYSICAL MEDIA WARRANTY Reserved

2.6 Breach of Contract

2.601 BREACH DEFINED

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.

2.602 *NOTICE AND THE RIGHT TO CURE*

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

2.603 *EXCUSABLE FAILURE*

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.7 Remedies

2.701 *CANCELLATION*

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not

cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

Termination Assistance. If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

A. Rights and Obligations Upon Termination

- (1) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (2) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for partially completed Deliverables, on a percentage of completion basis. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (3.) If any such termination by the State is for cause, the State shall have the right to set-off against any amounts due Contractor the amount of any damages for which Contractor is liable to the State under this Contract or pursuant to law or equity.
- (4.) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under this Contract, and may further pursue completion of the Services under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

B. Termination Assistance

If the Contract (or any Statement of Work issued under it) is terminated for any reason before completion, Contractor agrees to provide for up to two-hundred seventy (270) calendar days after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the

terms and conditions of the Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. The State shall compensate Contractor for such termination assistance at the same rates and charges set forth in the Contract on a time and materials basis in accordance with the Labor Rates indicated within Contractors pricing section. If the Contract is terminated by Contractor under **Section 20**, then Contractor may condition its provision of termination assistance under this Section on reasonable assurances of payment by the State for such assistance, and any other amounts owed under the Contract.

C. Reservation of Rights

Any termination of the Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

D. End of Contract Transition

In the event the Contract is terminated, for convenience or cause, or upon expiration, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of the Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 270 calendar days. These efforts shall include, but are not limited to, the following:

- (1) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors.
- (2) Knowledgeable Personnel. Contractor will make available to the State or a Third Party Provider knowledgeable personnel familiar with the operational processes and procedures used to deliver products and services to the State. The Contractor personnel will work with the State or third party to help develop a mutually agreeable transition plan, work to transition the process of ordering, shipping and invoicing equipment and services to the State.
- (3) Information - The Contractor agrees to provide reasonable detailed specifications for all Services needed by the State, or specified third party, to properly provide the services required under the Contract. The Contractor will also provide any licenses required to perform the Services under the Contract.
- (4) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services under the Contract. This shall include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level.
- (5) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations). The hourly rates or fixed price to be charged will be agreed upon prior to the work commencing.
- (6) Single Point of Contact. Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.

E. Transition out of this Contract

- (1) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the Contractor agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
- (i) Cooperating with any contractors, vendors, or other entities with whom the State contracts to meet its telecommunication needs, for at least two hundred and seventy (270) days after the termination of this Contract;
 - (ii) Reserved.
 - (iii) Providing the State with all asset management data generated from the inception of this Contract through the date on which this Contract is terminated, in a comma-delimited format unless otherwise required by the Program Office;
 - (iv) Reconciling all accounts between the State and the Contractor;
 - (v) Allowing the State to request the winding up of any pending or ongoing projects at the price to which the State and the Contractor agreed at the inception of the project;
 - (vi) Freezing all non-critical software changes;
 - (vii) Notifying all of the Contractor's subcontractors of procedures to be followed during the transition out phase;
 - (viii) Assisting with the communications network turnover, if applicable;
 - (ix) Assisting in the execution of a parallel operation until the effective date of termination of this Contract
 - (x) Answering questions regarding post-migration services;
 - (xi) Delivering to the State any remaining owed reports and documentation still in the Contractor's possession.
- (2) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
- (i) Reconciling all accounts between the State and the Contractor;
 - (ii) Completing any pending post-project reviews.

2.703

LIQUIDATED DAMAGES

- A. The State and the Contractor hereby agree to the specific standards set forth in this Contract. It is agreed between the Contractor and the State that the actual damages to the State as a result of Contractor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State and the Contractor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State as a result thereof. Accordingly, in the event of such damages, at the written direction of the State, the Contractor shall pay the State the indicated amount as liquidated damages, and not as a penalty. Amounts due the State as liquidated damages, if not paid by the Contractor within fifteen (15) days of notification of assessment, may be deducted by the State from any money payable to the Contractor pursuant to this Contract. The State will notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the State deducts such sums from money payable to the Contractor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.
- B. The Contractor shall not be liable for liquidated damages when, in the opinion of the State, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor.
- C. Liquidated damages will be assessed as follows: **Cost of audit and/or any payment for services already made by the DNR.**

1. The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:
 - a) Cancel the stop work order; or
 - b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.

2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to the performance of any part of this Contract; and
 - b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.

4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

2.802 TIME EXTENTIONS

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

2.803 MODIFICATION

Acquisition Services reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. The item(s) may be included on the Contract, only if prior written approval has been granted by Acquisition Services.

2.804 AUDIT AND RECORDS UPON MODIFICATION

DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Acquisition Services. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.

- (a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
 - (1) The date, circumstances, and source of the order; and
 - (2) That the Contractor regards the order as a change order.

- (b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

Article 3 – Certifications and Representations

Information in DMB File

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 ACQUISITION SERVICES
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

August 7, 2003

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B0000737
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Martindale Consultants, Inc. Attn: W. Patrick Martindale, President 9500 Westgate Road, Suite 150 Oklahoma City, OK 73162-6250 p.martindale@marticons.com		TELEPHONE Pat Martindale (405) 728-3003
		VENDOR NUMBER/MAIL CODE
		BUYER (517) 373-6535 Bill Walsh
Contract Administrator: Lynne Boyd Natural Gas Producers Post Production Audits – Dept. of Natural Resources		
CONTRACT PERIOD: From: July 6, 2000 To: September 30, 2004		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE:

This Contract is hereby EXTENDED to September 30, 2004 and INCREASED \$175,000.00

AUTHORITY/REASON:

Agency e-mail request dated 6/16/03, vendor agreement and AdBoard approval 8/5/03.

INCREASE: \$175,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$700,000.00

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 OFFICE OF PURCHASING
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

August 5, 2008

**NOTICE
 OF
 CONTRACT NO. 071B0000737
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Martindale Consultants, Inc. Attn: W. Patrick Martindale, President 9500 Westgate Road, Suite 150 Oklahoma City, OK 73162-6250	TELEPHONE Pat Martindale (405) 728-3003 VENDOR NUMBER/MAIL CODE BUYER (517) 241-1646 Greg Faremouth
Contract Administrator: Lynne Boyd Natural Gas Producers Post Production Audits – Dept. of Natural Resources	
CONTRACT PERIOD: From: July 6, 2000 To: September 30, 2003	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

The terms and conditions of this Contract are those of ITB #07110000419, this Contract Agreement and the vendor's quote dated 8/30/99. 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.

Est. Contract Value: \$525,000.00

OFFICE OF PURCHASING
STATE OF MICHIGAN

Contract No. 071B0000737

TABLE OF CONTENTS

SECTION I – CONTRACTUAL SERVICES TERMS AND CONDITIONS

I-A	<u>PURPOSE</u>	1
I-B	<u>TERM OF CONTRACT</u>	1
I-C	<u>ISSUING OFFICE</u>	1
I-D	<u>CONTRACT ADMINISTRATOR</u>	2
I-E	<u>COST LIABILITY</u>	2
I-F	<u>CONTRACTOR RESPONSIBILITIES</u>	2
I-G	<u>NEWS RELEASES</u>	2
I-H	<u>DISCLOSURE</u>	3
I-I	<u>ACCOUNTING RECORDS</u>	3
I-J	<u>INDEMNIFICATION</u>	3
I-K	<u>LIMITATION OF LIABILITY</u>	4
I-L	<u>NON INFRINGEMENT/COMPLIANCE WITH LAWS</u>	4
I-M	<u>WARRANTIES AND REPRESENTATIONS</u>	4
I-N	<u>TIME IS OF THE ESSENCE</u>	4
I-O	<u>WORK PRODUCT AND OWNERSHIP</u>	4
I-P	<u>CONFIDENTIALITY OF DATA AND INFORMATION</u>	5
I-Q	<u>REMEDIES FOR BREACH OF CONFIDENTIALITY</u>	5
I-R	<u>CONTRACTOR'S LIABILITY INSURANCE</u>	6
I-S	<u>NOTICE AND RIGHT TO CURE</u>	6
I-T	<u>CANCELLATION</u>	7
I-U	<u>RIGHTS AND OBLIGATIONS UPON CANCELLATION</u>	8
I-V	<u>EXCUSABLE FAILURE</u>	9
I-W	<u>ASSIGNMENT</u>	9
I-X	<u>DELEGATION</u>	9

I-Y	<u>NON-DISCRIMINATION CLAUSE</u>	10
I-Z	<u>MODIFICATION OF SERVICE</u>	10
I-AA	<u>ACCEPTANCE OF PROPOSAL CONTENT</u>	10
I-BB	<u>REVISIONS, CONSENTS, AND APPROVALS</u>	10
I-CC	<u>ENTIRE AGREEMENT</u>	10
I-DD	<u>NO WAIVER OF DEFAULT</u>	10
I-EE	<u>SEVERABILITY</u>	10
I-FF	<u>HEADINGS</u>	11
I-GG	<u>RELATIONSHIP OF THE PARTIES</u>	11
I-HH	<u>NOTICES</u>	11
I-II	<u>UNFAIR LABOR PRACTICES</u>	11
I-JJ	<u>SURVIVOR</u>	11
I-KK	<u>GOVERNING LAW</u>	11
I-LL	<u>YEAR 2000 SOFTWARE COMPLIANCE</u>	12
I-NN	<u>DISCLOSURE OF LITIGATION</u>	12
I-OO	<u>STOP WORK</u>	13

SECTION II

WORK STATEMENT

II-A	<u>BACKGROUND/PROBLEM STATEMENT</u>	14
II-B	<u>OBJECTIVES</u>	14
II-C	<u>TASKS</u>	15
II-D	<u>PROJECT CONTROL AND REPORTS</u>	16
II-E	<u>PRICE PROPOSAL</u>	17
II-E	<u>CONTRACT INVOICING AND PAYMENT</u>	18

APPENDICES

A	CONTRACTOR'S PROPOSAL
---	------------------------------

DEFINITION OF TERMS

TERMS	DEFINITIONS
Contract	A binding agreement entered into by the State of Michigan resulting from a bidder's proposal; see also "Blanket Purchase Order."
Contractor	The successful bidder who is awarded a Contract.
DMB	Michigan Department of Management and Budget
RFP	Request For Proposal - A term used by the State to solicit proposals for services such as consulting. Typically used when the requesting agency requires vendor assistance in identifying an acceptable manner of solving a problem.
ITB	Invitation to Bid - A generic form used by the Office of Purchasing to solicit quotations for services or commodities. The ITB serves as the document for transmitting the RFP to interested potential bidders.
Successful Bidder	The bidder(s) awarded a Contract as a result of a solicitation.
State	The State of Michigan For Purposes of Indemnification as set forth in section I-J, State means the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents.
Blanket Purchase Order	Alternate term for "Contract" used in the State's Computer system (Michigan Automated Information Network [MAIN])
Expiration	Except where specifically provided for in the Contract, the ending and termination of the contractual duties and obligations of the parties to the Contract pursuant to a mutually agreed upon date.
Cancellation	Ending all rights and obligations of the State and Contractor, except for any rights and obligations that are due and owing.

DEFINITION OF TERMS (con't.)

TERMS	DEFINITIONS
POST PRODUCTION COSTS (PPC)	The costs incurred by the Lessee after the wellhead to process, compress, and transport gas.
UNITIZATION AGREEMENT	An agreement to consolidate acreage into a Unitized area for the allocation of production on a basis as defined within the Agreement or Ratification as approved by the Lessor.
OPERATOR	The company that is recognized for operating and maintaining the wells or Unitized Areas.

**SECTION I
CONTRACTUAL SERVICES TERMS AND CONDITIONS**

I-A PURPOSE

The purpose of this contract is two-fold:

- 1) to obtain the gas and oil audit for units operated by J-5 Inc. (see Appendix A1 & A2) and;
- 2) establish a list of pre-qualified gas and oil industry auditors for future audits (July 2000 through 2003).

It is the intent of the State of Michigan to pre-qualify those firms that have experience in auditing oil and gas leases described in Section II, and for the State and vendors to agree on the terms and conditions contained herein.

For years 2000 through 2003 only vendors who are pre-qualified will be given an Invitation To Bid (ITB) as they are released through the State, and responses will be due within a short period of time, usually one to two weeks. The goal is to allow the State to rapidly acquire auditing services as the need arises.

NOTE: The State is estimating between five (5) to ten (10) gas and oil audits per year

Contract awarded from this solicitation will be the following type:

- Lump sum/fixed price Contract (plus hourly for testimony if needed)

I-B TERM OF CONTRACT

The State of Michigan is not liable for any cost incurred by contractor prior to signing of a Contract by all parties. The activities in the proposed Contract, J-5 Inc. (Appendix A1 and A2), cover one (1) year with an additional four (4) years for testimony work outside of audit scope (Section IV-F). The pre-qualified process for providing gas and oil audits will be valid through September 30, 2003. In addition vendors should note that each ITB issued only to the pre-qualified vendor list will identify the term of that particular engagement.

I-C ISSUING OFFICE

This contract is issued by the State of Michigan, Department of Management and Budget (DMB), Office of Purchasing, hereafter known as the Office of Purchasing, for the State of Michigan, Department of Natural Resources. Where actions are a combination of those of the Office of Purchasing and (DNR) the authority will be known as the State.

The Office of Purchasing is the sole point of contact in the State with regard to all procurement and contractual matters relating to the services described herein. The Office of Purchasing is the only office authorized to change, modify, amend, alter, clarify, etc., the prices, specifications, terms, and conditions of this Request For Proposal and any Contract(s) awarded as a result of this Request. The OFFICE OF PURCHASING will remain the SOLE POINT OF CONTACT throughout the procurement process, until such time as the Director of Purchasing shall direct otherwise in writing. See Paragraph II-C below. All communications concerning this procurement must be addressed to:

Greg Faremouth, Buyer
Professional & Management Services Division
DMB, Office of Purchasing
2nd Floor, Mason Building
P.O. Box 30026
Lansing, MI 48909
Ph: (517) 241-1646
FAX: (517) 335-0046
e-mail: FaremouthG@state.mi.us

I-D CONTRACT ADMINISTRATOR

Upon receipt at the Office of Purchasing of the properly executed Contract Agreement, it is anticipated that the Director of Purchasing will direct that the person named below or any other person so designated be authorized to administer the Contract on a day-to-day basis during the term of the Contract. However, administration of this Contract implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, and specifications of such Contract. That authority is retained by the Office of Purchasing. The Contract Administrator for this project is:

Lynne Boyd, Manager
Minerals Lease Management Section
Department of Natural Resources
Land and Mineral Division, 5th floor
Stevens T. Mason Building
530 W. Allegan St.
Lansing Michigan 48933
Ph: (517) 373-7666

I-E COST LIABILITY

The State of Michigan assumes no responsibility or liability for costs incurred by the Contractor prior to the signing of this Contract. Total liability of the State is limited to the terms and conditions of this Contract.

I-F CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities offered in this proposal whether or not that Contractor performs them. Further, the State will consider the Prime Contractor to be the sole point of contact with regard to contractual matters, including but not limited to payment of any and all costs resulting from the anticipated Contract. If any part of the work is to be subcontracted, responses to this RFP should include a list of subcontractors, including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractor's organizational abilities. The State reserves the right to approve subcontractors for this project and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract.

I-G NEWS RELEASES

News releases pertaining to this document or the services, study, data, or project to which it relates will not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the program are to be released without prior approval of the State and then only to persons designated.

I-H DISCLOSURE

All information in this Contract is subject to the provisions of the Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, *et seq.*

I-I ACCOUNTING RECORDS

The Contractor will be required to maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Department of Auditor General at any time during the Contract period and any extension thereof, and for three (3) years from the expiration date and final payment on the Contract or extension thereof.

I-J INDEMNIFICATION**1. General Indemnification**

The Contractor shall indemnify, defend and hold harmless the State from and against all lawsuits, liabilities, damages and claims or any other proceeding brought against the State by any third party (which for the purposes of this provision shall include, but not be limited to, employees of the State, the Contractor and any of its subcontractors), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

- (a) any breach of this Contract or negligence or intentional tortious act by the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable, in the performance of this Contract;
- (b) the death or bodily injury of any person or the damage, loss or destruction of any real or personal property in connection with the performance of this Contract by the Contractor, or any of its subcontractors, or by anyone else for whose acts any of them may be liable provided, and to the extent that the injury or damage was caused by the fault or negligence of the Contractor.
- (c) any act or omission of the Contractor or any of its subcontractors in their capacity as an employer in the performance of this Contract;
- (d) any claim, demand, action or legal proceeding against the State arising out of or related to occurrences, if any, that the Contractor is required to insure against as provided in this Contract.

2. Indemnification Obligation Not Limited

In any and all claims against the State by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or any other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in subclauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other subclause.

3. Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

I-K LIMITATION OF LIABILITY

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages, and either party's maximum aggregate liability shall be limited to the maximum amount of the executed Contract. Such limitation as to in direct or consequential damages, and as to a party's maximum liability shall not be applicable for claims arising out of gross negligence, willful misconduct, or the Contractor's indemnification responsibilities to the State as set forth in Section I-J with respect to third party claims, actions and proceeding brought against the State.

I-L NON INFRINGEMENT/COMPLIANCE WITH LAWS

The Contractor warrants that in performing the services called for by this Contract it will not violate any applicable law, rule, or regulation, any contracts with third parties, or any intellectual rights of any third party, including but not limited to, any United States patent, trademark, copyright, or trade secret.

I-M WARRANTIES AND REPRESENTATIONS

1. The Contractor warrants that all services required to be provided under this Contract shall be furnished in a professional and manner, as prescribed by general accepted auditing standards by the Contractor, its subcontractors and its or their employees, having the skill commensurate with the requirements of this Contract.
2. The Contractor warrants that it or its subcontractor is the lawful owner or licensee of any software programs or other material used by the either in the performance of services called for in this Contract, and has all the rights necessary to convey to the State the unencumbered ownership or licensed use of any and all materials or deliverables required to be provided by the terms of this Contract.

I-N TIME IS OF THE ESSENCE

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract.

I-O WORK PRODUCT AND OWNERSHIP

1. Work Products shall be considered works made by the Contractor for hire by the State and shall belong exclusively to the State and its designees, unless specifically provided otherwise by mutual agreement of the Contractor and the State. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by the State automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to the State and its designees the ownership of such Work Product, including all related intellectual property rights. The Contractor agrees to provide, at no additional charge, any assistance and to execute any action reasonably required for the State to perfect its intellectual property rights with respect to the aforementioned Work Product.
2. Notwithstanding any provision of this Contract to the contrary, any preexisting work or materials including, but not limited to, any routines, libraries, tools, methodologies,

processes or technologies (collectively, the "Development Tools") created, adapted or used by the Contractor in its business generally, including any all associated intellectual property rights, shall be and remain the sole property of the Contractor, and the State shall have no interest in or claim to such preexisting work, materials or Development Tools, except as necessary to exercise its rights in the Work Product. Such rights belonging to the State shall include, but not be limited to, the right to use, execute, reproduce, display, perform and distribute copies of and prepare derivative works based upon the Work Product, and the right to authorize others to do any

of the foregoing, irrespective of the existence therein of preexisting work, materials and Development Tools, except as specifically limited herein.

3. The Contractor and its subcontractors shall be free to use and employ their general skills, knowledge and expertise, and to use, disclose, and employ any generalized ideas, concepts, knowledge, methods, techniques or skills gained or learned during the course of performing the services under this Contract, so long as the Contractor or its subcontractors acquire and apply such information without disclosure of any confidential or proprietary information of the State, and without any unauthorized use or disclosure of any Work Product resulting from this Contract.

I-P CONFIDENTIALITY OF DATA AND INFORMATION

1. All financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this section.
2. The Contractor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Contractor without restriction, (3) information independently developed or acquired by the Contractor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Contractor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

I-Q REMEDIES FOR BREACH OF CONFIDENTIALITY

The Contractor acknowledges that a breach of its confidentiality obligations as set forth in section I-Q of this Contract, shall be considered a material breach of the Contract. Furthermore the Contractor acknowledges that in the event of such a breach the State shall be irreparably harmed. Accordingly, if a court should find that the Contractor has breached or attempted to breach any such obligations, the Contractor will not oppose the entry of an appropriate order restraining it from any further breaches or attempted or threatened breaches. This remedy shall be in addition to and not in limitation of any other remedy or damages provided by law.

I-R CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall purchase and maintain such insurance as will protect him/her from claims set forth below which may arise out of or result from the Contractor's operations under the Contract (Purchase Order), whether such operations be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' disability compensation, disability benefit and other similar employee benefit act. A non-resident Contractor shall have insurance for benefits payable under Michigan's Workers' Disability Compensation Law for any employee resident of and hired in Michigan; and as respects any other employee protected by workers' disability compensation laws of any other State the Contractor shall have insurance or participate in a mandatory State fund to cover the benefits payable to any such employee.
- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of his/her employees.
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than his/her employees, subject to limits of liability of not less than \$300,000.00 each occurrence and, when applicable \$300,000.00 annual aggregate, for non-automobile hazards and as required by law for automobile hazards.
- (4) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, subject to a limit of liability of not less than \$50,000.00 each occurrence for non-automobile hazards and as required by law for automobile hazards.
- (5) Insurance for Subparagraphs (3) and (4) non-automobile hazards on a combined single limit of liability basis shall not be less than \$300,000.00 each occurrence and when applicable, \$300,000.00 annual aggregate.
- (6) Claims for damages because of Errors and Omissions in the performance of duties inherent to the profession of Gas and Oil industry auditing, subject to a limit of liability of not less than \$100,000.00 each occurrence and, when applicable, \$500,000.00 annual aggregate. For this coverage, the State requires that it be named as a co-insured party.

The insurance shall be written for not less than any limits of liability herein specified or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under the Indemnification clause of the Contract (Purchase Order).

BEFORE STARTING WORK THE CONTRACTOR'S INSURANCE AGENCY MUST FURNISH TO THE DIRECTOR OF THE OFFICE OF PURCHASING, ORIGINAL CERTIFICATE(S) OF INSURANCE VERIFYING LIABILITY COVERAGE. THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. These Certificates shall contain a provision that coverage's afforded under the policies will not be canceled until at least fifteen days prior written notice bearing the Contract Number or Purchase Order Number has been given to the Director of Purchasing.

I-S NOTICE AND RIGHT TO CURE

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

I-T CANCELLATION

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess reprocurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
5. Approval(s) Rescinded. In the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 4-6. Cancellation may be in whole or in part and may be immediate as of the date of the written notice to the Contractor or may be effective as of the date stated in such written notice.

I-U RIGHTS AND OBLIGATIONS UPON CANCELLATION

1. If the Contract is canceled by the State for any reason, the Contractor shall,(a) stop all work as specified in the notice of cancellation, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Work Product or other property derived or resulting from the Contract that may be in the Contractor's possession, (c) return all materials and property provided directly or indirectly to the Contractor by any entity, agent or employee of the State, (d) transfer title and deliver to the State, unless otherwise directed by the Contract Administrator or his or her designee, all Work Product resulting from the Contract, and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or cancellation settlement costs, to the maximum practical extent, including, but not limited to, canceling or limiting as otherwise applicable, those subcontracts, and outstanding orders for material and supplies resulting from the canceled Contract.
2. In the event the State cancels this Contract prior to its expiration for its own convenience, the State shall pay the Contractor for all charges due for services provided prior to the date of cancellation and if applicable as a separate item of payment pursuant to the Contract, for partially completed Work Product, on a percentage of completion basis. In the event of a cancellation for cause, or any other reason under the Contract, the State will pay, if applicable, as a separate item of payment pursuant to the Contract, for all partially completed Work Products, to the extent that the State requires the Contractor to submit to the State any such deliverables, and for all charges due under the Contract for any cancelled services provided by the Contractor prior to the cancellation date. All completed or partially completed Work Product prepared by the Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and the Contractor shall be entitled to receive just and fair compensation for such Work Product. Regardless of the basis for the cancellation, the State shall not be obligated to pay, or otherwise compensate, the Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
3. If any such cancellation by the State is for cause, the State shall have the right to set-off against any amounts due the Contractor, the amount of any damages for which the Contractor is liable to the State under this Contract or pursuant to law and equity.
4. Upon a good faith cancellation, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under this Contract, and may further pursue completion of the Work Product under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

I-V EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable thereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

I-W ASSIGNMENT

The Contractor shall not have the right to assign this Contract or to assign or delegate any of its duties or obligations under this Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the State Purchasing Director.

I-X DELEGATION

The Contractor shall not delegate any duties or obligations under this Contract to a subcontractor other than a subcontractor named in the bid unless the State Purchasing Director has given written consent to the delegation.

I-Y NON-DISCRIMINATION CLAUSE

In the performance of any Contract or purchase order resulting herefrom, the bidder agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. The bidder further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting herefrom will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2101, *et seq*, and the Persons with Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, *et seq*, and any breach thereof may be regarded as a material breach of the Contract or purchase order.

I-Z MODIFICATION OF SERVICE

The Director of Purchasing reserves the right to modify this service during the course of this Contract. Such modification may include adding or deleting tasks which this service shall encompass and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the requested changes are subject to acceptance by the state. Changes may be increases or decreases.

IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATIONS.

I-AA ACCEPTANCE OF PROPOSAL CONTENT

The contents of this document and the vendor's proposal will become contractual obligations, if a Contract ensues. Failure of the successful bidder to accept these obligations may result in cancellation of the award.

I-BB REVISIONS, CONSENTS, AND APPROVALS

Any Contract resulting from this RFP may not be revised, modified, amended, extended, or augmented, except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

I-CC ENTIRE AGREEMENT

The Contract resulting from this RFP shall represent the entire agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

I-DD NO WAIVER OF DEFAULT

The failure of a party to insist upon strict adherence to any term of a Contract resulting from this RFP shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

I-EE SEVERABILITY

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

I-FF HEADINGS

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

I-GG RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

I-HH NOTICES

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

For the Contractor:

For the State:

Either party may change its address where notices are to be sent giving written notice in accordance with this section.

I-II UNFAIR LABOR PRACTICES

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board.

A Contractor of the State, in relation to the Contract, shall not enter into a Contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.

I-JJ SURVIVOR

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of this Contract for any reason.

I-KK GOVERNING LAW

This Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

I-LL YEAR 2000 SOFTWARE COMPLIANCE

The Contractor warrants that services provided under this Contract including but not limited to the production of all Work Products, shall be provided in an accurate and timely manner without interruption, failure or error due the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. The Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom.

I-MM CONTRACT DISTRIBUTION

The Office of Purchasing shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by the Office of Purchasing.

I-NN DISCLOSURE OF LITIGATION

1. The Contractor shall notify the State in its bid proposal, if it, any of its subcontractors, or their officers, directors, or key personnel under this Contract, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not or limited to fraud, misappropriation or deception. Contractor shall promptly notify the State of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract and three years thereafter.
2. The Contractor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments that may have arisen against it or its subcontractors during the five years proceeding its bid proposal, or which may occur during the term of this Contract or three years thereafter, which involve (1) products or services similar to those provided to the State under this Contract and which either involve a claim in excess of **\$250,000** or which otherwise may affect the viability or financial stability of the Contractor , or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Contractor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or subcontractor, in any an amount less than **\$250,000** shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Contractor or subcontractor.
3. All notices under subsection 1 and 2 herein shall be provided in writing to the State within fifteen business days after the Contractor learns about any such criminal or civil investigations and within fifteen days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Semi-annually, during the term of the Contract, and thereafter for three years, Contractor shall certify that it is in compliance with this Section. Contractor may rely on similar good faith certifications of its subcontractors, which certifications shall be available for inspection at the option of the State.
4. Assurances - In the event that such investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:
 - a) the ability of the Contractor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
 - b) whether the Contractor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct

would constitute a breach of this Contract or violation of Michigan or Federal law, regulation or public policy, then the Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (a) the Contractor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, (b) the Contractor or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

5. The Contractor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.

I-00 STOP WORK

1. The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:
 - a) Cancel the stop work order; or
 - b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.
2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to the performance of any part of this Contract; and
 - b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.
5. An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.

SECTION II

WORK STATEMENT

II-A BACKGROUND/PROBLEM STATEMENT

The Department of Natural Resources (DNR) is the mineral leasing agent for the State of Michigan and is responsible for monitoring the payments of oil and gas related revenues from all the various State oil and gas leases. Typically, the State of Michigan is due a royalty equal to 1/6 (or the rate specified in the lease) of the value at the wellhead for all oil and/or gas produced from the lease premises. The DNR is responsible for verifying that the royalty was paid on the correct volume, price, and decimal interest, and that only allowable costs are deducted. The costs allowed vary depending on the product (oil, gas, or other), formation, purchase contract, or any written agreement that may have been in effect at that time. For example: on November 10, 1993 the DNR issued a Letter of Understanding between the DNR and the Michigan Oil and Gas Association that allowed the deduction of certain reasonable capital and operating costs. These costs, known as Post Production Costs (PPC), were allowed only for **Antrim** units that had leases which required royalties to be paid of the value at the wellhead **and** that had a gas purchase contract that contained a price established at a point downstream from the wellhead. The Letter of Understanding was rescinded on May 7, 1996. Unless a separate agreement was entered into for other formations, only costs specifically allowed in the lease could be deducted.

Copies of leases, unitized area agreements, division orders, remittances, and correspondence will be provided by DNR, as needed. The extent of the deductions are limited to the expenses allowed in the State's oil and gas leases, the Letter of Understanding dated November 10, 1993, the May 7, 1996 Rescission of the Letter of Understanding dated November 10, 1993 or any other pertinent documents. The sales prices are per sales contracts between the operators and the first true third party purchasers. Records to be examined are located at the operators' offices at various locations within the United States.

II-B OBJECTIVES

The DNR has the following audit objectives:

1. General:

- a. To assess the adequacy of Operators' internal control structure as it applies to Revenue and Cost Accounting, including applicable administrative controls related to the management of minerals operations.
- b. To assess the Operators' compliance with the terms of the State of Michigan DNR oil and gas leases and any other written agreement that pertains to the amount of Royalty paid due to the State of Michigan.
- c. To conduct an audit/examination of the Production/Sales Volumes, Sales Revenues and associated marketing contracts arrangements, Reimbursements Received, Costs Deducted and other information filed by the operator to determine if the royalty revenue paid and received by the State is correct and has been properly accounted for, to the DNR, in accordance with the State of Michigan's oil and gas lease(s) and other pertinent documents.

2. Specific:

The audit scope shall encompass verification of Production/Sales Volume, Sales Revenue and Reimbursements, costs deductions (if any), State Decimal Interest, timeliness of payments and that transactions between operators and related entities are proper and reasonable, by examining records of the operator that affect or relate to the calculations of royalties due the DNR. Antrim formation audits conducted shall also verify that all costs deducted including capital, operating and third party costs were in accordance with the November 10, 1993 Letter of

Understanding or other agreement in effect during the audit period. The audit shall be conducted in accordance with generally accepted auditing standards and, accordingly, include such tests of the records and such other auditing procedures as are considered necessary in the circumstances.

- a. A draft audit report for each audited unitized area/well containing:
 - A schedule that shows the PPC schedules as originally filed, with an additional column for audit adjustments and then a column for the audited PPC allowed, if required.
 - A schedule showing comparison of the audited (allowed) PPC to the actual amount withheld on the operators monthly remittances, to determine over/under variance, if required.
 - A verified schedule of annual Gross Sales Volumes, Gross Price per Unit and Sales Measurement Basis (MCF/MMBTU/BBL/other), State's Decimal Interest, net PPC amount charged against the State of Michigan's royalty and net royalty revenue for the audit period.
 - Schedules, analysis and narrative comments detailing all audit adjustments or recommendations.
 - A Schedule of Affiliated Companies including:
 - 4) A narrative regarding the extent of affiliation.
 - 5) The nature of the business conducted by the affiliates with their units/wells.
 - 6) The nature of the business conducted by affiliates with companies not affiliated with the operator.
- b. A draft summary report of all unitized areas/wells for each operator shall be issued for the required period that includes but is not limited to the following:
 - A written certification and/or attestation to the accuracy and appropriateness of the audited/adjusted revenues and deductions.
 - A written certification and/or attestation to the accuracy and appropriateness of Production/Sales Volumes, Sales Prices, State Decimal Interest, and net amount of royalties received by the State of Michigan.
 - Audited/adjusted schedules summarizing revenues and deductions for all units or wells, to reflect adjustments resulting from the examinations for all years of the audit period.
- c. Final audit reports are to be issued after the DNR approves the draft reports above.

II-C TASKS

The following is a preliminary analysis of the major tasks involved for developing the end product of this project. The Contractor is not, however, constrained from supplementing this listing with additional steps, sub tasks or elements deemed necessary.

1. Verify Production/Sales Volumes, gross prices, and reimbursements which are the basis for royalty payments to production, sales, inventory records, and other pertinent records. For audits conducted under the November 10, 1993 letter, Compression reimbursements and any other reimbursements for years April 1, 1988 to March 31, 1993 and for the period April 1, 1993 through March 31, 1996 must be determined and applied as a reduction of unrecovered capital costs as of April 1, 1993.

2. Trace Sales prices to gas sales contracts to determine that prices reflect amounts obtainable through nonaffiliated third party transactions and that the sale price is reasonable.
3. Verify the PPC claimed to supporting documents, (i.e., invoices, statements, contracts, payroll records, and calculations) to determine eligible PPC.
4. Determine that all PPC costs deducted were in accordance with the appropriate DNR criteria such as the lease, the November 10, 1993 Letter of Understanding or other agreement.
5. Review all company records to determine the appropriateness of cost allocations used to allocation costs between production and post-production.
6. Determine alternative approaches for allocating costs when no specific agreement exists for allocating a specific cost or when company records are not sufficient to support their allocation. All allocations must reasonably reflect actual operation processes.
7. Calculate the amount of additional royalty due to the State of Michigan by calculating the difference between the amount of PPC claimed, the amount of PPC allowed after audit adjustments and the amount actually deducted from the State of Michigan royalty payments.

The contractor is responsible for the establishment and performance of the necessary audit procedures in conformance with the professional standards established by the American Institute of Certified Public Accountants (AICPA) and/or Council of Petroleum Accountants Society (COPAS).

II-D PROJECT CONTROL AND REPORTS

1. Project Control
 - a. The contractor will carry out this project under the direction and control of the DNR, Land and Mineral Services Division .
 - b. Although there will be continuous liaison with the contractor team and contract administrator, they will also meet either by telephone, email or in person at least biweekly during the field work phase with the contract administrator for the purpose of reviewing progress and providing necessary guidance to the contractor in solving problems which may arise. A staff person from DNR will be available to answer questions, provide DNR documents, and assist in interpretation deliberations. It is expected that the contractor will follow professional discretion in their scope determination and selection of verification analysis and procedures.
 - c. The contractor will provide biweekly summaries either by telephone, email or in person of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the contract administrator; and notification of any significant deviation from previously agreed-upon work plans.
 - d. Within five (5) working days of the audit engagement notification, the contractor is to notify the DNR, Land and Mineral Services Division if they are unable to perform the audit either in the required timeframe or due to a conflict of interest. If the contractor cannot perform the scheduled audit, the audit will be assigned to the second contractor. The contractor performing the audit must submit, within five (5) working days of notification, a work plan for final approval. This final implementation plan proposed by the bidder and accepted by the State for contract, must include the following:
 - i) The contractor's project organizational structure.
 - ii) The contractor's staffing table with names, title and experience of personnel assigned to the project. This must be in agreement with staffing included in the accepted

proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.

- iii) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
- iv) An estimated number of hours and cost to complete the audit.
- v) Minimum of two (2) meetings to discuss the audit draft report and the final report.
- vi) A timetable that gives completion dates for each phase of the audit, i.e., preliminary, fieldwork, write-up, draft report, revisions and final report.
- vii) Completion of the project must be completed within nine months of the date the audit assignment is accepted.

- e. The audit working papers and supporting source documents which support the various audit report conclusions and exceptions will be made available by the contract auditor to DNR representatives if requested by the State. The contract auditor will keep the audit working papers and the supporting source documents for at least five (5) years from the Final Report date. These records will be made available upon request by the DNR, during that time period.

2. Reports: Summary of Deliverables

The contractor shall prepare and submit a written preliminary draft of their findings within forty-five (45) days after completion of the field work. Three (3) copies of the draft to be provided to DNR for review and two (2) subsequently corrected drafts, if needed.

The contractor shall discuss the preliminary corrected draft with designated representatives of DNR, the Department's Land and Mineral Services Division and the operator during a formal exit conference.

The contractor shall issue its final report after DNR approval of the draft report and within ninety (90) days of completion of the fieldwork. Five (5) copies of the final report shall be submitted to Ms. Lynne Boyd, Manager, Minerals Lease Management Section, Land and Mineral Services Division.

The audit (attestation) shall state that the examination was made in accordance with generally accepted auditing (attestation) standards for financial and compliance audits followed with agreed upon procedures.

The audit report shall include certification and/or attestation, and schedules as outlined in Section II-B Objectives (Specific).

The report shall include narrative to explain any noncompliance of the unit operators or lessees with the terms and conditions of all agreements pertaining to the units between the lessees and State of Michigan as royalty interest owner.

II-E PRICE PROPOSAL

This is a pre-qualification contract. Pricing will be established through the bidding process as each individual audit is released through the DNR. All rates quoted in bidder's response to a subsequent RFP will be firm for the duration of the Contract. No price changes will be permitted.

II-E CONTRACT INVOICING AND PAYMENT

All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing, Department of Management & Budget. This activity will occur only upon the specific written direction from the Office of Purchasing with periodic payments authorized upon satisfactory completion of various phases of the audit (20 percent upon completion of planning and setup; 30 percent upon completion of audit field work, 20 percent upon issuance of the draft audit report which is satisfactorily free of errors and correct and after meetings to review audit results with contract administrator, 30 percent final payment upon issuance and acceptance of final audit report which is satisfactorily free of errors.)

SECTION III

CONTRACTOR INFORMATION

III-A BUSINESS ORGANIZATION

PRIMARY CONTRACTOR

MARTINDALE CONSULTANTS, INC.
9500 WESTGATE RD, SUITE 150
OKLAHOMA CITY, OH 73162-6250

III-B AUTHORIZED CONTRACTOR EXPEDITER:

W. PATRICK MARTINDALE, PRESIDENT
PHONE: (405) 728-3003
FAX: (405) 728-3893
E-MAIL: MARTICON@IONET.NET

APPENDIX A
CONTRACTOR'S PROPOSAL

MARTINDALE CONSULTANTS, INC.
TECHNICAL PROPOSAL FOR STATE OF MICHIGAN BID NO. 071I0000429

BUSINESS ORGANIZATION

Martindale Consultants, Inc.
9500 Westgate Road, Suite 150
Oklahoma City, OK 73162-6250

Phone: 405-728-3003
Fax: 405-728-3893
Email marticon@ionet.net

Incorporated in the State of Oklahoma (IRS "C" Corporation)

Statement of the Problem

The State of Michigan is a royalty owner in various oil and gas leases operated by J-5 Inc. and other oil and gas producers and receives payments in that capacity. Payments remitted to the State are net payments comprised of:

- Gross royalty due
- Deductions for transportation
- Deductions for treating expenses
- Deductions for gas plant treating and other fees
- Post Production Cost Deductions (PPC)
- Severance tax

The remittance information sent with the remittances typically only identify gross royalty due, the PPC deduction, the severance tax deduction, and the net amount paid. The costs comprising the PPC deduction, transportation, treating, and other fees are not necessarily detailed on the remittance. Sales transactions comprising the gross royalty due are not always detailed on the remittance. In order to determine whether or not the net royalty paid to the State of Michigan is in compliance with the lease terms, all of those components of income and deduction must be identified and verified with supporting documentation. This can only be accomplished by an on-site review of accounting records, including determination of related companies for both expenditures and gas sales.

With regard to the PPC and other deductions, these are governed by the lease terms with the November 10, 1993, letter of understanding, the May 7, 1996, statement rescinding that letter, division orders, and/or correspondence providing additional insights into possible allowed deductions. These costs are estimated by the Operator and translated to a "per/MCF" amount then adjusted in subsequent years to reflect the actual PPC costs incurred, with the difference used as a component in the next year's "per/MCF" amount. Capital costs are amortized over a seven-year period, with only the current year's amortization and return on investment used as a component of PPC. Capital costs are to be reduced by any and all compression reimbursements received under gas sales contracts. These calculations, source documents, and reimbursements need to be scrutinized to determine whether they have been appropriately assimilated into the PPC deduction.

MARTINDALE CONSULTANTS, INC.
TECHNICAL PROPOSAL FOR STATE OF MICHIGAN BID NO. 07110000429

Management Summary

Proposed Effort:

The audit can best be conducted by obtaining transaction level detail for all costs comprising the PPC Calculations and revenue information upon which the royalty payments are based. If possible, this detail of costs would be obtained on a diskette from the Operator and revenue received by the State of Michigan would be obtained in an electronic format from the DNR Mineral Division, where appropriate. This should occur in advance of work to be performed in the Operator's office.

The data will be analyzed and reconciled to the Operators' schedules A,B,C, and D submitted to the DNR for the audit time period. Transactions will then be assimilated, reviewed and materiality and scope determined. Electronic workpapers will be prepared from the assimilated data to facilitate an efficient review on-site.

On-site in the Operator's office, documentation will be reviewed in such a manner and scope as to be able to conclude as to the validity and propriety of PPC costs, accuracy of computation, validity of revenue amounts claimed as received by the Operator, and adequacy of internal controls to provide appropriate results in these areas.

Reports will consist of a summary of expenditures and revenues reviewed, detail of items to which exception is taken, and summaries reflecting the revisions in the DNR schedules A, B, C, & D. The net effect to the State will be computed. Supporting details to the findings and conclusions will be sufficient for the Operators to appropriately respond to the requests for adjustment and for all parties to gain a full understanding of the questioned items.

Martindale Consultants, Inc. personnel, will conduct the effort in phases appropriate to the efficient and effective completion of the work.

Preliminary Work: Arrange with the Operators for time in their offices to conduct the review.

Obtain data and documents from the State of Michigan and Operators and assimilate to facilitate the review on site.

Send an advance request list of vouchers and documents to Operators to be available upon our arrival.

Field Work and Finalization

MARTINDALE CONSULTANTS, INC.
TECHNICAL PROPOSAL FOR STATE OF MICHIGAN BID NO. 07110000429

Meet with appropriate State of Michigan personnel regarding results of prepwork and conceptual issues.

Meet with Operators' personnel and establish working relationship protocol for conducting the audit.

Visit each unit site to verify existence of equipment, read gas meters, identify sales connections, interview field personnel.

Obtain, analyze and review supporting documentation in the Operators' offices regarding PPC deduction, revenue received and included (or not) as a basis for computing royalty, and other peripheral areas.

Technical Work Plan

Audit Objectives: To determine that:

1. gross sales upon which royalty is based reflect actual third party values for all production volume measured at the wellhead,
2. all pertinent reimbursements and other values included in gas sales contracts have been appropriately included in the royalty calculation or any PPC deduction,
3. marketing fees, contract buydowns, purchase contract costs, etc. are not inappropriately deducted from revenue,
4. royalties paid are based on decimal interest accurately reflecting the State's ownership interest in the property,
5. the components of the PPC deduction taken by the Operators are consistent with the terms of the lease and any other applicable documents, are properly identified and calculated, and are appropriately deducted in the proper time period, and
6. timeliness of payments complies with the lease terms and/or other governing documents

The objectives will be accomplished by the following procedures:

Preliminary Work:

1. Obtain unitized area agreements, division orders, remittances and remittance data in electronic form, correspondence, leases, and Schedules A,B,C, & D from the State of Michigan for the units and time periods covered by this RFP.
2. Obtain summaries of costs and other data supporting Schedules A,B,C, & D submitted to the State from Operators.
3. Obtain detail ledger listings from the Operators supporting the summaries in 2 above.
4. Assimilate this data into usable audit form, agreeing all data to the State schedules and remittance information.
5. Sort all detailed transaction data into appropriate audit areas, including
 - Third party costs by unit

MARTINDALE CONSULTANTS, INC.
TECHNICAL PROPOSAL FOR STATE OF MICHIGAN BID NO. 07110000429

- Operators' in-house costs by unit (labor, overhead, materials, etc.)
 - Capital costs by unit and by category (sales lines, gathering system, central facility, etc.)
 - Monthly remittance volumes, values and deductions
6. Send advance request for underlying data support to Operators.

Field Work:

1. Obtain monthly sales information identifying all purchasers of production from each unit.
2. Obtain Gas Contracts for all sales.
3. Research and identify all purchasers as either third party or related parties.
4. Compare royalty paid to actual gas sales.
5. Agree volume upon which royalty was paid to appropriate production records.
6. Identify all transportation, treating, and other fees deducted from royalty. Trace to supporting documentation (on a sample basis) to determine whether or not deductions are appropriate.
7. Identify all other reimbursements and/or payments under the gas sales contract and determine they have been appropriately accounted for in the royalty calculation.
8. Compute the State's decimal interest in each unit based on the lease agreements, division order title opinions, and other appropriate documents. Compare to the decimal upon which the royalty was calculated identifying and reconciling all differences.
9. Using an appropriate scope, agree PPC operating expenses included in the PPC calculation to source documents to determine their validity and propriety.
10. Agree PPC Capital costs upon which PPC is based to the source documents to verify their validity and propriety.
11. Analyze the capital cost calculations for amortization and return on investment to determine their appropriateness.

Timing of Tasks to be Performed:

Work Task	Description	Man-weeks
Preliminary Work	Auditor-review and reconcile data	2-3 weeks
Field Work	Revenue and third party deductions	2-3 weeks
	Capital costs review	2-3 weeks
	Operating Expense review	2-3 weeks
	Obtaining additional documentation, completing analysis	1-2 weeks
Follow-up Report	Summarizing scope, findings, and amounts due	1-2 weeks

Prior Experience

Martindale Consultants, Inc. has conducted similar audits for the State of Michigan on the following Operators:

MARTINDALE CONSULTANTS, INC.
TECHNICAL PROPOSAL FOR STATE OF MICHIGAN BID NO. 07110000429

Terra Energy, Ltd.
Shell Western Energy and Production Company
O.I.L. Energy, Inc.
Trendwell Oil Company
Antrim Development Corporation
Mercury Exploration Company
Delta Oil Company

In addition, 100% of work performed by Martindale Consultants, Inc. relates directly to oil and gas exploration and production expenditures or oil and gas revenues. Our firm has conducted audits of oil and gas companies since 1982 in various cities in the United States and Canada, Indonesia, Australia, England, Scotland, South America and Egypt. Martindale Consultants, Inc. is also a working interest owner in oil and gas properties in Texas and Oklahoma.

References:	Mike Pinneo	Audit Manager, Kerr McGee Corp.	405-270-2356
	Bob Gum	Spradling, Alpern, Friot & Gum	405-272-0211
	Steve Castle	President, Hanley Petroleum	915-684-8051
	Howard Blunk	Audit Manager, Chevron USA	713-754-2352

Project Staffing

Pat Martindale, Firm President

With oil and gas audit experience since 1976 with Kerr-McGee and Texas International Company, Pat currently sits on the COPAS Board of Directors (Council of Petroleum Accountants Societies) and serves as Secretary.

Will be involved in all aspects of planning, preliminary work, fieldwork, and report. Will directly oversee the revenue portion and generally oversee the expense portion.

The staff listed on the following pages will be assigned to the project and specific tasks based on their prior experience on State of Michigan jobs, task to be performed, overall industry experience, and availability at the time the bid is accepted and field work arrangements confirmed with Terra Energy.

MARTINDALE CONSULTANTS, INC.
TECHNICAL PROPOSAL FOR STATE OF MICHIGAN BID NO. 071I0000429

Mike Cougevan Lafayette Manager

Fifteen years oil and gas experience with Conoco and Martindale Consultants, Inc. Serves as Chairman of the Lafayette COPAS Audit Committee and former President of COPAS Acadiana. Mike has participated in State of Michigan royalty audits of O.I.L. Energy, Inc., Terra Energy Ltd, Antrim Development Corporation and Shell Oil Company.

Chris Clark Firm Audit Manager

Twelve years experience in the oil and gas industry, with concentrations in the area of revenue and gas plant audits, international audits, and unitized properties. A prior president of COPAS Oklahoma City, she currently serves on the COPAS revenue committee.

Roger Gann Senior Auditor

Over five years experience in oil and gas auditing. Roger has participated in the audit of Terra Energy, Ltd. for the State of Michigan and has performed working interest audits on Michigan properties. He is currently the Chairman of the COPAS Oklahoma City Audit Committee.

Wayne Bibles Senior Auditor

Over seventeen years experience in the oil and gas industry with Amerada Hess, Phillips Petroleum and Martindale Consultants, Inc. Wayne participated in the State of Michigan audits of O.I.L. Energy, Inc., Delta Oil, and Shell Oil Company.

Todd Attalla Senior Auditor

With four years of experience with Martindale Consultants, Inc., Todd participated in the State of Michigan audits of O.I.L. Energy, Inc., Terra Energy, Ltd, and supervised the second State Terra Energy audit, Mercury Exploration Company, and Trendwell Oil Company audits. In addition, Todd has conducted two other audits for other royalty and working interest owners on Michigan antrim properties. He is a member of the COPAS Oklahoma City Audit Committee.

Larry Jefferson Part time Consultant

Larry has in excess of 25 years experience in the oil and gas industry with ARCO Production Company and Vastar Resources. Larry has worked for Martindale Consultants, Inc. on a variety of audits, including the Trendwell Oil Company and Antrim Development Corporation audits for the State of Michigan.

MARTINDALE CONSULTANTS, INC.
TECHNICAL PROPOSAL FOR STATE OF MICHIGAN BID NO. 071I0000429

Laura Layton Staff Auditor

Laura has participated in a variety of well cost audits in the three years she has worked for Martindale Consultants, Inc. and worked on the Terra Energy Ltd. and Mercury Exploration Company audits.

Ryan Wagonner Staff Auditor

Ryan has participated in a variety of well cost audits during the two years he has work for Martindale Consultants, Inc. and worked on the Terra Energy Ltd. and Mercury Exploration Company audits.

Jim Taylor Houston Manager

Jim has over 25 years experience in public accounting and the oil and gas industry, working for a variety of companies. He was Audit Manager for Torch Energy prior to coming to work for Martindale Consultants, Inc.

Ken Looney Dallas Manager

Ken has 30 years of experience in the oil and gas industry with Atlantic Richfield and Fina, prior to coming to work for Martindale Consultants, Inc. in March 1999. Ken has been co-author of several COPAS documents over the years and is sought after for his opinion on controversial issues affecting the oil and gas industry.

Rick Woods President, AIJ Enterprises

Rick has over 15 years experience in the oil and gas industry, with a substantial portion of time in the auditing area. Rick works with Martindale Consultants, Inc. as a part time consultants on various audit projects. He has previously audited Michigan properties on behalf of royalty owners and participated in the Terra Energy Ltd. and Mercury Exploration Company audits.

Boyd Burnette Part Time Consultant

Boyd has 30 years experience in the oil and gas industry, including oversight of revenue accounting at Atlantic Richfield Corporation. Boyd has provided independent audit services to the oil and gas industry since 1993, working a portion of that time for Martindale Consultants, Inc. He participated in the audits of Terra Energy Ltd. and Mercury Exploration Company.

**MARTINDALE CONSULTANTS, INC.
TECHNICAL PROPOSAL FOR STATE OF MICHIGAN BID NO. 071I0000429**

Dionne Forrest Staff Auditor

Dionne has participated in a variety of well cost audits during the year she has work for Martindale Consultants, Inc. and worked on the Terra Energy Ltd. and Mercury Exploration Company audit reports for the State of Michigan.

Bidder's Authorized Expeditor

W. PATRICK MARTINDALE

405-728-3003

PRICE PROPOSAL

Submitted in separate sealed envelope.