Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2

to

CONTRACT NO. 071B1300313

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Greenscape	Brian Cataldo	bwcataldo@yahoo.com
P.O. Box 133	TELEPHONE	CONTRACTOR #, MAIL CODE
Lake, MI 48632	989-544-2489	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Dave Maki	906-483-4038 ext 221	makid@michigan.gov
BUYER	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: Roadside and Slope Mowing - Ishpeming – Michigan Department of Transportation

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
June 30, 2011	May 1, 2014	2, 1 Year Option	May 1, 2014
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
Net 45 Days	N/A	N/A	N/A

ALTERNATE PAYMENT OPTIONS:	AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS:

N/A

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
☒ No ☐ Yes	☒	☐	1 year	May 1, 2015

VALUE/COST OF CHANGE NOTICE:	ESTIMATED REVISED AGGREGATE CONTRACT VALUE:
$24,033.60	$168,235.20

Effective immediately, the first option year available on this Contract is hereby utilized. The REVISED Contract end date is May 1, 2015. Effective immediately, this Contract is INCREASED by $24,033.60. Please also note that the buyer has been changed to Steve Rigg. All other terms, conditions, pricing and specifications remain unchanged. Per agency request, vendor agreement and approval from DTMB-Procurement.

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **February 23, 2012**
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE No.1
TO
CONTRACT NO. 071B1300313
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Greenscape** **P.O. Box 133** **Lake, Michigan 48632** **Email: bwcataldo@yahoo.com**	TELEPHONE Brian Cataldo **989-544-2489** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-1145 **Lymon Hunter**
Contract Compliance Inspector: Don Robillard (906)-485-6322 **Roadside and Slope Mowing – Ishpeming – Michigan Department of Transportation**	
CONTRACT PERIOD: **3 Years + 2 one-year options** From: **July 1, 2011** To: **May 1, 2014**	
TERMS **Net 45**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
ALTERNATE PAYMENT OPTIONS: ☐ P-card ☐ Direct Voucher (DV) ☐ Other	
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately, the buyer is hereby CHANGED to Lymon Hunter.

AUTHORITY/REASON(S):

Per DTMB Procurement.

TOTAL ESTIMATED CONTRACT VALUE: $144,201.60

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **July 1, 2011**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

NOTICE
TO
CONTRACT NO. 071B1300313
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Greenscape** **P.O. Box 133** **Lake, Michigan 48632** **Email: bwcataldo@yahoo.com**	TELEPHONE Brian Cataldo **989-544-2489** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-7396 **Kristen Robel**
Contract Compliance Inspector: Don Robillard (906)-485-6322 **Roadside and Slope Mowing – Ishpeming – Michigan Department of Transportation**	
CONTRACT PERIOD: **3 Years + 2 one-year options** From: **July 1, 2011** To: **May 1, 2014**	
TERMS **Net 45**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
ALTERNATE PAYMENT OPTIONS: ☐ P-card ☐ Direct Voucher (DV) ☐ Other	
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

Estimated Contract Value: $144,201.60

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

CONTRACT NO. 071B1300313
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Greenscape** **P.O. Box 133** **Lake, Michigan 48632** **Email: bwcataldo@yahoo.com**	TELEPHONE Brian Cataldo **989-544-2489** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-7396 **Kristen Robel**
Contract Compliance Inspector: Don Robillard (906)-485-6322 **Roadside and Slope Mowing – Ishpeming – Michigan Department of Transportation**	
CONTRACT PERIOD: **3 Years + 2 one-year options** From: **July 1, 2011** To: **May 1, 2014**	
TERMS **Net 45**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
ALTERNATE PAYMENT OPTIONS: ☐ P-card ☐ Direct Voucher (DV) ☐ Other	
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION: **The terms and conditions of this Contract are those of ITB 071I1300145, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.** **Estimated Contract Value: $144,201.60**	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I1300145. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE CONTRACTOR:	**FOR THE STATE:**
Greenscape Firm Name	Signature
Authorized Agent Signature	Kristen Robel Name/Title
Authorized Agent (Print or Type)	Commodities Division Division
Date	Date

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Definitions

This section provides definitions for terms used throughout this document.

Business Day - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am through 5:00pm Eastern Time unless otherwise stated.

Contractor – refers to any business entity which had bid for, but has not yet been awarded a Contract with the Michigan Department of Transportation.

Buyer – the DTMB-Purchasing Operations employee identified on the cover page of this RFP.

Chronic Failure - as defined in applicable Service Level Agreements.

Contract – based on this RFP, an agreement that has been approved and executed by the awarded Contractor, the DTMB-Purchasing Operations Director, and the State Administrative Board.

Contract Compliance Inspector (CCI) – refers to the Michigan Department of Transportation employee directly responsible for inspecting and approving for payment all work performed under this Contract.

Contractor – the awarded Contractor after the Effective Date.

Days - Business Days unless otherwise specified.

Deleted, Not Applicable - the section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable(s) - physical goods or commodities as required or identified in a Statement of Work.

Department – refers to the Michigan Department of Transportation

Eastern Time – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

Effective Date - the date that a binding contract is executed by the final party.

Final Acceptance - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article 1.

Key Personnel - any personnel designated as Key Personnel in Sections 1.3.3, Staff, Duties, and Responsibilities, and 2.4.2, Contractor Key Personnel, subject to the restrictions of Section 2.4.2.

Post-Industrial Waste - industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Purchase Order - a written document issued by the State that requests full or partial performance of the Contract.

State - the State of Michigan.

State Location - any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

Stop Work Order - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.

SubContractor - a company or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent Contractors engaged by the Contractor solely in a staff augmentation role.

Unauthorized Removal - the Contractor's removal of Key Personnel without the prior written consent of the State.

Article 1 – Statement of Work

1.1 Project Identification

This Contract is to provide Roadside Mowing Services for the Department of Transportation (MDOT).

1.1.1 Project Request

This is a Statement of Work (SOW) for Roadside Mowing Services for the Ishpeming Transportation Service Center (TSC).

1.1.2 Background- Deleted not applicable

1.2 Scope of Work and Deliverable(s)

1.2.1 In Scope – Deleted Not Applicable

1.2.2 Deliverable(s)

I. ADMINISTRATIVE PROCEDURES

Detailed Progress Schedule

Work to be performed for a period of 3 years beginning on June 30, 2011 and continue until May 1, 2014. All work will be performed between June 20 and September 30 of each contract year as solely determined by the Department. Work must be performed in accordance with the progress schedule submitted at the Pre- Award Meeting and described below. The first failure to complete work as defined in the progress schedule will result in a Complaint to Vendor and a meeting with the Contractor to insure corrective action. The second such failure will result in termination of this Contract. The progress must address all work to be completed when multiple contracts are awarded to the same vendor, including work performed as a Subcontractor for a local unit of government. If the Contractor has multiple contracts, the Contractor will be required to perform work concurrently with the other contracts.

Pre- Award Meeting

A meeting with the vendor and the Contract Administrator will be held at a location designated by the Department. The purpose of the meeting will be for that vendor to present the following required detailed information to the Department for review prior to the award of this contract.

A. Equipment list indicating description, age, manufacturer, model and serial number of each piece. Equipment must meet or exceed all requirements defined under "***Equipment Requirements***" of this document. All equipment must be in the vendor's possession, available for use and fully operational, prior to the Pre- Award Meeting. The vendor must provide an equipment list and any lease contracts at the Pre-Award Meeting.

B. Schedule of operations- personnel and hours.

C. Name(s) of supervisors, 24 hour contact telephone numbers, and best contact times.

D. Progress schedule listing locations where mowing will occur including a schedule of miles or acres to be mowed each day. Equipment failure will not constitute an acceptable reason for deviating from the progress schedule. The schedule must be approved by the Department at the Pre- Award Meeting. Adjustments to this schedule including any weather-related deviation must be approved by the Contract Administrator or designated representative.

E. Safety Program, including traffic control plan.

F. Name/location of Class II disposal site for litter/ trash.

G. Proof of Insurance as defined in the Standard Terms and Conditions attached to this document must be provided to the Purchasing Unit prior to the Pre- Award Meeting.

H. A list of current contracts and future prospective bids.

Any misrepresentation by the Contractor of its ability to perform the work described in this Contract will be grounds for immediate termination. In such case, this Contract will be awarded to the next lowest responsible Contractor who can demonstrate the ability to perform the work.

Rejecting Bids
The Department retains the right to reject any or all bids, to waive technicalities, to request new proposals or to proceed to do the work otherwise, if the best interest of the Department will be promoted thereby. The exercise of said right will not result or entitle vendors to costs for the preparation of the bid proposal or anticipated profits if the contract had been awarded to them.

Vendors who cannot demonstrate the ability to perform the work according to these supplemental specifications shall have their bid rejected, and this Contract will be awarded to the next lowest responsible Contractor.

Rejection for Lack of Proper Equipment
Vendors who bid on this project and in the opinion of the Department do not have proper and/or sufficient equipment and personnel to do the work within the time limits required will be rejected and the next low Contractor will be allowed to demonstrate the ability to perform the work.

Multiple Contracts Awarded to the Same Vendor
If a vendor is the low cost Contractor on more than one contract, including subcontracts with local units of government, the vendor shall demonstrate that sufficient tractors are available for each contract as described above. The vendor must therefore provide a detailed equipment list that includes, where each piece of equipment is to be used on contracts with the Department, the year of manufacture, manufacturer's name, model name and serial number and any lease contracts when applicable. This documentation must be furnished to the Purchasing Unit prior to any contract award. The Department reserves the right to inspect the vendor's equipment prior to the contract award and at any time throughout the duration of this contract. The department reserves the right to restrict the number of contracts awarded to a single vendor based on the ability of the Contractor to satisfactorily perform contract work within contract limits.

II. MOWING

Description of Work
These specifications supplement the 2003 Michigan Department of Transportation Standard Specifications, which standard specification are incorporated herein by reference. In case of a conflict between any provision of the Standard Specifications and the Supplemental Specifications, the more detailed provisions of the Supplemental Specifications will control. This Contract will require routine mowing of free access highways. This will include clear vision corners with other roads intersecting the highway. The roadway limits of each type of mowing and the approximate acres are listed in the attached "***Area Quantities***". The areas defined shall be mowed up to two (2) times during the mowing season according to the following mowing schedule.

Mowing Schedule
The Contractor shall be notified by the Contract Compliance Inspector (CCI) when and where to begin each mowing cycle. To prepare for the mowing cycle, the CCI shall notify the Contractor no less than five (5) calendar days prior to setting the start-up date. The Contractor shall have 15 calendar days (excluding Sundays) from the start-up date to complete each cycle. Mowing will begin when the grass and weeds have reached an average height of 8 to 12 inches. Based on historical experience, the approximate starting dates of each cycle are as follows **for the 2011 MOWING SEASON ONLY:**

1st Mowing -July 1, to be completed by July 31
2nd Mowing -August 20, to be completed by September 30

THE SECOND CYCLE OF MOWING IS OPTIONAL. THE NEED FOR A SECOND MOWING WILL BE DETERMINED BY THE DEPARTMENT.

The CCI may make adjustments in the mowing dates when unusual conditions are experienced.

FOR THE REMAINING MOWING SEASONS:
The Contractor shall be notified by the CCI when and where to begin each mowing cycle. To prepare for the mowing cycle, the CCI shall notify the Contractor no less than five (5) calendar days prior to setting the start-up date. The Contractor shall have 15 calendar days (excluding Sundays) from the start-up date to complete each cycle. Mowing will begin when the grass and weeds have reached an average height of 8 to 12 inches. Based on historical experience, the approximate starting dates of each cycle are as follows:
1st Mowing -June 10, to be completed by June 30
2nd Mowing -August 20, to be completed by September 30

THE SECOND CYCLE OF MOWING IS OPTIONAL. THE NEED FOR A SECOND MOWING WILL BE DETERMINED BY THE DEPARTMENT.

The CCI may make adjustments in the mowing dates when unusual conditions are experienced.

Mowing must be completed prior to the <u>last Saturday in June</u> for the following locations:

1-75 from M-123 south to Mackinac Bridge
US-2 from Gross Cap Roadside Park east to Ferry Lane

Mowing shall be paid in accordance with the terms of the purchase order which are net 30 days from the later of the invoice date or the date the CCI certifies the invoice indicative of satisfactory completion of each mowing cycle of the entire Contract area.

Scope of Work
The work covers litter pickup and disposal from the mowed grass areas prior to each mowing, mowing as specified on the designated routes and trimming around fixed objects as described in these specifications. The work shall be done in accordance with all the terms of this Contract, including the Supplemental Specification contained within this contract and the heading therein entitled "***Methods of Treatment***." Vegetation as used in this contract refers to grass, weeds, and small woody plants. For locations of mowing, see attached "***Area Quantities***."

Equipment Rentals

General
The Contractor shall furnish, operate and maintain suitable and adequate equipment necessary to perform the mowing operation in an approved safe, workmanlike manner without hindrance, delay or damage to the roadside. The equipment shall be capable of doing a neat job of mowing without misses or skips.

Type of Equipment
The equipment must be commercially available, in good repair, and shall be maintained so as to produce a clean, sharp cut to the grass at all times. Equipment which in any way pulls or rips grass, or damages the turf, shall not be allowed. Tractors used for production mowing shall have a minimum of 55 horsepower per tractor at the power take-off (P.T.O.) and be capable of cutting a width of no less than 10 feet in a single pass. Tractors used for trim mowing shall have a minimum of 30 horsepower at the power take-off and be capable of cutting a width of no less than 5 feet in a single pass. Tractors shall be equipped to provide the power to the mowing attachment. One (1) production mower and one (1) trim mower as described above shall be available to be used concurrently within the contract area. All equipment shall be of such type to permit the heights of cut to be adjusted to approximately 5 inches.

Safety
All equipment shall meet all federal, state and local safety requirements. If the mower box does not touch the ground the mower shall be equipped with one half inch safety chains which touch the ground but do not drag. The chains will be threaded with wire rope through the bottom link and made so as to prevent debris from being thrown from under the cutter.

Riding equipment shall be equipped with commercial type flashing amber lights plainly visible from all directions. Flashers shall have a minimum of 32 candlepower output and flash 50 to 60 times per minute.

Under no circumstances shall the Departments be responsible for any damage to the Contractor's equipment due to obstacles encountered.

Other Power Equipment
The Contractor is advised that any reference to mowing does not necessarily refer exclusively to grass cutting equipment which is tractor drawn, but shall include other power equipment as may be necessary to satisfactorily complete the work.

Methods of Treatment

Mowing
Typically the area to be mowed on a free access highway is a strip 12 feet wide adjacent to the shoulder unless restricted by right-of-way limits, ditch back slopes or protected plant area restrictions. The roadway limits of each type of mowing and approximate acres are listed in the attachments.

Mowing shall begin when the grass has reached the average height of 8 to 12 inches, unless otherwise directed by the Contract Administrator or designated representative. Two (2) days prior to the start of each mowing, the Contractor shall notify the Contract Administrator or designated representative. The Contractor and Contract Administrator or designated representative shall make a joint visual inspection of all specified mowing areas both prior to and upon completion of mowing operation. The inspection is for the purpose of documenting existing damage to turf, guardrails, delineator posts, signs, light fixtures, etc. and those caused by the Contractor's mowing operations. This inspection may be videotaped.

Each mowing shall be completed in successive segments not to exceed 4 miles in length (including median and both sides of the roadway) to insure uniform turf appearance upon completion of the work. Mowing operations, once initiated, shall continue until all designated mowing is completed including

multiple contracts awarded to the same Contractor. Only adverse weather conditions shall be cause to delay completion of each mowing.

It shall be necessary to mow within 12 inches of all sides of obstruction, such as sign supports, delineators, guard posts, utility poles, piers, abutments, structures and landscaping (trees, shrubs, etc) that may be within the designated mowing areas.

Certain areas to be mowed may contain survey stakes which must not be disturbed. Mowing shall be required around them. Where concrete curb and gutter is within the designated mowing areas, trimming shall be conducted simultaneously with the mowing during each mowing operations. Mowing may require the use of small mowing units to permit maneuvering in confined or congested work areas. Grassed areas which are saturated with water during certain periods of the year to the point where equipment may not be used without extensive damage to the turf, shall not be mowed at that particular time, but shall be mowed later when the areas are dry. Payment shall be for the applicable work item.

All areas identified as Protected Plant Areas shall be mowed as not to exceed the current MDNR permit limitations. Any mowing in the Protected Plant Areas beyond the permit limitations will result in a violation of State and Federal Law. In the event of a Protected Plant Area being damaged by the Contractor, all fines and all costs associated with any required restoration incurred from this damaged will be the responsibility of the Contractor. The Contract Administrator shall meet with the Contractor annually no less than five (5) calendar days prior to the start-up date to review the current MDNR Threatened/ Endangered Species Permit which outlines the current permit limitations. The Contractor at that time will submit the Protected Plant Areas and Critical Dune area mowing schedules to the Contract Administrator. The Contract Administrator is responsible for obtaining Region Approval of the Maintenance Activity Work Plan for these areas. The Contractor cannot start mowing in Protected Plant Areas and Critical Dune areas until Region approval has been given.

All vegetation in mowing areas shall be cut to a height of 5 inches. Multiple passes may be required to achieve the desired result. It is not necessary for the Contractor to remove grass clippings. The Contractor shall, at all times, provide satisfactory equipment and a force of qualified workers sufficient, in the opinion of the Contractor Administrator or designated representative, to perform the work described herein. The force of qualified workers shall be sufficient to perform litter pickup, mowing, and related activities on a timely basis.

Mowing operations shall be performed in swaths parallel to the roadway in the direction of traffic.

Litter Removal/ Disposal

All litter/ trash shall be picked up ahead of mowing operation. Litter includes, but is not limited to, paper, cardboard, Styrofoam, plastic, cloth, wire, steel bands, cable, garbage bags, tire tread, car parts, pallets, sheet metal, furniture, etc., as may be found on the roadside. All costs associated with litter removal, disposal of refuse, and associated costs are the responsibility of the Contractor. All refuse shall be disposed of in a “Class II” licensed landfill.

Proof of proper disposal shall be provided to the Contract Administrator upon request. The Contractor will not be responsible for disposal of suspected hazardous materials discovered during the course of this work. Such discovery shall immediately be reported to the Contract Administrator.

Maintaining Traffic

Traffic shall be maintained in accordance with Sections 103.5 and 812 of the 2003 Michigan Department of Transportation (MDOT) Standard Specifications for Construction, and the 2005 edition of the Michigan Manual of Uniform Traffic Control Devices (MMUTCD). All mowing operations shall be conducted in a manner that will not create a hazard, or hinder, restrict, or impede trunk line traffic. The Contractor shall not operate mowing equipment on the roadway or in a manner that requires unnecessary crossing the roadway. All equipment not in use may be temporarily parked on limited access freeway right-of-way, but not within the median or closer than 30 feet from the traveled roadway. Equipment may not be temporarily parked on free access roadways except at those locations designated by the Contract Administrator or designated representative.

No signing is required unless a Contractor's vehicle(s) remains stationary on the shoulder for more than 15 minutes. If a vehicle (service vehicle, transport vehicle, etc.) remains stationary for more than 15 minutes, a standard 48 inch x 48 inch road work ahead sign (W21-4) is required to be placed as stated in the 2005 edition of the MMUTCD. Any Vehicle on the shoulder shall have flashing or rotating lights or lighted arrow panel (Types B or C) operated in the bar mode as specified in the 2003 MDOT Standard Specification for Construction.

All labor, equipment and devices required for maintaining traffic shall be incidental to the project and will not be paid separately.

A copy of the MDOT 2003 Standard Specifications for Construction and the 2005 edition of the MMUTCD can be obtained from the following.

Financial Services Division
Bureau of Finance
Michigan Department of Transportation
P.O. Box 30050
Lansing, Michigan 48909

Public Convenience and Safety
The Contractor shall comply with all federal, state and local laws and regulations, including those governing environmental protection and the furnishing and use of all safeguards, safety devices and protective equipment. The Contractor shall take any other actions, or either his/her own responsibility or as directed by the Contract Administrator or designated representative, reasonably necessary to protect the safety and health of employees on the job and the public and to protect property during the performance of the project.

Days/ Hours of Operation
All work included in this Contract shall be performed during daylight hours only. No work shall be allowed on weekends unless prior approval is obtained from the Contract Administrator or designated representative. Work shall not be permitted during holiday periods in accordance with the 2003 Standard Specifications for Construction.

Damages
The Contractor shall at his/ her own expense, preserve and protect from injury all property, either public or private, along and adjacent to the roadway, and he/she shall be responsible for and repair, at his/ her own expense, any and all property damage and injury thereto, arising out of or in consequence of any act or omission of the Contractor of his/ her employees in the performance of the work covered by this Contract prior to completion and acceptance thereof.

The Contractor shall immediately repair all damage to light fixtures and delineators to the satisfaction of the Contract Administrator or designated representative. Damage to traffic control devises (signs) shall be reported to the Contract Administrator or designated representative immediately. The Contractor shall be responsible for any expenses incurred from sign repair. Damage to turf areas, desirable natural growth, shrubs and trees identified at pre-bid meeting to include among other things: skinning, scraping or gouging of trees, shrubs and turf areas, ruts and deep wheel depressions on turf areas: and ruts, deep wheel depressions and wheel slipping damage on slope areas caused by the Contractor through negligence shall be repaired to the satisfaction of the Contract Administrator or designated representative as further described below.

Turf damage repairs shall be made by the Contractor in accordance with Section 816 and 917 of the 2003 Standard Specifications for Construction and as herein specified. Only friable topsoil from a commercial source shall be used to fill any depressions, ruts, etc. prior to seeding. Seeding will only be allowed during the seasonal limitation periods.

All landscape plant material damaged by the Contractor shall be replaced in kind according to Sections 815 and 917 of the 2003 Standard Specifications for Construction and as herein specified. Planting may only be done in the spring prior to May 15. All replacement plants must be maintained during the specified establishment period.

Payment for work performed may be withheld until satisfactory repairs are made. If repairs are made by the Department, the actual replacements costs including all labor, equipment, materials and fringe benefits shall be charged to the Contractor.

Taxes
The Contractor shall include and be deemed to have included in his/ her bid and Contract price all Michigan sales and use taxes currently imposed by legislative enactment and as administered by the Michigan Department of Revenue on the bid date.

Deletion of Work
The Department may delete all or any portions of this Contract that cannot be completed in conformity with the progress schedule or a reasonable extension. The Department may also delete portions of this Contract that show no need for mowing due to growing conditions.

If this Contract is terminated, or portions thereof deleted, payment will be made for all satisfactory completed work at the Contract unit price.

III. GENERAL CONDITIONS

Work Approval
During the period of mowing operations, the Contractor shall consult the Contract Administrator or designated representative for inspection and tentative approval of work being accomplished, so that. In the event of unsatisfactory work, sufficient time will be available to the Contractor to make corrections in a satisfactory manner within the time specified.

Default
In addition to the cancellation provisions contained in the Standard Terms and Conditions attached, this Contract may be terminated due to default. If inspection by the Contract Administrator or his representative reveals that the Contractor's work results in non-compliance with this contract:

The Contract Administrator at the time of the first occurrence of noncompliance shall notify the Contractor and review the condition. If the condition poses a health or safety hazard or represents a significant deviation from the progress schedule or mowing specification, the Contract Administrator will prepare a written complaint to Vendor form. The Contractor will be informed in writing of the corrective action required.

Should a second non-acceptable condition occur, subsequent to a previous Complaint to Vendor form being filed, which would warrant a formal Complaint to Vendor, a written notice of termination will be sent to the Contractor.

Noncompliance includes but is not limited to:

1. Failure of the Contractor to mow the number of acres or miles per day specified in the progress schedule submitted at the Pre- Award Meeting and approved by the Department.

2. Failure of the Contractor to mow in accordance with any of the specification defined in this contract.

Deductions:
Failure to complete each mowing cycle as scheduled shall result in the deduction of $500 per day for each calendar day that the work remains uncompleted.

The Department reserves the right to bill the Contractor for any damages due to the default of the Contractor.

Coordinating Clause
Contract for landscaping, weed spraying or other work, may be in progress during the time of this Contract. Areas to be treated by weed spraying shall not be mowed for 72 hours before treatment or 48 hours after treatment. The Contractor shall coordinate his/her work activities with existing or future

work performed by MDOT, through close coordination with the Contract Administrator or his representative. Mowing dates may be adjusted through mutual agreement between the Contractor and the Contract Administrator or designated representative when unusual conditions are experienced.

Subcontracting
No subcontracting will be allowed on this project.

IV. PAYMENT

Method of Measurement and Basis for Payment
"Roadside Mowing" shall be measured by horizontal area and paid for at the Contract unit price per acre to include clearvision corners intersection the highway, which shall be considered payment in full for providing the equipment and labor required to complete each separate mowing of all grassed or vegetation areas and removal and disposal of litter to a Class II disposal site. Any area that cannot be mowed during a given mowing cycle because of flooding, or areas where extensive damage to the turf might result, shall be deducted from this Contract. In no case will deletion or termination result in a higher cost per acre paid to the Contractor.

Bid Item
Roadside mowing shall be bid on the basis of dollars per acre.

Method of Payment
The Contractor shall furnish an invoice for services rendered after each mowing cycle for labor and equipment. The invoices shall be prorated for incomplete cycles. Invoice for final payment, within a given year must be submitted prior to October 1st.

The invoice shall be sent to:

MICHIGAN DEPARTMENT OF TRANSPORATION
100 SOUTH WESTWOOD DRIVE
ISHPEMING, MI 49849

The billing shall reference the appropriate purchase order number and shall contain, if applicable, adjustments for addition, deletions or changes in service. MDOT shall pay the billed amount in accordance with the bid rate, and the payment terms specified in the purchase order which are net 30 days after the later of the invoice date or the date the Contract Administrator or designated representative certifies the invoice indicative of satisfactory completion of each mowing cycle of the entire Contract area.

1.2.3 Quantity
The State is not obligated to purchase in any specific quantity.

1.2.4 Ordering
See "Mowing Schedule" in Section II (Mowing) of Article 1.2.2.

1.2.5 Alternate Bids- Deleted not applicable

1.3 Management and Staffing
See "Pre-Award Meeting" in Section I (Administrative Procedures) or Article 1.2.2.

1.3.1 Project Management- Deleted not applicable

1.3.2 Reports- Deleted not applicable

1.3.3 Staff, Duties, and Responsibilities- Deleted not applicable

1.3.4 Meetings
See "Pre-Award Meeting" in Section I (Administrative Procedures) or Article 1.2.2.

1.3.5 Place of Performance- (Best Value Evaluation)

Full address of place of performance	Owner/operator of facility to be used	Percent (%) of Contract value to be performed at listed location
PO Box 133	Brian Cataldo	100%
8360 West Ludington Drive		
Lake, Michigan 48632		

1.3.6 Reserved

1.3.7 Binding Commitments

The Contractor representatives with the authority to make binding commitments on the Contractor's behalf and state the extent of that authority is Brian Cataldo.

1.3.8 Training- Deleted Not Applicable

1.3.9 Security- Deleted Not Applicable

1.4 Delivery and Acceptance

1.4.1 Time Frames

See “Mowing Schedule” in Section II (Mowing) in Article 1.2.2.

1.4.2 Minimum Order

See “Mowing Schedule” in Section II (Mowing) in Article 1.2.2.

1.4.3 Packaging – Deleted Not Applicable

1.4.4 Palletizing- Deleted Not Applicable

1.4.5 Delivery Term – Deleted Not Applicable

1.4.6 Acceptance Process

See Section III (General Conditions) of Article 1.2.2.

1.4.7 Criteria

See Section II (Mowing) of Article 1.2.2.

1.5 Proposal Pricing

1.5.1 Pricing

See the attached Location Specification Sheets for pricing details.

1.5.2 Quick Payment Terms – Deleted Not Applicable

1.5.3 Price Term

Prices in **the Location Specifications Sheets** are firm with prospective renegotiation at an agreed upon time. The criteria for a re-determination of pricing are under Section 2.3.5, Price Changes.

1.5.4 Tax Excluded from Price

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor’s prices must not include sales tax. DTMB-Purchasing Operations will furnish exemption certificates for sales tax upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will

be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, the Contractor's prices must not include the Federal Excise Tax.

1.5.5 Invoices

See Section IV (Payment) in Article 1.2.2.

1.6 Commodity Requirements

1.6.1 Customer Service- (Best Value Evaluation)

The Contractor is able to receive orders by any of the following methods: electronically, phone, facsimile transmission, or by written order.

The Contractor must have: (a) one or more knowledgeable individual(s) specifically assigned to State of Michigan accounts that will respond to State agency inquiries promptly; and (b) a statewide toll-free number for customer service calls. That individual is Charlotte Cataldo, 1-800-781-5296.

1.6.2 Research and Development- Deleted not applicable

1.6.3 Quality Assurance Program- Deleted not applicable

1.6.4 Warranty for Deliverable(s)- Deleted Not Applicable

1.6.5 Special Incentives- Deleted Not Applicable

1.6.6 Energy Efficiency- Deleted Not Applicable

1.6.7 Environmental Requirements- Deleted Not Applicable

1.6.8 Recycled Content and Recyclability- Deleted Not Applicable

1.6.9 Materials Identification and Tracking- (Best Value Evaluation)

(a) **Hazardous Chemical Identification**. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.

Chemical (if none, enter 'None')	Identification Number
None	

(b) **Mercury Content**. Under MCL 18.1261d, the Contractor must offer mercury-free products whenever possible. All products containing mercury must be labeled as containing mercury.

(c) **Brominated Flame Retardants**. The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible.

(d) **Environmental Permits and Requirements**. Contractor must immediately notify DTMB-Purchasing Operations of the receipt of any EPA, State, or local agency communication indicating that any of the Contractor's facilities are in violation of applicable environmental laws.

1.7 Extended Purchasing – Deleted Not Applicable

1.7.1 MiDEAL- Deleted Not Applicable

1.7.2 State Employee Purchases- Deleted Not Applicable

Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

This Contract term begins approximately June 30, 2011 and expires May 1, 2014. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the State, unless otherwise agreed to in writing by DTMB-Purchasing Operations. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect until the next September 30.

2.1.2 Options to Renew

This Contract may be renewed for up to two additional one year period(s). Renewal must be by mutual written agreement of the parties, not less than 30 days before expiration of this Contract.

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s) and for all of the associated payment milestones and amounts.

2.2.2 Payment Deadlines

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within 45 days after receipt.

2.2.3 Invoicing and Payment – In General – Deleted Not Applicable

2.2.4 Pro-ration - Deleted Not Applicable

2.2.5 Final Payment and Waivers

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party's continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverable(s) not reasonably known to be defective or substandard.

2.2.6 Electronic Payment Requirement

As required by MCL 18.1283a, the Contractor must electronically register with the State at http://www.michigan.gov/cpexpress to receive electronic fund transfer (EFT) payments.

2.2.7 Employment Taxes

The Contractor must collect and pay all applicable federal, state, and local employment taxes.

2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

2.3 Contract Administration

2.3.1 Issuing Office

This Contract is issued by DTMB-Purchasing Operations on behalf of the Michigan Department of Transportation (State). **DTMB-Purchasing Operations is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DTMB-Purchasing Operations for this Contract is:

Kristen Robel, Buyer
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
RobelK@michigan.gov
517-373-7396

2.3.2 Contract Compliance Inspector

See the attached Location Specification Sheet.

2.3.3 Project Manager – Deleted Not Applicable

2.3.4 Contract Changes

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Purchasing Operations will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until DTMB-Purchasing Operations issues a duly executed Contract Change Notice for the proposed change.

2.3.5 Price Changes

If allowed by Section 1.5.3, Price Term, the State and the Contractor will complete a pricing review (Review) every 365 days following the Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) The State may request a Review upon 30 days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

(c) In the event the Review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the Review reveals that changes may be recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then the State may eliminate all remaining Contract renewal options.

(f) Any changes based on the Review must be implemented through the issuance of a Contract Change Notice.

2.3.6 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan
DTMB-Purchasing Operations
Attention: Kristen Robel
PO Box 30026
530 West Allegan
Lansing, MI 48909
RobelK@michigan.gov
517-335-0230

If to Contractor:
Greenscape
Attn: Brian Cataldo
P.O. Box 133
8360 West Ludington Drive
Lake, Michigan 48632
bwcataldo@yahoo.com
989-544-2817

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

2.3.7 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

2.3.8 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The State may, however, assign this Contract to any other State agency, department, or division without the prior approval of the Contractor.

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

2.3.9 Equipment – Deleted Not Applicable

2.3.10 Facilities - Deleted Not Applicable

2.4 Contract Management

2.4.1 Contractor Personnel Qualifications

All persons assigned by the Contractor to perform work must be employees of the Contractor or its majority-owned subsidiaries, and must be fully qualified to perform the work assigned to them.

2.4.2 Contractor Key Personnel

See “Pre-Award Meeting” in Section I (Administrative Procedures) or Article 1.2.2.

2.4.3 Removal or Reassignment of Personnel at the State's Request

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected.

2.4.4 Contractor Personnel Location – Deleted Not Applicable

2.4.5 Contractor Identification

The Contractor's employees must be clearly identifiable, and must clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.4.6 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with the State and its agents and other Contractors, including the State's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

2.4.7 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor, is an employee, agent or servant of the State. 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.

2.4.8 Contractor Return of State Equipment/Resources – Deleted Not Applicable

2.4.9 Background Checks

The State may investigate the Contractor's personnel before granting access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine eligibility for working within State facilities and systems. The investigations will include a Michigan State Police background check (ICHAT) and may include a Criminal Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check.

2.4.10 Compliance With State Policies

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources, available at http://www.michigan.gov/pcpolicy. Contractor personnel must agree to the State's security and acceptable use policies before the State grants access to its IT equipment and resources. The Contractor must provide these policies to prospective personnel before requesting access from the State. Contractor personnel must comply with all physical security procedures in State facilities.

2.5 Subcontracting by Contractor

2.5.1 Contractor Responsible

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its SubCcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

2.5.2 State Approval of Subcontractor – Deleted Not Applicable – NO SUBCONTRACTING ALLOWED

2.5.3 Subcontract Requirements – Deleted Not Applicable – NO SUBCONTRACTING ALLOWED

2.5.4 Competitive Selection – Deleted Not Applicable – NO SUBCONTRACTING ALLOWED

2.6 Reserved

2.7 Performance

2.7.1 Time of Performance

(a) The Contractor must immediately notify the State upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must immediately notify the State and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.7.2 Service Level Agreements Deleted, Not Applicable

2.7.3 Liquidated Damages – Deleted Not Applicable

2.7.4 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, 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 a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the 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.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Days, and the State reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to the State, the State may: (a) procure the affected Deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of this Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure or to payments for Deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure 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, including disaster recovery plans.

2.8 Acceptance of Deliverable(s) – Deleted, Not Applicable

2.8.1 Quality Assurance – Deleted, Not Applicable

2.8.2 Delivery Responsibilities

See Section II (Mowing and Trimming) of Article 1.2.2.

2.8.3 Process for Acceptance of Deliverable(s)

See Section III (General Conditions) of Article 1.2.2.

2.8.4 Acceptance of Deliverable(s)

See Section III (General Conditions) of Article 1.2.2.

2.8.5 Process for Approval of Written Deliverable(s) Deleted Not Applicable

2.8.6 Process for Approval of Services Deleted Not Applicable

2.8.7 Final Acceptance

See Section III (General Conditions) of Article 1.2.2.

2.9 Ownership - Deleted Not Applicable

2.10 State Standards [Deleted Not Applicable]

2.11 Confidentiality

2.11.1 Confidential Information

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

(a) disclosable under the Michigan Freedom Of Information Act (FOIA);
(b) now available or becomes available to the public without breach of this Contract;
(c) released in writing by the disclosing party;
(d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
(e) publicly disclosed pursuant to federal or state law; or
(f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

2.11.2 Protection and Destruction of Confidential Information

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the

disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

2.11.3 Exclusions

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.11.4 No Obligation to Disclose

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

2.11.5 Security Breach Notification

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

2.12 Records and Inspections

2.12.1 Inspection of Work Performed

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.12.2 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.12.3 Examination of Records

The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

2.12.4 Audit Resolution

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

2.12.5 Errors

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

2.13 Warranties

2.13.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(c) It is qualified and registered to transact business in all locations where required.

(d) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two days of learning about it.

(e) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(f) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other Contractor for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other Contractor before the award of the Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify DTMB-Purchasing Operations if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

2.13.2 Warranty of Merchantability- Deleted Not Applicable

2.13.3 Warranty of Fitness for a Particular Purpose – Deleted Not Applicable

2.13.4 Warranty of Title – Deleted Not Applicable – Deleted Not Applicable

2.13.5 Equipment Warranty – Deleted Not Applicable

2.13.6 New Deliverable(s) – Deleted Not Applicable

2.13.7 Prohibited Products – Deleted Not Applicable

2.13.8 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

2.14 Insurance

2.14.1 Liability Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The following apply to all insurance requirements:

(i) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

(iv) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

(b) The Contractor must:

(i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that are alleged or may arise or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(ii) waive all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(iii) ensure that all insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.

(iv) obtain insurance, unless the State approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.

(v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.

(vi) pay all deductibles.

(vii) pay for and provide the type and amount of insurance checked ☑ below:

☑ **(A) Commercial General Liability Insurance**

Minimal Limits:

$2,000,000 General Aggregate Limit other than Products/Completed Operations;
$2,000,000 Products/Completed Operations Aggregate Limit;
$1,000,000 Personal & Advertising Injury Limit; and
$1,000,000 Each Occurrence Limit.

Deductable maximum:

$50,000 Each Occurrence

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☐ **(B) Umbrella or Excess Liability Insurance**

Minimal Limits:

$10,000,000 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (A), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(C) Motor Vehicle Insurance**

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

☐ **(D) Hired and Non-Owned Motor Vehicle Coverage**

Minimal Limits:

$1,000,000 Per Accident

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the vehicle liability certificate. The Contractor must also provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(E) Workers' Compensation Insurance**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ **(F) Employers Liability Insurance**

Minimal Limits:

$100,000 Each Accident;
$100,000 Each Employee by Disease
$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

2.14.2 Subcontractor Insurance Coverage – Deleted Not Applicable –NO SUBCONTRACTING ALLOWED

2.14.3 Certificates of Insurance and Other Requirements

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide DTMB-Purchasing Operations with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to the Director of DTMB-Purchasing Operations. The notice to the Director of DTMB-Purchasing Operations must include the applicable Contract or Purchase Order number.

2.15 Indemnification

2.15.1 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend, and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.15.2 Code Indemnification Deleted, Not Applicable

2.15.3 Employee Indemnification

In any claims against the State, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation will 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 benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, 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 provisions.

2.15.4 Patent/Copyright Infringement Indemnification – Deleted Not Applicable

2.15.5 Continuing Obligation

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues 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 before expiration or cancellation.

2.15.6 Indemnification Procedures

These procedures apply to all indemnity obligations:

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to

defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorney fees, incurred by the State in defending against the claim during that period.

(b) If the Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain prior approval of the State before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State's receipt of the Contractor's information requested by the State under clause (ii) of this paragraph, if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under 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 the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

2.15.7 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark 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; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

2.16 Termination by the State

2.16.1 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a 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. If cancellation is for default of Contract due to non-performance, the Contract may be canceled without notice.

2.16.2 Termination for Cause

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

2.16.3 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

2.16.4 Termination for Non-Appropriation

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

2.16.5 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty if 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 related to a State, public, or private Contract or subcontract.

2.16.6 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.16.7 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must:

(i) stop all work as specified in the notice of termination;

(ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;

(iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;

(iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);

(v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and

(vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

2.16.8 Reservation of Rights

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

2.16.9 Contractor Transition Responsibilities

If this Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

2.16.10 Transition Payments

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e., costs incurred after the expiration within the time period in Section 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

2.17 Termination by the Contractor

2.17.1 Termination

If the State breaches this Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

2.18 Stop Work

2.18.1 Stop Work Order

The State may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, the State must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.16, Termination by the State.

2.18.2 Termination of Stop Work Order

The Contractor must resume work if the State terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to the State; provided that, the State may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 2.3.4, Contract Changes.

2.18.3 Allowance of the Contractor's Costs

If the State fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 2.16, Termination by the State, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. The State is not

2.19 Reserved

2.20 Dispute Resolution

2.20.1 General

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

2.20.2 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Purchasing Operations, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Purchasing Operations, or such other time as agreed to by the parties, the Director of DTMB-Purchasing Operations will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Purchasing Operations within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Purchasing Operations is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

(e) DTMB-Purchasing Operations will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

2.20.3 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

2.20.4 Continued Performance

Each party will continue performing its obligations under this Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

2.21 Disclosure Responsibilities

2.21.1 Disclosure of Litigation

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

(i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;

(ii) A parole or probation Proceeding;

(iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and

(iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

2.21.2 Other Disclosures

The Contractor must notify DTMB-Purchasing Operations within 30 days of:

(a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or

(b) any changes to company affiliations.

2.21.3 Call Center Disclosure – Deleted Not Applicable

2.22 Extended Purchasing

2.22.1 MiDEAL Requirements – Deleted Not Applicable

2.22.2 State Administrative Fee – Deleted Not Applicable

2.22.3 State Employee Purchase Requirements – Deleted Not Applicable

2.23 Laws

2.23.1 Governing Law

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

2.23.2 Compliance with Laws

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).

2.23.3 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

2.23.4 Nondiscrimination

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her 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, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and any breach of this provision may be regarded as a material breach of the Contract.

2.23.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq*., the State must 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 under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after 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.

2.23.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

2.23.7 Freedom of Information

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq*.

2.23.8 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

2.23.9 Prevailing Wage- Deleted Not Applicable

2.23.10 Abusive Labor Practices – Deleted Not Applicable

2.24 General Provisions

2.24.1 Bankruptcy and Insolvency

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

(a) the Contractor files for bankruptcy protection;
(b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
(c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
(d) the Contractor makes a general assignment for the benefit of creditors; or
(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under this Contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

2.24.2 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

2.24.3 Contract Distribution

DTMB-Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by DTMB-Purchasing Operations.

2.24.4 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of the Contract.

2.24.5 Website Incorporation

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

2.24.6 Future Bidding Preclusion Deleted Not Applicable

2.24.7 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract.

2.24.8 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority.

2.24.9 Legal Effect

The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

2.24.10 Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

2.24.11 Order of Precedence

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

(a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);

(b) The most recent Statement of Work related to this Contract;

(c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);

(d) Any attachment or exhibit to the Contract documents;

(e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and

(f) Contractor Responses contained in any of the RFP documents.

2.24.12 Headings

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

2.24.13 Form, Function and Utility – Deleted Not Applicable

2.24.14 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

2.24.15 Approval

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

2.24.16 No Waiver of Default

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.24.17 Survival

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

MAINTENANCE, REPAIR & OPERATIONS (MRO)

ROADSIDE MOWING SERVICES

LOCATION SPECIFICATION SHEET (LSS)

SECTION I – PLACE OF SERVICES REQUESTED

LOCATION: Ishpeming TSC

CONTRACT INFORMATION			
ESTIMATED CONTRACT START DATE:	June 30, 2011	**CONTRACT END DATE:**	May 1, 2014
CONTRACT INFORMATION:	3 (Three) Year Contract with 2 (Two) One-Year Options		
CONTRACTING AGENCY NAME:	MDOT		
BUILDING NAME AND NUMBER:	MDOT Ishpeming TSC		
BUILDING ADDRESS:	100 S. Westwood Dr. Ishpeming, MI, 49849		
REGION / COUNTY:	SUPERIOR/Baraga & Houghton		
PROCUREMENT CONTACT INFORMATION			
PROCUREMENT OFFICE NAME:	MDOT Purchasing		
PROCUREMENT OFFICE CONTACT NAME:	Terry Harris	**CONTACT PHONE #:**	517-335-2507
	harrist@michigan.gov	**CONTACT FAX #:**	517-373-3707
CONTRACT COMPLIANCE INSPECTOR (CCI) / FACILITY MANAGER (FM) NAME:	Dan Robillard	**CONTACT PHONE #:**	906 -485-6322 ext. 121
CCI / FM CONTACT E-MAIL:	Robillardd@michigan.gov	**CONTACT FAX #:**	906-485-4878
LOCATION INFORMATION			
OFFICIAL WORKING DAYS OF BUILDING OCCUPANTS:		OFFICIAL WORKING HOURS OF BUILDING OCCUPANTS:	
ESTIMATE OF AREA TO BE SERVICED: (IF APPLICABLE)		**(FILL IN IF NEEDED)**	
IDENTIFY DAYS OF SERVICE:		**IDENTIFY HOURS OF SERVICE: [EXAMPLE: 5:30 A.M. TO 5:30 P.M.]**	

SECTION II – PRICING SHEET SUMMARY

ROADSIDE MOWING SERVICES

Check all that apply	DESCRIPTION OF SERVICES	ACRES PER CYLE	CYCLES PER YEAR	PRICE PER ACRE (Vendor Complete)	ANNUAL PRICE (Vendor Complete)
☐	Roadside Mowing – Non-Freeway – US-41 FROM THE MARQUETTE COUNTY LINE TO THE HOUGHTON COUNTY LINE. (Baraga County)	133.3	2	$48.00	$12,796.80
☐	Roadside Mowing – Non-Freeway – M-38 FROM JUNCTION US-41 TO ONTONAGON COUNTY LINE (Baraga& Houghton County)	71.6	2	$48.00	$6,873.60
☐	Roadside Mowing – Non-Freeway – M-28 FROM JUNCTION US-41 TO THE ONTONAGON COUNTY LINE (Baraga & Houghton County)	86.1	2	$48.00	$8,265.60
☐	Roadside Mowing – Non-Freeway – US-141 FROM JUNCTION M-28 TO THE IRON COUNTY LINE (Baraga County)	31.9	2	$48.00_	$3,062.40
☐	Roadside Mowing – Non-Freeway – M-203 FROM SOUTH JUNCTION US-41 TO NORTH JUNCTION US-41. (Houghton County)	23.1	2	$48.00	$2,217.60
☐	Roadside Mowing – Non-Freeway – US-41 FROM HANCOCK CITY LIMITS TO KEWEENAW COUNTY LINE. (Houghton County)	29.2	2	$48.00	$2,803.20
☐	Roadside Mowing – Non-Freeway – US-41 FROM HOUGHTON CITY LIMITS TO THE BARAGA COUNTY LINE. (Houghton County)	27.9	2	$48.00	$2,678.40
☐	Roadside Mowing – Non-Freeway – M-26 FROM HOUGHTON CITY LIMITS TO ONTONAGON COUNTY LINE. (Houghton County)	74.3	2	$48.00	$7,132.80
☐	Roadside Mowing – Non-Freeway – M-26 FROM HANCOCK CITY LIMITS TO JUNCTION US-41 (Houghton County)	23.3	2	$48.00	$2,236.80
				SUBTOTAL	$ 48,067.20
3 YEAR TOTAL					$ 144,201.60

Quantities are estimates only; actual quantities will determined by Contract Compliance Inspector.

2nd cycle optional

ESTIMATED ACREAGE OF MOWING AREA: <u>500.7</u>

EQUIPMENT

TYPE OF MOWER/TRIMMER	MANUFACTURER/ MODEL	SERIAL No. & HORSEPOWER @ PTO	APPROXIMATE AGE OF EQUIPMENT & OWNED OR RENTED/LEASED
1. Production Mower	Kubota/M120DTC	52065/96 HP	2000/Owned
2. Production Mower	John Deere/6400	ULV2634 / 78 HP	2004/Owned
3. Trim Mower	John Deere/4320	XVLA46798 / 43 HP	2008/Owned
4. Trim Mower	Ford/ 7710	63491AXL / 60 HP	1998/Owned