



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 6
to
Contract Number 071B1300328

CONTRACTOR	CURBCO SWEEPING INC.
	P.O. Box 70
	Swartz Creek, MI 48473
	Kirk Cowley
	810-232-2121
	k.cowley@curbco2121.com
	*****0746

STATE	Program Manager	Trace Plummer	MDOT
		269-849-1165	
		PlummerT@Michigan.gov	
	Contract Administrator	Steve Rigg	DTMB
		(517) 284-7043	
		riggs@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: CURB SWEEPING FOR THE SOUTHWEST REGION				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
August 17, 2011	August 1, 2014	2 - 1 Year	April 30, 2017	
PAYMENT TERMS		DELIVERY TIMEFRAME		
1% Net 15 or Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	N/A
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$ 753,524.89		\$ 49,000.00	\$ 802,524.89	

DESCRIPTION: Effective May 16, 2016, this contract is hereby increased by \$49,000.00. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

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. 5
 to
CONTRACT NO. 071B1300328
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Curbco Sweeping Inc. P.O. Box 70 Swartz Creek, MI 48473	Kirk Cowley	k.cowley@curbco2121.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	810-232-2121	0746

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MDOT	Albert Bessey	269-789-0560	besseya@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Curb Sweeping for the Southwest Region- Michigan Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 17, 2011	August 1, 2014	2, one year options	August 1, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
1 % Net 15 or Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	9 months	April 30, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$753,524.89		\$0.00	\$753,524.89	

DESCRIPTION: Effective September 29, 2015, this contract is hereby extended 9 months. The revised contract expiration date is April 30, 2017. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

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. 4
 to
CONTRACT NO. 071B1300328
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Curbco Sweeping Inc. P.O. Box 70 Swartz Creek, MI 48473	Kirk Cowley	k.cowley@curbco2121.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	810-232-2121	0746

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	MDOT	Albert Bessey	269-789-0560	besseya@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov

CONTRACT SUMMARY				
DESCRIPTION: Curb sweeping for the southwest region – Michigan Department of Transportation				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
August 17, 2011	August 1, 2014	2 – 1 year options	August 1, 2015	
PAYMENT TERMS	F.O.B.	SHIPPED TO		
1% Net 15 or Net 45	N/A	N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	August 1, 2016
CURRENT VALUE		VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$678,524.89		\$75,000.00	\$753,524.89	

DESCRIPTION:
 Effective June 5, 2015, this contract is exercising the second option year and is increased by \$75,000.00. The revised contract expiration date is August 1, 2016. All other terms, conditions, specifications and pricing remain the same. Per Vendor and Agency agreement, and DTMB Procurement approval.

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

June 18, 2014

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B1300328
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Curbco Sweeping Inc. P.O. Box 70 Swartz Creek, MI 48473	Kirk Cowley	k.cowley@curbco2121.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	810-232-2121	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Albert Bessey	(269) 789-0560	besseya@michigan.gov
BUYER	DTMB	Lymon Hunter	(517) 284-7015	hunterl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Curb Sweeping for the Southwest Region – Michigan Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 17, 2011	August 1, 2014	2, 1 Yr. Options	August 1, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
1% Net 15, Otherwise Net 45	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

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
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	August 1, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$250,000.00		\$678,524.89		
Effective immediately, the first option year available on this Contract is hereby utilized. This contract is extended to August 1, 2015 and increased by \$250,000.00. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and DTMB Procurement approval.				

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

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B1300328
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Curbco Sweeping Inc. P.O. Box 70 Swartz Creek, MI 48473	Kirk Cowley	k.cowley@curbco2121.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	810-232-2121	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Albert Bessey	(269) 789-0560	besseya@michigan.gov
BUYER	DTMB	William Walsh	(517) 373-6535	walshw@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Curb Sweeping for the Southwest Region – Michigan Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 17, 2011	August 1, 2014	2, 1 Yr. Options	August 1, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
1% Net 15, Otherwise Net 45	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

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
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$5, 313.90		\$428,254.89		

Effective immediately, this Contract is hereby INCREASED by \$5,313.90.

All other terms, conditions, specifications, and pricing remain the same

Per agency and vendor agreement and DTMB Procurement approval.

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET February 27, 2012
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO.1
OF
CONTRACT NO. 071B1300328
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Curbco Sweeping Inc. P.O. Box 70 Swartz Creek, MI 48473 Email: k.cowley@curbco2121.com	TELEPHONE Kirk Cowley 810-232-2121
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-6535 William C. Walsh, CPPB
Contract Compliance Inspector: Trace Plummer, Mike Streeter and Albert Bessey Curb Sweeping for the Southwest Region – Michigan Department of Transportation	
CONTRACT PERIOD: 3 years, 2 options From: August 17, 2011 To: August 1, 2014	
TERMS 1% Net 15, Otherwise Net 45	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION: N/A	

NATURE OF CHANGE(S):

Effective February 27, 2012 the Buyer has been changed to:

William C. Walsh
Phone: (517) 373-6535
walshw@michigan.gov

AUTHORITY/REASON:

Per DTMB Procurement's approval.

ESTIMATED CONTRACT VALUE REMAINS: \$422,940.99

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

August 17, 2011

NOTICE
OF
CONTRACT NO. 071B1300328
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Curbco Sweeping Inc. P.O. Box 70 Swartz Creek, MI 48473 Email: k.cowley@curbco2121.com		TELEPHONE Kirk Cowley 810-232-2121
		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-7396 Kristen Robel
Contract Compliance Inspector: Trace Plummer, Mike Streeter and Albert Bessey Curb Sweeping for the Southwest Region – Michigan Department of Transportation		
CONTRACT PERIOD: 3 years, 2 options From: August 17, 2011 To: August 1, 2014		
TERMS 1% Net 15, Otherwise Net 45	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other		
MINIMUM DELIVERY REQUIREMENTS N/A		
MISCELLANEOUS INFORMATION: N/A		

The terms and conditions of this Contract are those of ITB 07111300168, this Contract Agreement and the Contractor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.

Estimated Contract Value: **\$422,940.99**

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. 071B1300328
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Curbco Sweeping Inc. P.O. Box 70 Swartz Creek, MI 48473 Email: k.cowley@curbco2121.com	TELEPHONE Kirk Cowley 810-232-2121 CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-7396 Kristen Robel
Contract Compliance Inspector: Trace Plummer, Mike Streeeter and Albert Bessey Curb Sweeping for the Southwest Region – Michigan Department of Transportation	
CONTRACT PERIOD: 3 years, 2 options From: August 17, 2011 To: August 1, 2014	
TERMS 1% Net 15, Otherwise Net 45	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of ITB 07111300168, this Contract Agreement and the Contractor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.	
Estimated Contract Value: \$422,940.99	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07111300168. 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:
Curbco Sweeping Inc.	Signature
Firm Name	Name/Title
Authorized Agent Signature	Purchasing Operations
Authorized Agent (Print or Type)	Division
Date	Date



Table of Contents

Article 1 – Statement of Work..... 15

1.1 Project Identification..... 15

1.1.1 Project Request..... 15

1.1.2 Background- Deleted Not Applicable 15

1.2 Scope of Work and Deliverable(s)..... 15

1.2.1 In Scope – - Deleted Not Applicable 15

1.2.2 Deliverable(s)..... 15

Work and Deliverable 15

1.2.3 Quantity 26

1.2.4 Ordering..... 26

1.2.5 Alternate Bids- Deleted Not Applicable..... 26

1.3 Management and Staffing..... 26

1.3.1 Project Management- Deleted Not Applicable..... 26

1.3.2 Reports- Deleted Not Applicable 26

1.3.3 Staff, Duties, and Responsibilities- Deleted Not Applicable 26

1.3.4 Meetings..... 26

1.3.5 Place of Performance- (Best Value Evaluation) 26

1.3.6 Reserved..... 27

1.3.7 Binding Commitments- Deleted Not applicable..... 27

1.3.8 Training- Deleted Not Applicable..... 27

1.3.9 Security- Deleted Not Applicable..... 27

1.4 Delivery and Acceptance..... 27

1.4.1 Time Frames..... 27

1.4.2 Minimum Order..... 27

1.4.3 Packaging – Deleted Not Applicable..... 27

1.4.4 Palletizing – Deleted Not Applicable 27

1.4.5 Delivery Term 27

1.4.6 Acceptance Process..... 27

1.4.7 Criteria 27

1.5 Proposal Pricing 27

1.5.1 Pricing..... 27

1.5.2 Quick Payment Terms..... 27

1.5.3 Price Term..... 27

1.5.4 Tax Excluded from Price..... 27

1.5.5 Invoices 28

1.6 Commodity Requirements 28

1.6.1 Customer Service 28

1.6.2 Research and Development- Deleted Not Applicable 28

1.6.3 Quality Assurance Program- Deleted Not Applicable..... 28

1.6.4 Warranty for Deliverable(s)- Deleted Not Applicable..... 28

1.6.5 Special Incentives- Deleted Not Applicable 28

1.6.6 Energy Efficiency- Deleted Not Applicable..... 28

1.6.7 Environmental Requirements- Deleted Not Applicable 28

1.6.8 Recycled Content and Recyclability- Deleted Not Applicable..... 28

1.6.9 Materials Identification and Tracking 28

1.7 Extended Purchasing- Deleted Not Applicable 28

1.7.1 MiDEAL – Deleted Not Applicable..... 28

1.7.2 State Employee Purchases- Deleted Not Applicable 28

Article 2 – Terms and Conditions..... 29

2.1 Contract Term..... 29

2.1.1 Contract Term..... 29



2.1.2 Options to Renew 29

2.2 Payments and Taxes..... 29

2.2.1 Fixed Prices for Deliverable(s) 29

2.2.2 Payment Deadlines..... 29

2.2.3 Invoicing and Payment – In General - Deleted Not Applicable 29

2.2.4 Pro-ration - Deleted Not Applicable..... 29

2.2.5 Final Payment and Waivers 29

2.2.6 Electronic Payment Requirement..... 29

2.2.7 Employment Taxes 29

2.2.8 Sales and Use Taxes 29

2.3 Contract Administration 30

2.3.1 Issuing Office..... 30

2.3.2 Contract Compliance Inspector..... 30

2.3.3 Project Manager – Deleted Not Applicable 30

2.3.4 Contract Changes 30

2.3.5 Price Changes 31

2.3.6 Notices..... 31

2.3.7 Covenant of Good Faith..... 32

2.3.8 Assignments 32

2.3.9 Equipment 32

2.3.10 Facilities - Deleted Not Applicable..... 32

2.4 Contract Management 32

2.4.1 Contractor Personnel Qualifications..... 32

2.4.2 Contractor Key Personnel..... 32

2.4.3 Removal or Reassignment of Personnel at the State's Request..... 32

2.4.4 Contractor Personnel Location – Deleted Not Applicable..... 32

2.4.5 Contractor Identification..... 33

2.4.6 Cooperation with Third Parties..... 33

2.4.7 Relationship of the Parties..... 33

2.4.8 Contractor Return of State Equipment/Resources – Deleted Not Applicable..... 33

2.4.9 Background Checks 33

2.4.10 Compliance With State Policies..... 33

2.5 Subcontracting by Contractor – Deleted Not Applicable – NO SUBCONTRACTING ALLOWED
33

2.5.1 Contractor Responsible - Deleted Not Applicable – NO SUBCONTRACTING ALLOWED 33

2.5.2 State Approval of Subcontractor - Deleted Not Applicable – NO SUBCONTRACTING ALLOWED..... 33

2.5.3 Subcontract Requirements - Deleted Not Applicable – NO SUBCONTRACTING ALLOWED..... 33

2.5.4 Competitive Selection - Deleted Not Applicable – NO SUBCONTRACTING ALLOWED 33

2.6 Reserved 33

2.7 Performance..... 33

2.7.1 Time of Performance 33

2.7.2 Service Level Agreements Deleted Not Applicable 34

2.7.3 Liquidated Damages – Deleted Not Applicable..... 34

2.7.4 Excusable Failure 34

2.8 Acceptance of Deliverable(s) – Deleted Not Applicable..... 34

2.8.1 Quality Assurance – Deleted Not Applicable 34

2.8.2 Delivery Responsibilities 34

2.8.3 Process for Acceptance of Deliverable(s) 34

2.8.4 Acceptance of Deliverable(s) 34

2.8.5 Process for Approval of Written Deliverable(s) - Deleted Not Applicable..... 34

2.8.6 Process for Approval of Services - Deleted Not Applicable..... 34

2.8.7 Final Acceptance – Deleted Not Applicable..... 35

2.9 Ownership - Deleted Not Applicable..... 35



2.10 State Standards - Deleted Not Applicable..... 35

2.11 Confidentiality 35

 2.11.1 Confidential Information 35

 2.11.2 Protection and Destruction of Confidential Information 35

 2.11.3 Exclusions 35

 2.11.4 No Obligation to Disclose 35

 2.11.5 Security Breach Notification 35

2.12 Records and Inspections..... 35

 2.12.1 Inspection of Work Performed..... 36

 2.12.2 Retention of Records..... 36

 2.12.3 Examination of Records..... 36

 2.12.4 Audit Resolution 36

 2.12.5 Errors 36

2.13 Warranties 36

 2.13.1 Warranties and Representations 36

 2.13.2 Warranty of Merchantability – Deleted Not Applicable 37

 2.13.3 Warranty of Fitness for a Particular Purpose – Deleted Not Applicable 37

 2.13.4 Warranty of Title – Deleted Not Applicable 37

 2.13.5 Equipment Warranty – Deleted Not Applicable 37

 2.13.6 New Deliverable(s)- Deleted Not Applicable..... 37

 2.13.7 Prohibited Products – Deleted Not Applicable..... 37

 2.13.8 Consequences For Breach..... 37

2.14 Insurance 37

 2.14.1 Liability Insurance 37

 2.14.2 Subcontractor Insurance Coverage – Deleted Not Applicable – NO SUBCONTRACTING ALLOWED 39

 2.14.3 Certificates of Insurance and Other Requirements..... 39

2.15 Indemnification..... 40

 2.15.1 General Indemnification 40

 2.15.2 Code Indemnification - Deleted Not Applicable 40

 2.15.3 Employee Indemnification..... 40

 2.15.4 Patent/Copyright Infringement Indemnification – Deleted Not Applicable..... 40

 2.15.5 Continuing Obligation 40

 2.15.6 Indemnification Procedures..... 40

 2.15.7 Limitation of Liability 41

2.16 Termination by the State..... 41

 2.16.1 Notice and Right to Cure..... 41

 2.16.2 Termination for Cause..... 41

 2.16.3 Termination for Convenience 41

 2.16.4 Termination for Non-Appropriation..... 42

 2.16.5 Termination for Criminal Conviction..... 42

 2.16.6 Termination for Approvals Rescinded..... 42

 2.16.7 Rights and Obligations upon Termination 42

 2.16.8 Reservation of Rights 43

 2.16.9 Contractor Transition Responsibilities 43

 2.16.10 Transition Payments..... 43

2.17 Termination by the Contractor 43

 2.17.1 Termination 43

2.18 Stop Work – Deleted Not Applicable 43

 2.18.1 Stop Work Order – Deleted Not Applicable 43

 2.18.2 Termination of Stop Work Order – Deleted Not Applicable 43

 2.18.3 Allowance of the Contractor's Costs – Deleted Not Applicable 43

2.19 Reserved 43

2.20 Dispute Resolution..... 43



2.20.1 General 44

2.20.2 Informal Dispute Resolution 44

2.20.3 Injunctive Relief 44

2.20.4 Continued Performance 44

2.21 Disclosure Responsibilities 44

2.21.1 Disclosure of Litigation 44

2.21.2 Other Disclosures 45

2.21.3 Call Center Disclosure – Deleted Not Applicable 45

2.22 Extended Purchasing 45

2.22.1 MiDEAL Requirements – Deleted Not Applicable 45

2.22.2 State Administrative Fee - Deleted Not Applicable 45

2.22.3 State Employee Purchase Requirements – Deleted Not Applicable 45

2.23 Laws 45

2.23.1 Governing Law 45

2.23.2 Compliance with Laws 45

2.23.3 Jurisdiction 45

2.23.4 Nondiscrimination 45

2.23.5 Unfair Labor Practices 46

2.23.6 Environmental Provision 46

2.23.7 Freedom of Information 46

2.23.8 Workplace Safety and Discriminatory Harassment - Deleted Not Applicable 46

2.23.9 Prevailing Wage - Deleted Not Applicable 46

2.23.10 Abusive Labor Practices – Deleted Not Applicable 46

2.24 General Provisions 46

2.24.1 Bankruptcy and Insolvency 46

2.24.2 Media Releases 47

2.24.3 Contract Distribution 47

2.24.4 Permits 47

2.24.5 Website Incorporation 47

2.24.6 Future Bidding Preclusion - Deleted Not Applicable 47

2.24.7 Antitrust Assignment 47

2.24.8 Disaster Recovery 47

2.24.9 Legal Effect 47

2.24.10 Entire Agreement 47

2.24.11 Order of Precedence 47

2.24.12 Headings 48

2.24.13 Form, Function and Utility – Deleted Not Applicable 48

2.24.14 Reformation and Severability 48

2.24.15 Approval 48

2.24.16 No Waiver of Default 48

2.24.17 Survival 48

Attachment A, Pricing 49



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.

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

Chronic Failure - as defined in applicable Service Level Agreements.

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

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 ITB. 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.

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 provides curb sweeping services for the Department of Transportation (MDOT).

1.1.1 Project Request

This is a Statement of Work (SOW) for curb sweeping services for the Coloma, Kalamazoo, and Marshall Transportation Service Centers (TSC) in the Southwest Region.

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)

The Contractor will provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform the services as described in the specifications herein.

Out-Of-Scope

The following tasks are **considered out-of-scope** for this Contract:

- Performance of personal chores for anyone;
- Providing of transportation for agency staff or visitors (i.e., chauffeur service);
- Courier / Porter Services

Environment

The services requested are identified herein and during the hours specified by the Contract Compliance Inspector (CCI).

All work shall be done in accordance with all regulations governing the state agency wherein the work is to be performed and with minimum possible interference with the proper functioning of the activities of that state agency. Supplies, materials, equipment, etc. shall be confined so as not to unduly encumber the premises.

Work and Deliverable

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- A. The Contractor, through innovation, technology or other means, shall perform and provide the required services and staff to complete the frequencies determined by the State and otherwise do all things necessary for, or incidental, to the performance of work. Compliance will be based on the State’s overall evaluation and interpretation in accordance with method of performance, frequencies and method of performance, as set forth in the Contract.
- B. The Contractor shall provide all services and related items and services necessary for, or incidental to, the performance of work in accordance with this Contract.
- C. The Contractor shall provide services at the locations described in Attachment A and/or directed by the CCI.

The Contractor shall perform curb sweeping services under the jurisdiction of MDOT in accordance with requirements stated herein in accordance with requirements of this Contract. The Contractor shall also furnish supervision and all labor, equipment and transportation in accordance with all Federal and State statues and



incidentals necessary to satisfactorily perform the services at the frequencies and during the times as specified herein. The services shall include all functions normally considered a part of workmanlike, satisfactory public service.

The specifications contained in this Contract have been developed to establish the minimum level of curbside sweeping services required and operated by MDOT.

Curb/Street Sweeping

The Contractor shall perform one (1) complete curb sweeping per year on the routes identified in Attachment A for Routine Sweeping from August 2011 and ending August 2014.

The routine complete curb sweeping will be performed between April 1st and August 31st of each year. One (1) unit shall equal one (1) mile of curb/street sweeping as described on the pricing as an attachment to the Contract.

Non-Sweeping Debris

Any debris that cannot be removed by mechanical sweeping, but can be picked up by one (1) person, shall be collected by hand or other means, before sweeping and disposed of in a class two (2) landfill. Debris that cannot be picked up by one (1) person shall be reported to the CCI. Examples of debris that cannot be removed by mechanical sweepers include, but are not limited to: rocks, bricks, bottles, tree limbs, and sticks. Examples of debris that can be removed by mechanical sweepers include, but are not limited to: dirt, paper, and leaf piles less than eight (8) inches in depth.

Dust Control

All sweeping shall be accomplished with using water for dust control. The Contractor shall contact the local municipality for water and hydrant use, and comply with their requirements and all applicable regulations at no additional cost to the State.

Emergency Requests

The Contractor shall be available 24 hours, seven (7) days a week. The Contractor shall organize his/her operations to respond to emergency calls for curbside sweeping services from the CCI. Following a call from the CCI, the Contractor shall provide the necessary equipment for curb sweeping out at the designated scene within one (1) hour of notice.

All curb sweeping shall be paid on a unit price per hour. The completed work will be paid for at this Contract unit price, which price includes all equipment and labor.

Project Control

- A. The Contractor will carry out this project under the direction and control of MDOT.
- B. Although there will be continuous liaison with the Contractor, the client agency's project director will meet as needed for the purpose of reviewing progress and providing necessary guidance with the Contractor in solving any problems that may arise.

Volume of Service

Volume of service for this Contract are identified as estimates only on Attachment A. The CCI will determine final unit number(s) to be cleaned.

Days/Hours of Operation

All work included in this Contract, except trouble/emergency calls, shall be performed during daylight hours only, unless otherwise directed by the CCI (contact CCI for authorization of nighttime work in specific locations). No work shall be allowed on weekends unless prior approval is obtained from the CCI.



Work shall not be permitted during holiday periods in accordance with the 2003 Michigan Department of Transportation Standard Specifications for Construction or during special events. The CCI shall suspend the work at any time, if traffic is being unduly hampered or delayed by the work in progress.

Detailed Progress Schedule

Work must be performed in accordance with the progress schedule submitted with the Contractor’s Work Plan at the Pre-Award Meeting and described below.

The first failure to complete work as defined in the progress schedule without prior approval to adjust the schedule from the CCI shall result in a Vendor Performance being issued and a meeting with the Contractor to insure corrective action. The second such failure will result in termination of the Contract. The progress schedule must address all work to be completed when multiple Contracts are awarded to the same Contractor, including work performed as a subcontractor for a local unit of government.

The progress schedule must address all services to be completed by the Contractor. (If the Contractor has multiple Contracts for curb/street sweeping on the State Trunk Line System, the progress schedule shall include curb/street sweeping performed on the State Trunk Line System whether for MDOT or as a Department subcontractor for a local unit of government).

Contractor’s Work Plan

Contractor’s Work Plan, which must be approved prior to commencement of work, must include the following:

- 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" document. All equipment must be in the Contractor's possession, available for use and fully operational, prior to the Pre-Award meeting. The Contractor must provide an equipment list and any lease contracts at the Pre-Award Meeting.
- B. SCHEDULE OF OPERATIONS - personnel and hours expected to complete work on this Contract.
- C. Name(s) of supervisors – 24-hour contact telephone numbers and best contact times.
- D. Progress schedule listing locations where sweeping will occur including a schedule of curbside miles to be swept. Equipment failure **WILL NOT** constitute an acceptable reason for deviating from the progress schedule. This schedule must be approved by MDOT at the Pre-Award Meeting. Adjustments to this schedule, including any weather-related deviations, must be approved by the CCI or designated representative.
- E. Safety Program, including traffic control plan(s).
- F. Name/location of Class II disposal site for sweeping material.
- G. Proof of Insurance as defined in the Standard Terms and Conditions must be provided to Purchasing Operations with the signed Contract.
- H. The Contractor is responsible for notifying the County or Municipality before starting work in their area. The CCI will provide a Directory of Municipal Offices and County Directory at the Pre-Award Meeting.
- I. Copy of Liquid Waste Hauler License.
- J. 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 Contractor who can demonstrate the ability to perform the work.



Equipment Requirements

General

The Contractor shall furnish, operate, and maintain suitable and adequate equipment necessary to perform the sweeping operation in an approved safe, workmanlike manner without hindrance, delay, or damage to the roadside. Under no circumstances shall MDOT be responsible for any damage to the Contractor's equipment due to obstacles encountered.

Type of Equipment

The Contractor shall be required to use a sweeper with dual steering control and hold at least five (5) cubic yards of debris. All equipment shall be approved through an acceptable demonstration of the equipment's capabilities, suitability, and condition to MDOT. Demonstrations will be at no cost to MDOT.

GPS/GIS System

Each structure and/or area of curb sweeping shall be located with a Quality Stand Alone GPS (Global Positioning System). Such as:

- *Trimble GeoExplorer CE Series Model GeoXT, or approved equivalent.
Accuracy - 3 feet or less.

Curb Sweeping:

Data from the Quality Stand Alone G.P.S. receiver for curbside sweeping shall be recorded on Excel Spreadsheets (provided by CCI) and supplied electronically via e-mail, disk, or CD. Corrected inventory spreadsheets shall be submitted with each invoice for payment. Data shall consist of a unique number/letter for each structure with corresponding coordinate. An accuracy statement and description of coordinate system used shall be included on inventory sheets.

Safety

All equipment shall meet all federal, state, and local safety requirements. 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.

A lighted arrow Type B or C as specified in the 2003 Michigan Department of Transportation Standard Specifications for Construction shall be mounted on, or towed behind, each vehicle.

Truck Mounted Attenuators (TMA)

Description: The Contractor will use Truck-Mounted Attenuators (TMA's) to shield workers or work equipment from errant vehicles according to the following guidelines.

TMA's will be used for projects on freeways and roadways with operating speeds of 45 mph or greater where personnel or equipment are exposed to traffic and one (1) or more of the following conditions are met:
The vehicle is designated as a protective vehicle (shadow or barrier) as part of the maintenance of traffic plans.
Aerial work is being performed on scaffolding, lifts, hoists, bucket trucks, etc., where workers using this equipment are exposed to moving traffic in an occupied lane or shoulder.
Mobile/short duration operations such as pavement marking convoys, grinding in rumble strips, sign installations, luminescent installations, etc.

TMA's shall not be mounted on the vehicle or equipment used by personnel to complete aerial work. TMA's shall not be used as a temporary/permanent barrier ending except during replacement of damaged temporary/permanent barrier ending. In the event that a TMA is used as a temporary safety measure for a damaged temporary/permanent barrier ending, the maximum length of time that a TMA shall be used for this purpose shall be 48 hours or as approved by the Engineer.



Stationary Operation: This work shall consist of furnishing a vehicle with an actual gross vehicle weight of 12 tons (min. weight) and furnishing, installing, and operating a TMA according to the manufacturer’s recommendations, the plans/proposal, and/or as directed by the Engineer. The attenuator placement shall be located as detailed in the applicable maintaining traffic typical.

Material loaded onto the vehicle to obtain the required gross weight shall be securely attached to the vehicle to prevent movement should the TMA be hit.

Mobile Operation: This work shall consist of furnishing a vehicle with an actual gross vehicle weight of five (5) tons (min. weight) and furnishing, installing and operating a TMA according to the manufacturer’s recommendations, and/or as directed by the Engineer. The attenuator placement shall be located as detailed in the applicable maintaining traffic typical.

Material loaded onto the vehicle for transport or during work operations shall be securely attached to the vehicle to prevent movement should the TMA be hit. Hazardous materials will not be allowed on this vehicle. Materials loaded onto the vehicle shall not be considered part of the vehicle gross weight.

Materials and Design: All TMA’s used shall meet or exceed the requirements of NCHRP 350 test level II and III for work zone traffic control devices.

A TMA rated for (NCHRP 350 – Test Level II) shall be used on non-freeway roadways with a normal posted speed of 55 mph or less, which have been reduced to 45 mph or less. These TMA’s shall be prohibited for use on all freeways, non-freeway roadways with posted speed limits of 65 mph or greater and all work zones posted at 50 mph or greater.

A TMA rated for (NCHRP 350 – Test Level III) must be utilized on all freeways, non-freeway roadways with posted speed limits of 65 mph or greater and all work zones posted at 45 mph or greater. The TMA’s may also be used on all other roadways.

The TMA vehicle shall have a letter from the Contractor or manufacturer stating the TMA being used meets the above stated NCHRP 350 criteria, and has been installed and maintained according to manufacturer’s specifications. Upon request, a copy of this letter must be furnished to the Engineer.

The face of the TMA, visible to approaching traffic shall have reflectorized alternating yellow and black stripes, similar to the obstacle markers on the MMUTCD.

Operating Details and Utilization: The TMA shall be operated as per manufacturers’ recommendations, the plans/proposal, and/or as directed by the Engineer. This includes, but is not limited to, the following:

The height from the bottom of the TMA to the roadway surface shall be 12 inches (± one (1) inch).

The TMA shall be parallel (level) with the roadway surface.

The manufacturers of the approved TMA’s recommend a shoulder harness and headrest to be provided for the TMA vehicle’s operator.

For stationary operations, when operating the vehicle with the attenuator installed, the vehicle shall be in gear if it has a standard transmission (park if an automatic transmission), with the brakes set and steering wheels turned away from the work area and traffic, if possible (the TMA shall be placed according to the roll ahead distance table located at the end of this section).

Measurement and payment: Truck Mounted attenuators will be furnished and operated as part of this Contract at no cost to MDOT. MDOT will pay for repair or replacement of the attenuator on the project if struck by something other than the Contactor’s own equipment, and if the following criteria are met:



The damaged or destroyed attenuator must meet all of the manufacturing and operating criteria of this special provision.

The Contractor shall have the attenuators inspected by the Manufacturer/Supplier to ensure that the units are in good working order. Documentation of the inspection is to be provided to the Engineer prior to the start of work.

The Contractor shall be required to provide an accident report from the enforcement agency involved in the accident investigation.

The attenuator repair or replacement will be for the actual unit as required by this special provision. The cost to perform the repairs or replace the attenuator including installation will be paid for by the Contractor. A detailed invoice from the Supplier showing material costs for replacement or repair shall be provided to the Engineer for payment. The repair or replacement cost will not exceed the Suppliers invoice cost for a new attenuator.

MDOT will not pay for any costs that are required to replace or repair the barrier vehicle and any other items that were used to operate the attenuator.

GUIDELINES FOR ROLL-AHEAD DISTANCE FOR TMA VEHICLES TEST LEVEL II		
Weight of TMA Vehicle (Minimum)	Prevailing Speed (mph) (Posted Speed Prior to Work Zone)	Roll Ahead Distance* (Distance from front of TMA Vehicle to Work Area)
Five and a half (5.5) Tons (Stationary)	45 or Less	25 ft

*Roll ahead distances are calculated using a 4,410 lb impact vehicle weight

GUIDELINES FOR ROLL-AHEAD DISTANCE FOR TMA VEHICLES TEST LEVEL III		
Weight of TMA Vehicle (Minimum)	Prevailing Speed (mph) (Posted Speed Prior to Work Zone)	Roll-Ahead Distance* (Distance from front of TMA Vehicle to Work Area)
Five (5) Tons (Mobile)	60-70	175 ft
	50-55	150 ft
	45	100 ft
12 Tons (Stationary)	60-70	50 ft
	50-55	25 ft
	45	25 ft

*Roll ahead distances are calculated using a 10,000 lb impact vehicle weight

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, on either his/her own responsibility or as directed by the CCI 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.

Disposal of Material

The Contractor is responsible for stockpiling of all sweepings at designated containment areas at maintenance garages or as directed by CCI(s).

MDOT will be responsible for sweepings once Contractor has transported to the containment site.

This material is not considered hazardous waste and does not require a manifest.



Maintaining Traffic

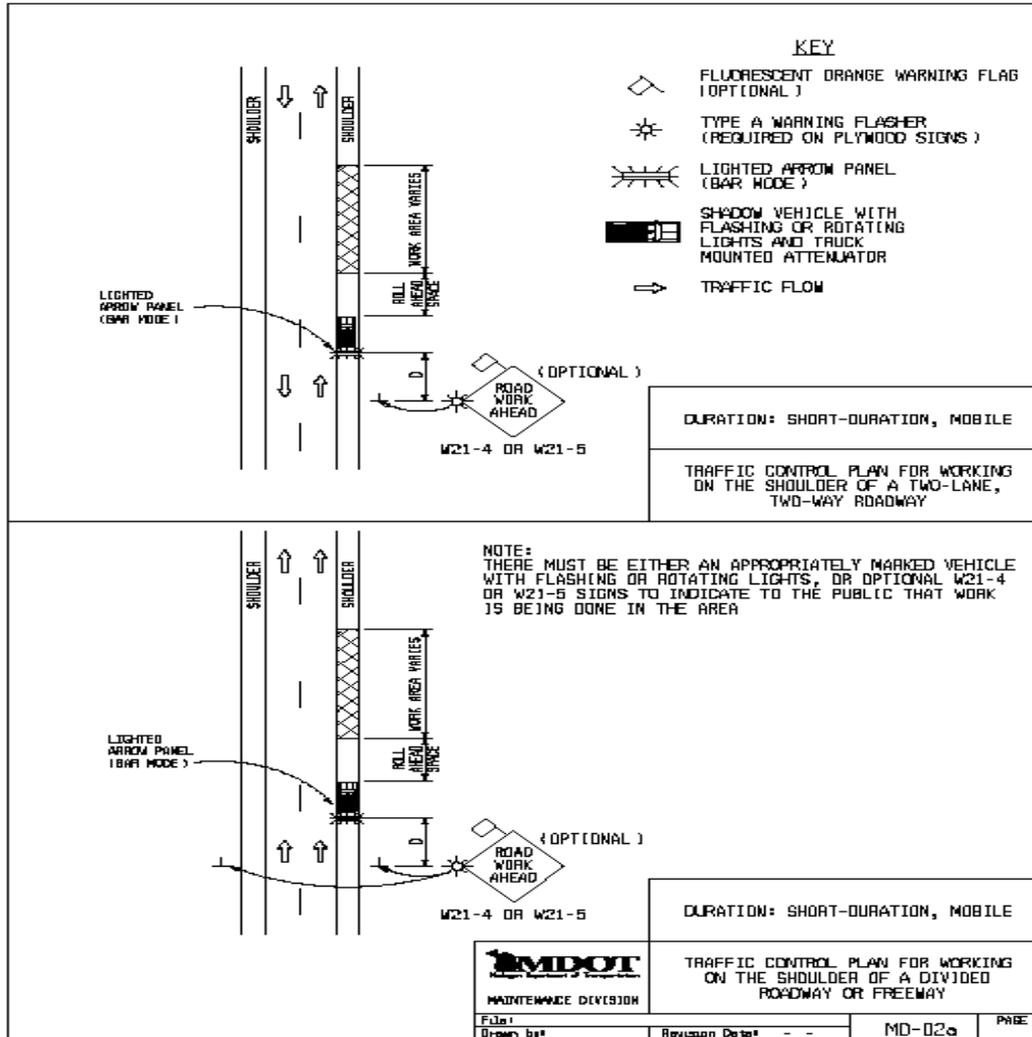
Traffic shall be maintained in accordance with Sections 103 and 812 of the 2003 MDOT Standard Specifications for Construction and the current edition of the Michigan Manual of Uniform Traffic Control Devices (MMUTCD). All operations shall be conducted in a manner that will not create a hazard. The Contractor shall not operate equipment in a manner that requires unnecessary crossing of the roadway. The Contractor shall not park equipment within the right of way of any state trunk line in a manner not permitted by posted traffic control devices. The Contractor shall not store equipment in the right of way of any state trunk line or on state property when not engaged in sweeping operations.

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

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

Traffic Control Plan

For Working on the shoulder of a:
 Two-Lane, two-way roadway
 Divided roadway or freeway
 (see diagram below)



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. The Contractor shall be responsible for, and repair to, at his/her own expense, any and all damage and injury thereto, arising out of or in consequence of any act or omission of the Contractor or 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 signs, light fixtures, and delineators to the satisfaction of the CCI. Damage to traffic control devices (signs) and/or manholes shall be reported to the CCI, or designated representative, immediately. If localized failure to the roadway is imminent, contact the CCI immediately. All other remarks should be included in the weekly report.

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 prior to May 10 of the following year, if the damage occurred after May 10. All replacement plants must be maintained during the specified establishment period.



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

Deletion of Work

MDOT may delete all, or any, portions of this Contract that cannot be completed in conformity with the progress schedule or a reasonable extension.

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

Locations

Contractor will be provided with an updated, itemized location list each year before commencing work.

See Attachment A and/or CCI for detailed routes/information regarding locations to be swept.

General Conditions

Work Approval

During the period of sweeping operations, the Contractor shall consult the CCI, 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.

Cancellation

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

The CCI, 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 Contract specifications, without prior written approval, the CCI 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 issued, a written notice of termination will be sent to the Contractor.

Noncompliance includes, but is not limited to:

Failure of the Contractor to meet the requirements specified in the progress schedule without prior approval of the CCI.

Failure of the Contractor to perform in accordance with any of the specifications defined above.

MDOT reserves the right to bill the Contractor for any damages due to the default of the Contract.

Subcontracting

No subcontracting will be allowed on this project.

During the first week of April for street sweeping of each year of this Contract, prior to the first curb sweeping, the Contractor and CCI shall meet to review and update the progress schedule for the coming season, identify any personnel changes, equipment changes and exchange special event schedules.

Contractor Roles & Responsibilities

A. PERSONNEL



1. Upon request from the State, the Contractor shall identify personnel requirements by number and skill including names and proposed physical location of executive and professional personnel who would be employed in this project in its work-plan (and shall indicate through the use of organizational diagrams and/or narrative statements, the specific functions of each assigned individual with detailed qualifications of employees assigned to his project), for at least the following:

Project Manager
Staff Support

2. The State reserves the right to approve personnel for this project and to require replacement of personnel found to be unacceptable at any time during the project. (See §2.040).

3. Contractor shall be responsible for repair, replacement, or cleanup as necessary due to carelessness or negligence on the part of the Contractor and its personnel.

B. SUPERVISION

Contractor shall provide all supervision as may be necessary to oversee its personnel:

1. Contractor shall exercise all supervisory control and general control over all day-to-day operations of his/her employees, including control over all workers duties. At the conclusion of each service, the Contractor shall inspect the route for completion and performance quality of the required services. The Contractor shall also be responsible for payment of all wages to employees, taxes, and fringe benefits, sick leave, pension benefits, vacations, medical benefits, life insurance or unemployment compensation or the like. The Contractor shall discipline his/her employees, as needed, including firing and hiring.

2. The CCI may require that Contractor immediately remove any Contractual employee(s) from the agency's premises for just cause. The Contractor will assume any and all responsibilities relating to this removal. Any employee so removed may not be placed in another State Agency.

3. The CCI shall make final determination of a contractual employee's suitability for assignment to a specific location. Problems of this nature will be addressed with the Contractor's management

State Staff Roles & Responsibilities

CCI or agency / departmental designee shall:

A. Staff members for each State Agency or Department will be clearly identified in the Contract.

B. Shall provide the Contractor the general and specific orders detailing services at each Contracted location. These orders shall be deemed a portion of this Contract and failure to carry out these orders shall be considered a violation of this Contract.

C. Give additional written or oral instructions to clarify the desired performance as determined by the CCI.

D. If applicable, provide necessary, registered, and returnable keys for the Contractor's entrance to areas necessary for the completion of described work (Contractor must not duplicate any such keys).

Contract Implementation Period / Transition / Orientation

The CCI will administer this Contract on a day-to-day basis during the term of this Contract. However, administration of this Contract implies no authority to change, modify, clarify, amend, or otherwise alter the terms, conditions, and specification of this Contract. That authority is retained by DMB – Purchasing Operations.



Before commencement of work by a new Contractor, the State CCI will:

Schedule a meeting with the Contractor to talk about the Contract specifications and answer any questions the Contractor may have.

Exchange emergency telephone numbers where the Contractor can be reached, day or night, and where the CCI can be reached.

List of supplies and Material Safety Data Sheets (MSDS) must be obtained, if applicable.

Do LEIN checks if necessary. See Contract for information required for LEIN checks.

Once the new Contractor has begun the work, the CCI should:
Provide written correspondence and feedback to the Contractor after each service. The Contractor must be informed of any deficiencies and allowed time to correct the deficiencies. If deficiencies continue, a formal Complaint to Vendor or Vendor Performance Report will be filed.

Inform Contractor where to forward invoices for immediate processing and payment.

Be available to answer questions from the Contractor. Feedback (Communication) is critical.

Project Plan Management

For each location, a project work plan for managing implementation of the services shall be specified and submitted to the CCI for review and approval.

Project management plan shall identify methods, tools, and processes proposed to oversee the project, address issues and changes as may arise, and keep the appropriate parties apprised of progress.

Contractor will carry out this project under the direction and control of the specified CCI for the respective locations where services are to be performed.

D. Contractor shall meet with the CCI and other agency or departmental project-leads, on a basis to be established by CCI and Contractor, but shall meet quarterly at a minimum, for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise, as well as continuously communicate with the agency/departmental project-lead.

E. Annual Service Review and Progress Meeting

The CCI may request an audit of the services provided each year under the specifications, terms, and conditions of the Contract. The audit will be a joint activity of MDOT and Purchasing Operations.

An unsatisfactory audit will result in cancellation of this Contract under the terms of the Cancellation Clause in the Contract. Further, should this Contract be cancelled for cause, the Contractor so cancelled will not be allowed to participate in request(s) for continuation of this service.

The audit will consist of an evaluation of the total service quality, including responsiveness, timeliness of required reporting, and any other specifics as required under the terms of the Contract. The results of the audit along with Contract recommendations will be published by Purchasing Operations and distributed to the respective Agency(s).

Should the Contractor desire, a meeting will be arranged between all concerned parties within 10 calendar days of the date the Contractor received, or could have reasonably been expected to receive, their copy of the



audit. This meeting will provide an opportunity for the Contractor to present their reactions to audit recommendations.

Issue Management, Inspection and Correction of Deficiencies

The CCI will conduct inspections for all specifications identified in this Contract and will provide performance evaluations to the Contractor noting deficiencies in this Contract specifications. The CCI (or his/her appointed representative) shall make the final determination as to whether any task has been satisfactorily performed.

CCI will also maintain a record comprised of complaints from agency or departmental staff and provide record of this to the Contractor at the beginning of each service; this record will identify the areas requiring special attention on that day, which must to be completed by Contractor within eight (8) hours of its receipt.

Contractor must remain responsible to make any necessary changes if the CCI determines that any task has not been performed adequately or satisfactorily. Contractor must correct the deficiency within 24 hours from notice of the deficiency, or sooner depending on the severity of the task.

D. Should the Contractor fail to correct specification deficiencies, a Complaint to Vendor (Vendor Performance form) will be filed by the CCI. Repeated failure to correct specification deficiencies resulting in issuance of subsequent Complaint to Vendor (Vendor Performance Form) may result in cancellation of this Contract and/or the assessment of liquidated damages as defined in Section 2.073 by Purchasing Operations.

Change Management

If a proposed Contract change is requested by the CCI and approved by the agency purchasing/procurement office, then the request for change will be submitted to the Department of Technology, Management and Budget, Purchasing Operations Buyer, who will then make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request.

If the DTMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the assigned Buyer will issue an addendum to the Contract, via a Contract Change Notice.

C. Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DTMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.

Compensation and Payment

Payment / Reimbursement Method:

Contractor agrees that –

CONTRACT AGREEMENT shall be a FIXED, not to exceed, maximum amount.

Payment will be issued as a rate per unit of service, as described in the price-model on Attachment A.

The Contractor shall maintain a record system that documents the total number of units of service as defined in the Agreement and delivered during the term of the Contract. These records shall also document the specific units billed to the State under the Contract.

A monthly “Statement of Expenditures” shall accurately represent the units of service delivered, the reimbursement rate by type of service, and the total amount being claimed, must be submitted to the State, within 30 days from the end of the monthly billing period.

For the month of September, billings shall be submitted as reasonable directed by the CCI or the State’s Contract Administrator to meet fiscal year-end closing deadlines.

If the billing is not received as set forth above, no payment shall be made by the State for that billing period unless as exception is specifically authorized by the Department director or his/her delegated representative.



7. In no event, shall the State make payment to the Contractor for billings submitted more than 90 days after the end of the billing period, without and approval from the State Department Director or his/her representative.

For authorized Services and Price List, see Attachment A.

Contractor’s out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State’s current travel reimbursement rates. See www.michigan.gov/dtmb for current rates.

1.2.3 Quantity

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

1.2.4 Ordering

See Section 1.2.2, under the heading of “Detailed Progress Schedule”

1.2.5 Alternate Bids- Deleted Not Applicable

1.3 Management and Staffing

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

The State may request other meetings as it deems appropriate.

1.3.5 Place of Performance- (Best Value Evaluation)

The Contractor must list the location of all facilities that will be involved in performing the Contract:

Full address of place of performance	Owner/operator of facility to be used	Percent (%) of Contract value to be performed at listed location
3145 South Dye Road Flint, Michigan	Curbco Inc.	100%

1.3.6 Reserved

1.3.7 Binding Commitments- Deleted Not applicable

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 Section 1.2.2, under the heading of “Detailed Progress Schedule”

1.4.2 Minimum Order

See Section 1.2.2, under the heading of “Detailed Progress Schedule”



1.4.3 Packaging – Deleted Not Applicable

1.4.4 Palletizing – Deleted Not Applicable

1.4.5 Delivery Term

Delivery is governed by Section 2.8.2, Delivery Responsibilities.

Prices are "F.O.B. Destination" with transportation charges prepaid on all orders that meet the minimum order requirement specified in Section 1.4.2, Minimum Order.

1.4.6 Acceptance Process

See Section 1.2.2, under the heading of "General Conditions."

1.4.7 Criteria

See Section 1.2.2, under the heading of "General Conditions."

1.5 Proposal Pricing

1.5.1 Pricing

See the Attachment A for pricing details.

1.5.2 Quick Payment Terms

The Contractor will offer a quick payment discount of 1% off an invoice if paid within 15 Days from the State's receipt of the invoice or delivery of the Deliverable(s), whichever is later.

1.5.3 Price Term

Prices in **Attachment A** 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 1.2.2, under the heading of "Compensation and Payment."

1.6 Commodity Requirements

1.6.1 Customer Service

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

Susan Mills is the individual assigned to the State of Michigan account that will respond to State agency inquires promptly. She can be reached by calling 1-800-223-5024.



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

(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.** The Contractor confirmed mercury will not be used with this Contract.

(c) **Brominated Flame Retardants.** The Contractor confirmed Brominated Flame Retardants will not be used with this Contract.

(d) **Environmental Permits and Requirements.** The 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 begins approximately August 17, 2011 and expires August 1, 2014. All outstanding Purchase Orders will expire upon the termination of this 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 this 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 the 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 the 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
 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

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a day-to-day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Trace Plummer
 Department of Transportation
 Coloma TSC
 3880 Red Arrow Highway
 Benton Harbor, Michigan 49022
 PlummerT@michigan.gov
 Phone: 269-849-2394
 Fax: 269-849-1227

Mike Streeter
 Department of Transportation
 Kalamazoo TSC
 5372 South 9th Street
 Kalamazoo, Michigan 49009
 StreeterM@michigan.gov
 Phone: 269-375-8699
 Fax: 269-544-0080

Albert Bessey
 Department of Transportation
 Marshall TSC
 15300 West Michigan Avenue
 Marshall, Michigan 49068
BesseyA@michigan.gov
 Phone: 269-789-0560
 Fax: 269-789-0936

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 this 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 this 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
 Fax: 517-335-0046



If to Contractor:
 Curbco Sweeping Inc.
 P.O. Box 70
 Swartz Creek, Michigan 48473
 k.cowley@curbco2121.com
 Fax: 810-232-2460

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 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 this 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

The State will not provide equipment and resources unless specifically identified in the Statement(s) of Work or other Contract exhibits.

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 Section 1.2.2, "Contractor Roles and Responsibilities."

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 while on State, 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 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 this 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 and servants, during the performance of the 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 – Deleted Not Applicable – NO SUBCONTRACTING ALLOWED

2.5.1 Contractor Responsible - Deleted Not Applicable – NO SUBCONTRACTING ALLOWED

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 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.

2.8 Acceptance of Deliverable(s) – Deleted Not Applicable

2.8.1 Quality Assurance – Deleted Not Applicable

2.8.2 Delivery Responsibilities

See Section 1.2.2, under the heading of "Specifications."

2.8.3 Process for Acceptance of Deliverable(s)

See Section 1.2.2, "General Conditions."

2.8.4 Acceptance of Deliverable(s)

See Section 1.2.2, under the heading of "General Conditions."

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 – Deleted Not Applicable

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 and agents, who must have access to fulfill the purposes of this Contract.

(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.

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.

(g) 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.

(h) 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.

(i) 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.

(j) 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 this 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

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 performance, including any person directly or indirectly employed by the Contractor, or any person for whose acts the Contractor 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.

Deductible 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 this 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, 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 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.

The State's liability for damages to the Contractor is limited to the value of the 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.

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 ITB 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. This 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 this 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 – Deleted Not Applicable

2.18.1 Stop Work Order – Deleted Not Applicable

2.18.2 Termination of Stop Work Order – Deleted Not Applicable

2.18.3 Allowance of the Contractor's Costs – Deleted Not Applicable

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 this 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 this 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 of its officers or directors;
 - (ii) A parole or probation Proceeding;
 - (iii) A Proceeding involving the Contractor 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 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 (B) a claim or written allegation of fraud against the Contractor 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 to continue to perform this Contract; or (ii) whether the Contractor 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 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 this 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. 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 - Deleted Not Applicable

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 ITB 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 ITB 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 this Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then this Contract will be modified to reflect the parties' original intent. All remaining provisions of this 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 this 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.



Attachment A, Pricing

Coloma TSC Curb Sweeping

CHECK ALL THAT APPLY	DESCRIPTION OF SERVICES	UNIT OF MEASURE	CYCLES PER YEAR	PRICE PER MILE	TOTAL PRICE FOR 3 YEARS
<input checked="" type="checkbox"/>	Curb Sweeping – Coloma TSC Cass, Berrien, Van Buren and St. Joseph Counties	MILE	1 CYCLE / YEAR AT 158.9 MILES / CYCLE 476.7 MILES Total for 3 years	\$354.26	\$168,875.74
<input checked="" type="checkbox"/>	Emergency Clean Out	HOUR	Estimated 150 Hours over 3 years	\$120.00	\$18,000.00
TOTAL					\$186,875.74

NOTE: Quantities are estimates only; actual work performed based by CCI.



Coloma Sweeping Route/Mileage

COLOMA TSC CURB SWEEPING ROUTE MILAGE			
County/Garage	Route	Location	Mileage
Berrien / Coloma-Sawyer	I-94	Indiana State line east to Van Buren Co. Various locations. Includes bridges over	17.873
Berrien / Coloma	I-94 BL	I-94 to St Joseph City Limits, includes the City of Benton Harbor	11.266
Berrien /Coloma	I-196	I-94 north to Van Buren Co. Line. Includes bridges over	1.8
Berrien / Coloma / Niles	US-31	Indiana State line to I-94. Includes bridges over.	12.12
Berrien / Coloma	M-63	Benton Harbor to I-196	10.763
Berrien / Coloma / Niles	M-139	US-12 to BL-94	15.987
Berrien / Coloma / Niles / South Haven	M-140	M-139 north to Watervliet, includes City of Watervliet.	4.623
Berrien / Niles / Sawyer	US-12	Indiana State line east to Cass Co. line. Include Three Oaks and Galien.	7.715
Berrien / Niles	M-60/Old BL	Niles	0.315
Berrien / Cass / Niles	M-62	M-140 east to traffic light in Dowagiac	3.464
Berrien / Sawyer	M-239	Various	0.447
		Total Berrien County	86.373
Cass / Niles / Jones	US-12	Berrien Co. Line, east to St. Joseph Co. line. Includes Edwardsburg	3.305
Cass / Niles	M-51	Niles City Limit, north to M-152. Excludes the City of Dowagiac.	7.699
Cass / Niles / Jones	M-60	US-12 east to St. Joseph Co. line. Includes village of Cassopolis, Vandalia, M-60/Old BL.	5.574
Cass / Jones	M-40	US-12 north to Van Buren Co. line. Various, Includes village of Marcellus.	1.739
Cass / Niles	M-152	Various	0.077
Cass / Jones	M-216	Various, includes Village of Marcellus	1.085
Cass / Jones	M-217	Indiana State line north to US-12, various.	0.130
		Total Cass County	19.609
St. Joseph / Jones	US-12	Adamsville east to West Sturgis City limit	9.0
St. Joseph / Jones	M-60	Cassopolis East City, east to M-66, excludes the city of Three Rivers	3.0
St. Joseph / Jones	M-66	Indiana State line north to the M66/M-60 junction, excludes the City of Sturgis	5.0



St. Joseph / Jones	M-86	Three Rivers east City limit to M-66, includes village of Centreville	3.0
St. Joseph / Jones	M-103	Indiana State line north to US-12	1.0
St. Joseph / Jones	US-131	Indiana State line north to Kalamazoo Co. line. Includes Constantine and Three Rivers	8.0
St. Joseph / Jones	M-216	M-40 to US-131, includes Village of Marcellus	0.1
		Total St. Joseph County	29.1
Van Buren / Fennville / Kalamazoo / Jones	M-40	Various – Cass Co. line north to Allegan Co.	9.548
Van Buren / South Haven	M-140	Berrien Co. line north to South Haven City limits	1.554
Van Buren / South Haven / Kalamazoo	M-43	South Haven City limits east to Kalamazoo Co. line	5.245
Coloma / Van Buren	M-152	Various	0.151
Van Buren / Coloma / Kalamazoo	I-94	Berrien Co. line east to Kalamazoo Co. line, includes bridges over and interchanges	4.17
Van Buren / South Haven	I-196	Berrien Co. line north to Allegan Co. line. Various locations.	1.387
Van Buren / South Haven	I-196 BL	South Haven	1.784
		Total Van Buren County	23.839

Note: Quantities are estimates only. Contact CCI to get approval for any amounts over the stated estimate quantity. Contractor will be provided with an updated, itemized location list each year before commencing work.



EQUIPMENT

TYPE OF EQUIPMENT	MANUFACTURER/ MODEL	SERIAL No. & HORSEPOWER	APPROXIMATE AGE OF EQUIPMENT & <u>OWNED OR RENTED/LEASED</u>
1. STERLING/ELGIN	EAGLE SC8000	49HAADB74DM97918	2004 – OWNED
2. ELGIN/GMC	WHIRLWIND T7500	1GDM7C1J7WJ502654	1998 – OWNED
3. STERLING/ELGIN	EAGLE SC800	49HAADB74DK83497	2003 – OWNED
4. FREIGHTLINER	BROOMBEAR FL70	1FVABTAK02HJ43863	2002 – OWNED
5. INTERNATIONAL	4700-T44E DUMP TRUCK	3FDXF75NOYMA09585	2000 – OWNED
6. FORD	F750 DUMP TRUCK	3FDXF75NOYMA09585	2000 – OWNED
7. STERLING	L7501 DUMP TRUCK	2FZAA9AK41AB90371	2001 – OWNED
8. FORD	F750 DUMP TRUCK	3FRWF75H99V092328	2009 - OWNED



Kalamazoo TSC Curb Sweeping

CHECK ALL THAT APPLY	DESCRIPTION OF SERVICES	UNIT OF MEASURE	CYCLES PER YEAR	PRICE PER MILE	TOTAL PRICE FOR 3 YEARS
<input checked="" type="checkbox"/>	Curb Sweeping –Kalamazoo TSC Allegan and Kalamazoo county's	MILE	1 CYCLE / YEAR AT 119.1 MILES / CYCLE 357.3 MILES Total for 3 years	\$354.26	\$126,577.10
<input checked="" type="checkbox"/>	Emergency Call Out – Kalamazoo TSC	HOUR	Estimated 210 Hours over 3 years	\$120.00	\$25,200.00
TOTAL					\$151,777.10

NOTE: Quantities are estimates only; actual work performed based by CCI.



Kalamazoo Sweeping Route/Mileage

KALAMZOO TSC CURB SWEEPING ROUTE MILAGE			
County/Garage	Route	Location	Mileage
Allegan / Fennville	M-40	US-31 to North Village limits of Gobles, Excludes the city of Allegan	12.7
Allegan / Calhoun – Fennville / Plainwell	M-89	US-31 east to Battle Creek City Limits, Excludes City of Allegan, Otsego, Plainwell.	12.4
Allegan / Plainwell	M-179	US-131 to Patterson Rd. / Barry County Line.	2.4
Allegan / Plainwell	M-222	Allegan East City limits to US-131 interchange.	.3
Allegan / Plainwell	US-131	Kalamazoo County Line to Kent Co. line, including bridges over 131.	5.3
Allegan / Fennville	US-31	I-196 to 32 nd Ave including BL31	2.9
Allegan / Fennville	I-196	Van Buren Co. line north to Ottawa Co. line, including bridges over 196	7.4
Kalamazoo / Kalamazoo	M-43	Van Buren Co. line east to M-89, north of Richland. Excludes City of Kalamazoo	18.3
Kalamazoo / Kalamazoo	M-96	Kalamazoo east city limits to east village limits of Augusta.	4.3
Kalamazoo / Kalamazoo	I-94	Van Buren Co. line east to Calhoun Co. line, barrier wall, interchanges and bridges over I-94	44.2
Kalamazoo / Kalamazoo	I-94 BL	I-94 west to Kalamazoo City Limits.	2.2
Kalamazoo / Kalamazoo	US-131 and US-131 BL	St. Joseph Co. Line north to Allegan Co. Line, includes 131BL to the north city limits of Kalamazoo, all interchanges and bridges over US-131	6.7
TOTAL KALAMAZOO TSC			119.1

Note: Quantities are estimates only. Contact CCI to get approval for any amounts over the stated estimate quantity. Contractor will be provided with an updated, itemized location list each year before commencing work.



EQUIPMENT

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1. STERLING/ELGIN	EAGLE SC8000	49HAADB74DM97918	2004 – OWNED
2. ELGIN/GMC	WHIRLWIND T7500	1GDM7C1J7WJ502654	1998 – OWNED
3. STERLING/ELGIN	EAGLE SC800	49HAADB74DK83497	2003 – OWNED
4. FREIGHTLINER	BROOMBEAR FL70	1FVABTAK02HJ43863	2002 – OWNED
5. INTERNATIONAL	4700-T44E DUMP TRUCK	3FDXF75NOYMA09585	2000 – OWNED
6. FORD	F750 DUMP TRUCK	3FDXF75NOYMA09585	2000 – OWNED
7. STERLING	L7501 DUMP TRUCK	2FZAA9AK41AB90371	2001 – OWNED
8. FORD	F750 DUMP TRUCK	3FRWF75H99V092328	2009 – OWNED



Marshall TSC Curb Sweeping

CHECK ALL THAT APPLY	DESCRIPTION OF SERVICES	UNIT OF MEASURE	CYCLES PER YEAR	PRICE PER MILE	TOTAL PRICE FOR 3 YEARS
<input checked="" type="checkbox"/>	Curb Sweeping: Barry County	MILE	1 CYCLE / YEAR AT 24.20 72.60 Total for 3 years	\$354.26	\$25,719.28
<input checked="" type="checkbox"/>	Curb Sweeping: Branch County	MILE	1 CYCLE / YEAR AT 18.56 55.68 Total for 3 years	\$354.26	\$19,725.20
<input checked="" type="checkbox"/>	Curb Sweeping: Calhoun County	MILE	1 CYCLE / YEAR AT 17.58 52.74 Total for 3 years	\$354.26	\$18,683.67
<input checked="" type="checkbox"/>	Emergency Call Out	HOUR	Estimated 168 Hours over 5 years	\$120.00	\$20,160.00
TOTAL					\$84,288.15

NOTE: Quantities are estimates only; actual work performed based by Contract Compliance Inspector.



Marshall Sweeping Route/Mileage

Marshall TSC CURB SWEEPING ROUTE MILEAGE		
County/Garage	Route	Mileage
Barry	M-37	9.49
Barry	M-43	6.96
Barry	M-43 (Kalamazoo Co.)	.52
Barry	M-50	.16
Barry	M-66	3.28
Barry	M-79	.85
Barry	M-89	.04
Barry	M-170	.80
Barry	Various Bridges	2.10
	Yearly Total	24.20

Marshall TSC CURB SWEEPING ROUTE MILEAGE		
County/Garage	Route	Mileage
Branch	M-86	2.53
Branch	US-12	.19
Branch	I-69	4.05
Branch	I-69BL	7.20
Branch	Various Bridges	.11
	Yearly Total	17.58

TOTAL MARSHALL TSC: 60.34 MILES PER YEAR

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EQUIPMENT

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2. ELGIN/GMC	WHIRLWIND T7500	1GDM7C1J7WJ502654	1998 – OWNED
3. STERLING/ELGIN	EAGLE SC800	49HAADBv4DK83497	2003 – OWNED
4. FREIGHTLINER	BROOMBEAR FL70	1FVABTAK02HJ43863	2002 – OWNED
5. INTERNATIONAL	4700-T44E DUMP TRUCK	3FDXF75NOYMA09585	2000 – OWNED
6. FORD	F750 DUMP TRUCK	3FDXF75NOYMA09585	2000 – OWNED
7. STERLING	L7501 DUMP TRUCK	2FZAA9AK41AB90371	2001 – OWNED
8. FORD	F750 DUMP TRUCK	3FRWF75H99V092328	2009 - OWNED