

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

CHANGE NOTICE NO. 3
 to
 CONTRACT NO. 071B2200181
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
AAA Mobile Wash 924 East Nine Mile Ferndale, MI 48220	David Krauskoff	AAADK1@gmail.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	248-867-9399	5030

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MDOT	Ahmad Azmoudeh	248-451-2465	AzmoudehA@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jared Ambrosier	517-284-6398	AmbrosierJ@michigan.gov

CONTRACT SUMMARY				
DESCRIPTION: Metro Region – MDOT - Graffiti Removal Services				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
May 1, 2012	April 30, 2015	2, 1 year	April 30, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 Days		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 checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		April 30, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
align="center">\$1,845,000.00		\$0.00	align="center">\$1,845,000.00	

DESCRIPTION:
 Effective May 1, 2016 the second option year available on this contract is hereby exercised. The revised contract expiration date is April 30, 2017. Please note Contract Administrator has been changed to Jared Ambrosier, DTMB-Procurement. All other terms, conditions, specifications and pricing remain the same. Per MDOT request, vendor agreement contract 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. 2
 to
CONTRACT NO. 071B2200181
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
AAA Mobile Wash 924 East Nine Mile Ferndale, MI 48220	David Krauskoff	AAADK1@gmail.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	248-867-9399	5030

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	MDOT	Ahmad Azmoudeh	248-451-2465	AzmoudehA@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Lisa Crozier-Green	517-284-7042	CrozierGreenL@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Metro Region – MDOT - Graffiti Removal Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 1, 2012	April 30, 2015	2, 1 Year Options	April 30, 2015
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45 Days	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	April 30, 2016
CURRENT VALUE		VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$1,845,000.00		\$0.00	\$1,845,000.00	

DESCRIPTION:
 EFFECTIVE May 1, 2015 the first option year available on this contract is hereby exercised. The revised contract expiration date is April 30, 2016. Please note buyer has been changed to Lisa Crozier-Green, DTMB-Procurement. All other terms, conditions, pricing and specifications remain the same. Buyer changed to Lisa Crozier-Green, DTMB-Procurement. Per agency request, vendor agreement and approval from DTMB-Procurement.

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. 1
 to
CONTRACT NO. 071B2200181
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
AAA Mobile Wash 924 East Nine Mile Ferndale, MI 48220	David Krauskoff	AAADK@aol.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	248-867-9399	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Ahmad Azmoudeh	248-451-2465	azmoudeha@michigan.gov
BUYER	DTMB	Jim Wilson	517-241-1916	wilsonj4@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Graffiti Removal Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 1, 2012	April 30, 2015	2, 1 Year Options	April 30, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45 Days	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"/>		April 30, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$1,230,000.00		\$1,845,000.00		

Effective immediately, this Contract is INCREASED by \$1,230,000.00.

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

Per agency and vendor agreement, DTMB Procurement approval, and the approval of the State Administration Board dated July 9, 2013.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48913

**NOTICE
 OF
 CONTRACT NO. 071B2200181**

**Between
 THE STATE OF MICHIGAN
 And**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
AAA Mobile Wash 924 East Nine Mile Ferndale, MI 48220	David Krauskoff	AAADK@aol.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	248-867-9399	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDOT	Ahmad Azmoudeh	248-451-2465	azmoudeha@michigan.gov
BUYER:	DTMB	Kristen Robel	517-373-7396	RobelK@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Graffiti Removal Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Three Years	May 1, 2012	April 30, 2015	Two One-Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45 Days	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			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of ITB # 071I2200066A, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$615,000.00

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48913

CONTRACT NO. 071B2200181

Between

THE STATE OF MICHIGAN

And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
AAA Mobile Wash 924 East Nine Mile Ferndale, MI 48220	David Krauskoff	AAADK@aol.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	248-867-9399	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDOT	Ahmad Azmoudeh	248-451-2465	azmoudeha@michigan.gov
BUYER:	DTMB	Kristen Robel	517-373-7396	RobelK@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Graffiti Removal Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Three Years	May 1, 2012	April 30, 2015	Two One-Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45 Days	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			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of ITB # 071I2200066A, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$615,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I2200066A. 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:

Firm Name
AAA Mobile Wash

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name/Title
Jeff Brownlee / Chief Procurement Officer

DTMB/Procurement

Date



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Definitions

This section provides definitions for terms used throughout this document.

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

Buyer – the DTMB-Procurement employee identified on the cover page of the ITB.

Chronic Failure - as defined in applicable Service Level Agreements.

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

Contractor – the awarded bidder after the Effective Date.

Days - Business Days unless otherwise specified.

Deleted, Not Applicable - the section is not applicable or included in the 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 this Contract.

State - the State of Michigan.

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

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



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

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



Article 1 – Statement of Work

1.1 Project Identification

This Contract is for Graffiti Removal Services in the Metro Region, to be overseen by the Michigan Department of Transportation.

1.1.1 Project Request

This Statement of Work (SOW) is for Graffiti Removal in the Metro Region for the Michigan Department of Transportation.

1.1.2 Background- Deleted, Not Applicable

1.2 Scope of Work and Deliverable(s)

1.2.1 Scope

In Scope

The Contractor shall provide all personnel, equipment, tools, materials, supervision and other items and services necessary to perform the graffiti removal 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 (i.e., porter or courier service);
- Providing of transportation for agency staff or visitors (i.e., chauffeur service);
- Courier / Porter Services
- Janitorial Services

1.2.2 Deliverable(s)

Environment

The graffiti removal services are requested 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. The Contractor shall be held to have visited the site prior to starting work for this Contract and checked with the authorities the working conditions and the methods of carrying out the work, and to have included in this Contract amount, all costs for meeting such working conditions.

Work and Deliverable

- A. The Contractor, through innovation, technology or other means, shall perform and provide the required graffiti removal services, staff, equipment, tools, supplies, materials, training and supervision 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 this document.
- B. The Contractor shall provide services at the locations identified by the Contract Compliance Inspector (CCI).



Specifications

Definite Specifications - All services to be furnished hereunder shall conform to the specifications as noted herein.

The Contractor shall adhere to the doctrine of DO NO HARM. Complying with this means that abrasive blasting that, in any way, damages the substrate will be not be allowed. Also, excessive water pressure or special nozzles that cause harm to the substrate will not be allowed. The Contractor will be required to repair and/or replace, at their cost, any substrate that is damaged by ignoring these constraints. The graffiti shall be removed so that from twenty feet away, no discernible shadow or distinct impression of the graffiti remains. Essentially, all paint shall be removed unless it would cause greater harm to remove it. In any case, the no shadow rule shall be construed as at least 98% of paint being removed by area.

BLAST CLEANING - MASONRY SURFACE or PAINTING OVER - STEEL SURFACES at designated locations under the jurisdiction of the Michigan Department of Transportation in Metro Region or as directed by the Contract Compliance Inspector.

Blast Cleaning may be dry blast using the below approved low dust abrasives.

Spec.# Material Name	Product Name	Manufacturer(s) or Supplier(s)
712.03A1c Abrasive, Low Dusting Note: The blasting profile produced by these abrasives will depend on the equipment used. It is the responsibility of the Contractor to produce a profile within the 1.0 to 2.8 mils specified range. The abrasive additive, Blastox may be used with any of the listed low-dusting abrasives.	Barshot 30	Barnes Environmental Inc., Waterdown, ONT LOR 2HO
	Barshot 50	Barnes Environmental Inc., Waterdown, ONT LOR 2HO
	Ebony Grit #20	Barnes Environmental Inc., Waterdown, ONT LOR 2HO
	Black Beauty, Grade 2550	Reed Minerals Division, Highland, IN
	Black Shot Nickel Slag #20	Bell & Mackenzie Co., LTD., Hamilton, ONT
	Blackjack MSM, Waupaca Materials	Falk Brothers Constr. Co., Inc., Waupaca, WI
	Emerald Creek Garnet 30/40	Emerald Creek Garnet, Fernwood, ID
	GMA Garnet Blast, Grade ROM (3060)	Barton Mines Corp., Golden, CO
	StarBlast XL	Dupont, Wilmington, DE
	E-1015	Universal Ground Cullett, Inc., Brook Park, OH
	M-1015	Universal Ground Cullett, Inc., Brook Park, OH
	Norblast	Transtech Inc., Covington, KY
	Blast Away	Gibbco, Inc

Blast Cleaning may also be accomplished via wet blasting using a non-toxic/non-caustic media.

No blast cleaning operation can be performed over live lanes of traffic. If it is necessary to perform such operations, the proper MDOT Maintaining Traffic typical shall be used.

The Contractor shall protect surfaces and bridge components not designated for cleaning. Paint Over is to be accomplished using MDOT approved paint. Surfaces to be painted shall be wiped down with a tack rag suitable for removing loose dirt and debris before application of paint. Paint shall match the existing color of the surface to be painted.

Spec.# Material Name	Product Name	Coats	Manufacturer(s) or Supplier(s)
915 Coating Systems for Steel Structures, Hanger Assemblies and End Diaphragms Notes: * Indicates product could be used on faying surfaces of slip critical bolted connections	*Amercoat 68HS Amercoat 385 or Amercoat 370 Amercoat 450HS	1 st 2 nd 3 rd	Ameron International
	*Carboline 859 Carboline 561 Carboline 134HG	1 st 2 nd 3 rd	Carboline Company
	E-2800 E-500 M.I.O. E-600 or E-700	1 st 2 nd 3 rd	Environmental Protective Coating
	24-166 Zinc Rich Epoxy Primer 24-125 White Epoxy Midcoat 27-250 Aliphatic Urethane Top Coat	1 st 2 nd 3 rd	Hoffer's Inc.



Catha-Coat 303H Devran 224 HS Devthane 359	1 st 2 nd 3 rd	ICI Devco Coating
Interzinc 52 Intergard 475 HS Interthane 990HS	1 st 2 nd 3 rd	International Protective Coatings
Interthane 721 Interthane 753 Interthane 794	1 st 2 nd 3 rd	International Protective Coatings
Polyzinc 3079 Polylock 2260 Diamondglaze 500 or Diamondglaze MIOX	1 st 2 nd 3 rd	Polycoat Products
Urethane Zinc-Rich Primer UC65147/97-674 Pitt-Guard All Weather DTR Epoxy 97-946 Pitthane Ultra Gloss Urethane Enamel 97-80000	1 st 2 nd 3 rd	PPG Industries
*Zinc Clad III HS Epoxy Mastic D.O.T. Acrolon 218 HS	1 st 2 nd 3 rd	Sherwin-Williams
*Tneme-Zinc 90-97 F.C. Typoxy Series 27 Endura-shield Series 74	1 st 2 nd 3 rd	Tnemec
MC-Zinc MC-Miomastic or MC-Ferrox B MC-Ferrox A	1 st 2 nd 3 rd	Wasser High Tech Coatings

Paint shall be applied according to the Michigan Department of Transportation’s 2012 Standard Specifications for Construction, Section 915 or another method pre-approved by the MDOT Contract Compliance Inspector. The Contractor shall protect surfaces and bridge components not intended to be painted.

The Contractor is required to have proper equipment to perform the work satisfactorily. This includes a minimum of 3000 psi power wash with soda blaster unit and an airless paint sprayer. A list of equipment is provided on “Attachment A, Pricing and Equipment.”

GENERAL CONDITIONS

Work Approval

During the period of operations, the Contractor shall contact the Contract Compliance Inspector for inspection of the completed work. Acceptance or unsatisfactory work shall be addressed per the Michigan Department of Transportation’s 2012 Standard Specifications for Construction, Section 109.

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 Contract Compliance Inspector, reasonably necessary to protect the safety and health of employees on the job, and the public, and to protect property during the performance of the project.

Days/Hours of Operation

All work included in this Contract shall be performed during daylight hours only. No work shall be allowed on weekends, unless prior approval is obtained from the Contract Compliance Inspector. Work shall not be permitted during holiday periods in accordance with the 2012 Standard Specifications for Construction.

Damages

The Contractor shall, at their own expense, preserve and protect from injury all property, either public or private, along and adjacent to the roadway. If any damages and/or injuries occur arising out of, or in consequence of, any act or omission of the Contractor, it shall be the responsibility of the Contractor to return, whole, any parties or property.



Maintaining Traffic

Traffic shall be maintained in accordance with the 2012 Standard Specifications for Construction, MDOT Maintaining Traffic typicals, and the Michigan Manual of Uniform Traffic Control Devices (MMUTCD). All operations shall be conducted in a manner that will not create a hazard, nor hinder, restrict, or impede trunk line traffic. The Contractor shall not operate equipment on the roadway or in a manner that requires unnecessary crossing the roadway. Traffic control is to be adhered in accordance with Section 812 of MDOT’s 2012 Standard Specifications for Construction, and with MDOT’s Traffic Standards, Typicals, Special Details, and the MMUTCD manual. All equipment not in use may be temporarily parked on limited access freeway right-of-way, but not within the median or closer than 30 feet from the traveled roadway. Equipment may not be temporarily parked on free access roadways except at those locations designated by the Contract Administrator.

A copy of the MDOT 2012 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, Michigan 48909

Pay Items

- Item 01 Setup/Mobilization per each.
 Covers all expenses of initial setup including using an attenuator in accordance to MDOT Special Provision 12SP812 (A). Payable once each job site (as defined on the requests for service).

- Item 02 Blast Cleaning for concrete surfaces, per square foot.
 Rate includes all labor, equipment and blast media to perform the work.

- Item 03 Paint Over for steel surfaces only, per square foot.
 Rate includes all labor, equipment and MDOT Specification paint to perform the work.

- Item 04 Lane Closure payable per job site
 Rate includes all labor, equipment and material to set up, maintain and remove lane closure.

Contract Quantities

Quantities are estimates only. Actual work performed during life of this Contract is entirely based on the specific need for service as determined by the Contract Compliance Inspector.

Method of Payment

The Contractor shall furnish an invoice for services rendered.

The billing shall reference/include the appropriate purchase order number, date(s) of service, job site(s) and applicable charges for each job site. MDOT shall pay the billed amount in accordance with the bid rate, and the payment terms specified in this Contract, which are net 30 days after the later of the invoice date, or the date the Contract Compliance Inspector, or designated representative, certifies the invoice indicative of satisfactory completion of each graffiti removal performed.

Contractor Staff, Roles, and Responsibilities

A. PERSONNEL

- 1. 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:

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 work site 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.

State Staff Roles & Responsibilities

Contract Compliance Inspector or agency / departmental designee shall:

- A. Complete assignments related to this Contract have not been made at this time.
- 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 is determined by the State to be needed.

Contract Implementation Period / Transition / Orientation

The State Contract Compliance Inspector (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 DTMB-Procurement.

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

- A. Schedule a meeting with the Contractor to talk about the Contract specifications and answer any questions the Contractor may have.
- B. Contractor must provide telephone numbers of any supervisors, if other than the Contractor.
- C. Exchange emergency telephone numbers where the Contractor can be reached, day or night, and where the CCI can be reached.



- D. Do lien checks if necessary. See Contract for information required for lien checks.
- E. Once the new Contractor has begun the work, the CCI shall:
 - 1. 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 Contractor or Contractor performance report will be filed.
 - 2. Inform Contractor where to forward invoices for immediate processing and payment.
 - 3. Be available to answer questions from the Contractor.

Project Plan Management

- A. For each location, a project work plan for managing implementation of the graffiti removal services shall be specified and submitted to the CCI for review and approval.
- B. 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.
- C. Contractor will carry out this project under the direction and control of the specified Contract Compliance Inspector (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 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. Contractor’s Work Plan, which must be approved prior to commencement of work, must include the following:
 - 1. EQUIPMENT LIST - indicating description, age, manufacturer, model and serial number of each piece. Equipment must meet or exceed all requirements defined under "Equipment Requirements" in this document. All equipment must be in the Contractor's possession, available for use and fully operational, prior to Contract award.
 - 2. SCHEDULE OF OPERATIONS - personnel expected to complete work on this Contract from 9:00 am to 3:00 pm weekdays or as authorized by CCI.
 - 3. Name(s) of supervisors – 24-hour contact telephone numbers and best contact times.
 - 4. Equipment failure **WILL NOT** constitute an acceptable reason for failure to provide graffiti removal service. Adjustments to providing this service, including any weather-related deviations, must be approved by the Contract Compliance Inspector or designated representative.
 - 5. Safety Program, including traffic control plan(s).
 - 6. Proof of Insurance as defined in the Standard Terms and Conditions attached to this document must be provided to Procurement **prior** to Contract award.



7. 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, a Contract will be awarded to the next lowest bidder who can demonstrate the ability to perform the work.

F. Annual Service Review and Progress Meeting

1. The Contract Compliance Inspector may request an audit of the services provided each year under the specifications, terms, and conditions of this Contract. The audit will be a joint activity of the Michigan Department of Transportation and the Department of Technology, Management and Budget (DTMB) Procurement.
2. An unsatisfactory audit will result in cancellation of this Contract under the terms of the Cancellation Clause in this 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.
3. 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 this Contract. The results of the audit along with Contract recommendations will be published by Procurement and distributed to the respective Agency(s).
4. Should the Contractor desire, a meeting will be arranged between all concerned parties within 10 (ten) calendar days of the date the Contractor received, or could have reasonably been expected to receive, his/her copy of the audit. This meeting will provide an opportunity for the Contractor to present his/her reactions to audit recommendations.

Issue Management, Inspection and Correction of Deficiencies

- A. Agency/Departmental Compliance Inspector (CCI) will conduct inspections for all specifications identified in this document and will provide performance evaluations to the Contractor noting deficiencies in the Contract specifications. The CCI (or his/her appointed representative) shall make the final determination as to whether any task has been satisfactorily performed.
- B. 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 8 hours of its receipt.
- C. Contractor is 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 Contractor (Vendor Performance) will be filed by the Contract Compliance Inspector. Repeated failure to correct specification deficiencies resulting in issuance of subsequent Complaint to Contractor (Vendor Performance) may result in cancellation of this Contract.



Change Management

- A. If a proposed Contract change is requested by the Contract Compliance Inspector and approved by the agency purchasing/procurement office, then the request for change will be submitted to the DTMB-Procurement Buyer, who will then make recommendations to the Chief Procurement Officer regarding ultimate approval/disapproval of change request.
- B. If the DTMB Chief Procurement Officer agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the assigned Buyer will issue an addendum to this 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 Procurement, risk non-payment for the out-of-scope/pricing products and/or services.**

1.2.4 Ordering

See Section 1.2. 2. “Deliverables” under the heading “Work and Deliverable.”

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

See Section 1.2.2, “Deliverables” under the heading “Annual Service Review and Progress Meeting.”

The State may request other meetings as it deems appropriate.

1.3.5 Place of Performance

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

Full address of place of performance	Owner/operator of facility to be used	Percent (%) of Contract value to be performed at listed location
AAA Mobile Wash 924 East Nine Mile Ferndale, MI 48220	David Krauskoff	N/A

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, “Deliverables” under the heading “Annual Service Review and Progress Meeting.”

1.4.2 Minimum Order – Deleted – Not Applicable

1.4.3 Packaging – Deleted – Not Applicable

1.4.4 Palletizing – Deleted – Not Applicable

1.4.5 Delivery Term – Deleted – Not Applicable

1.4.6 Acceptance Process

The acceptance process is defined in Section 2.8.4, Acceptance of Deliverable(s), unless otherwise defined in this section.

1.4.7 Criteria

See Section 1.2.2, “Deliverables” under the heading “Criteria.”

1.5 Proposal Pricing

1.5.1 Pricing

Pricing details are provided in **Attachment A**.

1.5.2 Quick Payment Terms – Deleted – Not Applicable

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-Procurement 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

The Contractor’s invoice should include the following:

- (a) Date
- (b) PO #
- (c) Quantity
- (d) Deliverable
- (e) Unit Price
- (f) Shipping Cost (if any)
- (g) Total Price



1.6 Commodity Requirements-

1.6.1 Customer Service

David Krauskoff and Doug Kolmetz can be notified at any time. David is available by calling 248-867-9399 and Doug is available by calling 248-541-9920. They can be emailed at: AAADK@aol.com.

The Contractor observes Christmas, New Years, Thanksgiving, Memorial Day, Labor and Independence Day, however they are available any time to provide customer service and respond in case of emergency situations.

1.6.2 Research and Development- Deleted - Not Applicable

1.6.3 Quality Assurance Program- Deleted - Not Applicable

1.6.4 Warranty for Deliverable(s)- Deleted – Not Applicable

1.6.5 Special Incentives- Deleted – Not Applicable

1.6.6 Energy Efficiency- Deleted – Not Applicable

1.6.7 Environmental Requirements- Deleted – Not Applicable

1.6.8 Recycled Content and Recyclability- Deleted – Not Applicable

1.6.9 Materials Identification and Tracking- (Best Value Evaluation)

(a) **Hazardous Chemical Identification.** Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. 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 confirms that their products do not contain mercury.

(c) **Brominated Flame Retardants.** The Contractor confirms that their products do not contain Brominated Flame Retardants.

(d) **Environmental Permits and Requirements.** The Contractor must immediately notify DTMB-Procurement 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

1.7.1 MiDEAL – Deleted – Not Applicable

1.7.2 State Employee Purchases- Deleted - Not Applicable



Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

This Contract term begins approximately May 1, 2012 and expires April 30, 2015. 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-Procurement. 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 (2) additional one (1) 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).

2.2.2 Payment Deadlines

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

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

2.2.4 Pro-ration - Deleted - Not Applicable

2.2.5 Final Payment and Waivers

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

2.2.6 Electronic Payment Requirement

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

2.2.7 Employment Taxes

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

2.2.8 Sales and Use Taxes

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



2.3 Contract Administration

2.3.1 Issuing Office

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

Kristen Robel
 Procurement
 Department of Technology, Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
RobelK@michigan.gov
 Phone: 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.**

Ahmad Azmoudeh
 Department of Transportation
 Oakland TSC
azmoudeha@michigan.gov
 Phone: 248-451-2465

2.3.3 Project Manager

The individual(s) who will oversee the work to be performed on this Contract, will be named by the CCI.

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 this 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 this Contract.

(b) The State or the Contractor may propose changes to this 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-Procurement 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-Procurement 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-Procurement
 Attention: Kristen Robel
 PO Box 30026
 530 West Allegan
 Lansing, MI 48909
 RobelK@michigan.gov
 Fax: 517-335-0046

If to Contractor:

AAA Mobile Wash
 Attn: Dave Krauskoff
 924 E. Nine Mile
 Ferndale, MI 48220
 Email: aaadk@aol.com
 Fax: 248 246 6555

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 this Contract.

2.3.8 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under this 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 this Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on 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

(a) The Contractor must provide the Contract Compliance Inspector with the names of Key Personnel as required in Section 1.2.2 "Contractor Staff 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 property 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 this Contract.

2.4.8 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for this Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

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)



2.8.1 Quality Assurance

By tendering any Deliverable to the State, the Contractor certifies to the State that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; and (c) it has corrected all material deficiencies discovered during the quality assurance activities and testing. To the extent that testing occurs at State Locations, the State is entitled to observe and otherwise participate in the testing.

2.8.2 Delivery Responsibilities – Deleted – Not Applicable

2.8.3 Process for Acceptance of Deliverable(s) – Deleted – Not Applicable

2.8.4 Acceptance of Deliverable(s) – Deleted – Not Applicable

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

2.8.6 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State’s election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor’s correction efforts must be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

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

(c) Upon termination of this 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 that performs services in connection with this Contract.

2.12.4 Audit Resolution

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

2.12.5 Errors

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of this 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 this 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 bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this



Contract to any other bidder before the award of this 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.

(kj) It will immediately notify DTMB-Procurement 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-Procurement 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-Procurement. The notice to the Director of DTMB-Procurement must include the applicable Contract or Purchase Order number.

2.15 Indemnification

2.15.1 General Indemnification

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 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

(a) The Contractor must indemnify 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) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by the State; or



(iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

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 this Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.15.6 Indemnification Procedures

These procedures apply to all indemnity obligations:

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

(b) If the Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain prior approval of the State before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State's receipt of the Contractor's information requested by the State under clause (ii) of this paragraph, if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

2.15.7 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.



2.16 Termination by the State

2.16.1 Notice and Right to Cure

If the Contractor breaches this 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 this Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

2.16.3 Termination for Convenience

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

2.16.4 Termination for Non-Appropriation

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

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the



Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

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

2.16.5 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a State, public, or private Contract.

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 these 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 this Contract.

2.18 Stop Work

2.18.1 Stop Work Order

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

2.18.2 Termination of Stop Work Order

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

2.18.3 Allowance of the Contractor's Costs

If the State fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 2.16, Termination by the State, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the



termination settlement. The State is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 2.18, Stop Work.

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-Procurement, 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-Procurement, or such other time as agreed to by the parties, the Director of DTMB-Procurement will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Procurement 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-Procurement 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-Procurement 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 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-Procurement 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 this 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 this Contract.

2.23.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract 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 this Contract, must not enter into a contract with a manufacturer or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of this Contract, the name of the Contractor as an employer or the name of the manufacturer or supplier of the Contractor appears in the register.

2.23.6 Environmental Provision

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

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

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

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

2.23.7 Freedom of Information

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



2.23.8 Workplace Safety and Discriminatory Harassment

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

2.23.9 Prevailing Wage - Deleted - Not Applicable

2.23.10 Abusive Labor Practices

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

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

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 this 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 this 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 this Contract;
- and
- (f) Bidder 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 this 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 this 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.

2.24.18 PCI Data Security Standard

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data, in compliance with DTMB policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the Contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.



Attachment A, Pricing and Equipment

DESCRIPTION OF SERVICES	UNIT OF MEASURE	Cycles PER YEAR	PRICE PER Each/Square Foot	TOTAL PRICE FOR 3 YEARS
Set-up / Mobilization – Covers all expenses of initial set-up (payable once each job site).	EA	300 times/year 900 TIMES TOTAL FOR 3 years	\$400.00 PER MOBILIZATION	\$360,000.00
Blast Cleaning – For concrete surfaces, per square foot . (Rate includes all labor, equipment and blast media to perform the work).	SQ.FT	50,000 SQ.FT/YEAR 150,000 SQ.FT FOR 3 YEARS	\$.40 PER SQFT.	\$60,000.00
Paint Over – For steel surfaces only, per square foot . (Rate includes all labor, equipment and MDOT Specification paint to perform the work).	SQ.FT	60,000 SQ.FT/YEAR 180,000 SQ.FT FOR 3 YEARS	\$.95 PER SQFT	\$171,000.00
Lane Closure – Payable per job site. (Rate includes all labor, equipment and material to set up, maintain and remove lane closure).	EA	4 TIMES/YEAR 12 TIMES TOTAL FOR 3 YEARS	\$2,000.00 PER SET UP	\$24,000.00
TOTAL:				\$615,000.00

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



EQUIPMENT

1998 Ford Cube Van with Kabota Power Washer 5 Years Old (Owned)

2006 Chevy Cube Van with Kabota Power Washer 5 Years Old (Owned)

1993 Ford Cube Van with Kabota Power Washer 7 Years Old (Owned)

1994 Ford Cube Van with Honda Power Washer 7 Years Old (Owned)

1986 Ford Cube Van Environmental Truck 300 gal recovery tank 2 500 cfm recovery vacs with booms

1994 Chevy Van

1994 Ford Van

Two 5000 psi soda blasters with hoppers

4 Graco airless paint sprayers

Misc Barrels Road Work Signs Sand Bags Cones Green Vests