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

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

June 20, 2008

CHANGE NOTICE NO. 2
OF
CONTRACT NO. 071B5200332
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (989) 631-5127 **James Kindy**
Kindy Farms, LLC **2020 Freeland Road** **Freeland, MI 48623**	VENDOR NUMBER/MAIL CODE **(001)**
	BUYER/CA (517) 241-3768 **Lance Kingsbury**

Contract Compliance Inspector: Ponce Esparza (989) 754-0784 Perry Lund (989) 233-2129

Roadside Mowing Services – Bay Region – Saginaw County - MDOT

CONTRACT PERIOD:	From: **September 15, 2006**	To: **April 1, 2009**
TERMS **N/A**	SHIPMENT **N/A**	
F.O.B. **N/A**	SHIPPED FROM **N/A**	
MINIMUM DELIVERY REQUIREMENTS **N/A**		

NATURE OF CHANGE(S):

Effective July 1, 2008, the Contract monthly pricing is hereby changed to:

MOWING	**718.8 Acres/Cycle**	**$29.04**
BRUSH MOWING	**108.5 Acres/Cycle**	**$32.27**

All other terms and conditions shall remain the same.

AUTHORITY:

Per request of Vendor (email dated 4/18/08) and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: $185,662.81

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

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

May 22, 2007

CHANGE NOTICE NO. 1
OF
CONTRACT NO. 071B5200332
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (989) 631-5127 **James Kindy**
Kindy Farms, LLC **2020 Freeland Road** **Freeland, MI 48623**	VENDOR NUMBER/MAIL CODE **(001)**
	BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Ponce Esparza (989) 754-0784 Perry Lund (989) 233-2129 **Roadside Mowing Services – Bay Region – Saginaw County - MDOT**	
CONTRACT PERIOD: From: **September 15, 2006** To: **April 1, 2009**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

NATURE OF CHANGE(S):

Effective May 15, 2007, the price per acre for this Contract is hereby INCREASED to:

MOWING	**718.8 Acres/cycle**	**$28.22**
BRUSH MOWING	**108.5 Acres/year**	**$31.36**

All other terms and conditions shall remain the same.

AUTHORITY:

Per request of Department of Transportation (AS-1 dated 3/28/07)

INCREASE: $1,940.01

TOTAL REVISED ESTIMATED CONTRACT VALUE: $185,662.81

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

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

September 13, 2006

NOTICE
OF
CONTRACT NO. 071B5200332
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Kindy Farms, LLC** **2020 Freeland Road** **Freeland, MI 48623**	TELEPHONE (989) 631-5127 **James Kindy** VENDOR NUMBER/MAIL CODE **(001)** BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Ponce Esparza (989) 754-0784 Perry Lund (989) 233-2129 **Roadside Mowing Services – Bay Region – Saginaw County - MDOT**	
CONTRACT PERIOD: From: **September 15, 2006** To: **April 1, 2009**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

The terms and conditions of this Contract are those of ITB #I4001403, this Contract Agreement and the vendor's quote dated 9/23/2004. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $183,722.80

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

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

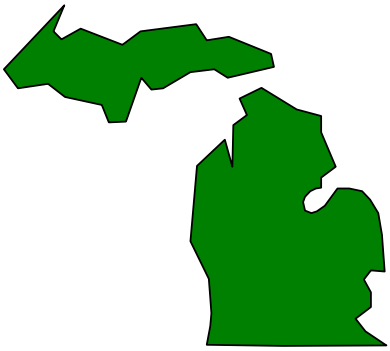
CONTRACT NO. 071B5200332
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Kindy Farms, LLC** **2020 Freeland Road** **Freeland, MI 48623**	TELEPHONE (989) 631-5127 **James Kindy** VENDOR NUMBER/MAIL CODE **(001)** BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Ponce Esparza (989) 754-0784 Perry Lund (989) 233-2129 **Roadside Mowing Services – Bay Region – Saginaw County - MDOT**	
CONTRACT PERIOD: From: **September 15, 2006** To: **April 1, 2009**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION: **The terms and conditions of this Contract are those of ITB #I4001403, this Contract Agreement and the vendor's quote dated 9/23/2004. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.** **Estimated Contract Value: $183,722.80**	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I4001403. Orders for delivery of services may be issued directly by the Michigan Department of Transportation through the issuance of a Purchase Order Form.

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

FOR THE VENDOR:	**FOR THE STATE:**
Kindy Farms, LLC Firm Name	Signature
Authorized Agent Signature	**William C. Walsh, CPPB, Buyer Manager** Name/Title
Authorized Agent (Print or Type)	**MRO Division, Purchasing Operations** Division
Date	Date



STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

BPO No. 071B5200332

ROADSIDE MOWING SERVICES

FOR

THE MICHIGAN DEPARTMENT OF TRANSPORTATION (MDOT)

BAY REGION - SAGINAW COUNTY

WITH

KINDY FARMS, LLC
2040 FREELAND RD.
FREELAND, MI 48263
(989) 631-5127

EFFECTIVE

SEPTEMBER 15, 2006 - APRIL 1, 2009

Roadside Mowing Services For The MDOT – Bay Region – Saginaw County

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ARTICLE1 – STATEMENT OF WORK (SOW)

1.0 Introduction

1.001 DEFINING DOCUMENT

This document contains or incorporates defined requirements, the specifications and scope of work, and all contractual terms and conditions.

1.002 PROJECT TITLE AND DESCRIPTION

Contract for **Roadside Mowing Services For The Michigan Department of Transportation (MDOT), Bay Region, in Saginaw County**. The contractor shall provide Roadside Mowing Services as specified under the jurisdiction of the department in accordance with requirements of this contract. All work must be performed in accordance with the progress schedule presented at the Pre-Award Meeting and in accordance with all the terms of this contract, including any Supplemental Specifications contained herein.

1.003 PROJECT CONTROL

Project Control

a. The Contractor will carry out this project under the direction and control of the Michigan Department of Transportation (MDOT).

b. Although there will be continuous liaison with the Contractor team, the client agency's project director will meet monthly as a minimum, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.

c. The Contractor will submit brief written biweekly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. A copy of this report will be forwarded to the named buyer in Purchasing Operations.

Reports

All reports submitted to the Agency's Contract Compliance Inspector must be submitted timely and prior to any scheduled meeting between the Contractor and the State. The Contractor is expected to maintain a chronological file of all reports and correspondence related to any contract resulting from this solicitation.

1.004 COMMENCEMENT OF WORK

Contractor shall show acceptance of this agreement by signing a copy of this contract and returning it to the contract administrator. Contractor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms.

1.1 Product Quality

1.101 SPECIFICATIONS

Definite Specifications - All commodities and/or services to be furnished hereunder shall conform to the specifications as noted attached herein.

1.2 Service Capabilities

1.201 CUSTOMER SERVICE

Contractor shall provide customer service capabilities inclusive of having the capacity to receive orders electronically, by phone, facsimile, and by written order.

The Contractor shall have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. The Contractor shall have experienced sales representatives make timely personal visits to State accounts. The Contractor's customer service must respond to State agency inquiries promptly. The Contractor shall provide a statewide toll-free OR local number for customer service calls.

Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule.

All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods.

1.202 RESERVED

1.203 REPORTING

Contractor shall be able to provide various reports, when requested by the State. Examples include itemized report of total items (commodities and services) purchased by all agencies or individual agencies, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.

1.204 RESERVED

1.205 SECURITY

Contract may require frequent delivery of services to State of Michigan facilities or controlled areas. Contractor shall utilized measures by their firm to ensure the security and safety of these buildings and areas. This shall include, but is not limited to, performance of security background checks on all personnel assigned to State of Michigan facilities and how they are performed, what the security check consists of, the name of the company that performs the security checks, use of uniforms and ID badges, etc. If security background checks are performed on staff, Contractor shall indicate the name of the company that performs the check as well as provide a document stating that each employee has satisfactorily completed a security check and is suitable for assignment to State facilities. Upon request by the State, Contractor shall provide the results of all security background checks.

Upon review of the Contractor's security measures, the State will decide whether to issue State ID badges to the Contractor's personnel or accept the ID badge issued to their personnel by the Contractor.

The State may decide to also perform a security background check. If so, the Contractor will be required to provide to the State a list of all people that will service State of Michigan facilities, including name and date of birth (social security number of driver license number would also be helpful).

The Contractor and its subcontractors shall comply with the security access requirements of individual State facilities.

1.3 RESERVED

1.4 Project Price

1.401 RESERVED

1.402 RESERVED

1.403 PRICE TERM

Fixed with prospective re-determination at an agreed upon time. Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective. Prices are subject to change at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Purchasing Operations also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365-day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST TEN DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

1.5 Quantity term

Requirements – Vendor agrees to supply all that the state requires.

Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

This Contract is for **Roadside Mowing Services** for the State of Michigan's **Department of Transportation (MDOT)**. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form.

The State may provide a listing of MDOT locations that may order from the Contract. That listing shall not limit participation of additional agencies/locations as the need may develop at the same prices, terms and conditions.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the **Michigan Department of Transportation**, hereinafter known as MDOT. Where actions are a combination of those of Purchasing Operations and the State agencies, the authority will be known as the State.

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

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

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

DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
ATTN: LANCE KINGSBURY
2ND FLOOR, MASON BUILDING
P.O. BOX 30026
LANSING, MICHIGAN 48909
(517) 241-3768
KINGSBURYL@MICHIGAN.GOV

2.003 NOTICE

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

2.004 CONTRACT TERM

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately **September 15, 2006** through **April 1, 2009**.

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

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

2.005 GOVERNING LAW

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

2.006 APPLICABLE STATUTES

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

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

2.007 RELATIONSHIP OF THE PARTIES

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

2.008 HEADINGS

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

2.009 MERGER

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

2.010 SEVERABILITY

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

2.011 SURVIVORSHIP

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

2.012 NO WAIVER OF DEFAULT

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

2.013 PURCHASE ORDERS

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

2.1 Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

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

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing Operations within 30 days.

2. The Contractor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall:

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

2. Provide Purchasing Operations or designated representative ready access to the records upon request;

3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and

4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 RESERVED

2.104 RESERVED

2.105 RESERVED

2.106 RESERVED

2.107 PAYROLL AND BASIC RECORDS

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

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

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

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

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

2.108 COMPETITION IN SUB-CONTRACTING

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

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

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

2.202 CONTRACT PAYMENT SCHEDULE

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

2.203 POSSIBLE PROGRESS PAYMENTS

The Government may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.204 RESERVED

2.205 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is available to State contractors. **VENDORS MUST REGISTER with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at** www.cpexpress.state.mi.us.

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

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

2.302 CONTRACTOR RESPONSIBILITIES

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

2.303 ASSIGNMENT AND DELEGATION

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

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

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

2.304 TAXES

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

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

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

2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;

4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;

5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

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

Code Indemnification

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

Indemnification Obligation Not Limited

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

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect not withstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Indemnification Procedures

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

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

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

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

2.306 LIMITATION OF LIABILITY

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

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

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

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

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

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

2.310 RESERVED

2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 30 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

2.312 RESERVED

2.313 RESERVED

2.314 WEBSITE INCORPORATION

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

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

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

PONCE ESPARZA, CONTRACT COMPLIANCE INSPECTOR
MICHIGAN DEPARTMENT OF TRANSPORTATION
EASTSIDE MAINTENANCE COMPLEX
3510 E. WASHINGTON, SAGINAW, MI 48601
ESPARZAP@MICHIGAN.GOV (989) 754-0784

AND

PERRY LUND, CONTRACT COMPLIANCE INSPECTOR
MICHIGAN DEPARTMENT OF TRANSPORTATION
BAY CITY TSC FACILITY
2590 E. WILDER ROAD, BAY CITY, MI 48706
LUNDP@MICHIGAN.GOV (989) 233-2129

2.402 PERFORMANCE REVIEWS

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

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

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

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

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change.

2.502 RESERVED

2.503 RESERVED

2.504 RESERVED

2.505 CONTRACTOR WARRANTIES

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

1. The Contractor will perform all services in accordance with high professional standards in the industry;

2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;

3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;

4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;

5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;

6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;

7. The Contractor has duly authorized the execution, delivery and performance of the Contract;

8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.

9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.

10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.

11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.

13. The Contractor is qualified and registered to transact business in all locations where required.

14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, it true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

2.506 STAFF

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

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

2.6 Breach of Contract

2.601 BREACH DEFINED

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

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

2.602 NOTICE AND THE RIGHT TO CURE

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

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option:

(a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.7 Remedies

2.701 CANCELLATION

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

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

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

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

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

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.

5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.702 RIGHTS UPON CANCELLATION

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

A. Rights and Obligations Upon Termination

(1) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(2) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for partially completed Deliverables, on a percentage of completion basis. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(3) If any such termination by the State is for cause, the State shall have the right to set-off against any amounts due Contractor the amount of any damages for which Contractor is liable to the State under this Contract or pursuant to law or equity.

(4) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under this Contract, and may further pursue completion of the Services under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

B. Termination Assistance

If the Contract (or any Statement of Work issued under it) is terminated for any reason before completion, Contractor agrees to provide for up to two-hundred seventy (270) calendar days after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of the Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. The State shall compensate Contractor for such termination assistance at the same rates and charges set forth in the Contract on a time and materials basis in accordance with the Labor Rates indicated within Contractors pricing section. If the Contract is terminated by Contractor under **Section 20**, then Contractor may condition its provision of termination assistance under this Section on reasonable assurances of payment by the State for such assistance, and any other amounts owed under the Contract.

C. Reservation of Rights

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

D. End of Contract Transition

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

(1) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's

subcontractors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors.

(2) Knowledgeable Personnel. Contractor will make available to the State or a Third Party Provider knowledgeable personnel familiar with the operational processes and procedures used to deliver products and services to the State. The Contractor personnel will work with the State or third party to help develop a mutually agreeable transition plan, work to transition the process of ordering, shipping and invoicing equipment and services to the State.

(3) Information - The Contractor agrees to provide reasonable detailed specifications for all Services needed by the State, or specified third party, to properly provide the services required under the Contract. The Contractor will also provide any licenses required to perform the Services under the Contract.

(4) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services under the Contract. This shall include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level.

(5) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations). The hourly rates or fixed price to be charged will be agreed upon prior to the work commencing.

(6) Single Point of Contact. Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.

E. Transition out of this Contract

(1) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the Contractor agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

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

(2) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

(i) Reconciling all accounts between the State and the Contractor;
(ii) Completing any pending post-project reviews.

2.703 LIQUIDATED DAMAGES

A. The State and the Contractor hereby agree to the specific standards set forth in this Contract. It is agreed between the Contractor and the State that the actual damages to the State as a result of Contractor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State and the Contractor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State as a result thereof. Accordingly, in the event of such damages, at the written direction of the State, the Contractor shall pay the State the indicated amount as liquidated damages, and not as a penalty. Amounts due the State as liquidated damages, if not paid by the Contractor within fifteen (15) days of notification of assessment, may be deducted by the State from any money payable to the Contractor pursuant to this Contract. The State will notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the State deducts such sums from money payable to the Contractor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.

B. The Contractor shall not be liable for liquidated damages when, in the opinion of the State, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor.

2.704 STOP WORK

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

   a) Cancel the stop work order; or
   b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.

1. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

   a) The stop work order results in an increase in the time required for, or in the Contractor’s costs properly allocable to the performance of any part of this Contract; and
   b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

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

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

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

2.705 SUSPENSION OF WORK

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

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

A claim under this clause shall not be allowed:

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

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

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

2.802 TIME EXTENTIONS

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

2.803 MODIFICATION

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

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

2.804 AUDIT AND RECORDS UPON MODIFICATION

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

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

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

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

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

2.805 CHANGES

(a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:

(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) In the Government-furnished facilities, equipment, materials, services, or site; or
(4) Directing acceleration in the performance of the work.

(a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:

(1) The date, circumstances, and source of the order; and
(2) That the Contractor regards the order as a change order.

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

2.9 Liability Insurance

A. Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these

damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

All insurance coverage provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract. See www.michigan.gov/cis

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked **below**:

1. Commercial General Liability with the following minimum coverage:

$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
$1,000,000	Each Occurrence Limit
$500,000	Fire Damage Limit (any one fire)

   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.

2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

   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 also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside

of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:

$100,000	each accident
$100,000	each employee by disease
$500,000	aggregate disease

B. Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

C. Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. 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 Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

ATTACHMENT "1"

SPECIFICATIONS
FOR
MODIFIED ROADSIDE MOWING SERVICES
FOR
MDOT BAY REGION - SAGINAW COUNTY

I. ADMINISTRATIVE PROCEDURES

Definitions

The Department refers to the Michigan Department of Transportation.

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

Contractor refers to a vendor as defined above which, has been awarded a contract by the Department for roadside mowing of freeways.

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

DETAILED PROGRESS SCHEDULE

Work is to be performed for a period of 3 years with two each, one-year options to extend. work will be performed between May 1 and October 30 of each contract year, as solely determined by the Department. Work must be performed in accordance with the progress schedule submitted at the Pre-Award Meeting and described below. The first failure to complete work as defined in the progress schedule will result in a Complaint to Vendor and a meeting with the contractor to insure corrective action. The second such failure will result in termination of the contract. The progress schedule must address all work to be completed when multiple contracts are awarded to the same vendor, including work performed as a subcontractor for a local unit of government.

Pre-Award Meeting

After the low bid has been determined, a meeting with that vendor and the Region Maintenance Superintendent and/or Contract Compliance Inspector will be held at a time and location designated by the Department. The purpose of the meeting will be for that vendor to present the following required detailed information to the Department for review prior to the award of the contract.

A. Equipment list - indicating description, age, manufacturer, model and serial number of each piece. Equipment must meet or exceed all requirements defined under "Equipment Requirements" on page 4 of this document. All equipment must be in the vendor's possession, available for use and fully operational, prior to the Pre-Award meeting. The vendor must provide an equipment list and any lease contracts at the Pre-Award Meeting.

B. Schedule of operations - personnel and hours expected to complete work on this contract.

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

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

E. Safety Program, including traffic control plan(s).

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

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

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

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

Rejecting Bids

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

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

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

Multiple Contracts Awarded to the Same Vendor

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

II. MOWING

Description of Work

These specifications supplement the Michigan Department of Transportation 2003 Standard Specifications for Construction, which standard specifications are incorporated herein by reference. In case of a conflict between any provision of the Standard Specifications and the Supplemental Specifications, the more detailed provisions of the Supplemental Specifications will control. This contract will require litter removal/disposal, routine mowing and contour mowing at interchanges of limited access or divided highways and routine mowing of free access highways. The roadway limits of each type of mowing and approximate acres are listed in the attachments and may at the discretion of the Department change. The areas defined shall be mowed up to three (3) times during the mowing season according to the following mowing schedule. The second mowing cycle MUST BE requested by the Contract Compliance Inspector or designated representative or shall not be performed.

Mowing Schedule

The Contractor shall be notified by the Contract Compliance Inspector or designated representative when and where to begin each mowing cycle. To prepare for the mowing cycle, the Contract Compliance Inspector shall notify the Contractor no less than five (5) days prior to actual starting date. The Contractor shall have 20 calendar days from the date of notification to complete each cycle. Mowing will begin when the grass has reached an average height of twelve (12) inches. Based on historical experience, the **approximate** starting dates of each cycle are as follows:

1st mowing - May 15 – June 15
2nd mowing (if requested) - August 10 - August 30
3rd mowing - October 1 - October 20

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

SCOPE OF WORK

ROUTE	CONTROL SECTION	DESCRIPTION
0I0075	73171	S. Saginaw Co. Line North, to Dixie Hwy. Includes Weigh Station.
	73111	Dixie Hwy. North, to South End Zilwaukee Bridge.
	73112	South End Zilwaukee Bridge North, to Bay County Line
0I0675	73101	S Jct. I-75 North, to N Jct. I-75
0M0013	73051	S. Saginaw Co Line North, to S. Saginaw City Limit.
	73091	N. Saginaw City Limit North, to Bay County Line.
0M0083	73131	S. Co. Line North, to M-15 (Gap Frankenmuth)
0M0081	73081	N. Saginaw City Limit East, to W. Reese City Limit
0M0015	73151	S. Saginaw Co. Line North, to S. Bay County Line
0M0046	73061	W. Saginaw Co. Line East, to M-52 (Gap Merrill, Hemlock)
	73062	M-52 East, to Kennely Rd.
	73063	Cumberland St. East, to Tuscola County Line
0M0047	73032	M-46 North, to M-47/M-58 By-Pass
	73073	M-47/M-58 Crossover North, to US-10 (Gap Freeland)
0M0084	73033	Tittabawassee Rd North, to Bay Co. Line
0M0052	73031	S. Saginaw Co. Line North, to M-46 (Gap Oakley, St Charles)
0M0057	73021	W. Saginaw Co. Line East, to Genesee Co Line (Gap Chesaning)

All routes include interchanges, clear-vision corners and ramps. The proposed work covers litter pickup and disposal from the mowed areas prior to each mowing, mowing as specified on the designated routes, mowing clear vision areas and triangle islands at locations designated at pre-bid meeting as described in these specifications. The work shall be done in accordance with all the terms of this contract, including the Supplemental Specifications contained within this contract, and the heading therein entitled "Methods of Treatment." Vegetation as used in this contract refers to grass, weeds, and small woody plants.

EQUIPMENT REQUIREMENTS

General

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

Type of Equipment

The equipment must be commercially available, in good repair, and shall be maintained so as to produce a clean, sharp cut to the grass at all times. Equipment which in any way pulls or rips grass, or damages the turf, shall not be allowed. Tractors used for production mowing shall have a minimum of 55 horsepower per tractor at the power take-off (P.T.O.) and be capable of cutting a width of no less than ten (10.0) feet in a single pass. Tractors used for trim mowing shall have a minimum of 30 horsepower at the power take-off and be capable of cutting a width of no less than five (5.0) feet in a single pass. Tractors shall be equipped to provide the power to the mowing attachment. One production mower and one trim mower as described above shall be available to be used concurrently within the contract area. All equipment shall be of such type to permit the heights of cut to be adjusted to approximately five (5.0) inches.

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

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

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

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

Methods of Treatment

MOWING
Typically the area to be mowed on limited access roads includes medians up to 50.0 Ft in width between the edge of shoulder of both roadways and a strip 12.0 Ft wide adjacent to the outside shoulder of both roadways unless restricted by the right-of-way limits or the ditch back slopes. When the median is wider than 50.0 Ft, a 12.0 Ft. strip will be mowed adjacent to both inside shoulders. The entire median may be mowed as determined by the Department in accordance with P.A. 174. (See next section)

Mowing shall begin when the grass has reached the average height of twelve (12.0) inches, unless otherwise directed by the Contract Compliance Inspector or designated representative. Two (2) days prior to the start of each mowing, the Contractor shall notify the Contract Compliance Inspector or designated representative. The Contractor and Contract Compliance Inspector or designated representative shall make a joint visual inspection of all specified mowing areas, both prior to and upon completion of mowing operation. The inspection is for the purpose of documenting existing damage to turf, guardrails, delineator posts, signage, light fixtures, etc., and those caused by the Contractor's mowing operations. This inspection may be video taped. Each mowing shall be completed in successive segments not to exceed four (4.0) miles (including median and both sides of the roadway) to insure uniform turf appearance upon completion of the work. Mowing operations, once initiated, shall continue until all designated mowing is completed including multiple contracts awarded to the same Contractor. Only adverse weather conditions shall be cause to delay completion of each mowing.

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

All vegetation in mowing areas shall be cut to a height of five (5.0) inches. It is not necessary for the Contractor to remove grass clippings. The Contractor shall, at all times, provide satisfactory equipment and a force of qualified workers sufficient, in the opinion of the Contract Compliance Inspector or designated representative, to perform the work described herein. **The force of qualified workers shall be sufficient to perform litter pickup, mowing, and related activities on a timely basis.**

Median Mowing

Section 326 of P.A. 174 of 1998 as amended, states that when the median is wider than 50.0 Ft, and is outside an area considered to be federal aid urban, then it can only be mowed once every four years as directed by the Department. If the median is wider than 50.0 Ft, and is in a federal aid urban area, then the entire median shall be mowed. Upon reviewing Saginaw County it has been determined that all medians are either less than 50.0 Ft, or those that are greater than 50.0 Ft are in an area considered federal aid urban.

BRUSH MOWING

Brush mowing may be requested by the Contract Compliance Inspector and may only be performed between July 16 and the following March 1. Only areas where brush is present and is a problem shall this function be performed. The areas where bush mowing will take place shall be determined by the Contract Compliance Inspector and the Contractor. The acres to be brush mowed shall be agreed upon before any brush mowing takes place and shall be paid for by unit price per acre. This can be done every other year (50% of Region).

Mowing operations shall be performed in swaths parallel to the roadway in the direction of traffic. The Contract Compliance Inspector or designated representative may make adjustments in the mowing dates when unusual conditions are experienced.

Litter Removal/Disposal

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

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

Maintaining Traffic

Traffic shall be maintained in accordance with the Michigan Department of Transportation 2003 Standard Specifications for Construction, and the revised 1994 edition (January 2001) of the Michigan Manual of Uniform Traffic Control Devices (MMUTCD). All mowing operations shall be conducted in a manner that will not create a hazard, nor hinder, restrict, or impede trunkline traffic. The Contractor shall not operate mowing equipment on the roadway or in a manner that requires unnecessary crossing the roadway. All equipment not in use may be temporarily parked on limited access freeway right-of-way, but not within the median or closer than thirty (30.0) feet from the traveled roadway. Equipment may not be temporarily parked on free access roadways except at those locations designated by the Contract Compliance Inspector or designated representative.
No signing is required unless a Contractor's vehicle(s) remains stationary on the shoulder for more than 15 minutes. If a vehicle (service vehicle, transport vehicle, etc.) remains stationary for more than 15 minutes, a standard 48" x 48" ROAD WORK AHEAD sign (W21-4) is required to be placed within 500 feet of the vehicle. Any vehicle on the shoulder shall have flashing or rotating lights or lighted arrow panel (Types A or B) operated in the bar mode as specified in the Michigan Department of Transportation 2003 Standard Specifications for Construction.

A copy of the Michigan Department of Transportation, 2003 Standard Specifications for Construction and MMUTCD can be obtained from the following:

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

Public Convenience and Safety

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

Days/Hours of Operation

All work included in this contract shall be performed during daylight hours only. No work shall be allowed on weekends unless prior approval is obtained from the Contract Compliance Inspector or designated representative. Work shall not be permitted during holiday periods in accordance with the 2003 Standard Specifications for Construction, and/or current Michigan Department of Transportation policy.

Damages

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

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

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

All landscape plant material damaged by the Contractor shall be replaced in kind according to the 2003 Standard Specifications for Construction and as herein specified. Planting may only be done in the spring and prior to May 10. All replacement plants must be maintained during the specified establishment period.

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

Taxes

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

Deletion of Work

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

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

III. GENERAL CONDITIONS

Work Approval

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

Default

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

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

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

Noncompliance includes but is not limited to:

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

Liquidated Damages
Failure to complete each mowing cycle as scheduled will result in assessment of liquidated damages, which shall consist of $200.00 per day for each calendar day that the work remains uncompleted.

THE DEPARTMENT RESERVES THE RIGHT TO BILL THE CONTRACTOR FOR ANY DAMAGES DUE TO THE DEFAULT OF THE CONTRACTOR.

Coordinating Clause

Contracts for landscaping, weed spraying or other work, may be in progress during the time of this contract. Areas to be treated by weed spraying shall not be mowed for 72 hours before treatment or 48 hours after treatment. The Contractor shall coordinate his/her work activities with existing or future work performed by Michigan Department of Transportation, through close coordination with the Contract Compliance Inspector or his representative. Mowing dates may be adjusted through mutual agreement between the Contractor and Contract Compliance Inspector or designated representative when unusual conditions are experienced.

Subcontracting

No subcontracting will be allowed on this project.

IV. PAYMENT

Method of Measurement and Basis for Payment

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

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

Method of Payment

The Contractor shall furnish an invoice in duplicate, for services rendered for each mowing cycle for labor and equipment.

The original invoice shall be sent to:

Michigan Department of Transportation
Attn. Perry Lund
2590 Wilder Road
Bay City, MI. 48706

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

BAY REGION
SAGINAW COUNTY
Roadside Mowing Description of Work

ROUTE	DESCRIPTION	MILES	ACRES	BRUSH ACRES
I-75	N Genesee Co. Ln N, to Dixie Hwy	14.544	112.0	66.0
	Dixie Hwy N. to Zilwaukee Bridge	09.023		
	Zilwaukee Bridge N to Bay Co.	04.076		
I-675	S Jct I-75 to N Jct I-75	07.804	85.0	42.5
M-13	S Co Ln North to S Saginaw CL	14.412	67.0	
	N Saginaw CL North to Bay Co Ln	05.448		
M-83	S Co Ln North to SCL Frankenmuth	06.180	42.0	
	NCL Frankenmuth North to M-15	06.024		
M-54/M-83	I-75 East to M-83	02.097	06.1	
M-81	NCL Saginaw East to WVL Reese	09.910	31.0	
M-15	S Saginaw Co Ln to South Bay Co Ln	05.939	40.3	
M-46	W Saginaw Co Ln East to M-52	12.070	98.0	
	M-52 East to Kennely Rd.	01.980		
	Cumberland St East to W Co LnTuscola	10.755		
M-47	M-46 North to M-58/M47 By-Pass	01.730	62.7	
	M-58/M47 By-Pass North to Midland Rd	08.712		
	Midland Rd North to Bay Co Ln	02.249		
	Bay Co Ln North to US-10	02.135		
M-84	Tittabawassee Rd North to Bay Co Ln	02.990	08.7	
M-52	S Saginaw Co Ln North to M-46	18.220	80.0	
M-57	W Saginaw Co Ln East to W VL Chesaning	11.711	86.0	
	E VL Chesaning East to Genesee Co Ln	09.090		
		TOTAL	**718.8**	**108.5**

PRICES SUBMITTED ARE DOLLARS ($) PER ACRE

		$ PER ACRE	$ FOR TOTAL ACRES
- MOWING	**718.8 ACRES/CYCLE**	**$ 27.78**	**$ 19,968.26**
- BRUSH MOWING	**108.5 ACRES/YEAR**	**$ 30.87**	**$ 3,349.40**

TOTAL CONTRACT PRICE **$ 183,722.80**

CONTRACTOR'S PROPOSED WORK PLAN

WORK PLAN

Mowing will be executed promptly after receiving request from the Contract Compliance Inspector. Proposed Mowing time has been efficiently cut by acquiring safer and up to date equipment. Kindy's mowers are located on the front of the tractor so that the grass is cut before the tractor tires run over it. If the tires run over the grass, it is knocked down prior to cutting and leaves fish/rooster tails in its wake. Kindy Farms proposed that it will take approximately 120 man hours to complete each mowing cycle. All mowing will be completed to the best of Kindy Farms ability and make sure it is done to the satisfaction of the States Contract Compliance Inspectors.

In the event of inclement weather, it is anticipated that contractor's employees will not be affected.
All employees are furnished with Nextel phone to insure continual contact with the company.

On a daily basis, James Kindy will be communicating with the CCI regarding progress schedule of mowing operations and any problems that have occurred.

The following is a list of available employees whose hourly wages starts at $8.00:

- James Kindy – Owner
- Benjy Miller – Tractor Driver –
- Mark Short – Tractor Driver –
- Ted Jerome – Tractor Driver –
- Shelly Kindy – Tractor Driver –
- Lorrin Cook – Tractor Driver –
- Virgil Kindy – Tractor Driver –

PRODUCT QUALITY

All equipment is owned by Kindy Farms and is maintained on a regular basis in order to achieve optimal performance. The following is a listing of all Kindy Farms equipment:

2000 John Deere 6410
1998 John Deere 6410
1989 John Deere 2155
1986 Case 3594
(2) 2000 Lely Front Mount Disc Mowers
(1) 2000 Lely Rear Side Mount Disc Mowers
(1) 2004 Lely Rear Side Mount Disc Mowers
(2)6' Rotary Mowers
1998 Woods 20' Rotary Mower
1998 Woods 15' Rotary Mower

SERVICE CAPABILITIES

1. Training
All staff will be trained prior to providing services for MDOT. The training will occur at Kindy Farms, LLC.

2. Safety
Safety is a high priority at Kindy Farms. Special care is taken to protect employees and the other vehicles on the roads. Every vehicle and implement has a flashing bar light on the top to caution drivers of our presence. The disc mowers that I use are safer than the commonly used rotary mowers. Plus, all my drivers wear orange safety vest to alert drivers of their whereabouts.