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

November 6, 2007

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B6200033
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (734) 284-0584 **Cheryl Solo**
M.S.T. & L., Inc. **637 Sibley Road** **Trenton, MI 48183** **mstlinc@bignet.net**	VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Arnold Trombley (Adrian) - Dave Vorce (Williamston) **Roadside Mowing – Limited Access and Free Access – University Region** **Lenawee County - MDOT**	
CONTRACT PERIOD: From: **April 1, 2006**	To: **March 31, 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 immediately, this Contract is hereby INCREASED by $579.85. Additionally, the price per acre is hereby CHANGED to $57.40. All other terms, conditions, specifications, and pricing remain the same.

AUTHORITY/REASON:

Per agency/vendor agreement and DMB/Purchasing Operations.

TOTAL REVISED ESTIMATED CONTRACT VALUE: $114,028.63

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

July 20, 2007

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B6200033
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (734) 284-0584 **Cheryl Solo**
M.S.T. & L., Inc. **637 Sibley Road** **Trenton, MI 48183** **mstlinc@bignet.net**	VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Arnold Trombley (Adrian) - Dave Vorce (Williamston) **Roadside Mowing – Limited Access and Free Access – University Region** **Lenawee County - MDOT**	
CONTRACT PERIOD: From: **April 1, 2006** To: **March 31, 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 2, 2007, the price per acre is hereby CHANGED from $53.95 to $56.11. All other terms, conditions, specifications, and pricing remain the same.

AUTHORITY/REASON:

Per agency/vendor agreement and DMB/Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $113,448.78

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

July 28, 2006

NOTICE
TO
CONTRACT NO. 071B6200033
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (734) 284-0584 **Cheryl Solo**
M.S.T. & L., Inc. **637 Sibley Road** **Trenton, MI 48183** **mstlinc@bignet.net**	VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Arnold Trombley (Adrian) - Dave Vorce (Williamston) **Roadside Mowing – Limited Access and Free Access – University Region** **Lenawee County - MDOT**	
CONTRACT PERIOD: From: **April 1, 2006**	To: **March 31, 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 #071I5200182, this Contract Agreement and the vendor's quote dated 05/11/2005. 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: $113,448.78

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. 071B6200033
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (734) 284-0584 **Cheryl Solo**
M.S.T. & L., Inc. **637 Sibley Road** **Trenton, MI 48183** **mstlinc@bignet.net**	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3768 **Lance Kingsbury**

Contract Compliance Inspector: Arnold Trombley (Adrian) - Dave Vorce (Williamston)

Roadside Mowing – Limited Access and Free Access – University Region
Lenawee County - MDOT

CONTRACT PERIOD:	From: **April 1, 2006**	To: **March 31, 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 #071I5200182, this Contract Agreement and the vendor's quote dated 05/11/2005. 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: $113,448.78

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I5200182. Orders for delivery may be issued directly by the 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:**
M. S. T. & L., Inc. Firm Name	Signature
Authorized Agent Signature	**Kristi L. B. Thompson, Director** Name/Title
Authorized Agent (Print or Type)	**Services Division, Purchasing Operations** Department
Date	Date

STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations - MRO

Michigan Department of Transportation (MDOT)
Roadside Mowing – Limited Access and Free Access - University Region

Lenawee County (Adrian Garage) #071B6200033

Awarded to:

M.S.T. & L. Inc.
16716 Dudley Street
Taylor, MI 48180

Buyer Name: Lance Kingsbury
Telephone Number: (517) 241-3768
E-Mail Address: kingsburyl@michigan.gov

MDOT Roadside Mowing – Limited Access and Free Access - University Region

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MDOT Roadside Mowing Specifications
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Pricing Page - Ingham County (Williamston Garage)

Article1 – Statement of Work (SOW)

1.0 Introduction

1.001 DEFINING DOCUMENT

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

1.002 PROJECT TITLE/ DESCRIPTION AND SCOPE OF WORK

These two (2) Contracts are for **Roadside Mowing – Limited Access and Free Access for Michigan Department of Transportation (MDOT)'s University Region for Lenawee (Adrian Garage) and Ingham (Williamston Garage) Counties.**

This Contract including all routes, 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.

Contractor shall provide all personnel, equipment, tools, materials, supervision and other items and services necessary to perform the roadside mowing services and grounds maintenance tasks as described in the specifications detailed herein. The required result is to maintain the designated area(s) and grounds in such as manner as to provide a clear and safe roadway. The specifications contained in this Contract have been developed to established the minimum level of grounds maintenance services required and operated by the Michigan Department of Transportation (MDOT).

1.003 PROJECT CONTROL

Project Control

a. The Contractor will carry out this project under the direction and control of MDOT.

b. Although there will be continuous liaison with the Contractor, the client agency's project director will meet as needed for the purpose of reviewing progress and providing necessary guidance with the Contractor in solving any problems that may arise.

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.

Mowing Schedule

The Contractor shall be notified by the Contract Administrator or designated representative when and where to begin each mowing cycle. To prepare for the mowing cycle, the Contract Administrator shall notify the Contractor no less than five (5) days prior to actual starting date. The Contractor shall have 25 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 1st – June 1st	
2nd Mowing	July 15 – August 15th	**(IF REQUIRED)** Optional mowing determined by Contract Compliance Inspector
3rd Mowing	October 1st – October 31st	
4th Mowing	July 10th – July 30th	**Grand Ledge Garage** location only

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 Administrator certifies the invoice indicative of satisfactory completion of each mowing cycle of the entire contract area.

Days/Hours of Operation

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

Mowing 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) 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. A minimum of two (2) production mowers and two (2) trim mowers 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 – Limited Access
Typically the area to be mowed on limited access roads includes medians up to fifty (50) feet in width between the edge of shoulder of both roadways and a strip twelve (12) feet 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 fifty (50) feet, a twelve (12) foot strip will be mowed adjacent to both inside shoulders. The entire median may mow as determined by the Department in accordance with P.A. 174. (See next section)

Mowing – Free Access

Typically the area to be mowed on a free access highway is a strip ten (10) feet wide adjacent to the shoulder unless restricted by right-of way limits, or protected plant area restrictions. All intersections shall be considered to be clear vision areas and shall be mowed to the right-of-way limits as directed by the contract administrator. This contract includes mowing behind all guardrails. This is a minimum five (5) foot cut. The roadway limits of each type of mowing and approximate acres are listed in the attachments.

Median Mowing

Section 326 of P.A. 174 of 1998 as amended, states that when the median is wider than fifty (50) feet, and is outside an area considered to be federal aid urban area then you can only mow a twelve (12) foot strip adjacent to the inside shoulders. If the median is wider than fifty (50) feet, and is in a federal aid urban area, then the entire median shall be mowed.

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

It shall be necessary to mow within six (6) inches of all sides of obstructions, such as sign supports, delineators, guard posts, utility poles, piers, abutments, structures and landscaping (trees, shrubs, etc.) that may be within designated mowing areas.

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

All areas identified as **Protected Plant Areas** shall be mowed as not to exceed the current MDNR permit limitations. Any mowing in the **Protected Plant Areas** beyond the permit limitations will result in a violation of State and Federal Law. In the event of a **Protected Plant Area** being damaged by the contractor, all fines and all costs associated with any required restoration incurred from this damage will be the responsibility of the contractor. The Contract Administrator shall meet with the contractor annually no less than five (5) calendar days prior to the start-up date to review the current MDNR Threatened/Endangered Species Permit which outlines the current permit limitations.

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 Administrator or designated representative, to perform the work described herein. **The force of qualified workers shall be sufficient to perform litter pickup, mowing, and related activities on a timely basis.**

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

Litter Removal/Disposal

All litter/trash shall be picked up ahead of mowing operation. Litter includes, but is not limited to, paper, cardboard, Styrofoam, plastic, cloth, wire, steel bands, cable, garbage bags, tire tread, car parts, pallets, sheet metal, furniture, etc., as may be found on the roadside. All costs associated with litter removal, disposal 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 Administrator upon request. The Contractor will not be responsible for disposal of suspected hazardous materials discovered during the course of this work. Such discovery shall immediately be reported to the Contract Administrator.

Maintaining Traffic

Traffic shall be maintained in accordance with the Michigan Department of Transportation 2003 Standard Specifications for Construction, and the Michigan Manual of Uniform Traffic Control Devices (MMUTCD) 1994 edition. All mowing operations shall be conducted in a manner that will not create a hazard, nor hinder, restrict, or impede trunk line traffic. The Contractor shall not operate 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 Administrator or designated representative.

No signing is required unless a Contractor's vehicle(s) remains stationary on the shoulder for more than 15 minutes. If a vehicle (service vehicle, transport vehicle, etc.) remains stationary for more than 15 minutes, a standard 48" 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.

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

A copy of the 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 Administrator or designated representative, reasonably necessary to protect the safety and health of employees on the job and the public and to protect property during the performance of the project.

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, hand holes and delineators to the satisfaction of the Contract Administrator or designated representative. Damage to traffic control devices (signs, post, hand holes) shall be reported to the Contract Administrator 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 Administrator 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 the Department makes repairs, the actual replacement costs including all labor, equipment, materials, and fringe benefits shall be charged to the Contractor.

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.

GENERAL CONDITIONS

Work Approval

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

Cancellation

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

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

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

Noncompliance includes but is not limited to:

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

2. Failure of the Contractor to mow in accordance with any of the 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 Administrator or his representative. Mowing dates may be adjusted through mutual agreement between the Contractor and Contract Administrator or designated representative when unusual conditions are experienced.

Subcontracting

No subcontracting will be allowed on this project.

1.102 QUALITY ASSURANCE PROGRAM

INSERT VENDOR RESPONSE

1.103 WARRANTY FOR PRODUCTS OR SERVICES

Contractor shall include the warranty associated with the actual product being proposed, as well as the warranty associated with any service work performed under the contract. Contractor will handle any repairs that need to be made due to damaged or defective product, how installation problems will be rectified, and the process State agencies should follow to report warranty issues.

1.2 Service Capabilities

1.201 CUSTOMER SERVICE/ORDERING - RESERVED

1.202 TRAINING

Contractor has the following training or certification programs(s) that are currently required or optional and are in place within their organization (i.e., MIOSHA) as follows:

INSERT VENDOR RESPONSE

1.203 REPORTING

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

1.204 SECURITY - RESERVED

1.3 Project Price

1.301 CONTRACT PRICING

"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 labor, materials, equipment and incidentals required to complete the work as specified for 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. The following represents the estimated work to be completed work as measured for roadside mowing and will be paid for at the contract unit prices for the following Contract item(s):

INSERT PRICING PAGE & VENDOR PRICING

1.302 QUICK PAYMENT TERMS

The State of Michigan is interested in payment terms that reflect cost savings to the State based on an accelerated payment process. Quick payment terms that they are offering to the State of 5% discount off invoice if paid within 15 days from receipt of invoice.

1.303 PRICE TERM

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. Acquisition Services 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). Acquisition Services 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.

Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for **Roadside Mowing – Limited Access and Free Access for the Michigan Department of Transportation (MDOT)'s University Region** for the State of Michigan. Exact quantities are ESTIMATED and have been provided although in some cases may be 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 MDOT locations that may order from the Contract are **Lenawee (Adrian Garage) and Ingham (Williamston Garage)** Counties. The 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 Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the Michigan Department of Transportation, hereinafter known as MDOT. Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

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

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

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

Department of Management and Budget
Purchasing Operations - MRO
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 April 1, 2006 through March 31, 2009.

Option. The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to exercise an option year.

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

Written notice will be provided to the Contractor within 90 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.

Detailed Progress Schedule

Work is to be performed as defined in this Contract. All work will be performed between May 1 and October 31 of each contract year, as solely determined by the MDOT. The project is to be completed by March 1, 2009. 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.

Service Quality

MDOT SPECIFICATIONS FOR ROADSIDE MOWING (Limted Access and Free Access)

The specifications detailed in this Contract 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 Administrator or designated representative or shall not be performed. (See attachments.)

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 Acquisition Services within 30 days.

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

The Contractor shall:

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

2. Provide Acquisition Services or designated representative ready access to the records upon request;

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

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

2.103 SOFTWARE COMPLIANCE

The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure year 2000 compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

2.104 RESERVED

2.105 RESERVED

2.106 PREVAILING WAGE

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

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

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

2.107 PAYROLL AND BASIC RECORDS

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

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

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

The Contractor 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 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 RESERVED

2.109 RESERVED

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

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

2.202 CONTRACT PAYMENT SCHEDULE

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

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

INSERT INFORMATION

The invoice shall be sent to:

MICHIGAN DEPARTMENT OF TRANSPORTATION
Contract Compliance Inspector
Location Address (to be specified in the Contract per Location)

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

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 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered) - RESERVED

2.205 ELECTRONIC PAYMENT AVAILABILITY

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

2.206 PERFORMANCE OF WORK BY CONTRACTOR - RESERVED

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

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

2.302 CONTRACTOR RESPONSIBILITIES

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

2.303 ASSIGNMENT AND DELEGATION

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

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

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

2.304 TAXES

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

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

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

2.305 INDEMNIFICATION

General Indemnification

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

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.

2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;

3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;

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

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

Patent/Copyright Infringement Indemnification

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

Code Indemnification

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

Indemnification Obligation Not Limited

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

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect 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.

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not 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 PURCHASING FROM OTHER STATE AGENCIES - 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 thirty (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 Acquisition Services of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s).**

That authority is retained by Acquisition Services. The Contract Compliance Inspector for this project will be based on location of award(s).

Rick Tyrer
Michigan Department of Transportation
Brighton TSC
(810) 227-4681

Dave Vorce
Michigan Department of Transportation
Williamston TSC
(517) 324-2297

2.402 PERFORMANCE REVIEWS

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

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

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

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 Acquisition Services has approved a change.

2.502 QUALITY ASSURANCE - RESERVED

2.503 INSPECTION - RESERVED

2.504 GENERAL WARRANTIES - 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.

2.507 RESERVED

2.508 EQUIPMENT WARRANTY

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain such equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.

Within seven (7) business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor shall provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor if requested and deemed necessary.

The Contractor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

The Contractor shall act as the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

2.509 RESERVED

2.6 Breach of Contract

2.601 BREACH DEFINED

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

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

2.602 NOTICE AND THE RIGHT TO CURE

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice.

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

2.603 EXCUSABLE FAILURE

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

2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.7 Remedies

2.701 CANCELLATION

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

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

   In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs,

and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

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

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

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

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

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

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

2.702 RIGHTS UPON CANCELLATION

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.

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

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

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

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

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

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

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

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

2.804 AUDIT AND RECORDS UPON MODIFICATION

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

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

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

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

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

2.805 CHANGES

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

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

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

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

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

3.307 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 Acquisition Services, 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 Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, 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. <u>Subcontractors</u>

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 Acquisition Services 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 A:

MICHIGAN DEPARTMENT OF TRANSPORTATION (MDOT)

DETAIL SHEET / SPECIFICATIONS FOR ROADSIDE MOWING
LIMITED ACCESS & FREE ACCESS
(Barry, Clinton, Eaton, Ingham, Lenawee, and Livingston Counties)

DEFINITIONS

The Department refers to the Michigan Department of Transportation (MDOT).

Vendor refers to any business entity, which had bid for but has not yet been awarded a contract with MDOT.

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

Contract Compliance Inspector refers to and MDOT employee directly responsible for inspecting and approving for payment all work performed under this contract.

CONTRACT LOCATIONS

- University Region – Roadside Mowing – Limited Access / Free Access – Adrian Garage
- University Region – Roadside Mowing – Limited Access / Free Access – Brighton
- University Region – Roadside Mowing – Limited Access / Free Access – Charlotte Garage
- University Region – Roadside Mowing – Limited Access / Free Access – Grand Ledge Garage
- University Region – Roadside Mowing – Limited Access / Free Access – Williamston Garage

MANDATORY PRE-BID MEETING

It is mandatory that each Vendor be familiar with the project through a field review and review of these contract specifications. Interested vendors shall attend the Mandatory Pre-Bid Meeting at MDOT - Lansing - Transportation Service Center (TSC) on:

Wednesday, April 13, at 9:00 a.m. (EST)

MDOT TSC – LANSING
1019 Trowbridge Road
East Lansing, MI 48823
Telephone: (517) 324-2260

In order to receive award consideration, Vendor Bidder must attend this MANDATORY pre-bid meeting and sign attendance form. No other pre-bid meetings will be scheduled. Failure to attend this pre-bid meeting and site visit will result in disqualification of bid.

The purpose of this meeting will be to discuss with prospective bidders the work to be performed and to allow them to ask questions arising from their review of the ITB. Representation at the pre-bid meeting may be limited to one person per vendor, due to limited facilities available. The pre-bid meeting is for information only. Any answers furnished will not be official until verified in writing by Acquisition Services, DMB. Answers that change or substantially clarify the ITB will be affirmed in writing; copies will be provided to all attendees. Neither **MDOT** nor Acquisition Services will respond to telephone inquiries or visitation by bidders or their representatives. The pre-bid meeting will be the bidders' only opportunity to personally address questions concerning this ITB.

DETAILED PROGRESS SCHEDULE

Work is to be performed for a period of 18 months with an option for two (2) one (1) year extensions beginning on July 1, 2005 and continuing until March 1, 2008. All work will be performed between May 1 and October 31 of each contract year, as solely determined by the Department. The project is to be completed by March 1, 2008. 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 awardable Vendor/Contractor has been identified, a meeting with the selected Vendor/Contractor and the Region Maintenance Superintendent and/or Contract Administrator 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.

1. Equipment list - indicating description, age, manufacturer, model and serial number of each piece. Equipment must meet or exceed all requirements defined under "Equipment Requirements" 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.

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

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

4. 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.

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

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

7. 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.

8. 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.

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 Administrator or designated representative or shall not be performed.

Mowing Schedule

The Contractor shall be notified by the Contract Administrator or designated representative when and where to begin each mowing cycle. To prepare for the mowing cycle, the Contract Administrator shall notify the Contractor no less than five (5) days prior to actual starting date. The Contractor shall have 25 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 1st – June 1st	
2nd Mowing	July 15 – August 15th	**(IF REQUIRED)** Optional mowing determined by Contract Compliance Inspector
3rd Mowing	October 1st – October 31st	
4th Mowing	July 10th – July 30th	**Grand Ledge Garage** location only

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 Administrator certifies the invoice indicative of satisfactory completion of each mowing cycle of the entire contract area.

Scope of Work

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) 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. A minimum of two (2) production mowers and two (2) trim mowers 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 – Limited Access
Typically the area to be mowed on limited access roads includes medians up to fifty (50) feet in width between the edge of shoulder of both roadways and a strip twelve (12) feet 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 fifty (50) feet, a twelve (12) foot strip will be mowed adjacent to both inside shoulders. The entire median may mow as determined by the Department in accordance with P.A. 174. (See next section)

Mowing – Free Access

Typically the area to be mowed on a free access highway is a strip ten (10) feet wide adjacent to the shoulder unless restricted by right-of way limits, or protected plant area restrictions. All intersections shall be considered to be clear vision areas and shall be mowed to the right-of-way limits as directed by the contract administrator. This contract includes mowing behind all guardrails. This is a minimum five (5) foot cut. The roadway limits of each type of mowing and approximate acres are listed in the attachments.

Median Mowing

Section 326 of P.A. 174 of 1998 as amended, states that when the median is wider than fifty (50) feet, and is outside an area considered to be federal aid urban area then you can only mow a twelve (12) foot strip adjacent to the inside shoulders. If the median is wider than fifty (50) feet, and is in a federal aid urban area, then the entire median shall be mowed.

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

It shall be necessary to mow within six (6) inches of all sides of obstructions, such as sign supports, delineators, guard posts, utility poles, piers, abutments, structures and landscaping (trees, shrubs, etc.) that may be within designated mowing areas.

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

All areas identified as **Protected Plant Areas** shall be mowed as not to exceed the current MDNR permit limitations. Any mowing in the **Protected Plant Areas** beyond the permit limitations will result in a violation of State and Federal Law. In the event of a **Protected Plant Area** being damaged by the contractor, all fines and all costs associated with any required restoration incurred from this damage will be the responsibility of the contractor. The Contract Administrator shall meet with the contractor annually no less than five (5) calendar days prior to the start-up date to review the current MDNR Threatened/Endangered Species Permit which outlines the current permit limitations.

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 Administrator or designated representative, to perform the work described herein. **The force of qualified workers shall be sufficient to perform litter pickup, mowing, and related activities on a timely basis.**

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

Litter Removal/Disposal

All litter/trash shall be picked up ahead of mowing operation. Litter includes, but is not limited to, paper, cardboard, Styrofoam, plastic, cloth, wire, steel bands, cable, garbage bags, tire tread, car parts, pallets,

sheet metal, furniture, etc., as may be found on the roadside. All costs associated with litter removal, disposal 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 Administrator upon request. The Contractor will not be responsible for disposal of suspected hazardous materials discovered during the course of this work. Such discovery shall immediately be reported to the Contract Administrator.

Maintaining Traffic

Traffic shall be maintained in accordance with the Michigan Department of Transportation 2003 Standard Specifications for Construction, and the Michigan Manual of Uniform Traffic Control Devices (MMUTCD) 1994 edition. All mowing operations shall be conducted in a manner that will not create a hazard, nor hinder, restrict, or impede trunk line traffic. The Contractor shall not operate 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 Administrator or designated representative.

No signing is required unless a Contractor's vehicle(s) remains stationary on the shoulder for more than 15 minutes. If a vehicle (service vehicle, transport vehicle, etc.) remains stationary for more than 15 minutes, a standard 48" 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.

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

A copy of the 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 Administrator or designated representative, reasonably necessary to protect the safety and health of employees on the job and the public and to protect property during the performance of the project.

Days/Hours of Operation

All work included in this contract shall be performed during daylight hours only. No work shall be allowed on weekends unless prior approval is obtained from the Contract Administrator or designated representative. Work shall not be permitted during holiday periods in accordance with the 2003 Standard Specifications for Construction, 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, hand holes and delineators to the satisfaction of the Contract Administrator or designated representative. Damage to traffic control devices (signs, post, hand holes) shall be reported to the Contract Administrator 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 Administrator 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 the Department makes repairs, the actual replacement costs including all labor, equipment, materials, and fringe benefits shall be charged to the Contractor.

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.

GENERAL CONDITIONS

Work Approval

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

Cancellation

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

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

required.

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

Noncompliance includes but is not limited to:

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

2. Failure of the Contractor to mow in accordance with any of the 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 Administrator or his representative. Mowing dates may be adjusted through mutual agreement between the Contractor and Contract Administrator or designated representative when unusual conditions are experienced.

Subcontracting

No subcontracting will be allowed on this project.

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.

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

The invoice shall be sent to:

MICHIGAN DEPARTMENT OF TRANSPORTATION
Contract Compliance Inspector
Location Address (to be specified in the Contract per Location)

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

DEPARTMENT OF
Management & Budget

MAINTENANCE, REPAIR, & OPERATIONS

UNIVERSITY REGION

ROADSIDE MOWING – LIMITED & ACCESS & FREE ACCESS

PRICING PAGE

CONTRACT PERIOD: 04/01/2006 – 03/31/2009

VENDOR: MST&L, Inc.
637 Sibley Road
Trenton, Michigan 48183

A	B	C	D	E
LOCATION	TOTAL MOWABLE ACRES	COST PER ACRE	TOTAL COST PER CYCLE	TOTAL CONTRACT COST / CYCLES
CONTRACT #071B6200033 LENEWEE COUNTY ADRIAN GARAGE (Refer to Route Specifications)	233.65	$53.95	$12,605.42	$63,027.10 (5 Cycles)
CONTRACT #071B6200036 INGHAM COUNTY WILLIAMSTON GARAGE (Refer to Route Specifications)	328.30	$37.23	$12,222.61	$85,558.27 (7 Cycles)

UNIVERSITY REGION – LENAWEE COUNTY
SPECIFICATIONS FOR ROADSIDE MOWING - LIMITED ACCESS & FREE ACCESS

ADRIAN GARAGE						
Roadside Mowing Description of Work 4/1/06 – 3/31/09 (3-Year Contract)						
ROUTE	DESCRIPTION*	ROUTE TYPE	MOWING WIDTH (FT)	MAINLINE MOWING ACRES	SIDE ROAD ACRES	CLEAR VISION ACRES
US-223	US-127 SE to Lenawee/Monroe County Line – County Line Road	Free / Limited Access*	10'	80.65	6.8	2.58
M-52	Michigan/Ohio State Line North to US-12	Free Access	10'	36.65	4.1	9.25
M-50	US-12 east to County Line Road	Free Access	10'	44.05	4.0	8.25
US-12	M-52 East to Washtenaw County Line	Free Access	10'	5.7	5.07	0.5
M-156	Michigan/Ohio State line north to M-34	Free Access	10'	24.1	1.7	0.0
M-34	US-127 east to Madison Street in Adrian	Free Access	10'	42.5	3.0	0.0
TOTAL MOWABLE ACRES				233.65	21.67	20.53

*** Lenawee County total Acres to be mowed: 233.65 Acres that include 9.1 acre of Limited Access highway on US 223. Mowing to Include: At all cross roads, 500 Foot in front of STOP and STOP AHEAD road signs, and behind all guardrails. At all County Road Intersections, mow Clear Vision areas.**

MOWING SCHEDULE		
1st Mowing	May 1st – June 1st	
2nd Mowing	July 15 – August 15th	**(IF REQUIRED)** Optional mowing determined by Contract Compliance Inspector
3rd Mowing	October 1st – October 31st	

UNIVERSITY REGION – INGHAM, EATON and CLINTON COUNTIES
SPECIFICATIONS FOR ROADSIDE MOWING - LIMITED ACCESS & FREE ACCESS

WILLIAMSTON GARAGE					
Roadside Mowing Description of Work 4/1/06 – 3/31/09 (3-Year Contract)					
ROUTE	DESCRIPTION*	ROUTE TYPE	MOWING WIDTH (FT)	MAINLINE MOWING ACRE(S)	CLEAR VISION ACRE(S)
I-96	M-59 to College Road. (full-width median mowing) to include additional Okemos Rest Area, ramps and Clear Vision	Limited Access	12'	142.1	38.1
BL-69	Hagadorn Road to free access county line; full-width median mowing to include Clear Vision	Free Access	12'	26.9	4.4
M-78	Woodbury Road to Clinton County Line to include Car Pool Lot and Clear Vision	Free Access	10'	1.5	1.0
M-52 North	M-43 to Shiawassee County Line to include Clear Vision	Free Access	10'	13.8	9.0
M-52 South	M-43 to Stockbridge to include Clear Vision and Car Pool Lot	Free Access	10'	24.5	18.6
M-36	M-52 to Mason (Temple Street)	Free Access	6'	13.0	2.0
M-36	M-52 to Gregory	Free Access	6'	8.5	.5
M-106	Gregory to Stockbridge	Free Access	6'	5.8	.5
M-43	M-52 South to Dobie Road	Free Access	10'	17.5	.5
SUBTOTALS				**253.6**	**74.5**
TOTAL MOWABLE ACRES = 328.30					

*** At all County Road Intersections, mow Clear Vision areas.**

MOWING SCHEDULE		
1st Mowing	May 1st – June 1st	
2nd Mowing	July 15 – August 15th	**(IF REQUIRED)** Optional mowing determined by Contract Compliance Inspector
3rd Mowing	October 1st – October 31st	