

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

**CHANGE NOTICE NO. 2**  
 to  
**CONTRACT NO. 071B8200174**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Michigan Highway Hazard Recovery 5171 Martin Road Capac, MI 48014	Russ Stoddard	rstodd@klondyke.net
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(810) 395-7555	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR				
BUYER	DTMB	Lymon Hunter	517-284-7015	hunterl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Large Carcass Removal Services – MRO – MDOT - Kalamazoo/Oakland/Marshall/Coloma TSC's			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 1, 2008	July 1, 2013		January 1, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45 Days	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS: N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	6 Months	July 1, 2014
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$250,000.00		\$1,572,805.00		
Effective February 25, 2014 this Contract is EXTENDED six months from January 1, 2014 to July 1, 2014. In addition, this Contract is INCREASED by \$250,000.00. All other terms, conditions, specifications and pricing remain unchanged. Per agency request dated December 12, 2013, DTMB, Procurement request dated December 10, 2013, vendor agreement dated January 10, 2014 and State Administrative Board approval on February 25, 2014.				

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

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B8200174**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Michigan Highway Hazard Recovery 5171 Martin Road Capac, MI 48014	Russ Stoddard	rstodd@klondyke.net
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(810) 395-7555	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR				
BUYER	DTMB	Lymon Hunter	517-241-1145	hunterl@michigan.gov

CONTRACT SUMMARY:			
<b>DESCRIPTION: Large Carcass Removal Services – MRO – MDOT - Kalamazoo/Oakland/Marshall/Coloma TSC's</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 1, 2008	July 1, 2013		July 1, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			<b>AVAILABLE TO MiDEAL PARTICIPANTS</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	6 months	January 1, 2014
<b>VALUE/COST OF CHANGE NOTICE:</b>		<b>ESTIMATED REVISED AGGREGATE CONTRACT VALUE:</b>		
\$100,000.00		\$1,322,805.00		
Effective July 1, 2013, this contract is hereby extended to January 1, 2014 and increased by \$100,000.00. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and DTMB Procurement approval.				

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

July 14, 2008

**NOTICE  
 TO  
 CONTRACT NO. 071B8200174  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF CONTRACTOR  <b>Michigan Highway Hazard Recovery          5171 Martin Road          Capac, MI 48014</b>  rstodd@klondyke.net	TELEPHONE (810) 395-7555 <b>Russ Stoddard</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1145 <b>Lymon C. Hunter, CPPB</b>
Contract Compliance Inspector: See Location Specification Sheets <b>Large Carcass Removal Services – MRO – MDOT          Kalamazoo/Oakland/Marshall/Coloma TSC's</b>	
CONTRACT PERIOD: From: <b>July 1, 2008</b> To: <b>July 1, 2013</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>Per Attached Specifications</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	

The terms and conditions of this Contract are those of ITB #07118200058, this Contract Agreement and the vendor's quote dated 3/19/08. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Current Authorized Spend Limit: **\$1,222,805.00**





**STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
CONTRACT # 071B8200174**

**LARGE CARCASS REMOVAL –  
ALLEGAN, KALAMAZOO AND ST. JOSEPH COUNTIES**

**Buyer Name: Lymon Hunter  
Telephone Number: (517) 241-1145  
E-Mail Address: [HunterL@michigan.gov](mailto:HunterL@michigan.gov)**

**ESTIMATED TIMELINE**

KEY MILESTONES / PHASES	TARGET DATES
Invitation To Bid Issued	Friday, February 15, 2008
Pre-Bid Meeting *MANDATORY*	See Schedule
Bidder Questions Due	Wednesday, March 12, 2008 by 3:00pm
Bid Proposal and Quotation Due	Wednesday, March 25, 2008 by 3:00pm
Estimated Notification of Award Recommendation	Friday, April 25, 2008
Estimated Contract Start Date	Tuesday, July 1, 2008



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**Attachments**

**Location Specifications Sheets**



## Article 1 – Statement of Work (SOW)

### 1.000 Project Identification

#### 1.001 Project Request

##### A. STATE SOLICITATION

This contract is for pick up and disposal of dead deer or large animal carcass' along prescribed highway right of ways for the State of Michigan. The Contractor must meet all requirements and regulations as established by Michigan Department of Natural Resources, Michigan Department of Agriculture and Michigan Department of Environmental Quality as to animal disposal. Orders for service will be issued directly to the Contractor by the Michigan Department of Transportation on the Purchase Order Contract Release Form and by Acquisition Services on the Purchase Order Form.

This Contract will be a Unit Price Contract.

#### 1.002 Project Background - Deleted N/A

### 1.100 Scope of Work and Deliverables

#### 1.101 In-Scope

The Contractor shall be responsible for furnishing all labor, materials, equipment, tools and any other apparatus required to remove dead deer or large animals from the Right-of-Way, unless otherwise herein stated. The Contractor must meet all requirements and regulations as established by Michigan Department of Natural Resources, Michigan Department of Agriculture and Michigan Department of Environmental Quality as to animal disposal. The project will cover all expressway in the area listed.

**Work to be performed for a period of Five (5) years, beginning on July 1, 2008.** All work will be performed each contract year as solely determined by the Department. The project is to be completed by July 1, 2013. Work must be performed in accordance with the progress schedule submitted at the Pre-Maintenance Meeting and described below. The first failure to complete work as defined in the progress schedule will result in a Vendor Performance being filed with the Department of Management and Budget, and a meeting with the Contractor to insure corrective action. The second such failure may be cause for termination of the contract.

All equipment must be in the Contractor's possession, available for use and fully operational, prior to the Pre-Maintenance meeting. The Contractor must provide an equipment list and any lease contracts at the Pre-Maintenance Meeting.

A Detailed Progress Schedule which includes schedule of operations, personnel and hours.  
Name(s) of supervisors and 24 hour contact cell telephone numbers.

\*Note: The Contractor shall be required to use equipment approved through an acceptable demonstration of the equipment's capabilities, suitability and condition to the Department. Demonstrations will be at no cost to the Department.

#### Patrol Frequency:

The Contractor will contact the CCI at the beginning of each patrol. This can be to a telephone number selected by the CCI. A voicemail message will serve as notice, if the CCI is not available by telephone.

Two patrols each week will be performed April 1, thru December 15, on the Trunk Line listed in each area, on Monday and Thursday of each week, days of the week may change during this period, as determined by the Contract Administrator.

One patrol per week will be performed December 16 thru March 31, on Wednesday.



The Contractor must have cell phone number, facsimile number, pager number (optional), and a telephone/message number with a contact person at the message number to respond to request for Emergency Call Outs or additional patrols.

**Emergency Requests:**

The Contractor shall be available 24 hours, seven (7) days a week for emergency request. Following a call from the CCI, the Contractor shall provide the necessary equipment for Carcass Removal and Disposal at the designated scene within one (1) hour of notice **or a mutually agreeable time frame that is acceptable by CCI.**

All emergency call outs shall be paid on an hourly basis plus the Carcass Removal and Disposal unit cost. The completed work will be paid for at this Contract unit price, which price includes all equipment and labor to remove and dispose the Carcass, **and traffic control to satisfactorily complete the work as described.**

**Note: Emergency Carcass Removal and disposal is optional only as requested and directed by the CCI.**

**Safety Requirements:**

Equipment used in the execution of the Contract will meet all Federal, State and Local safety requirements. All equipment will be equipped with commercial type flashing amber lights plainly visible from all directions. Flashers will have a minimum of 32 candlepower output and flash 50 to 60 times per minute.

Contractor shall be responsible for providing any and all items such as clothing, gloves, reflective safety vest, antiseptics, or anything else necessary for protective measures.

The Contractor will comply with MDOT Standard Specifications for Construction and the Michigan Manual for Uniform Traffic Control when performing work on State Trunk line.

**Deletion of Work:**

The Department may delete all or any portions of the Contract that cannot be completed in conformity with the progress schedule.

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

**1.102 Out-Of-Scope**

The following tasks are **considered out-of-scope** in Awards from this solicitation (unless otherwise stated as a requirement on the Location Specification Sheet(s) (LSS)):

- Performance of personal chores for anyone (i.e., porter or courier service);
- Providing of transportation for agency staff or visitors (i.e., chauffeur service);
- Rubbish Removal from facility site
- Chemical, Hazardous, or Medical Rubbish / Waste removal

**1.103 Environment - Deleted N/A****1.104 Work and Deliverable****A. Description of Service:**

This contract is for pick up and disposal of dead deer or large animal carcass' along prescribed highway right of ways for the State of Michigan.

**1.200 Roles and Responsibilities****1.201 Contractor Roles & Responsibilities****A. PERSONNEL**



1. Contractor shall be responsible for repair, replacement, or cleanup as necessary due to the Contractor or its staff's implementation of services under this Agreement.

#### 1.202 State Staff Roles & Responsibilities

The State shall assign a Contract Compliance Inspector or agency / departmental designee for each location, who:

- A. Shall provide the Contractor, prior to the term of the Contract, the general and specific orders detailing services at each contracted location, including approval of the Final Work Plan (per Location).
- B. Give additional written or oral instructions to clarify the desired performance as is determined by the State to be needed.
- C. State Agency / Departmental Contract Compliance Inspector(s) / Facility Site Manager(s) role includes:
  - a. Contract compliance inspection, and monitoring;
  - b. Verifying service and work product delivery;
  - c. Validation of contractor invoices prior to final State approval and payment; and,
  - d. Contractor performance evaluation.

However, management or administration of any Contract implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, and specifications to the Contract: that authority is retained solely by Department of Management and Budget's Business Services Administration – Purchasing Operations.

#### 1.203 Contract Implementation Period / Transition / Orientation

The State Contract Compliance Inspector (CCI) will administer the Contract on a day-to-day basis during the term of the impending Contract. However, administration of any Contract implies no authority to change, modify, clarify, amend, or otherwise alter the terms, conditions and specification of such contract. That authority is retained by the DMB – Business Services Administration - Purchasing Operations.

##### A. Once contractor begins providing service, the State CCI:

1. Shall provide written correspondence to the Contractor after each meeting, verifying any actions agreed to, informing Contractor of any deficiencies and allowing the opportunity to correct such deficiencies. (However, if deficiencies continue, a formal complaint to vendor or vendor performance report will be filed.)
2. Inform Contractor where to forward invoices for immediate processing and payment.
3. Be available to answer questions from the Contractor.

#### 1.204 Other Roles & Responsibilities - Deleted N/A

#### 1.300 Project Plan

#### 1.301 Project Plan Management.

The transition plan for Michigan Highway Hazard Recovery is fairly straight forward. As the incumbent partner and contractor currently providing these services for MDOT, the additional requirements of the contract will be established and provided within the existing service support model that Michigan Highway Hazard Recovery provides to the MDOT. Additionally, the new service requirements, such as use of GPS, will be worked through within the first thirty days of the contract to ensure that the expected deliverables are met with the degree that is required providing the MDOT the data to utilize for metrics collection and comparison.



The monthly reports that Michigan Highway Hazard Recovery has valued with the existing contract, will continue as a sub-function ensuring success and the validity of the work performed as a service of the contract. If there are additional items that MDOT may desire to collect, or see on the reports may be negotiated as part of the contract.

Michigan Highway Hazard Recovery does not anticipate nor foresee any disruption in the current service level as the new requirements are additional touch points that will only enhance the success of the partnership. During the first monthly status meeting with MDOT contract contact personnel, feedback will be requested by the MDOT staff relating to any identification of service level concerns. Based on prior success, Michigan Highway Hazard Recovery believes that the current level of service provided has set the bar for any other vendor to compete with the existing outstanding level of service provided by Michigan Highway Hazard Recovery.

The contingency plan that Michigan Highway Hazard Recovery currently utilizes will continue forward with the new contract. In the event, a no show or absent employee may affect a route, an on-call driver will be a substitute driver for that route until the no-show or absent employee is available to work their existing scheduled route.

In the event an equipment failure occurs during a route, other equipment will be called to use for that area (i.e. vehicle breakdown.) In past experiences, the route is completed during the same contractual schedules with the replacement equipment until the broken equipment is repaired or replaced.

In the event of a weather issue, the current contingency plan would carry forward with the new contract as Michigan Highway Hazard Recovery will contact the appropriate MDOT TSC contract contact and inform them of the issue and determine if MDOT would require the route to be completed prior to the next scheduled route or if the preference would be to complete the route on a different day.

### 1.302 Reports

Contractor must provide the TSC CCI with the Animal Removal, Reporting, Invoicing Form on a monthly basis.

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

### 1.400 Project Management

#### 1.401 Issue Management and Inspection and Correction of Deficiencies

#### 1.402 Risk Management - Deleted N/A

#### 1.403 Change Management

- A. If a proposed contract change is requested by the Contract Compliance Inspector and approved by the agency purchasing/procurement office, then the request for change will be submitted to the Department of Management and Budget, Purchasing Operations Buyer, who will then make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request.
- B. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the assigned Buyer will issue an addendum to the Contract, via a Contract Change Notice.
- C. **A Contractor which provides or delivers products or services outside the description in this Agreement, prior to the issuance of a Contract Change Notice by the DMB Office of Purchasing Operations, risks non-payment for the out-of-scope/pricing products and/or services.**



**1.500 Acceptance**

**1.501 Criteria for Vendor Performance**

The following criteria will be used by the State to determine "Acceptance" of the Services provided under this SOW (also see § 2.070, *Performance*).

- A. Removal of animal carcass' from contracted routes.
- B. Proper disposal of all animal carcass'

**1.502 Acceptance and Inspection- Deleted N/A**

**1.503 Contract Close-Out and Final Inspection**

(Also, see § 2.210, *Termination or Cancellation by the State.*)

- A. The CCI will complete a final evaluation summary, describing whether the Contractor has satisfactorily complied with the terms of the Contract AGREEMENT.

**1.600 Compensation and Payment**

**1.601 Compensation and Payment**

The Contractor will submit Excel Spreadsheet, with G.P.S. location, time and date of each animal picked up **as well as the beginning and the end of each route patrolled**, contractors invoice and Landfill document (**or alternate acceptable disposal documentation**) to verify carcass quantity. Billing may be submitted bi-weekly or monthly. The invoice will include the lump sum price as bid and documented number of animals removed.

Each animal carcass shall be plotted with a Stand Alone G.P.S. (Global Positioning System).

\*Trimble GeoExplorer CE Series Model GeoXT, or approved equivalent.

Accuracy - **3 meters** or less.

GPS/GIS System

Data from the Quality Stand Alone G.P.S. receiver for each location of animal carcass, shall be recorded on Excel Spreadsheets and supplied electronically, (e-mail or disk). Corrected spreadsheets shall be submitted with each invoice for payment. Data shall be submitted to the contact name shown below corresponding to your geographic area. Data shall consist of a time and date for each animal carcass, with corresponding coordinate. An accuracy statement and description of coordinate system used shall be included on inventory sheets.

Note: Coordinates will be used for data collection and maintenance information only.

Submit invoice to: Michigan Department of Transportation

MDOT - Marshall TSC 15300 W. Michigan Ave. Marshall, MI, 49068	MDOT – Kalamazoo TSC 5372 South 9th Street Kalamazoo, MI, 49009	MDOT – Coloma TSC 3880 Red Arrow Hwy. Benton Harbor, MI, 49022
<b>Attention:</b> Al Bessey	<b>Attention:</b> Kathy Romeo	<b>Attention:</b> Trace Plummer
MDOT – Oakland TSC 2300 Dixie HWY., Waterford, MI 48328		
<b>Attention:</b> Ahmad Azmoudeh		

Note: Invoice will show running totals of carcasses removed and disposed of from each route, for that calendar year.

The Department shall deduct \$500.00 for any missed patrols authorized by the CCI (Contract Compliance Inspector). Equipment breakdown or employee issues will not be grounds for missed patrols. Weather related safety concerns will be discussed with the CCI prior to schedule changes or work deletions.



## Article 2 – General Terms and Conditions

### 2.010 Contract Structure and Administration

### 2.011 Definitions

Capitalized terms used in the Contract (including its Attachments and Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) "Days" means calendar days unless otherwise specified.
- (b) "24x7x365" means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) "Additional Service" means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
- (d) "Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (e) "Deliverable" means physical goods and/or commodities as required or identified by a Statement of Work
- (f) "Key Personnel" means any Personnel designated in **Article 1, Section 1.201** as Key Personnel.
- (g) "State Location" means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (h) "Subcontractor" means a company Contractor delegate's performance of a portion of the services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (i) "State" means the State of Michigan.
- (j) "Department" means the Department of Management and Budget of the State of Michigan.
- (k) "Director" means the State Purchasing Director.
- (l) "Agency" means the unit of State government covered by the Contract..

### 2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Office of Purchasing Operations for the Michigan Department of Transportation (MDOT). Office of Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **Office of Purchasing Operations is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within the DMB – Purchasing Operations for the Contract is:

Lymon Hunter, CPPB  
Purchasing Operations  
Business Services Administration  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Contact Phone: (517) 241-1145  
[HunterL@michigan.gov](mailto:HunterL@michigan.gov)

**2.015 Contract Compliance Inspector (CCI)**

Upon receipt at Office of Purchasing Operations of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with the client State Agency, will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Office of Purchasing Operations.** The Contract Compliance Inspector for this Contract is listed on the cover page of each location specification sheet.

**2.016 Project Manager – Deleted N/A****2.020 Contract Objectives / Scope / Background****2.021 Background – Deleted N/A****2.022 Purpose**

Refer to Article 1 for background information.

**2.023 Objectives and Scope**

Refer to Article 1 for background information.

**2.024 Interpretation – Deleted N/A****2.025 Form, Function and Utility**

If this Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

**2.030 Legal Effect and Term****2.031 Legal Effect**

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that the Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against this Contract has been issued.

**2.032 Contract Term**

**Work to be performed for a period of Five (5) years, beginning on July 1, 2008.** All work will be performed each Contract year as solely determined by the Department. The project is to be completed by June 30, 2013. Work must be performed in accordance with the progress schedule submitted at the Pre-Maintenance Meeting and described below. The first failure to complete work as defined in the progress schedule will result in a Vendor Performance being filed with the Department of Management and Budget, and a meeting with the contractor to insure corrective action. The second such failure may be cause for termination of the contract.

**2.033 Renewal(s)**

No options have been included for the Contract term.



## 2.040 Contractor Personnel

### 2.041 Contractor Personnel

Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent Contractor relationship.

### 2.042 Contractor Identification

Contractor employees shall be clearly identifiable while on State property by wearing a issued badge, and/or uniforms as required by the CCI. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

### 2.043 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under the Contract with such requests for access.

### 2.044 Subcontracting by Contractor

There will be **NO SUB-CONTRACTING ALLOWED** for this Contract.

### 2.045 Contractor Responsibility for Personnel

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

## 2.050 State Standards

### 2.051 Existing Technology Standards - Deleted N/A

### 2.052 PM Methodology Standards – Deleted N/A

### 2.053 Adherence to Portal Technology Tools - Deleted N/A

### 2.054 Acceptable Use Policy – Deleted N/A

## 2.060 Deliverables

### 2.061 Ordering

Any Services/Deliverables to be furnished under the Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of the Contract. In the event of conflict between an order and the Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.



2.062 Software - Deleted N/A

2.063 Hardware - Deleted N/A

2.064 Equipment to be New and Prohibited Products - Deleted N/A

## 2.070 Performance

### 2.071 Performance, In General

The State engages Contractor to execute this Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete this Contract in its entirety as specified in this Contract.

### 2.072 Time of Performance

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.
- (c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

### 2.073 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.
- (c) Liquidated damages will be assessed as follows:
  - Failure to conduct scheduled patrols may result in an assessment of liquidated damages, which shall consist of:
    - \$500.00 for any missed patrols authorized by the CCI**
- (d) The Department reserves the right to bill the Contractor for any damages due to the default of the Contractor.

**2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

**2.075 Time is of the Essence**

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract.

**2.076 Service Level Agreements (SLAs)- Deleted N/A****2.080 Delivery and Acceptance of Deliverables****2.081 Delivery Responsibilities - Deleted N/A****2.082 Delivery of Deliverables- Deleted N/A****2.083 Testing - Deleted N/A****2.084 Approval of Deliverables, In General**

See § 1.5, *Acceptance*

**2.085 Process For Approval of Written Deliverables – Deleted N/A****2.086 Process for Approval of Services**

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

**2.087 Process for Approval of Physical Deliverables- Deleted N/A****2.088 Final Acceptance**

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Service shall occur when each Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

**2.090 Financial****2.091 Pricing**

- (a) **Fixed Prices for Services/Deliverables**  
Each Statement of Work/PO issued under the Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, payment amounts.
- (b) **Adjustments for Reductions in Scope of Services/Deliverables**  
If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.
- (c) **Services/Deliverables Covered**  
For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under the Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in the Contract.
- (d) **Labor Rates**  
All charges will be at the rates specified in **and the Pricing Sheet.**
- (e) **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. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Purchasing Operations also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365-day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST TEN DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be canceled. 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.

**2.092 Invoicing and Payment Procedures and Terms**

- (a) **Invoicing and Payment – In General**
  - (i) Each Contractor invoice will show details as to charges by Service component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed shall be determined based on the actual number of Services performed, at the applicable Labor Rates specified in **Article 1 and the Location Specification Sheet (LSS)**. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State, pursuant to §1.6, *Compensation Payment*, §2.073 *Liquidated Damages*.
  - (ii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.
- (b) **Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)**  
The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.



- (c) **Out-of-Pocket Expenses**  
Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.
- (d) **Pro-ration**  
To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.
- (e) **Antitrust Assignment**  
The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of the Contract.
- (f) **Final Payment**  
The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract shall constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

### 2.093 State Funding Obligation

The State's obligation under the Contract is payable only and solely from funds appropriated for the purpose of the Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of the Contract. Events of non-appropriation are addressed further in **Section 2.210** of the Contract.

### 2.094 Holdback - Deleted N/A

### 2.095 Electronic Payment - Mandatory

Public Act 533 of 2004 **requires** that payments under the contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).

## 2.100 Contract Management

### 2.101 Contract Management Responsibility

- (a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in the Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1 (Project Plan)** is likely to delay the timely achievement of any Contract tasks.
- (b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in the Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of the Contract.



## 2.102 Problem and Contract Management Procedures

The Contract and the applicable Statements of Work will govern problem Management and Contract Management procedures.

## 2.103 Reports and Meetings

### (a) Reports.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, the Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

### (b) Meetings.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

## 2.104 System Changes - Deleted N/A

## 2.105 RESERVED

## 2.106 Change Requests

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be in-scope Services/Deliverables, not New Work.



If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

- (a) Change Requests
  - (i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").
  - (ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.
  - (iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
  - (iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").
  - (v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Purchasing Operations.
  - (vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of the Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

## 2.107 Management Tools - Deleted N/A



## **2.110 Records and Inspections**

### **2.111 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.

### **2.112 Errors**

- (a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the Contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

## **2.120 State Responsibilities**

### **2.121 State Performance Obligations- Deleted N/A**

## **2.130 Security**

### **2.131 Background Checks**

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case-by-case basis.

The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints.

Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State.

It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

## **2.140 Reserved**

## **2.150 Confidentiality**

### **2.151 Freedom of Information**

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

**2.152 Confidentiality**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below), which is marked confidential, restricted, and proprietary, or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under the Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including the Contract) that is publicly available pursuant to the Michigan FOIA.

**2.153 Protection of Confidential Information**

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

**2.154 Exclusions**

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

**2.155 No Implied Rights**

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

**2.156 Remedies**

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

**2.157 Security Breach Notification**

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

**2.158 Survival**

The parties' respective obligations under this Section shall survive the termination or expiration of the Contract for any reason.

**2.159 Destruction of Confidential Information**

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

**2.160 Proprietary Rights - Deleted N/A****2.170 Warranties And Representations**

The foregoing express warranties are in lieu of all other warranties and each party expressly disclaims all other warranties, express or implied, by operation of law or otherwise including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

**2.171 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under the Contract. The performance of all obligations under the Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under the Contract.
- (b) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
- (c) It is qualified and registered to transact business in all locations where required.
- (d) Neither the Contractor nor any Affiliates, nor any employee of either, has, 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 the 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.
- (e) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (f) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract.



- (g) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (h) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of the 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 has been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (i) All written information furnished to the State by or behalf of Contractor in connection with the Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (j) It is not in material default or breach of any other Contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such Contract.

#### 2.172 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of the Contract.

#### 2.180 Insurance

##### 2.181 Liability Insurance

- (a) Liability 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 the 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 the Contract.

All insurance coverage's provided relative to the Contract/Purchase Order are 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 the 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 the Contract.

See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---.00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---.00.html).

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



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

3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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

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

4. Employers liability insurance with the following minimum limits:

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



- (b) **Subcontractors**  
Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- (c) **Certificates of Insurance and Other Requirements**  
Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insured's 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 the 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 the 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 the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the 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.

## **2.190 Indemnification**

### **2.191 Indemnification**

- (a) **General Indemnification**  
To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of the Contract and that are attributable to the negligence or tortuous acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.
- (b) **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.
- (c) **Employee Indemnification**  
In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, 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 benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.



(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees 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 patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or 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 to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if 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.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under the Contract.

## 2.192 Continuation of Indemnification Obligations

The Contractor's duty to indemnify pursuant to this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

## 2.193 Indemnification Procedures

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

## **2.200 Limits of Liability and Excusable Failure**

### **2.201 Limits of Liability**

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 which ever is higher. The foregoing limitation of liability 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 the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

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

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

### **2.202 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of 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 commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business 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/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue;



(b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

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/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and 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.

### **2.203 Disaster Recovery**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under the Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

### **2.210 Termination/Cancellation by the State**

The State may terminate the 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:

### **2.211 Termination for Cause**

- (a) In the event that 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 (such time period not to be less than thirty (30) days), 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 termination to Contractor, terminate the Contract in whole or in part, for cause, as of the date specified in the notice of termination.
- (b) In the event that the Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in the Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under the Contract.
- (c) In the event the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause shall cease on the effective date of the termination.
- (d) In the event the Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination 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 termination for convenience.

### **2.212 Termination for Convenience**

The State may terminate the Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be 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 Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any ITB issued by the State.



The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least thirty (30) days prior to the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause shall cease on the effective date of the termination.

### **2.213 Non-Appropriation**

- (a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State shall have the right to terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.
- (c) In the event the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

### **2.214 Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including 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 Contractor's business integrity.

### **2.215 Approvals Rescinded**

The State may terminate the 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, § 5, and Civil Service Rule 7-1. 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.

### **2.216 Rights and Obligations Upon Termination**

- (a) If the 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 the 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 Deliverables 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 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.
- (b) In the event the State terminates the 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 the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to the 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.
  - (c) 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 deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

### **2.217 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.

### **2.218 Contractor Transition Responsibilities**

In the event the contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, 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 ninety (90) days. These efforts shall include, but are not limited to, the following:

- (a) 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 or Contractors, 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 or Contractors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.
- (b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor will provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.
- (c) Payment - If the termination provisions of the Contract shall govern the transition results from a termination for any reason, reimbursement. 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) at the rates specified. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

### **2.219 State Transition Responsibilities**

In the event that the 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:

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



## 2.220 Termination by Contractor

### 2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under the Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate the Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

## 2.230 Stop Work

### 2.231 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to 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 2.230**. Upon receipt of the stop work order, 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) terminate the work covered by the stop work order as provided in **Section 2.210**.

### 2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon 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 Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar 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 Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

### 2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

## 2.240 Reserved

## 2.250 Dispute Resolution

### 2.251 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.



### 2.252 Informal Dispute Resolution

- (a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
- (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
  - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
  - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
  - (iv) Following the completion of this process within sixty (60) calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.
- (b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

### 2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

### 2.254 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

## 2.260 Federal and State Contract Requirements

### 2.261 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

**2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. The United States National Labor Relations Board compiles this information. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

**2.263 Workplace Safety and Discriminatory Harassment**

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

**2.270 Litigation****2.271 Disclosure of Litigation**

- (a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements, which are prevented from disclosure by the terms of the settlement, may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.
- (b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:
  - (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform the Contract in accordance with its terms and conditions, or
  - (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
    - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform the Contract and any Statements of Work in accordance with its terms and conditions, and
    - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.
- (c) Contractor shall make the following notifications in writing:
  - (i) Within thirty (30) days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Purchasing Operations.



- (ii) Contractor shall also notify the Office of Purchasing Operations within thirty (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.
- (iii) Contractor shall also notify Purchasing Operations within thirty (30) days whenever changes to company affiliations occur.

#### **2.272 Governing Law**

The Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

#### **2.273 Compliance with Laws**

Contractor shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.

#### **2.274 Jurisdiction**

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

#### **2.280 Environmental Provision**

##### **2.281 Environmental Provision**

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act. The Contract does not cover the handling, removal, or disposal of all Hazardous Materials.

- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work.



- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

## 2.290 General

### 2.291 Amendments

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

### 2.292 Assignment

- (a) Neither party shall have the right to assign the Contract, or to assign 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 other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or notations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.
- (b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

### 2.293 Entire Contract; Order of Precedence

- (a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.
- (b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

### 2.294 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 the Contract.

### 2.295 Relationship of the Parties (Independent Contractor Relationship)

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of 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. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

**2.296 Notices**

- (a) Any notice given to a party under the Contract 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.

**State of Michigan:****Lymon Hunter, CPPB**

Purchasing Operations

Business Services Administration

Department Of Management And Budget

Mason Bldg, 2nd Floor

PO Box 30026

Lansing, MI 48909

Contact Phone: (517) 241-1145

[HunterL@michigan.gov](mailto:HunterL@michigan.gov)

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

- (b) **Binding Commitments**  
Representatives of Contractor identified in **Article 1, Attachment B** shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

**2.297 Media Releases and Contract Distribution**

- (a) **Media Releases**  
Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.
- (b) **Contract Distribution**  
Purchasing Operations shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

**2.298 Reformation and 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.

**2.299 Consents and Approvals**

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

**2.300 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.

**2.301 Survival**

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

**2.302 Covenant of Good Faith**

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

**2.303 Permits**

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

**2.304 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.

**2.305 Taxes**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Contractor who has failed to pay any applicable State taxes. The State may refuse to accept Bidder's bid, if Bidder has any outstanding debt with the State. Prior to any award, the State will verify whether Bidder has any outstanding debt with the State.

**2.306 Prevailing Wage - Deleted N/A****2.307 Call Center Disclosure - Deleted N/A****2.308 Future Bidding Preclusion**

Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future ITB, it may be precluded from bidding on the subsequent ITB. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the ITB development, or as a Bidder offering free assistance) to gain a leading edge on the competitive ITB.

**2.310 Reserved**

**2.320 Extended Purchasing****2.321 MiDEAL - Deleted N/A****2.322 State Employee Purchases - Deleted N/A****2.330 Federal Grant Requirements****2.331 Federal Grant Requirements**

The following links contain certifications and terms, which may be required for some purchases paid via Federal funds. They are included here to be utilized as required.

Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

[http://straylight.law.cornell.edu/uscode/html/uscode31/usc\\_sec\\_31\\_00001352----000-.html](http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html)

[http://www.archives.gov/federal\\_register/codification/executive\\_order/12549.html](http://www.archives.gov/federal_register/codification/executive_order/12549.html)

[http://www.archives.gov/federal\\_register/executive\\_orders/pdf/12869.pdf](http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf)

<http://www.epls.gov/epls/servlet/EPLSSearchMain/1>



**MAINTENANCE, REPAIR & OPERATIONS (MRO)**

**Large Animal Carcass Removal and Disposal - Department of Transportation  
Oakland County**

**CONTRACT#: 071B8200174**

**LOCATION SPECIFICATION SHEET (LSS)**

Consideration for award will be based on Work Plan/Price Quotation in accordance with the specifications, terms and conditions as stated within this solicitation.

**SECTION I – PLACE OF SERVICES REQUESTED**

**LOCATION:**

<b>CONTRACT INFORMATION</b>			
<b>ESTIMATED CONTRACT START DATE:</b>	07/01/2008	<b>CONTRACT END DATE:</b>	06/30/2013
<b>PREVIOUS BPO #:</b>	No Previous BPO		
<b>CONTRACT INFORMATION:</b>	5 (five) Year Contract with No Options		
<b>CONTRACTING AGENCY NAME:</b>	MDOT		
<b>BUILDING NAME AND NUMBER:</b>	MDOT Oakland TSC		
<b>BUILDING ADDRESS:</b>	2300 Dixie HWY., Waterford, MI 48328		
<b>REGION / COUNTY:</b>	Metro Region Oakland County		
<b>PROCUREMENT CONTACT INFORMATION</b>			
<b>PROCUREMENT OFFICE NAME:</b>	MDOT Purchasing		
<b>PROCUREMENT OFFICE CONTACT NAME:</b>	Rick Dolan	<b>CONTACT PHONE #:</b>	517-335-2507
<b>PROCUREMENT OFFICE CONTACT E-MAIL:</b>	<a href="mailto:dolanr@michigan.gov">dolanr@michigan.gov</a>	<b>CONTACT FAX #:</b>	517-373-3707
<b>CONTRACT COMPLIANCE INSPECTOR (CCI) / FACILITY MANAGER (FM) NAME:</b>	Ahmad azmoudeh	<b>CONTACT PHONE #:</b>	248-451-2465
<b>CCI / FM CONTACT E-MAIL:</b>	<a href="mailto:azmoudeha@michigan.gov">azmoudeha@michigan.gov</a>	<b>CONTACT FAX #:</b>	248-451-0125
<b>LOCATION INFORMATION</b>			
<b>OFFICIAL WORKING DAYS OF BUILDING OCCUPANTS:</b>		<b>OFFICIAL WORKING HOURS OF BUILDING OCCUPANTS:</b>	
<b>ESTIMATE OF AREA TO BE SERVICED: (IF APPLICABLE)</b>		<b>(FILL IN IF NEEDED)</b>	
<b>IDENTIFY DAYS OF SERVICE:</b>		<b>IDENTIFY HOURS OF SERVICE:</b> [EXAMPLE: 5:30 A.M. To 5:30 P.M.]	



**SECTION II – PRICING SHEET SUMMARY**

**LARGE ANIMAL REMOVAL SERVICES**

Check all that apply	DESCRIPTION OF SERVICES	Annual Quantity	Unit Cost (Vendor Complete)	ANNUAL PRICE (Vendor Complete)
<input type="checkbox"/>	Scheduled Patrols - Oakland County Routes.	104	\$680.00	\$70,720.00
<input type="checkbox"/>	Each Carcass Pick up and Disposal	500	\$29.00	\$14,500.00
<input type="checkbox"/>	Each Emergency Carcass Removal and Disposal Request, Hourly	40	\$20.00	\$800.00
<b>SUBTOTAL</b>				<b>\$86,020.00</b>
<b>5 YEAR TOTAL</b>				<b>\$430,100.00</b>

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**EQUIPMENT**

Bidder Instructions: Provide a complete list of all the equipment you will utilize to manage the scope of work for this contract location. List should include all equipment to be used during services and any other function(s) needed to perform this service. Also indicate whether the equipment is owned or rented. (Expand the table if necessary or submit separate table of equipment/supplies with proposal).

<b>TYPE OF VEHICLE USED FOR PICK-UP</b>	<b>MANUFACTURER/ MODEL</b>	<b>SERIAL No. &amp; HORSEPOWER @ PTO</b>	<b>APPROXIMATE AGE OF EQUIPMENT &amp; <u>OWNED</u> OR <u>RENTED/LEASED</u></b>
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**MAINTENANCE, REPAIR & OPERATIONS (MRO)**

Large Animal Carcass Removal and Disposal - Department of Transportation  
Allegan, Kalamazoo, and St. Joseph Counties

CONTRACT#: 071B8200174

**LOCATION SPECIFICATION SHEET (LSS)**

Consideration for award will be based on Work Plan/Price Quotation in accordance with the specifications, terms and conditions as stated within this solicitation.

**SECTION I – PLACE OF SERVICES REQUESTED**

**LOCATION:**

<b>CONTRACT INFORMATION</b>			
<b>ESTIMATED CONTRACT START DATE:</b>	07/01/2008	<b>CONTRACT END DATE:</b>	06/30/2013
<b>PREVIOUS BPO #:</b>	No Previous BPO		
<b>CONTRACT INFORMATION:</b>	5 (five) Year Contract with No Options		
<b>CONTRACTING AGENCY NAME:</b>	MDOT		
<b>BUILDING NAME AND NUMBER:</b>	MDOT Kalamazoo TSC		
<b>BUILDING ADDRESS:</b>	15300 West Michigan Avenue, Marshall MI 49068		
<b>REGION / COUNTY:</b>	Southwest Region; Allegan, Kalamazoo and St. Joseph Counties		
<b>PROCUREMENT CONTACT INFORMATION</b>			
<b>PROCUREMENT OFFICE NAME:</b>	MDOT Purchasing		
<b>PROCUREMENT OFFICE CONTACT NAME:</b>	Rick Dolan	<b>CONTACT PHONE #:</b>	517-335-2507
<b>PROCUREMENT OFFICE CONTACT E-MAIL:</b>	<a href="mailto:dolanr@michigan.gov">dolanr@michigan.gov</a>	<b>CONTACT FAX #:</b>	517-373-3707
<b>CONTRACT COMPLIANCE INSPECTOR (CCI) / FACILITY MANAGER (FM) NAME:</b>	Kathy Romeo	<b>CONTACT PHONE #:</b>	(269) 375-8699
<b>CCI / FM CONTACT E-MAIL:</b>	<a href="mailto:romeok@michigan.gov">romeok@michigan.gov</a>	<b>CONTACT FAX #:</b>	226- 544-0080
<b>LOCATION INFORMATION</b>			
<b>OFFICIAL WORKING DAYS OF BUILDING OCCUPANTS:</b>	Mon-Fri	<b>OFFICIAL WORKING HOURS OF BUILDING OCCUPANTS:</b>	7:30a-4:30p
<b>ESTIMATE OF AREA TO BE SERVICED: (IF APPLICABLE)</b>	Two counties	<b>(FILL IN IF NEEDED)</b>	
<b>IDENTIFY DAYS OF SERVICE:</b>		<b>IDENTIFY HOURS OF SERVICE: [EXAMPLE: 5:30 A.M. TO 5:30 P.M.]</b>	



**SECTION II – PRICING SHEET SUMMARY**

**LARGE ANIMAL REMOVAL SERVICES**

Check all that apply	DESCRIPTION OF SERVICES	Annual Quantity	Unit Cost (Vendor Complete)	ANNUAL PRICE (Vendor Complete)
<input type="checkbox"/>	Scheduled Patrols – Allegan, Kalamazoo and St. Joseph County Routes.	104	\$425.00	\$44,200.00
<input type="checkbox"/>	Each Carcass Pick up and Disposal	622	\$29.00	\$18,038.00
<input type="checkbox"/>	Each Emergency Carcass Removal and Disposal Request, Hourly	20	\$0	\$0
<b>SUBTOTAL</b>				<b>\$62,238.00</b>
<b>5 YEAR TOTAL</b>				<b>\$311,190.00</b>

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**EQUIPMENT**

Bidder Instructions: Provide a complete list of all the equipment you will utilize to manage the scope of work for this contract location. List should include all equipment to be used during services and any other function(s) needed to perform this service. Also indicate whether the equipment is owned or rented. (Expand the table if necessary or submit separate table of equipment/supplies with proposal).

TYPE OF VEHICLE USED FOR PICK-UP	MANUFACTURER/ MODEL	SERIAL No. & HORSEPOWER @ PTO	APPROXIMATE AGE OF EQUIPMENT & <u>OWNED</u> OR <u>RENTED/LEASED</u>
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**MAINTENANCE, REPAIR & OPERATIONS (MRO)**

Large Animal Carcass Removal and Disposal -- Department of Transportation  
Berrien and Van Buren Counties

**CONTRACT#: 071B8200174**

**LOCATION SPECIFICATION SHEET (LSS)**

Consideration for award will be based on Work Plan/Price Quotation in accordance with the specifications, terms and conditions as stated within this solicitation.

SECTION I – PLACE OF SERVICES REQUESTED

**LOCATION:**

<b>CONTRACT INFORMATION</b>			
<b>ESTIMATED CONTRACT START DATE:</b>	07/01/2008	<b>CONTRACT END DATE:</b>	06/30/2013
<b>PREVIOUS BPO #:</b>	No Previous BPO		
<b>CONTRACT INFORMATION:</b>	5 (five) Year Contract with No Options		
<b>CONTRACTING AGENCY NAME:</b>	MDOT		
<b>BUILDING NAME AND NUMBER:</b>	MDOT Coloma TSC		
<b>BUILDING ADDRESS:</b>	3880 Red Arrow Highway, Benton Harbor MI 49022		
<b>REGION / COUNTY:</b>	Southwest Region; Berrien and Van Buren Counties		
<b>PROCUREMENT CONTACT INFORMATION</b>			
<b>PROCUREMENT OFFICE NAME:</b>	MDOT Purchasing		
<b>PROCUREMENT OFFICE CONTACT NAME:</b>	Rick Dolan	<b>CONTACT PHONE #:</b>	517-335-2507
<b>PROCUREMENT OFFICE CONTACT E-MAIL:</b>	dolanr@michigan.gov	<b>CONTACT FAX #:</b>	517-373-3707
<b>CONTRACT COMPLIANCE INSPECTOR (CCI) / FACILITY MANAGER (FM) NAME:</b>	Trace Plummer	<b>CONTACT PHONE #:</b>	(269) 849-2394
<b>CCI / FM CONTACT E-MAIL:</b>	plummert@michigan.gov	<b>CONTACT FAX #:</b>	226-849-1227
<b>LOCATION INFORMATION</b>			
<b>OFFICIAL WORKING DAYS OF BUILDING OCCUPANTS:</b>	Mon-Fri	<b>OFFICIAL WORKING HOURS OF BUILDING OCCUPANTS:</b>	7:30a-4:30p
<b>ESTIMATE OF AREA TO BE SERVICED: (IF APPLICABLE)</b>	2 counties	<b>(FILL IN IF NEEDED)</b>	
<b>IDENTIFY DAYS OF SERVICE:</b>		<b>IDENTIFY HOURS OF SERVICE: [EXAMPLE: 5:30 A.M. TO 5:30 P.M.]</b>	

**SECTION II – PRICING SHEET SUMMARY****LARGE ANIMAL REMOVAL SERVICES**

Check all that apply	DESCRIPTION OF SERVICES	Annual Quantity	Unit Cost (Vendor Complete)	ANNUAL PRICE (Vendor Complete)
<input type="checkbox"/>	Scheduled Patrols –Berrien and Van Burren County Routes.	104	\$315.00	\$32,760.00
<input type="checkbox"/>	Each Carcass Pick up and Disposal	560	\$29.00	\$16,240.00
<input type="checkbox"/>	Each Emergency Carcass Removal and Disposal Request, Hourly	20	\$0	\$0
<b>SUBTOTAL</b>				<b>\$49,000.00</b>
<b>5 YEAR TOTAL</b>				<b>\$245,000.00</b>

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**EQUIPMENT**

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<b>TYPE OF VEHICLE USED FOR PICK-UP</b>	<b>MANUFACTURER/ MODEL</b>	<b>SERIAL No. &amp; HORSEPOWER @ PTO</b>	<b>APPROXIMATE AGE OF EQUIPMENT &amp; <u>OWNED</u> OR <u>RENTED/LEASED</u></b>
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**MAINTENANCE, REPAIR & OPERATIONS (MRO)**

Large Animal Carcass Removal and Disposal -- Department of Transportation  
Calhoun and Branch Counties

**CONTRACT#: 071B8200174**

**LOCATION SPECIFICATION SHEET (LSS)**

Consideration for award will be based on Work Plan/Price Quotation in accordance with the specifications, terms and conditions as stated within this solicitation.

**SECTION I – PLACE OF SERVICES REQUESTED**

**LOCATION:**

<b>CONTRACT INFORMATION</b>			
<b>ESTIMATED CONTRACT START DATE:</b>	07/01/2008	<b>CONTRACT END DATE:</b>	06/30/2013
<b>PREVIOUS BPO #:</b>	071B2001569 and 071B2001570		
<b>CONTRACT INFORMATION:</b>	5 (five) Year Contract with No Options		
<b>CONTRACTING AGENCY NAME:</b>	MDOT		
<b>BUILDING NAME AND NUMBER:</b>	MDOT Marshall TSC		
<b>BUILDING ADDRESS:</b>	15300 West Michigan Avenue, Marshall MI 49068		
<b>REGION / COUNTY:</b>	Southwest Region; Calhoun and Branch Counties		
<b>PROCUREMENT CONTACT INFORMATION</b>			
<b>PROCUREMENT OFFICE NAME:</b>	MDOT Purchasing		
<b>PROCUREMENT OFFICE CONTACT NAME:</b>	Rick Dolan	<b>CONTACT PHONE #:</b>	517-335-2507
<b>PROCUREMENT OFFICE CONTACT E-MAIL:</b>	<a href="mailto:dolanr@michigan.gov">dolanr@michigan.gov</a>	<b>CONTACT FAX #:</b>	517-373-3707
<b>CONTRACT COMPLIANCE INSPECTOR (CCI) / FACILITY MANAGER (FM) NAME:</b>	Al Bessey	<b>CONTACT PHONE #:</b>	269 789-0560 EXT.237
<b>CCI / FM CONTACT E-MAIL:</b>	<a href="mailto:besseya@michigan.gov">besseya@michigan.gov</a>	<b>CONTACT FAX #:</b>	226- 789-0688
<b>LOCATION INFORMATION</b>			
<b>OFFICIAL WORKING DAYS OF BUILDING OCCUPANTS:</b>	Mon-Fri	<b>OFFICIAL WORKING HOURS OF BUILDING OCCUPANTS:</b>	7:30a-4:30p
<b>ESTIMATE OF AREA TO BE SERVICED: (IF APPLICABLE)</b>	Two counties	<b>(FILL IN IF NEEDED)</b>	
<b>IDENTIFY DAYS OF SERVICE:</b>		<b>IDENTIFY HOURS OF SERVICE: [EXAMPLE: 5:30 A.M. To 5:30 P.M.]</b>	

**SECTION II – PRICING SHEET SUMMARY****LARGE ANIMAL REMOVAL SERVICES**

Check all that apply	DESCRIPTION OF SERVICES	Annual Quantity	Unit Cost (Vendor Complete)	ANNUAL PRICE (Vendor Complete)
<input checked="" type="checkbox"/>	Scheduled Patrols – Branch and Calhoun County Routes.	104	\$280.00	\$29,120.00
<input type="checkbox"/>	Each Carcass Pick up and Disposal	627	\$29.00	\$18,183.00
<input type="checkbox"/>	Each Emergency Carcass Removal and Disposal Request, Hourly	20	\$0	\$0
<b>SUBTOTAL</b>				<b>\$ 47,303.00</b>
<b>5 YEAR TOTAL</b>				<b>\$ 236,515.00</b>

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**EQUIPMENT**

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TYPE OF EQUIPMENT	MANUFACTURER/ MODEL	SERIAL No. & HORSEPOWER @ PTO	APPROXIMATE AGE OF EQUIPMENT & <u>OWNED</u> OR <u>RENTED/LEASED</u>
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