



Michigan Department of Natural Resources – Procurement Services
 P.O. Box 30028, Lansing, MI 48909
 OR
 530 W. Allegan, Lansing, MI 48933

CHANGE NOTICE NO. 01 TO GRANT NO. 751B3200060

**Between
 STATE OF MICHIGAN
 and**

Required by authority of 1984 PA 431, as amended.

Name and Address of Contractor Restoration Dredging 837 Foxhall Road Bloomfield Hills, MI 48304	Primary Contact David Cozad
	Email benthos1@aol.com
	Telephone (989) 662-2240
Contractor #, Mail Code *****9617/001	

State Contact	Agency	Name	Telephone	Email
Contract Compliance Inspector	DNR	Marlene Sublet-Bennett	(517) 373-2966	Sublet-bennettm@michigan.gov
Buyer	DNR	Jana Harding-Bishop	(517) 373-1190	HardingJ3@michigan.gov

Initial Contract Summary

Description (Provide a basic but comprehensive description of services) South Branch Au Sable River Large Woody Debris Installation			
Effective Date 5/23/2013	Initial Expiration Date 7/15/2015	Initial Available Options 2 - 1 year	Current Expiration Date 7/15/15
Payment Terms Net 45	F.O.B. N/A	Shipped N/A	Shipped From N/A
Minimum Delivery Requirements N/A	Alternate Payment Options <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV)		Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Description of Change Notice

Option Exercised: Yes No If Yes, New Expiration Date: _____

Provide the detail of the Change Notice Revise funding distribution within the contract:		
Task	Was	Will be
Task 5 – Harvesting (\$1,540.52 per day)	\$4,436.70 (2.88 days)	\$4,621.56 (3 days)
Task 5 - Mobilization	\$1,150.00	\$1,150.00
Task 6 – Remediation (3,437.50 per day)	\$22,687.50 (6.6 days)	\$13,750 (4 days)
Task 7 – Tree placement (\$48,359.84 per day)	\$278,552.67 (5.76 days)	\$278,552.67 (5.76 days)
Task 7 – Mobilization	\$41,449.56	\$41,449.56
Task 8 – Repairing Complexes (\$394.80 per hour)	\$15,792.00 (40 hours)	\$24,477.60 (62 hours)

Value/Cost of Change Notice Decrease of \$67.04	Estimated Revised Aggregate Contract Value \$399,615.47
---	---

FOR THE CONTRACTOR:
Restoration Dredging

On-file in DNR Procurement
 Authorized Agent Signature
 Bill Walker on Behalf of David Cozad
 Authorized Agent (Print or Type)
 8-28-13
 Date

FOR THE STATE:
Department of Natural Resources

On-file in DNR Procurement
 Authorized Buyer Signature
 Sharon Walenga-Maynard
 Authorized Buyer (Print or Type)
 8-28-13
 Date



Michigan Department of Natural Resources – Procurement Services
 P.O. Box 30028, Lansing, MI 48909
 OR
 530 W. Allegan, Lansing, MI 48933

NOTICE OF GRANT NO. 751B3200060
Between
STATE OF MICHIGAN
and

Required by authority of 1984 PA 431, as amended.

Name and Address of Contractor Restoration Dredging, Inc. 837 Foxhall Road Bloomfield Hills, MI 48304	Primary Contact David Cozad	
	Email Benthos1@aol.com	
	Telephone (989) 662-2240	Contractor #, Mail Code *****9617/001

State Contact	Agency	Name	Telephone	Email
Contract Compliance Inspector	DNR	Marlene Sublet-Bennett	(517) 373-2966	Sublet-bennettm@michigan.gov
Buyer	DNR	Jana Harding-Bishop	(517) 373-1190	HardingJ3@michigan.gov

Grant Summary			
Description (Provide a basic but comprehensive description of services) South Branch Au Sable River Large Woody Debris Installation			
Initial Term 26 Months	Effective Date 5/23/2013	Initial Expiration Date 7/15/2015	Available Options 2-1 year
Payment Terms Net 45	F.O.B. N/A	Shipped N/A	Shipped From N/A
Minimum Delivery Requirements N/A		Alternate Payment Options <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV)	Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Miscellaneous Information The terms and conditions of this Grant are those of ITB # RFP-JH-FISH-751R3200736, this Grant Agreement and the Contractor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the contractor, those of the State take precedence. ESTIMATED GRANT VALUE AT TIME OF EXECUTION: \$399,682.51			



Michigan Department of Natural Resources – Procurement Services
 P.O. Box 30028, Lansing, MI 48909
 OR
 530 W. Allegan, Lansing, MI 48933

GRANT NO. 751B3200060

**Between
 STATE OF MICHIGAN**

and

Required by authority of 1984 PA 431, as amended.

Name and Address of Contractor Restoration Dredging, Inc. 837 Foxhall Road Bloomfield Hills, MI 48304	Primary Contact David Cozad	
	Email Benthos1@aol.com	
	Telephone (989) 662-2240	Contractor #, Mail Code *****9617/001

State Contact	Agency	Name	Telephone	Email
Contract Compliance Inspector	DNR	Marlene Sublet-Bennett	(517) 373-2966	Sublet-bennettm@michigan.gov
Buyer	DNR	Jana Harding-Bishop	(517) 373-1190	HardingJ3@michigan.gov

Grant Summary			
Description (Provide a basic but comprehensive description of services) South Branch Au Sable River Large Woody Debris Installation			
Initial Term 26 Months	Effective Date 5/23/2013	Initial Expiration Date 7/15/2015	Available Options 2-1 year
Payment Terms Net 45	F.O.B. N/A	Shipped N/A	Shipped From N/A
Minimum Delivery Requirements N/A	Alternate Payment Options <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV)		Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Miscellaneous Information The terms and conditions of this Grant are those of ITB # RFP-JH-FISH-751R3200736, this Grant Agreement and the Contractor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the contractor, those of the State take precedence. ESTIMATED GRANT VALUE AT TIME OF EXECUTION: \$399,682.51			

THIS IS NOT AN ORDER: This Grant Agreement is awarded on the basis of our inquiry bearing the ITB No. RFP-JH-FISH-751R3200736. Orders for delivery will be issued directly by the Michigan Department of Natural Resources through the issuance of a Purchase Order Form.

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

FOR THE GRANTEE:

Restoration Dredging, In
 Firm Name

 Authorized Agent Signature
 David C. Cozad, President
 Authorized Agent (Print or Type)
 17 May 2013
 Date

FOR THE STATE:

Signature
 Sharon Walenga-Maynard, Procurement Manager
 Name/Title
 Finance and Operations Division
 DNR/Procurement
 May 20, 2013
 Date

Table of Contents

DEFINITIONS..... 5

Article 1 – Statement of Work (SOW)..... 7

1.010 Project Identification7

1.011 Project Request.....7

1.012 Background7

1.020 Scope of Work and Deliverables7

1.021 In Scope7

1.022 Work and Deliverable7

1.030 Roles and Responsibilities13

1.31 Grantee Staff, Roles, and Responsibilities13

1.32 State Staff, Roles, and Responsibilities13

1.040 Project Plan14

1.041 Project Plan Management14

1.042 Reports.....23

1.050 Acceptance.....23

1.051 Criteria.....23

1.052 Final Acceptance23

1.060 Proposal Pricing24

1.061 Proposal Pricing24

1.062 Price Term.....24

1.063 Tax Excluded from Price24

1.064 Holdback24

1.070 Additional Requirements24

1.071 Additional Terms & Conditions specific to this RFP - Reserved24

Article 2, Terms and Conditions..... 25

2.000 Contract Structure and Term25

2.001 Contract Term.....25

2.002 Options to Renew25

2.003 Legal Effect.....25

2.004 Attachments & Exhibits.....25

2.005 Ordering25

2.006 Order of Precedence25

2.007 Headings25

2.008 Form, Function & Utility - Reserved.....26

2.009 Reformation and Severability.....26

2.010 Consents and Approvals26

2.011 No Waiver of Default26

2.012 Survival.....26

2.020 Contract Administration.....26

2.021 Issuing Office.....26

2.022 Contract Compliance Inspector26

2.023 Project Manager27

2.024 Change Requests.....27

2.025 Notices27

2.026 Binding Commitments28

2.027 Relationship of the Parties.....28

2.028 Covenant of Good Faith28

2.029 Assignments28

2.030 General Provisions28

2.031 Administrative Fee And Reporting - Reserved.....28

2.032 Media Releases.....28

2.033 Contract Distribution28

2.034 Permits29

2.035 Website Incorporation.....29

2.036 Future Bidding Preclusion29

2.037 Freedom of Information29

2.038 Disaster Recovery29

2.040 Financial Provisions29

2.041 Fixed Prices for Services/Deliverables29

2.042 Adjustments for Reductions in Scope of Services/Deliverables29

2.043 Services/Deliverables Covered.....29

2.044 Invoicing and Payment – In General.....29

2.045 Pro-ration - Reserved30

2.046 Antitrust Assignment.....30

	2.047	Final Payment.....	30
	2.048	Electronic Payment Requirement	30
2.050		Taxes.....	30
	2.051	Employment Taxes.....	30
	2.052	Sales and Use Taxes	30
2.060		Contract Management	31
	2.061	Grantee Personnel Qualifications	31
	2.062	Grantee Key Personnel	31
	2.063	Re-assignment of Personnel at the State's Request	31
	2.064	Grantee Personnel Location.....	32
	2.065	Grantee Identification	32
	2.066	Cooperation with Third Parties	32
	2.067	Grantee Return of State Equipment/Resources	32
	2.068	Contract Management Responsibilities	32
2.070		Subcontracting by Grantee.....	32
	2.071	Grantee Full Responsibility.....	32
	2.072	State Consent to Delegation.....	32
	2.073	Sub-Contractor Bound to Contract	33
	2.074	Flow Down.....	33
	2.075	Competitive Selection.....	33
2.080		State Responsibilities.....	33
	2.081	Equipment	33
	2.082	Facilities - Reserved.....	33
2.090		Security.....	33
	2.091	Background Checks	33
	2.092	Security Breach Notification.....	33
	2.093	PCI Data Security Standard - Reserved	34
2.100		Confidentiality	34
	2.101	Confidentiality.....	34
	2.102	Protection and Destruction of Confidential Information.....	34
	2.103	Exclusions	34
	2.104	No Implied Rights	34
	2.105	Respective Obligations.....	35
2.110		Records and Inspections	35
	2.111	Inspection of Work Performed	35
	2.112	Retention of Records.....	35
	2.113	Examination of Records	35
	2.114	Audit Resolution	35
	2.115	Errors.....	35
2.120		Warranties	36
	2.121	Warranties and Representations	36
	2.122	Warranty of Merchantability - Reserved	36
	2.123	Warranty of Fitness for a Particular Purpose - Reserved	36
	2.124	Warranty of Title - Reserved.....	36
	2.125	Equipment Warranty - Reserved	36
	2.126	Equipment to be New – Reserved.....	36
	2.127	Prohibited Products - Reserved.....	36
	2.128	Consequences For Breach.....	36
2.130		Insurance.....	37
	2.13.1	Liability Insurance.....	37
	2.13.2	Sub-Contractor Insurance Coverage.....	40
	2.13.3	Certificates of Insurance.....	40
2.140		Indemnification	40
	2.141	General Indemnification.....	40
	2.142	Code Indemnification.....	40
	2.143	Employee Indemnification	40
	2.144	Patent/Copyright Infringement Indemnification.....	40
	2.145	Continuation of Indemnification Obligations	41
	2.146	Indemnification Procedures	41
2.150		Termination/Cancellation	42
	2.151	Notice and Right to Cure	42
	2.152	Termination for Cause.....	42
	2.153	Termination for Convenience.....	42
	2.154	Termination for Non-Appropriation	42
	2.155	Termination for Criminal Conviction.....	43
	2.156	Termination for Approvals Rescinded.....	43
	2.157	Rights and Obligations upon Termination.....	43
	2.158	Reservation of Rights	44

2.160	Termination by Grantee.....	44
	2.161 Termination by Grantee.....	44
2.170	Transition Responsibilities	44
	2.171 Grantee Transition Responsibilities.....	44
	2.172 Grantee Personnel Transition.....	44
	2.173 Grantee Information Transition.....	44
	2.174 Grantee Software Transition - Reserved.....	44
	2.175 Transition Payments.....	44
	2.176 State Transition Responsibilities.....	45
2.180	Stop Work	45
	2.181 Stop Work Orders.....	45
	2.182 Cancellation or Expiration of Stop Work Order.....	45
	2.183 Allowance of Grantee Costs.....	45
2.190	Dispute Resolution	45
	2.191 In General.....	45
	2.192 Informal Dispute Resolution.....	45
	2.193 Injunctive Relief.....	46
	2.194 Continued Performance.....	46
2.200	Federal and State Contract Requirements	46
	2.201 Nondiscrimination.....	46
	2.202 Unfair Labor Practices.....	46
	2.203 Workplace Safety and Discriminatory Harassment.....	47
	2.204 Prevailing Wage.....	47
2.210	Governing Law	47
	2.211 Governing Law.....	47
	2.212 Compliance with Laws.....	47
	2.213 Jurisdiction.....	47
2.220	Limitation of Liability	47
	2.221 Limitation of Liability.....	47
2.230	Disclosure Responsibilities	48
	2.231 Disclosure of Litigation.....	48
	2.232 Call Center Disclosure - Reserved.....	49
	2.233 Bankruptcy.....	49
2.240	Performance	49
	2.241 Time of Performance.....	49
	2.242 Service Level Agreements (SLAs) - Reserved.....	49
	2.243 Liquidated Damages.....	49
	2.244 Excusable Failure.....	49
2.250	Approval of Deliverables	50
	2.251 Delivery Responsibilities.....	50
	2.252 Delivery of Deliverables.....	50
	2.253 Testing - Reserved.....	51
	2.254 Approval of Deliverables, In General.....	51
	2.255 Process For Approval of Written Deliverables.....	51
	2.256 Process for Approval of Services.....	52
	2.257 Process for Approval of Physical Deliverables.....	52
	2.258 Final Acceptance.....	52
2.260	Ownership	52
	2.261 Ownership of Work Product by State.....	52
	2.262 Vesting of Rights.....	52
	2.263 Rights in Data.....	53
	2.264 Ownership of Materials.....	53
2.270	State Standards	53
	2.271 Existing Technology Standards - Reserved.....	53
	2.272 Acceptable Use Policy - Reserved.....	53
	2.273 Systems Changes - Reserved.....	53
	2.274 Electronic Receipt Processing Standard - Reserved.....	53
2.280	Extended Purchasing Program	53
	2.281 Extended Purchasing Program.....	53
2.290	Environmental Provision	53
	2.291 Environmental Provision.....	53
2.300	Other Provisions	54
	2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials.....	54

DEFINITIONS

24x7x365 means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

ARO means after receipt of (contract) order

Audit Period means the seven year period following Grantee's provision of any work under the Contract.

BMP means DNR Natural Rivers, Best Management Practice

Bidder(s) are those companies that submit a proposal in response to this RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

CCI means Contract Compliance Inspector.

Contract may mean a Purchase Order, a Memorandum of Agreement, or a Grant Agreement issued by the State of Michigan and signed by both parties per all of the Terms & Conditions of this RFP and related SOW.

Days means calendar days unless otherwise specified.

Deleted – N/A-DELETED means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DNR means the Michigan Department of Natural Resources.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

Large Woody Debris (LWD) – whole trees that are added to the river, and for this contract, have a diameter breast height (DBH) of 5-15 inches

LWD Complex – complex of appropriately sized trees in a cluster suitable to the location on the river and placed so that it is anchored in the water and placed strategically by a professional; each complex is to contain at least 1 root wad attached to a tree

LWD Drop sites are defined as locations where the helicopter places wood strategically in the river as defined by an experienced river crew at that time of placement.

LWD Pick Site – upland locations on state forest land where appropriately sized trees and root wads are removed with a helicopter and transported to the placement site on the river; this site is selected by the Grantee and DNR cooperatively

LWD Placement Site – approved locations on river that are picked to receive installation of LWD complexes

Natural Rivers are river systems that have been selected by the Department for their outstanding natural resource values and given legal protection from unwise use and development.

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Grantee with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

Reuse means using a product or component of municipal solid waste in its original form more than once.

RFP means a Request for Proposal designed to solicit proposals for services.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

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

Sub-Contractor means a company selected by the Grantee to perform a portion of the Services, but does not include independent Grantees engaged by Grantee solely in a staff augmentation role.

Unauthorized Removal means the Grantee's removal of Key Personnel without the prior written consent of the State.

Work in Progress means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

Work Product refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Grantee as a result of an in furtherance of performing the services required by the Contract.

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a Grant for the purpose of completing the restoration and enhancement of cold water river communities in the South Branch Au Sable River Crawford County.

1.012 Background

The Au Sable River is one of the country's most notable cold water rivers. High groundwater inputs provide excellent thermal habitat for cold water fish communities in most streams in the watershed, including the South Branch Au Sable River - Crawford County. Historically, the river was noted for clear, cold, stable flow with high channel diversity. A complex of large woody debris (LWD) and high gradient provided abundant in-stream habitat that supported prolific and diverse benthic and fish communities.

European settlement of the region in the last half of the 1800's brought many changes to the river creating problems that exist today. Zorn and Sendek (2001) categorized these problems of limited habitat into four types including: 1) a paucity of LWD in portions of the stream channel and near-shore areas, 2) excess sand/sediment bedload, 3) water quality degradation, and 4) stream fragmentation. Addition of LWD in the South Branch Au Sable River will directly address items 1 and 2.

The Au Sable River is a state designated Natural River with special zoning ordinances administered by the State of Michigan and local units of government.

This project is the final two year segment of a 10 year commitment to restore ecological function to the Au Sable River system that was previously funded by the Federal Sport Fish Restoration Act.

1.020 Scope of Work and Deliverables

1.021 In Scope

Grantee will be responsible to plan for the placement of up to approximately 300 large woody debris complexes, with complexes into the South Branch Au Sable River, Crawford County, on private and public reaches from the mouth of Thayer Creek downstream to the main stem Au Sable River. One tree per complex must retain the root wad. All trees will be transported and placed into the river solely by helicopter. Pick sites will be a short flight time from the river drop sites so as to minimize flight time. All tree pick and placement sites in the river will be identified and/or approved by DNR Fisheries Division staff and will also be part of a public review process for placement sites before they are considered finalized.

1.022 Work and Deliverable

Task 1:

The Grantee will be responsible for developing a plan for placing up to 300 Large Woody Debris (LWD) Complexes in the south Branch of the Au Sable River from the mouth of Thayer Creek downstream to the main stem of the Au Sable river using the DNR's Natural Rivers program "policy and guidance" for placing LWD for fish habitat enhancement (Attachment B). It is the Grantee's responsibility to use the Best Management Practices (BMPs) established as defined in Attachment B.

The plan must include at a minimum the following subtasks:

- (a) Ground Marking and GPS mapping of proposed locations (waypoints). Locations should be spread out along the length of the identified river segment.
- (b) Riparian ownership must be identified and easement secured for each complex placement site.
- (c) Each individual complex will have a description identifying size and purpose.

Complex specifications:

- i. 1-20 trees per complex
- ii. Each tree must be 5-15" DBH
- iii. At least 1 tree per complex must have root wad intact

- iv. Strategically placed near shore with trees angled downstream and base of the tree facing upstream

A draft plan will be submitted and reviewed by DNR staff within 5 business days of submission. The DNR Project Manager will work with the Grantee to address any questions and make any necessary changes to the draft plan.

Upon agreement of the Draft plan, The DNR Project Manager will obtain public input on the plan. Public input will be captured by posting the plan and maps on the DNR Internet and allowing comments to be sent to the DNR Project Manager. If a public meeting is deemed necessary, the DNR will make all necessary arrangements for the meeting and the Grantee will be required to be in attendance to answer questions.

The public input period is estimated to last approximately 5 weeks after the DNR Project Manager has reviewed and approved the plan.

After the public input time is complete, the DNR Project Manager will work with Grantee regarding any necessary modifications to the placement plan. The Grantee will make changes as requested and submit a finalized plan, including maps

Upon receipt of the final placement plan approval it will be the Grantee's responsibility to obtain all appropriate permits for the placement of the tree complexes (e.g. DEQ Land and Water permit; Natural River zoning permit, Soil Erosion and Sedimentation Control (SESC) permit or understanding and practicing of Best Management Practice policies in Natural Rivers).

Grantee must have final approval of the placement plan from the Project Manager before proceeding.

Upon final approval the Grantee must flag or ground mark all finalized placement sites for complexes per the approved plan.

Responsibilities	
Grantee Responsibilities	DNR Responsibilities
Creation of draft placement plan	Review draft plan
Attend public meeting if one is deemed necessary	Post draft plan to DNR Internet
Create final placement plan	Obtain and respond to public input received thru internet
Obtain any necessary permits for placement	Coordinate all aspects of public meeting if one is deemed necessary
Placement of flags/ground marking in the river	Review and approve final placement plan

Task 2:

Harvest:

Grantee will work directly with DNR Fisheries and DNR Forest Resources staff to identify 1-3 tree harvest sites from the state forest lands adjacent to the river segment and most likely within the Mason Tract boundary. The tree removal and lift sites will be within a 5 minute flight from the tree placement sites.

The number of tree to be removed will be determined upon completion of task #1.

Trees chosen for removal must meet the following criteria:

- (a) Trees must be 5-15" DBH
- (b) Root wads should be left on trees when possible
- (c) Root wads must be left on the minimum number of trees specified in placement plan

DNR Project Manager will complete the Forest Treatment Plan (FTP) required for the taking of trees.

Remediation:

Grantee must work in conjunction with DNR Fisheries, DNR Forest Management and DNR Wildlife to provide a remediation plan for the pick sites. Grantee will be required to perform remediation as specified in the Forest Treatment Plan developed for each individual site. The Grantee will be required to work with the County

Enforcing Agency to determine if a Soil Erosion and Sedimentation Control (SESC) permit will be needed, and if so will secure one.

General Remediation Language:

- ❖ No new roads shall be built or existing roads widened or improved without prior written authorization of the Unit Manger. If access is needed to a location, The DNR Project Manager must be contacted to determine the best route and the road shall be built with minimal soil disturbance or tree removal. Once operations have been completed, all newly constructed roads must be blocked and obliterated per DNR Project Manager instructions.
- ❖ No activity is to occur around oak trees from April 15 through July 15th without specific written permission from the Unit Manager in order to prevent the spread of Oak Wilt.
- ❖ Damage to residual trees of any species will not be allowed and no trees other than those specified will be cut without Management Unit approval.
- ❖ If trees are to be extracted with full root wads, soil must be shaken off the root wad at the site of the excavation and be used to restore the excavation site. Where possible, topsoil shall be saved and stockpiled to assist with restoration.
- ❖ Following removal of trees with root wads, the extraction sites will need to be leveled, disked, seeded, and mulched following the FTP guidelines.
- ❖ Any operations that occur within the natural river corridor will need permission and/or permits from the natural river coordinator.
- ❖ BMP's must be followed and any damage near riparian areas shall be repaired as soon as possible.
- ❖ The DNR Project Manager must be contacted and notified of when operations are commencing prior to beginning any operations on the ground.
- ❖ Seasonal restrictions may be placed on operations if they impact any designated recreational trails or facilities.
- ❖ Care must be used to prevent introduction or encourage spread of invasive species during operations.

Examples of Possible Remediation

- ❖ Leveling areas where root wads were removed.
- ❖ Re-seeding pick sites with rye
- ❖ Stabilizing and re-vegetating exposed soils to SESC and DNR standards
- ❖ Closing access road built to pick sites

The Grantee will provide a written plan documenting the trees to be removed; a plan for the management of the pick sites (including equipment and personnel to be used) as well as a remediation plan. The DNR Project Manager will have 5 business days to review and approve or make changes to the plan.

Responsibilities	
Grantee Responsibilities	DNR Responsibilities
Coordinate pick sites with DNR staff	Coordinate pick sites with Grantee
Propose trees to be removed	Completion of the FTP
Develop remediation plan with DNR staff input	Review and approve final harvest/remediation plan
Obtain any necessary permits	

Task 3:

The Grantee must have an aviation plan in place that meets the following criteria and is approved by the DNR Project Manager and DNR Lead Pilot.

AVIATION PLAN

Grantee will provide helicopter and pilot, fully insured per the attached Terms & Conditions, and any needed ground crew for the placement of (whole) trees in the South Branch of the Au Sable River, Crawford County.

At the time of Grant Award DNR Lead Pilot has certified Sub-Contractor Construction Helicopters, Inc. to fly this mission for the DNR. Construction Helicopters MUST re-certify their helicopters and pilots BEFORE any flights take place.

Prior to each flight the helicopter pilot MUST present to the DNR Project Manager or their designee on-site proof of certification to fly for the DNR from the DNR Lead Pilot.

Pick sites will be a short flight time from the river drop sites so as to minimize flight time.

Woody debris to be transported will be in the range of 5-15 DBH. Root wads will be left on approximately 300 trees.

The pilot may be required to pass an annual/random drug test. The cost for this screening process will be borne by the Department of Natural Resources. A list of authorized clinics will be provided.

The pilot is responsible for the safety of the helicopter; its occupants and cargo. The pilot will comply with the directions from the State only when, in his/her judgment such compliance will not be a violation of Federal Aviation Regulations. Further, the pilot in command shall not permit any passenger to ride in the helicopter or any cargo to be loaded therein unless authorized by the State.

--FACILITATING SUPPLIES—

The Grantee will be responsible for furnishing all fuel, oil and normal operating supplies required for the aircraft, as well as servicing and repair.

SCIENTIFIC REQUIREMENTS:

- A) Sectional aeronautical charts or equivalent (Grantee will furnish).
- B) Maps of flight areas (DNR will furnish).

--PERSONNEL REQUIREMENTS—

The Grantee will provide qualified pilots must be current and capable of piloting a helicopter for the type of mission to be flown.

Each pilot must have a currently valid commercial pilot's certificate with appropriate ratings in accordance with Federal Aviation Regulations, and must meet the qualifications required by the applicable State regulations.

Pilots must have a current Class II (minimum) FAA Medical Certificate and current Flight Review, as specified in Federal Air Regulations, Part 61.

Pilot-In-Command will have a currently valid commercial pilot certificate with appropriate aircraft ratings as defined in Federal Air Regulations, Part 61

In case there is any question regarding the capability of an individual pilot, the State shall require actual performance tests to judge his/her ability. The State reserves the right to refuse participation of any pilot in the interest of safety or satisfactory work performance as determined by the DNR Project Manager in consultation with the DNR lead pilot.

-- GENERAL QUALIFICATIONS—

Prior to beginning work, the pilot must provide the following documents and/or proof of compliance.

1. Medical certificate
2. Commercial Pilot License
3. Flight review
4. Annual inspection Airframe
5. Annual inspection engine
6. 100 hour inspection airframe and 100 hour inspection/Engine
7. Aircraft insurance certificate, naming the State as an additional insured.

All aircraft must possess the following:

1. Current 100 hour inspection or progressive maintenance inspection.
2. Current annual inspection.
3. Aircraft radio license.

4. Aircraft registration.
5. Aircraft Airworthiness certificate.
6. Exceeding TBO will only be allowed by written request to and approval by the DNR lead pilot.

Throughout the life of the contract, it is the Grantee's sole responsibility to keep these documents current. The Grantee has no more than ten (10) days prior to expiration of a document to send it's replacement to the DNR lead pilot. Failure to provide this information prior to its expiration date may result in the balance of the contract being cancelled.

--QUALIFICATIONS--

In addition to the general qualifications and the following minimum flight experience requirements; contract pilots who have not had previous DNR flight experience may be required to demonstrate their flight proficiency on an actual "flight test", at the Grantees expense, if deemed necessary by the DNR lead pilot. Aircraft used for such tests will be equipped with dual controls.

--MINIMUM FLIGHT EXPERIENCE REQUIREMENTS--

1. PILOT-IN-COMMAND – ROTARY WING	HOURS OF FLYING TIME
a. Total of all aircraft, including fixed wing	1000
b. Helicopter:	
i. Total flying time	500
ii. Night flying	10
iii. Typical terrain	50
iv. In weight class to be flown (light, med, heavy)	100
v. Make and model, preceding 60 days	10

Responsibilities	
Grantee Responsibilities	DNR Responsibilities
Provide all necessary documentation to the DNR Lead Pilot to Certify all pilots and aircraft to be used under the contract.	If qualified -- certify pilots and aircraft
Present Pilot Certification each day of work	

Task 4:

Grantee will combine tasks 1, 2 and 3 into one final project plan for final review and approval by the DNR Project Manager.

The report must include the following:

- (a) A list of the complexes identified by number which describes the makeup of the complex as well as the purpose
- (b) Documentation of permits which will be requested
- (c) Names of riparian owners and easement permissions
- (d) Pick site harvest plan
- (e) Remediation plan for pick site
- (f) Lift and placement plan
- (g) GPS locations of pick sites and complexes on one map
- (h) Names of key personnel to be assigned to each task and their roles
- (i) Time line for work to be performed
- (j) Plan to repair and maneuver complexes (if needed)

The DNR Project Manager will have 5 business days to review, approve or make changes to the final project plan

Responsibilities	
Grantee Responsibilities	DNR Responsibilities
Submit project plan for review	Review and approve project plan
Make changes to the plan as requested	DNR Responsibilities

Task 5:

Grantee must harvest trees in accordance with the approved project plan.

Responsibilities	
Grantee Responsibilities	DNR Responsibilities
Complete work according to approved project plan	Review work upon completion, detail any deficiencies in writing and time frames for resolution
Complete deficiencies	Review final work and approve payment

Task 6:

Grantee must perform remediation in accordance with the approved project plan

Responsibilities	
Grantee Responsibilities	DNR Responsibilities
Complete work according to approved project plan	Review work upon completion, detail any deficiencies in writing and time frames for resolution
Complete deficiencies	Review final work and approve payment

Task 7:

Grantee must lift and place the trees in accordance with the approved project plan.

Responsibilities	
Grantee Responsibilities	DNR Responsibilities
Complete work according to approved project plan	Review work upon completion, detail any deficiencies in writing and time frames for resolution
Complete deficiencies	Review final work and approve payment

Task 8:

Grantee will be required to identify and repair any problems associated with misplaced or dislodged large woody debris in the spring/summer following the placement of the complexes. The Grantee will not be required to use a helicopter or large equipment to do this work.

The Grantee must float the river to determine if any adjustments need to be made to the complexes and provide the DNR Project Manager with a written report of the findings and remediation plan if any.

The DNR Project Manager will have 30 days to review and approve or make changes to the remediation plan.

The Grantee must complete the remediation within 30 days of written notification of plan acceptance.

The Grantee will be responsible for responding to any requests made in writing of any repairs/obstructions which need to be dealt with thru the end of the contract period (7/15/15) project period. The Grantee will have 30 calendar days to remedy the issue as directed by the DNR Project Manager.

Responsibilities	
Grantee Responsibilities	DNR Responsibilities
Float the river and identify necessary repairs	Review and Approve Remediation Plan
Provide remediation report to DNR Project Manager	Follow up after remediation to ensure work was performed as agreed upon – note any deficiencies in writing to the Grantee
Perform work as stated in the deficiency note	Review final work and approve payment

Fisheries Division will also maintain the option of providing a maximum of three personnel each year to assist the Grantee at the pick and/or placement sites.

1.030 Roles and Responsibilities

1.31 Grantee Staff, Roles, and Responsibilities

Grantee should clearly state if their organization will be doing all of this work, and identify all parts of this project which will be sub-contracted. Provide an organization chart for Grantee and/or Sub-Contractor where applicable:

Grantee must state the key personnel for themselves as well as key personnel for sub-contractor. General labor does not need to be identified, however the Grantee must state how they will go about hiring personnel and the roles which they will participate in the total project.

Grantee Staff

Name	Title	Functional Role
David Cozad	President, Restoration Dredging	Project Coordinator, Field Operations Stream Ecologist
Bill Walker	Vice President Restoration Dredging	Project Coordinator, Field, Administrative

Harvest Staff

Name	Title	Functional Role
David Cozad/ Bill Walker	Project Coordinator/ Stream Ecologist Project Coordinator	Pick Site Selection
Steven P. Sendek	Fisheries Biologist, Northpoint Fisheries Management -- Subcontractor	Pick Site Selection
John Hartman	President, S&J Excavating -- Subcontractor	Tree Harvest Subcontractor Pick Site Restoration

Placement Staff

Name	Title	Functional Role
David Cozad/ Bill Walker	Project Coordinator/ Stream Ecologist Project Coordinator	Placement Site Identification & Implementation
Steven P. Sendek	Fisheries Biologist, Northpoint Fisheries Management	Placement Site Identification & Implementation
Site Labor Crew		

1.32 State Staff, Roles, and Responsibilities

Name	Title	Functional Role
Tim Cwalinski	Senior Fisheries Biologist	Co-Project Manager
Dave Borgeson	Fisheries Unit Supervisor	Co-Project Manager
Susan Thiel	Forest Resources, Unit Manager	Pick site review and approval of all timber & land management aspects
Brian Mastenbrook	Wildlife Biologist	Pick site selection review
Marlene Sublet-Bennett	Contract Compliance Inspector	Monitor and coordinate the activities for the Contract on a day-to-day basis during its term.
Jana Harding-Bishop	Contract Administrator	Oversight of the contract as a whole

1.040 Project Plan

1.041 Project Plan Management

Below is the Contractor's project management plan, identifying methods, tools and processes proposed to oversee & complete each phase of this project, including a plan for summarizing completed work and for providing progress reports.

In order to protect life and health and to prevent damage in the performance of this service, the Grantee will use due diligence in preventing accidents and injuries and will comply will all applicable provisions of Federal and State laws and regulations.

To best identify and manage all possible types and sources of risk for this habitat enhancement project, the Grantee will work with the DNR Project Manager from the start of the project. After identifying possible types and sources of risk, the Grantee will work with the DNR project leaders to prioritize the risks based on the potential impact to personnel and habitat, and the likelihood of occurrence. Mitigation strategies will then be defined and determination as to how to best monitor the risk and mitigation measures. Review of the risk management process will occur regularly.

The Grantee will follow all OSHA requirements and maintain a record of all cases of death, injury or disease arising out of, or in the course of, employment work under the subsequent purchase order. All accidents/injuries will immediately be reported in writing to the DNR Project Manager, and all records will be available upon request of the State.

If a health & safety issue arises, the Grantee will immediately begin to address the issue with all of the proper authorities including the DNR Project Manager.

The State shall have the authority to suspend the work, wholly or in part, by written order because of: the failure on the part of the Grantee to correct conditions considered unsafe for the workmen or the general public; or failure to perform any provisions of the purchase order. The Grantee shall immediately comply with all such written orders to suspend the work, wholly or in part.

If a habitat or project management issues arises, the Grantee will immediately begin to address the issue with the DNR Project Manager.

<p>DNR Requirement</p> <p>Provide an estimated time line for completing this project. Estimated contract start date will be May 15, 2013 timeline must include all tasks with the complex building to be completed by November 30, 2014 and final work review and work to be completed by July 15, 2015. (Separate document may be attached if using MS Project or other software.)</p>	<p>Bidder Response</p> <p>May 2013 Riparian Owner Easement Forms Mailed June 2013 Pick Site and Complex Placement Plan Drafted August 2013 Pick Site and Complex Placement Site Plan Finalized September 2013 All Permit Applications Submitted, Draft Aviation Plan Submitted October 2013 Final Project Plan Submitted November/ December 2013 Harvest Trees at Pick Sites Spring 2014 All trees lifted and placed within a two-week period. Specific dates selected Based on stream flow and flying conditions May 2014 Pick site remediation July/August 2014 Complex repairs</p>
<p>A complete communication plan including contact names, phone numbers, email address and frequency of communication.</p>	<p><u>Contract Administrator:</u></p> <p>Jana Harding-Bishop, Buyer Procurement Department of Natural Resources Mason Bldg, 6th Floor PO Box 30028 Lansing, MI 48909 Email: HardingJ3@michigan.gov Phone: 517.373.1190</p> <p><u>Contract Compliance Inspector:</u></p> <p>Marlene Sublet-Bennett, Procurement Liaison Department of Natural Resources Southfield Operations Service Center 26000 W. Eight Mile Rd Southfield, MI 48034 Phone: 248.359.9062 Email: sublet-bennettm@michigan.gov</p> <p>Michigan DNR – Fisheries Division Project Managers: <u>To receive monthly progress reports</u></p>

by e-mail.

Tim Cwalinski, Fisheries Biologist*
Department of Natural Resources
Gaylord Operations Service Center
1732 West M-32
Gaylord MI 49735
Phone: 989.732.3541 ext 5472
Email: cwalinski@michigan.gov

Dave Borgeson, Fisheries Supervisor
Department of Natural Resources
Gaylord Operations Service Center
1732 West M-32
Gaylord MI 49735
Phone: 989.732.3541 ext 5470
Email: borgeson@michigan.gov

NOTE: General Contractor will funnel all MDNR inter-divisional communication through Mr. Cwalinski, unless instructed otherwise.

General Contractor/Project Coordinators:

David Cozad, President – All field operations communications to be coordinated by Mr. Cozad
Restoration Dredging
P.O. Box 96
Auburn, Michigan 48611
Office and Fax: (989) 662-2240
e-mail: benthos1@aol.com

Bill Walker, Vice President – All administrative communications to be coordinated by Mr. Walker
Restoration Dredging
837 Foxhall Road
Bloomfield Hills, Michigan 48304
Office and Fax: (248) 645-1830
e-mail: billwalkeriii@aol.com

Subcontractors:

Northpoint Fisheries Management
Steven P. Sendek, MDNR Fisheries Biologist (Ret.)
930 AuSable Trail
Grayling, Michigan 49738
Phone (989) 390-4533
e-mail: northpointfisheriesmanagement@charter.net

Construction Helicopters, Inc.
David Amador, Project Manager
3679 Bowen Road
Howell, Michigan 48855
Phone: (800) 521-5130
Fax: (800) 521-4275
e-mail: damador@constructionhelicopters.com

S&J Excavating, Inc.
John Hartman, President
11355 Steckert Bridge Road
Roscommon, Michigan 48653
Phone: (989) 275-5656

Provide a plan for determining the placement of the LWD complexes. The plan must include how the placement will be determined, what scientific and technical factors will be used to make the decisions and why.

The placement of the large woody debris complexes will be based on an inventory and evaluation of the present status of the stream channel form including instream cover and excess sand bedload. This information will be gathered during a float/wade survey of the entire treatment reach from Thayer Creek to the mouth at the mainstream. Priority placement locations will include areas lacking natural woody cover, areas with groundwater seeps (thermal refugia), areas adjacent to spawning gravels, areas with unnaturally wide channel and areas with excess sand bedload. The placed LWD complexes will be designed to improve survival and recruitment of all age classes of trout, provide protection for spawning adults, increase channel roughness, improve benthic invertebrate production and address excess sand bedload. Fish cover will be further specified as adult cover that is associated with deeper water locations and juvenile cover which is associated with shallow water locations. Sediment management will be achieved through the placement of woody structure (trees and root wads) to purge excess sand bedload and uncover critical areas of natural woody structure and gravel/cobble substrates. Tree/root wad placement will then be utilized to collect and contain these mobilized sands in defined areas which will result in a channel morphology that is narrower and deeper with more available woody cover. Woody complexes will

<p>Provide a sample of the placement site report including description and purpose of each LWD complex.</p>	<p>also be placed at groundwater seeps to enhance adult and juvenile trout cover in areas that can provide thermal refuge. Woody complexes will also be placed adjacent to potential spawning riffles affording cover for spawning and resultant juvenile trout.</p>
<p><u>Sample</u></p> <p><u>SOUTH BRANCH AU SABLE RIVER LARGE WOODY DEBRIS COMPLEX SITE REPORT</u></p> <p>Date: _____</p> <p>Field Staff: _____</p> <p>Complex Waypoint No. _____ Landowner _____</p> <p>Location:</p> <p>T _____, R _____, Sec. _____</p> <p>Bank: _____ Right or Left, looking downstream</p> <p>Length of treatment area: _____ ft.</p> <p>Mean water depth at complex: _____ ft.</p> <p>Estimated number of trees to be installed: _____</p> <p>Habitat deficiency which is improved through the installation of large woody debris:</p> <p>For example: Extensive high quality spawning riffle lacks adjacent overhead cover. The installation of 3 trees approximately 40 feet in length along the west stream bank will provide overhead cover for trout throughout the year and will provide protection for spawning adults as well as refugia for smolts which have emerged from redds on this riffle.</p>	

<p>Describe how locations will be marked in order to be easily deciphered on a map and identified in the field.</p> <p>Explain the process for obtaining easements for structures placed adjacent to private land, and a sample report format.</p>	<p>Flagging will be placed at each complex location in the field. All flagging will be marked to designate a waypoint number that will correspondingly be noted on a hard copy Project Map (USGS Quadrangle).</p> <p>Riparian landowner lists will be acquired from the Crawford County Equalization Department. Letters will be mailed to all candidate riparian landowners requesting their voluntary participation in the project. Restoration Dredging will follow-up by telephone with landowners as necessary to secure the appropriate easements. The standard MDNR easement form which has been used on previous Large Woody Debris Projects will be utilized.</p> <p><u>Sample Form</u></p> <p>South Branch Au Sable River Large Woody Debris Easement Progress Report</p> <table border="1"> <thead> <tr> <th><u>Waypoint/Complex No.</u></th> <th><u>Riparian Owner</u></th> <th><u>Address</u></th> <th><u>Follow-up Call</u></th> <th><u>Date Signed</u></th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>John and Jane Smith</td> <td>123 Main St. Lansing, MI 48304</td> <td>7/20/13</td> <td>8/1/13</td> </tr> </tbody> </table>	<u>Waypoint/Complex No.</u>	<u>Riparian Owner</u>	<u>Address</u>	<u>Follow-up Call</u>	<u>Date Signed</u>	1.	John and Jane Smith	123 Main St. Lansing, MI 48304	7/20/13	8/1/13
<u>Waypoint/Complex No.</u>	<u>Riparian Owner</u>	<u>Address</u>	<u>Follow-up Call</u>	<u>Date Signed</u>							
1.	John and Jane Smith	123 Main St. Lansing, MI 48304	7/20/13	8/1/13							
<p>Define the criteria which will determine the pick sites.</p>	<p>Restoration Dredging will work with MDNR Forest Management, Wildlife and Fisheries divisions to arrive at 2-3 pick sites each being approximately 1-2 acres in size. In addition to Threatened and Endangered Species, cultural and historic resource concerns, appropriate buffers to wetlands and other surface waters will be key considerations in choosing candidate pick sites. The sites will each be chosen such that minimal, if any, access creation will be needed. In keeping with Natural Rivers Zoning, the pick sites will be no closer than 150' to surface water bodies. The pick areas will contain 300-400 mature trees having DBH of 5"-15" of suitable hardwood species. The sites shall be situated to facilitate cost-effective helicopter transport to the placement sites by being located within a 5-minute or shorter flight to the placement sites.</p>										
<p>Explain how the pick site will be prepared, including specifics on: access to sites, application of appropriate BMP's, and determination of mitigation needed (if any). Fully explain the personnel, equipment and supplies which will be used in all aspects at the pick site.</p>	<p>Based upon preliminary field review, it is anticipated that very little or no access trail improvement would be needed to harvest and lift trees. No sediment will be transported overland as a result of tree harvesting. No wetlands or other surface waters will be impacted by the harvest activities.</p> <p>S & J Excavating will use a 314 Caterpillar hydraulic excavator with a thumb to uproot whole trees in 2-3 upland pick site locations which are no closer than 150' to surface water bodies. Soil will be shaken from the root wad and the trees will be arranged in rows to facilitate rigging prior to lift and placement. All work will be accomplished by S&J Excavating. S&J Excavating has an extensive and diverse background, having been established in 1979. They will be performing this harvest work in a sensitive and methodic manner so as to minimize site disturbance. Over the years, S&J Excavating has undertaken a wide variety of stream restoration projects in the AuSable and Manistee river watersheds. Thus, they are keenly aware of the sensitive nature of this work.</p>										

<p>The Grantee must identify the process which will be used to determine what remediation is needed at the pick site and how the Grantee will carry out the necessary work.</p> <p>LWD placement follow-up: Detail the inspection plan for all newly established LWD complexes following the first major flood event; include key personnel and equipment.</p>	<p>At the time of harvest, each root cavity will be leveled with the hydraulic excavator this will be part of the costs associated with task # 5 (tree harvesting). Following the completion of lifting and placement, further site leveling will be accomplished if needed with a Komatsu D-37 bulldozer and the disturbed soils will be seeded costs associated with this task will be charged under task # 6.</p> <p>The entire subject reach will be floated by the Project Coordinator, David Cozad, and MDNR Fisheries Division staffs are invited to participate. The condition of each LWD complex will be noted in a field log, together with appropriate remedial measures that are needed. A Plan of Work will be submitted to MDNR Fisheries division staff following the inspection float. Prior to the initiation of remedial work, MDNR and Restoration Dredging will agree to the scope and nature of the remedial work.</p>
<p>Aviation portion of the plan must state the helicopter(s) make/model which will be used for this project and describe the capabilities of the helicopter. The plan must state if the helicopter is owned by the Bidder (or their Subcontractor) or is rented and must provide a plan for repair or replacement of an approved helicopter so as not to delay the project.</p>	<p>Restoration Dredging will subcontract with Construction Helicopters, Inc. for the lifting and aerial placement of the trees in the river. Construction Helicopters has been the aviation subcontractor for all of the MDNR aerial tree placement projects in Michigan rivers, including projects on the South Branch, North Branch and Upper and Lower mainstream AuSable River. Thus, they are well versed in the successful planning and execution of these projects and have conducted extensive work in the AuSable River watershed. Construction Helicopters proposes to use either an AS332L1 Super Puma or an S61N Sikorsky helicopter to accomplish this work. Both aircraft exceed the requirements set forth in the project specifications. Construction Helicopters will provide to Restoration Dredging all information required for the Aviation Plan. Restoration Dredging will, in turn, interface with the State of Michigan DNR's lead pilot to arrive at a final, approved plan.</p> <p>Construction Helicopters will perform all maintenance in a timely and cost efficient manner and will replace a disabled helicopter with an acceptable alternative helicopter so as to not disrupt or delay the project.</p>
<p>Identify any/all risks inherent with each task of this project and how the risks will be mitigated.</p>	<p>Safety meetings will be held no less than daily when field operations are underway.</p> <p>Task 1. Development of Large Woody Debris Plan</p> <p>All watercraft users and waders shall wear Personal Floatation Devices.</p> <p>Task 3. Aviation Plan</p> <p>The Aviation Plan shall incorporate all appropriate aircraft safety measures and all measures necessary to protect the lives and welfare of all ground-based support staff.</p> <p>Appropriate clearance distances shall be observed and all ground-based crew will wear appropriate head, ear and eye protection.</p>

<p>Detailed safety plan for each task of the project. A sample monthly accomplishment report must be submitted.</p>	<p>Construction Helicopter's safety plan shall be modified, as appropriate, to incorporate measures which are necessitated by project-specific conditions.</p> <p>Task 5. Tree Harvesting</p> <p>S&J Excavating will utilize all appropriate safety measures, including appropriate head, ear and eye protection while harvesting trees. The general public will be kept from entering the harvest area while trees are being harvested</p> <p>Task 6. Remediation</p> <p>S&J Excavating will utilize all appropriate safety measures, including appropriate head, ear and eye protection while leveling soils at the pick sites. The general public will be kept from entering the pick site while bulldozer work is being accomplished.</p> <p>Task 7. The general public will be kept from entering upon the pick sites while helicopter lifts are being performed. All personnel at the pick site will wear head, ear and eye protection during tree lifts. Standard safety measures shall be taken by staff utilizing chain saws.</p> <p>Project personnel in the stream will wear personal floatation devices and hardhats. Eye and ear protection shall be worn, as appropriate. All staff shall remain clear of the helicopter flight path, consistent with Construction Helicopter's Safety Plan. Staff shall direct the public whether they are wading, in water craft, walking or in vehicles to stay clear of flight paths, as well. Project staff will affect any and all road/trail closures that may become necessary.</p> <p>Task 8. Identify and repair complexes.</p> <p>All personnel in the stream shall wear personal floatation devices. Head, ear and eye protection shall be worn by staff utilizing chain saws.</p>
<p>See narrative above in Risk Identification. <u>Sample</u></p> <p><u>South Branch AuSable River Large Woody Debris Project – Progress Report – May 2013</u></p> <p><u>Task No. 1.</u></p>	

Field reconnaissance of the South Branch Au Sable River was conducted from 20 May to 30 May. Messrs. Cozad and Sendek collaborated with Mr. Cwalinski in developing treatment recommendations.

Site Maps and Complex Site Reports are currently being drafted.

Draft electronic and hard copy maps and Complex Site Reports are expected to be forwarded to Mr. Cwalinski on 25 June.

Task No. 2.

Messrs. Cozad and Sendek met onsite with Mr. Potter and Ms. Thiel of Forest Management Division to evaluate several potential pick sites. Exact size and location of pick sites will be determined upon final evaluation of treatment sites and following consultation with Fisheries and Wildlife division staffs. Pick sites will be reviewed with Mr. Hartman of S&J Excavating prior to being finalized with MDNR – Forest Management Division.

Challenges to Progress: None at this time.

Submitted by: David Cozad, Restoration Dredging

1.042 Reports

All reports can be submitted to the DNR Project Manager via email.

1. A detailed written report for Task 1 (the proposed locations for LWD complexes – report must include riparian easement permissions) will be provided to DNR Fisheries upon completion of the task. The DNR will have up to 60 calendar days (includes time for public input) to review and respond. The Grantee will have 5 business days to revise and provide a final Task 1 plan.
2. A detailed written report for Task 2 (the proposed pick sites and remediation plan) will be provided to DNR Fisheries by upon completion of the task. The DNR will have 10 business days to review and respond. The Grantee will have 5 business days to revise and provide a final Task 2 plan.
3. A detailed written report for Task 4 will be provided to DNR Fisheries by upon completion of the task. The DNR will have 10 business days to review and respond. The Grantee will have 5 business days to revise and provide a final Task 4 plan.
4. Monthly accomplishment reports detailing progress must be provided to DNR Fisheries Division Project Managers, Dave Borgeson and Tim Cwalinski. These reports will detail current progress and achievements toward each project goal. These reports must be provided by the 10th of each month.
5. Within 10 business days of completion of each task, the Grantee will provide detailed report which must include at a minimum a summary of the work performed, any issues and how they were resolved, a list of all personnel who worked on the task, the number of hours they worked, equipment that was used and the number of hours worked.
6. Final Report is due within 30 days of completion of the final float and repairs (May 15, 2015)
The report must include:
 - a) A final detailed map of all locations of complexes and number of LWD associated with each site, including a description of purpose for each site.
 - b) Photos of each complex placed and associated waypoint number must be provided and include a description and purpose for each complex.
 - c) Timeline of all activities associated with the project by task, including the date which the task was accomplished.
 - d) Staff who worked on each task, their names, their role/responsibility and the number of hours spent on each task.
 - e) Positive/Negative outcomes or issues associated with each task.

1.050 Acceptance

1.051 Criteria

The following criteria will be used by the DNR to determine Acceptance of the Services or Deliverables provided under this SOW:

- Tasks 1-4 Acceptance will be when the project plan report is complete for task 4 and accepted
- Tasks 5-7 Acceptances will be upon successful completion of each task, receipt of the reports and review/approval of work performed.
- Task 8 Acceptance will be upon completion of the identification and repair of the complexes

1.052 Final Acceptance

Final Acceptance is when the project is completed and functions according to the requirements. Any intermediate acceptance of sub-Deliverables does not complete the requirement of Final Acceptance.

Final acceptance will be upon receipt and approval of the final report.

1.060 Proposal Pricing

1.061 Proposal Pricing

Pricing for the contract will be as follows:

- Tasks 1-4 is a lump sum amount for all tasks
- Tasks 5-7 are a cost per day, plus mobilization costs
- Task 8 is a cost per hour

For authorized Services and Price List, see Attachment A.

The Department of Natural Resources (DNR) will issue a Purchase Order for the lump sum payment of tasks 1-4, upon completion and acceptance of task 4 (the final plan) – the DNR will determine how the remainder of the tasks will be funded based on the final plan and costs outlined in Attachment A. For the purposes of issuing the contract, the amounts are listed are based upon what the DNR estimates for each task, after the final plan has been established the amounts per task may be adjusted with a Grant Change Notice.

Grantee'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 Grantee for the expense at the State's current travel reimbursement rates. See www.michigan.gov/0 for current rates.

1.062 Price Term

Prices quoted are firm for the entire length of the Contract.

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback

The State has the right to hold back, as a retainer, an amount equal to 5 percent (5%) of the lifting and placing (task # 7) portion of the contract. The amounts held back must be released to Grantee after the State has granted Final Acceptance.

1.070 Additional Requirements

1.071 Additional Terms & Conditions specific to this RFP - Reserved

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of 26 months beginning 5/23/2013 through 7/15/2015. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 2 additional 1 year periods.

2.003 Legal Effect

Grantee must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Grantee must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Grantee receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Grantee or payment under the Contract, until Grantee 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 the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Grantee must furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 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 the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(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 the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 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.

2.008 Form, Function & Utility - Reserved

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 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, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, 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.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Natural Resources, DNR-Procurement. DNR-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **DNR-Procurement is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Grantee Administrator within DNR-Procurement for the Contract is:

Jana Harding-Bishop, Buyer
Procurement
Department of Natural Resources
Mason Bldg, 6th Floor
PO Box 30028
Lansing, MI 48909
Email: HardingJ3@michigan.gov
Phone: 517.373.1190

2.022 Contract Compliance Inspector

After DNR-Procurement receives the properly executed Contract, it is anticipated that the Director of DNR-Procurement, will direct the person named below, or any other person so designated, 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 the Contract as that authority is retained by DNR Procurement.** The CCI for the Contract is:

Marlene Sublet-Bennett, Procurement Liaison
Department of Natural Resources
Southfield Operations Service Center
26000 W. Eight Mile Rd
Southfield, MI 48034
Phone: 248.359.9062
Email: sublet-bennettm@michigan.gov

2.023 Project Manager

The following individuals will oversee the project:

Tim Cwalinski, Fisheries Biologist
Department of Natural Resources
Gaylord Operations Service Center
1732 West M-32
Gaylord MI 49735
Phone: 989.732.3541 ext 5072
Email: cwalinskit@michigan.gov

Dave Borgeson, Fisheries Supervisor
Department of Natural Resources
Gaylord Operations Service Center
1732 West M-32
Gaylord MI 49735
Phone: 989.732.3541 ext 5470
Email: borgesond@michigan.gov

2.024 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 Grantee 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 Grantee 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 Grantee does not so notify the State, the Grantee has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Grantee written notice within a reasonable time, the State must be entitled to accept a Grantee proposal for Change, to reject it, or to reach another agreement with Grantee. Should the parties agree on carrying out a Change, a written Contract Change Notice must 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").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DNR-Procurement.
- (c) If the State requests or directs the Grantee to perform any activities that Grantee believes constitute a Change, the Grantee must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Grantee fails to notify the State before beginning to work on the requested activities, then the Grantee waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Grantee commences performing work outside the scope of the Contract and then ceases performing that work, the Grantee must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Grantee's contact as noted on the cover page of the contract, 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 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.

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

2.026 Binding Commitments

Representatives of Grantee must have the authority to make binding commitments on Grantee's behalf within the bounds set forth in the Contract. Grantee may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

The relationship between the State and Grantee is that of client and independent Grantee. No agent, employee, or servant of Grantee or any of its Sub-Contractors must be deemed to be an employee, agent or servant of the State for any reason. Grantee is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Sub-Contractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must 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.

2.029 Assignments

(a) Neither party may assign the Contract, or 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 Grantee and Grantee may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the 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) Grantee may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Grantee is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

(c) If the Grantee intends to assign the Contract or any of the Grantee's rights or duties under the Contract, the Grantee must notify the State in writing at least 90 days before the assignment. The Grantee also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Administrative Fee And Reporting – Reserved not available to MiDEAL/Other Gov't entities

2.032 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.033 Contract Distribution

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

2.034 Permits

Grantee must 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 must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.035 Website Incorporation

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

2.036 Future Bidding Preclusion

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

2.037 Freedom of Information

All information in any proposal submitted to the State by Grantee and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

2.038 Disaster Recovery

Grantee 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, Grantee personnel dedicated to providing Services/Deliverables under the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Grantee when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Grantee must show verification of measurable progress at the time of requesting progress payments.

2.042 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 must negotiate an equitable reduction in Grantee's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Grantee (and its Sub-Contractors, if any) under the Contract, the State must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General

(a) Each Statement of Work issued under the Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Grantee invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor

category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Grantee's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Grantee.

The specific payment schedule for any Contract(s) entered into, as the State and the Grantee(s) must mutually agree upon. The schedule must show payment amount and must reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements must be forwarded to the designated representative by the 15th day of the following month.

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

2.045 Pro-ration - Reserved

2.046 Antitrust Assignment

The Grantee 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 Grantee, toward fulfillment of the Contract.

2.047 Final Payment

The making of final payment by the State to Grantee 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 (1) 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. Grantee's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Grantee against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State contracts. The Grantee must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Grantees are expected to collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

Grantees are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Grantees that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two (2) or more trades or businesses under common control" the term "organization" means sole

proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Grantee Personnel Qualifications

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

2.062 Grantee Key Personnel

(a) The Grantee must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Grantee must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Grantee must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Grantee's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Grantee, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Grantee personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Grantee provides 30 days of shadowing unless parties agree to a different time period. The Grantee with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Grantee must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Grantee may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Grantee personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Grantee cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay

not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Grantee Personnel Location

All staff assigned by Grantee to work on the Contract must perform their duties either primarily at Grantee's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel must, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work.

2.065 Grantee Identification

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

2.066 Cooperation with Third Parties

Grantee must cause its personnel and the personnel of any Sub-Contractors to cooperate with the State and its agents and other Grantees including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Grantee must provide to the State's agents and other Grantees reasonable access to Grantee's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Grantee's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Grantee's performance under the Contract with the requests for access.

2.067 Grantee Return of State Equipment/Resources

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

2.068 Contract Management Responsibilities

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

2.070 Subcontracting by Grantee

2.071 Grantee Full Responsibility

Grantee has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Grantee to be the sole point of contact with regard to all contractual matters under the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Grantee must not delegate any duties under the Contract to a Sub-Contractor unless the DNR-Procurement has given written consent to such delegation. The State reserves the right of prior written approval of all Sub-Contractors and to require Grantee to replace any Sub-Contractors found, in the reasonable judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Sub-Contractor(s) for the removed Sub-Contractor must be fully qualified for the position. If the State exercises this right, and the Grantee cannot immediately replace the removed Sub-Contractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any

such incident with a removed Sub-Contractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Sub-Contractor Bound to Contract

In any subcontracts entered into by Grantee for the performance of the Services, Grantee must require the Sub-Contractor, to the extent of the Services to be performed by the Sub-Contractor, to be bound to Grantee by the terms of the Contract and to assume toward Grantee all of the obligations and responsibilities that Grantee, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Grantee may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Sub-Contractor is the responsibility of Grantee, and Grantee must remain responsible for the performance of its Sub-Contractors to the same extent as if Grantee had not subcontracted such performance. Grantee must make all payments to Sub-Contractors or suppliers of Grantee. Except as otherwise agreed in writing by the State and Grantee, the State will not be obligated to direct payments for the Services other than to Grantee. The State's written approval of any Sub-Contractor engaged by Grantee to perform any obligation under the Contract will not relieve Grantee of any obligations or performance required under the Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Grantee must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Sub-Contractors.

2.075 Competitive Selection

The Grantee must select Sub-Contractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities

2.081 Equipment

The State must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities - Reserved

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Grantee's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Grantee personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Grantee 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.

2.092 Security Breach Notification

If the Grantee breaches this Section, the Grantee must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Grantee and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Grantee must 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 72 hours of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Standard - Reserved

2.100 Confidentiality

2.101 Confidentiality

Grantee 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 Grantee must mean all non-public proprietary information of Grantee (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Grantee by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Grantee must 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 than reasonable care. Neither Grantee nor the State will (i) make any use of the Confidential 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 must limit disclosure of the other party's Confidential Information to employees and Sub-Contractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Sub-Contractor is permissible where (A) use of a Sub-Contractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Sub-Contractor's scope of responsibility, and (C) Grantee obligates the Sub-Contractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Grantee and of any Sub-Contractor 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 Grantee's and the Sub-Contractor's obligations under this Section and of the employee's obligation to Grantee or Sub-Contractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Grantee 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 the 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 **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must 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.

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Grantee's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Grantee's systems or facilities. The Grantee must provide reasonable assistance for the State's representatives during inspections.

2.112 Retention of Records

(a) The Grantee must retain all financial and accounting records related to this Contract for a period of 7 years after the Grantee performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Grantee's records is initiated before the end of the Audit Period, the Grantee must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.113 Examination of Records

(a) The State, upon 10 days notice to the Grantee, may examine and copy any of the Grantee's records that relate to this Contract any time during the Audit Period. The State does not have the right to review any information deemed confidential by the Grantee if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Grantee, or any Sub-Contractor that performs services in connection with this Contract.

(b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, DNR or its designee may audit the Grantee to verify compliance with the Contract. The financial and accounting records associated with the Contract shall be made available to DNR or its designee and the auditor general, upon request, during the term of the Contract and any extension of the Contract and for 3 years after the later of the expiration date or final payment under the Contract.

2.114 Audit Resolution

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

2.115 Errors

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Grantee must pay all reasonable audit costs.

2.120 Warranties

2.121 Warranties and Representations

The Grantee represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Grantee or developed by Grantee under the Contract, and Grantee has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Grantee to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under the Contract, Grantee procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Grantee under Grantee's name), then in addition to Grantee's other responsibilities with respect to the items in the Contract, Grantee must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Grantee.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Grantee nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Grantee'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. Grantee must notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.
- (h) If any of the certifications, representations, or disclosures made in the Grantee's original bid response change after the Contract start date, the Grantee must report those changes immediately to DNR-Procurement.

2.122 Warranty of Merchantability - Reserved

2.123 Warranty of Fitness for a Particular Purpose - Reserved

2.124 Warranty of Title - Reserved

2.125 Equipment Warranty - Reserved

2.126 Equipment to be New – Reserved

2.127 Prohibited Products - Reserved

2.128 Consequences For Breach

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

2.130 Insurance

2.13.1 Liability Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The Grantee must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Grantee's or a Sub-Contractor's performance, including any person directly or indirectly employed by the Grantee or a Sub-Contractor, or any person for whose acts the Grantee or a Sub-Contractor may be liable.

(b) The Grantee waives all rights against the State for the recovery of damages that are covered by the insurance policies the Grantee is required to maintain under this Section. The Grantee's failure to obtain and maintain the required insurance will not limit this waiver.

(c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.

(d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(e) Unless the State approves otherwise, any insurer must have an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.

(f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Grantee's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.

(g) The Grantee must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Grantee must secure tail coverage for at least three (3) years following the termination of this Contract.

(h) The Grantee must provide, within five (5) business days, written notice to the Director of DNR-Procurement if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.

(i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Grantee to any indemnified party or other persons.

(j) The Grantee is responsible for the payment of all deductibles.

(k) If the Grantee fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Grantee at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Grantee, or require the Grantee to pay that cost upon demand.

(l) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

(m) The Grantee is required to pay for and provide the type and amount of insurance checked below:

(i) Commercial General Liability

Minimal Limits:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations;
\$2,000,000 Products/Completed Operations Aggregate Limit;
\$1,000,000 Personal & Advertising Injury Limit; and
\$1,000,000 Each Occurrence Limit.

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

The Grantee must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the Commercial General Liability certificate. The Grantee also agrees to provide evidence that the insurance policy contains a waiver of subrogation by the insurance company.

(ii) Aviation Insurance (Construction Helicopter)

Minimal Limits:

\$10,000,000.00 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (i), General Commercial Liability. The Grantee must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Grantee also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

(iii) Motor Vehicle

Minimal Limits:

If a motor vehicle is used in relation to the Grantee's performance, the Grantee must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

(iv) Hired and Non-Owned Motor Vehicle

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

The Grantee must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the vehicle liability certificate. The Grantee also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

(v) Workers' Compensation Insurance

Minimal Limits:

The Grantee must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Grantee's domicile. If the applicable coverage is provided by a self-insurer, the Grantee must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Grantee's domicile, the Grantee must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Grantee must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Grantee must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

(vi) Employers Liability

Minimal Limits:

\$100,000 Each Incident;
\$100,000 Each Employee by Disease
\$500,000 Aggregate Disease

Additional Requirements:

The Grantee must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

(vii) Employee Fidelity (Crime)

Minimal Limits:

\$1,000,000 Employee Theft Per Loss

Deductible Maximum:

\$50,000 Per Loss

Additional Requirements:

Insurance must cover Forgery and Alteration, Theft of Money and Securities, Robbery and Safe Burglary, Computer Fraud, Funds Transfer Fraud, Money Order and Counterfeit Currency.

The Grantee must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as Loss Payees on the certificate.

(viii) Professional Liability (Errors and Omissions)

Minimal Limits:

\$3,000,000 Each Occurrence

\$3,000,000 Annual Aggregate

Deductible Maximum:

\$50,000 Per Loss

(ix) Medical Malpractice

Minimal Limits:

(Small Provider)\$200,000 Each Occurrence

\$600,000 Annual Aggregate

(Large Provider)\$1,000,000 Each Occurrence

\$3,000,000 Annual Aggregate

Deductible Maximum:

\$5,000 Each Occurrence

(x) Cyber Liability

Minimal Limits:

\$1,000,000 Each Occurrence

\$1,000,000 Annual Aggregate

Additional Requirements:

Insurance should cover (a)unauthorized acquisition, access, use, physical taking, identity theft, mysterious disappearance, release, distribution or disclosures of personal and corporate information; (b) Transmitting or receiving malicious code via the insured's computer system; (c) Denial of service attacks or the inability to access websites or computer systems.

The Grantee must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

(xi) Property Insurance

Property Insurance covering any loss or damage to the State-owned office space used by Grantee for any reason under this Contract, and the State-owned equipment, software and other contents of the office space, including without limitation, those contents used by Grantee to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care,

custody and control of Grantee. The State must be endorsed on the policy as a loss payee as its interests appear.

2.13.2 Sub-Contractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Grantee must require any Sub-Contractor to purchase and maintain the insurance coverage required in Section 2.13.1, Liability Insurance. Alternatively, the Grantee may include a Sub-Contractor under the Grantee's insurance on the coverage required in that Section. The failure of a Sub-Contractor to comply with insurance requirements does not limit the Grantee's liability or responsibility.

2.13.3 Certificates of Insurance

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Grantee must provide evidence that the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Grantee must provide DNR-Procurement with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in Section 2.13.1, Liability Insurance. Each certificate must be on the standard "Accord" form or equivalent and **MUST IDENTIFY THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER.**

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Grantee must 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 Grantee in the performance of the Contract and that are attributable to the negligence or tortious acts of the Grantee or any of its Sub-Contractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

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

2.143 Employee Indemnification

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Grantee or any of its Sub-Contractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Grantee or any of its Sub-Contractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Grantee must 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 the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Grantee or its Sub-Contractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the 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 Grantee's opinion be likely to become the subject of a claim of infringement, the Grantee must at the Grantee's sole expense (i) procure for the State the right to continue using the equipment,

software, commodity or service or, if the option is not reasonably available to the Grantee, (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 the option is not reasonably available to Grantee, (iii) accept its return by the State with appropriate credits to the State against the Grantee'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 Grantee has 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; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Grantee, 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 Grantee under the Contract.

2.145 Continuation of Indemnification Obligations

The Grantee's duty to indemnify under 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 before expiration or cancellation.

2.146 Indemnification Procedures

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

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

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

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Grantee breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Grantee with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Grantee in writing, if the Grantee (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If the Contract is terminated for cause, the Grantee must pay 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 are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

(c) If 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 must 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 must cease on the effective date of the termination.

(d) If the State terminates the Contract for cause under this Section, and it is determined, for any reason, that Grantee was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in the Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must 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 RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Grantee written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Grantee 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 must 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 Grantee. The State must give Grantee at least 30 days advance written notice

of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Grantee for the agreed-to level of the Services or production of Deliverables to be provided by Grantee are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Grantee, reduce the level of the Services or the change the production of Deliverables in the manner and for the 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 the reduction.

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Grantee under this Section, the State must pay Grantee 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. This Section will not preclude Grantee from reducing or stopping Services/Deliverables 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.

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Grantee for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Grantee or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Grantee must (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 Grantee's possession, (c) return all materials and property provided directly or indirectly to Grantee by any entity, agent or employee of the State, (d) 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 must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Grantee for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Grantee 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) If the State terminates the Contract before its expiration for its own convenience, the State must pay Grantee for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under 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 Grantee under the Contract, at the option of the State, becomes the State's property, and Grantee is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Grantee 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 may assume, at its option, any 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.

2.158 Reservation of Rights

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

2.160 Termination by Grantee

2.161 Termination by Grantee

If the State breaches the Contract, and the Grantee in its sole discretion determines that the breach is curable, then the Grantee will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Grantee may terminate the Contract if the State (i) materially breaches its obligation to pay the Grantee undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Grantee to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Grantee must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Grantee Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Grantee 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. If the Contract expires or terminates, the Grantee 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 30 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

2.172 Grantee Personnel Transition

The Grantee must 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 Grantee must 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 Grantee's Sub-Contractors or vendors, as necessary to meet its needs, Grantee agrees to reasonably, and with good-faith, work with the State to use the Services of Grantee's Sub-Contractors or vendors. Grantee must notify all of Grantee's Sub-Contractors of procedures to be followed during transition.

2.173 Grantee Information Transition

The Grantee 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 Grantee must provide the State with asset management data generated from the inception of the Contract through the date on which the Grantee is terminated in a comma-delineated format unless otherwise requested by the State. The Grantee must deliver to the State any remaining owed reports and documentation still in Grantee's possession subject to appropriate payment by the State.

2.174 Grantee Software Transition - Reserved

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Grantee 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 agreed upon by the State. The Grantee must prepare an accurate accounting from which the State and Grantee may reconcile all outstanding accounts.

2.176 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 Grantee agree:

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

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Grantee, require that Grantee stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Grantee, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Grantee must immediately comply with its terms and take all reasonable steps to minimize incurring 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 must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Grantee must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Grantee's costs properly allocable to, the performance of any part of the Contract; and (b) Grantee asserts its right to an equitable adjustment within 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 Grantee proposal submitted at any time before final payment under the Contract. Any adjustment must conform to the requirements of **Section 2.024**.

2.183 Allowance of Grantee 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, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Grantee for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

- (a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the

processes, the parties must meet with the Director of Procurement, DNR, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Grantee and the State must meet as often as the parties reasonably deem necessary 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 must 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 (1) party to another for non-privileged information reasonably related to the Contract must 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 Grantee 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 60 calendar days, the Director of Procurement, DNR, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must 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 under **Section 2.193**.

(c) The State will not mediate disputes between the Grantee and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Grantee will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the 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.

2.194 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 must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Grantee agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Grantee further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Sub-Contractor. This covenant is required under 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.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Grantee of the State, in relation to the Contract, must not enter into a contract with a Sub-Contractor, manufacturer, or supplier whose name appears in this register.

Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Grantee as an employer or the name of the Sub-Contractor, manufacturer or supplier of Grantee appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

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

2.204 Prevailing Wage

The rates of wages and fringe benefits to be paid each class of individuals employed by the Grantee, its Sub-Contractors, their Sub-Contractors, and all persons involved with the performance of the Contract in privity of contract with the Grantee must not be less than the wage rates and fringe benefits established by the Michigan Department of Licensing and Regulatory Affairs, Wage and Hour Division, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Grantee must include all general Grantees, prime Grantees, project managers, trade Grantees, and all of their Grantees or Sub-Contractors and persons in privity of contract with them.

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

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

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

Grantee must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Grantee nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for

personal injury or damage to property caused by the gross negligence or willful misconduct of the Grantee; 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 Grantee's liability for damages to the State is limited to two times the value of the Contract or \$500,000 whichever is higher. The foregoing limitation of liability does 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 Grantee; 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 Grantee is limited to the value of the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Grantee must disclose any material criminal litigation, investigations or proceedings involving the Grantee (and each Sub-Contractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Grantee (and each Sub-Contractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Grantee (or, to the extent Grantee is aware, any Sub-Contractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Grantee or any Sub-Contractor; or (ii) a claim or written allegation of fraud against Grantee or, to the extent Grantee is aware, any Sub-Contractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Grantee must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Grantee's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under 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 Grantee (or a Sub-Contractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Grantee (or a Sub-Contractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Grantee must provide the State all reasonable assurances requested by the State to demonstrate that:

- (a) Grantee and its Sub-Contractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
- (b) Grantee and its Sub-Contractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Grantee must make the following notifications in writing:

- (1) Within 30 days of Grantee 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, Grantee must notify DNR-Procurement.
- (2) Grantee must also notify DNR Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

- (3) Grantee must also notify DNR Procurement within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure - Reserved

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Grantee files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Grantee and not removed within 30 days;
- (c) the Grantee becomes insolvent or if a receiver is appointed due to the Grantee's insolvency;
- (d) the Grantee makes a general assignment for the benefit of creditors; or
- (e) the Grantee or its affiliates are unable to provide reasonable assurances that the Grantee or its affiliates can deliver the services under the Contract.

Grantee will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

(a) Grantee must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to 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 2.241(a)**, Grantee must 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 must inform the State of the projected actual delivery date.

(c) If the Grantee believes that a delay in performance by the State has caused or will cause the Grantee to be unable to perform its obligations according to specified Contract time periods, the Grantee must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Grantee will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs) - Reserved

2.243 Liquidated Damages - Reserved

2.244 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 the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, 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 a party; provided the non-performing party and its Sub-Contractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. but the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Grantee's performance of the Services/provision of Deliverables for more than 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 is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Grantee as of a date specified by the State in a written notice of termination to the Grantee, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Grantee 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 Grantee which are caused by acts or omissions of its Sub-Contractors will not relieve Grantee of its obligations under the Contract except to the extent that a Sub-Contractor is itself subject to an Excusable Failure condition described above and Grantee cannot reasonably circumvent the effect of the Sub-Contractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following must be applicable to all orders issued under the Contract.

(a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Grantee must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.

(b) Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Grantee within five days of inspection

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Grantee including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing - Reserved

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Grantee. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Grantee agree that the Deliverable/Service is ready for use and, where applicable, certification by Grantee according to **Section 2.253**.

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Grantee to rectify them post-approval. In any case, Grantee will be responsible for working diligently to correct within a reasonable time at Grantee's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two (2) repeat efforts), the Grantee is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Grantee cure the failure and give the Grantee additional time to cure the failure at the sole expense of the Grantee; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Grantee has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Grantee provided Grantee is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Grantee for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Grantee in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Grantee or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the

Deliverable). If the State notifies the Grantee about deficiencies, the Grantee must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Grantee's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Grantee, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

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

2.257 Process for Approval of Physical Deliverables

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

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in Sections 2.251-2.257. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Grantee for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Grantee assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Grantee, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Grantee for the State. From time to time upon the State's request, the Grantee must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The

State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Grantee or its agents, Sub-Contractors or representatives under the Contract. The Grantee must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Grantee. No employees of the Grantee, other than those on a strictly need-to-know basis, have access to the State's data. Grantee must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Grantee must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Grantee must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Grantee for any purpose. The State must not possess or assert any lien or other right against the Grantee's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

The State and the Grantee will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Grantee by the State, and paid for by the State, will be owned by the State. Any software licensed through the Grantee and sold to the State, will be licensed directly to the State.

2.270 State Standards

2.271 Existing Technology Standards - Reserved

2.272 Acceptable Use Policy - Reserved

2.273 Systems Changes - Reserved

2.274 Electronic Receipt Processing Standard - Reserved

2.280 Extended Purchasing Program

2.281 Extended Purchasing Program - Reserved

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation, or disposal of which is regulated by the federal, State, or local laws governing the protection of the public health, natural resources, or the environment. 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.

(a) The Grantee must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Grantee's Work. Before the commencement of Work, the State must advise the Grantee of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Grantee encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Grantee must immediately stop all affected Work, notify the State in writing about 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 Grantee, or does not result in whole or in part from any violation by the Grantee of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Grantee must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Grantee for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Grantee, or results in whole or in part from any violation by the Grantee 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 Grantee, the Grantee must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning:

The Grantee must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the Contract.

Environmental Performance:

Waste Reduction Program: Grantee must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Grantee's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

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

Attachment A

Pricing Proposal will be broken into three categories – each category must be supported with the details in the pricing chart as requested. If additional costs lines are needed the Bidder may add lines to the chart.

- 1) Lump Sum for tasks 1-4
- 2) Cost per day for tasks 5-7
- 3) Tasks 5 and 7 will include a set one-time mobilization and de-mobilization fee
- 4) Hourly rate for task 8

RESTORATION DREDGING PROPOSAL BASED ON 6000 TREES

Tasks 1 – 4 will be awarded as a lump sum, fixed cost for all tasks.

Task # 1 – Costs for placement of Woody Debris Plan

Staffing			
Name	Hourly Rate (to include fringes and benefits)	Est # of Hours	Cost
Cozad/Walker	\$103.87	96	\$9,971.52
Sendek	\$103.87	96	\$9,971.52
Total Cost for Staffing			\$19,943.04
Travel			\$765.90
Equipment			
Supplies			\$345.00
Total for Task # 1			\$21,053.94

Task # 2 – Cost for Pick Site Plan

Staffing			
Name	Hourly Rate (to include fringes and benefits)	Est # of Hours	Cost
Cozad/Walker	\$103.87	40	\$4,154.80
Sendek	\$103.87	40	\$4,154.80
Total Cost for Staffing			\$8,309.60
Travel			\$382.95
Equipment			
Supplies			\$57.50
Total for Task # 2			\$8,750.05

Task # 3 – Cost for Aviation Plan (Certification of pilots & Aircraft)

Staffing			
Name	Hourly Rate (to include fringes and benefits)	Est # of Hours	Cost
Cozad/Walker	\$103.87	30	\$3,116.10
Total Cost for Staffing			\$3,116.10
Travel			\$143.61
Equipment			

Supplies	57.50
Total for Task # 3	\$3,317.21

Task # 4 – Cost Development of Final Project Plan

Staffing			
Name	Hourly Rate (to include fringes and benefits)	Est # of Hours	Cost
Cozad/Walker	\$103.87	20	\$2,077.40
Sendek	\$103.87	4	\$415.48
Total Cost for Staffing			\$2,492.88
Travel			
Equipment			
Supplies			
Total for Task # 4			\$2,492.88

Lump Sum for Tasks 1 - 4	\$35,614.08
---------------------------------	--------------------

Tasks 5 and 6's number of days and daily rates should be based on harvesting, lifting and remediating for the maximum number of trees– should the amount of work done be reduced at the time the final plan is agreed upon – the DNR reserves the right to negotiate less than the total numbers of days based on the actual work performed. The hourly rate and estimated hours must be listed for staffing as well as use of heavy equipment.

Tasks 5 and 7 will allow for one-time mobilization and demobilization fees

Task # 5 – Tree Harvesting

Staffing			
Name	Hourly Rate	Est # of Hours	Cost
Cozad/Walker	\$103.87	67	\$6,959.29
Total Cost for Staffing			\$6,959.29
Large Equipment	\$115.00	200	\$23,000.00
Travel			\$851.04
Equipment			
Supplies			
Estimated number of trees to be harvested in a day			300
Estimated Number of days to complete harvesting			20
Cost Per Day to Harvest trees per agreed to plan			\$1,540.52
Total Cost for Tree Harvesting			\$30,810.33
Total Mobilization Fees			
Cost to Mobilize	\$575.00	Cost to De-mobilize	\$575.00
			\$1,150.00

Task # 6 – Remediation

Staffing			
Name	Hourly Rate	Est # of Hours	Cost
Cozad/Walker	\$103.87	167	\$17,346.29

Crew: 2 Class C	\$63.74 (2 Crew)	133	\$8,477.42
Total Cost for Staffing			\$25,823.71
Large Equipment	\$115	133	\$15,295.00
Travel			
Equipment			
Supplies			\$4,600.00
Estimated Number of days to Complete Remediation			13.3
Cost Per Day to do Remediation Work per agreed to plan			\$3,437.50
Total Cost for Remediation			\$45,718.71

Task # 7 – Tree lifting and placement

Staffing			
Name	Hourly Rate	Est # of Hours	Cost
Cozad/Walker	\$103.87	480	\$49,857.60
Sendek	\$103.87	480	\$49,857.60
Crew: 2 Class B, 4 Class C	\$271.98 (6 Crew)	480	\$130,550.40
Total Cost for Staffing			\$230,265.60
Helicopter Costs	\$5,198.96	320	\$1,663,667.20*
Large Equipment Costs			
Travel			\$4,042.47
Equipment			\$17,250.86
Supplies			\$19,167.63
Estimated number of trees to be lifted and placed in a day			150
Estimated Number of days to complete lifting and placing			40
Cost Per Day to lift and place trees per agreed to plan			\$48,359.84
Total Cost for lifting and placing			\$1,934,393.76
Total Mobilization Fees			
Cost to Mobilize	\$23,312.28	Cost to De-mobilize	\$18,137.28
			\$41,449.56

* Based on fuel prices being at or below \$6.10 per gallon during construction. A surcharge will be billed should fuel prices exceed \$6.10 per gallon.

NOTE: To provide cost savings and a more efficient project, Restoration Dredging's proposal calls for the placement of all 6,000 trees at one time, in the spring of 2014. This will require only one mobilization and one demobilization in Task 7.

For evaluation purposes the state will use 40 hours for identifying and repairing complexes – the Grantee and the State will negotiate the hours needed and pay only for the actual number of hours worked.

Task # 8 – Cost per hour for Identifying and repairing issues with complex

Staffing			
Name	Hourly Rate (including fringes)	Est # of Hours	Cost
Cozad/Walker	\$103.87	320	\$33,238.40
Sendek	\$103.87	320	\$33,238.40
Crew: 2 Class B, 2 Class C	\$175.22 (4 Crew)	320	\$56,070.40
Total Cost for Staffing			\$122,547.20
Travel			\$1,489.34

Equipment	
Supplies	\$2,300.12
Total Cost for identifying and repairing complexes (in 320 hours)	\$126,336.66
Cost Per Hour for identifying and repairing complexes	\$394.80
For Evaluation Purposes 40 hours of time allocated for this work	X 40 hours
Total cost for identifying and repairing complexes (in 40 hours)	\$15,792.00

GRANT AWARD BASED ON \$400,000.00 BUDGET

Line Item in MAIN			
003	Task 1 -4		\$35,614.08
004	Task 5 – tree harvesting	Based on 2.88 days @\$1540.52 per day	\$4,436.70
001	Task 5 – Mobilization		\$1,150.00
005	Task 6 – Remediation	Based on 6.6 days @ \$3,437.50 per day	\$22,687.50
006	Task 7 – lift/placement	Based on 5.76 days @ \$48,359.84 per day	\$278,552.67
002	Task 7 – Mobilization		\$41,449.56
007	Task 8 – Identifying/Repairing Complexes	Based on 40 hrs @ \$394.80 per hour	\$15,792.00
	Total Award		\$399,682.51

Attachment B – Natural Rivers Policy and Guidance

Natural Rivers Program
Policy and Guidance
Adopted September 2, 2011

Large woody debris placement for fish habitat enhancement

Approved conservation partners of the Department of Natural Resources, Natural River Program, do not need to secure a Natural Rivers Permit for large woody debris (LWD) projects if the following guidelines are adhered to.

Selection of trees

1. Except as outlined below, trees shall be acquired from outside the natural vegetation buffer (buffer). The buffer varies by river system – see the table at the end of this document.
2. Trees within the buffer may be removed for use as in-stream LWD only when one of the following situations is present:
 - The vegetation is so dense that transporting/skidding trees through the buffer would cause significant damage to the buffer and the number of trees to be removed is minimal.
 - There is a lack of available or suitable trees in the immediate area outside the buffer.
 - An unsafe or diseased tree suitable for use has been identified.
3. When trees are removed from within the buffer, the following standard shall be adhered to:
 - No tree shall be removed that is rooted within 6 feet of the ordinary high water mark or when the removal of the tree might result in bank instability, unless the tree has been identified as an unsafe tree or diseased tree.
4. Removal of trees from within the buffer shall adhere to the following hierarchy, with *a* being selected first, and *d* being selected last:
 - a. Unsafe trees, i.e. trees that represent an identifiable hazard to life or property, or diseased trees.
 - b. Dead or damaged trees.
 - c. A single tree from a cluster or grouping of trees where the removal of one tree will release surrounding trees.
 - d. A single tree from a forested area where removal of the tree will not be easily noticed at the river level due to screening by the remaining vegetation.

Placement of LWD

Placement of LWD in the stream shall adhere to the following guidelines:

- The structure shall not interfere with navigation or interfere with the natural flow of the stream.
- In selecting a site for placement LWD into the stream channel, the effects of the new structure on surrounding land, current habitat, and existing structures, shall be considered. Site selection must consider potential impacts of redirecting current into and around fragile stream banks or sedimentation of natural LWD, stream bed gravels and shoreline spring seeps.
- All hardware used in placing the tree shall be free of nails, spikes, or other objects that will represent a hazard to river users at the time of installation or in the future when the structure decays. Duckbill anchors and associated cable are allowed, however, such hardware should be hidden from view to the greatest extent practical.

Other considerations

- Prior consultation with and approval from the DNR District Fish Biologist is required for all LWD projects. At their discretion, the DNR District Fish Biologist may elect to waive this review for specific projects or a certain class of projects.
- All necessary permits from the Department of Environmental Quality must be acquired prior to commencing any work.
- In certain jurisdictions, a zoning permit may be required from the affected township or county for LWD work being conducted on private land.

Reporting requirements

Any conservation partner undertaking a LWD project without a Natural Rivers Permit, in accordance with these guidelines, shall provide prior notification of the project to the Natural Rivers Program. Notice shall be given on either a per project basis or in the form of an annual or multi-annual plan. Providing the Natural Rivers Program with a copy of the application submitted to the Department of Environmental Quality (DEQ) for a large woody debris project, if the application is deemed complete by the DEQ, satisfies this requirement.

Natural Vegetation Buffer

River	Private land mainstream buffer	Private land tributary buffer	Public land mainstream buffer	Public land tributary buffer
Au Sable (mainstream standards also apply to North branch & South Branch)	75	50	150	150