

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

August 27, 2008

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B5200299
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR The Nelson Paint Company Three Nelson Drive Kingsford, MI 49802 Email: Leel@nelsonpaint.com	TELEPHONE Laurie Lee 1-800-236-9278 ext. 140
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 Irene Pena
Contract Compliance Inspector: Kristina Squibb 517-373-7987 TREE MARKING AND BOUNDARY PAINT-DNR	
CONTRACT PERIOD: From: August 8, 2005 To: August 31, 2009	
TERMS Net 45	SHIPMENT 2-3 Days ARO
F.O.B. Delivered	SHIPPED FROM Kingsford, MI
MINIMUM DELIVERY REQUIREMENTS 1 Unit	

NATURE OF CHANGE(S):

Effective immediately the following changes are hereby incorporated into the Contract:

1. Contract is EXTENDED through August 31, 2009
2. Prices are INCREASED .40 per quart can, .80 per gallon and .40 per aerosol can.
3. Shipping term FOB Delivered with a \$200.00 minimum order per section 1.302 of the contract.

AUTHORITY/REASON:

Per DMB Purchasing Operations

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,090,943.20

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

August 27, 2007

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B5200299
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR The Nelson Paint Company Three Nelson Drive Kingsford, MI 49802 LeeL@nelsonpaint.com	TELEPHONE Laurie Lee 1-800-236-9278 ext. 140
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 Irene Pena
Contract Compliance Inspector: Kristina Squibb 517-373-7987	
TREE MARKING AND BOUNDARY PAINT-DNR	
CONTRACT PERIOD: From: August 8, 2005 To: August 31, 2008	
TERMS Net 45	SHIPMENT 2-3 Days ARO
F.O.B. Delivered	SHIPPED FROM Kingsford, MI
MINIMUM DELIVERY REQUIREMENTS 1 Unit	

NATURE OF CHANGE(S):

Effective immediately this Contract is EXTENDED 10 months. The new ending date is August 31, 2008.

Effective September 1, 2007, prices have increased. Please refer to the attached revised item listing. All other specifications, terms and conditions remain unchanged.

The vendor contact has also changed to:

Sharon Neubauer
National Sales Representative
Nelson Paint Company
One Nelson Drive
Kingsford, MI 49802
800-236-9278
ext. 140
neubauers@nelsontechinc.com

AUTHORITY/REASON:

Per vendor contact Sharon Neubauer on June 12, 2007, agency contact (Kris Squibb) dated July 17, 2007 and DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,090,943.20

Item Listing

Item #	Part Number	Description	U/M	Price	Increase	% Increase	New Price
1	630-64-28-0710	BLACK, QUART, TREE MARKIN	Qt	\$3.39	0.25	7.37%	\$3.64
2	630-64-28-0820	BLACK, QUART, BOUNDARY GR	Qt	\$3.50	0.25	7.14%	\$3.75
3	630-64-28-0850	BLACK, BOUNDARY GRADE, 12	CN	\$2.49	0	0.00%	\$2.49
4	630-64-28-1020	BLUE, QUART, TREE MARKING	Qt	\$3.39	0.25	7.37%	\$3.64
5	630-64-28-1040	BLUE, QUART, BOUNDARY GRA	Qt	\$3.50	0.25	7.14%	\$3.75
6	630-64-28-1050	BLUE, BOUNDARY GRADE, 12	CN	\$2.49	0	0.00%	\$2.49
7	630-64-28-4100	LIGHT BLUE, QUART, BOUNDA	Qt	\$3.50	0.25	7.14%	\$3.75
8	630-64-28-4200	LIGHT GREEN, QUART, TREE	Qt	\$3.39	0.25	7.37%	\$3.64
9	630-64-28-4230	LIGHT GREEN, BOUNDARY GRA	CN	\$2.49	0	0.00%	\$2.49
10	630-64-28-5140	ORANGE, QUART, BOUNDARY G	Qt	\$4.50	0.25	5.56%	\$4.75
11	630-64-28-5160	ORANGE, QUART, LEADED BOU	Qt	\$4.50	0.25	5.56%	\$4.75
12	630-64-28-5180	ORANGE, QUART, TRACER PAI	Qt	\$3.99	0.25	6.27%	\$4.24
13	630-64-28-5200	ORANGE, QUART, TREE MARKI	Qt	\$3.33	0.25	7.51%	\$3.58
14	630-64-28-5215	ORANGE, BOUNDARY GRADE, 1	CN	\$2.49	0	0.00%	\$2.49
15	630-64-28-5220	ORANGE, GALLON, TREE MARK	Gallon	\$11.24	0.35	3.11%	\$11.59
16	630-64-28-5340	ORANGE, GALLON, BOUNDARY	Gallon	\$15.24	0.35	2.30%	\$15.59
17	630-64-28-7480	RED, QUART, TREE MARKING	Qt	\$3.50	0.25	7.14%	\$3.75
18	630-64-28-7490	RED, QUART, BOUNDARY GRAD	Qt	\$4.25	0.25	5.88%	\$4.50
19	630-64-28-7500	RED, GALLON, TREE MARKING	Gallon	\$11.24	0.35	3.11%	\$11.59
20	630-64-28-7520	RED, GALLON, BOUNDARY GRA	Gallon	\$13.99	0.35	2.50%	\$14.34
21	630-64-28-7700	TRACER PAINT TEST KITS	Gallon	\$19.00	0.35	1.84%	\$19.35
22	630-64-28-9100	YELLOW, BOUNDARY GRADE, 1	CN	\$2.49	0	0.00%	\$2.49
23	630-64-28-9162	YELLOW, QUART, TREE MARKI	Qt	\$3.50	0.25	7.14%	\$3.75
24	630-64-28-9164	YELLOW, QUART, BOUNDARY G	qt	\$4.70	0.25	5.32%	\$4.95
25	630-64-28-9170	YELLOW, GALLON, TREE MARK	Gallon	\$11.24	0.35	3.11%	\$11.59
26	630-64-28-9220	YELLOW, GALLON, BOUNDARY	Gallon	\$15.50	0.35	2.26%	\$15.85
27	630-64-28	PAINT, SPRAY, MARKING	Qt	\$3.40	0.25	7.35%	\$3.65
28	630-64-28	PAINT, SPRAY, MARKING	CN	\$2.49	0	0.00%	\$2.49
29	630-64-28	PAINT, SPRAY, MARKING	Gallon	\$13.99	0.35	2.50%	\$14.34

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

May 8, 2007

CHANGE NOTICE NO. 1
 TO
 CONTRACT NO. 071B5200299
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF VENDOR The Nelson Paint Company Three Nelson Drive Kingsford, MI 49802	TELEPHONE: Laurie Massicotte (906) 774-5566 ext. 140
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 Seleana Samuel
Contract Compliance Inspector: Kristina Squibb 517-373-7987 TREE MARKING AND BOUNDARY PAINT-DNR	
CONTRACT PERIOD: From: August 8, 2005 To: August 31, 2007	
TERMS Net 45	SHIPMENT 2-3 Days ARO
F.O.B. Delivered	SHIPPED FROM Kingsford, MI
MINIMUM DELIVERY REQUIREMENTS 1 Unit	

NATURE OF CHANGE(S):

Effective immediately this Contract is EXTENDED 60 days. The new ending date is August 31, 2007.

All other pricing, specifications, terms and conditions remain unchanged.

AUTHORITY/REASON:

Per vendor contact (Sharon Neubauer) on April 25, 2007, agency contact (Kris Squibb) dated May 7, 2007 and DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,090,943.20

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

August 12, 2005

**NOTICE
 OF
 CONTRACT NO. 071B5200299
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR <p style="text-align: center;">The Nelson Paint Company Three Nelson Drive Kingsford, MI 49802</p>	TELEPHONE: Laurie Massicotte (906) 774-5566 ext. 140
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 Seleana Samuel
Contract Compliance Inspector: Kristina Squibb 517-373-7987 <p style="text-align: center;">TREE MARKING AND BOUNDARY PAINT-DNR</p>	
CONTRACT PERIOD: From: August 8, 2005 To: June 30, 2007	
TERMS <p style="text-align: center;">Net 45</p>	SHIPMENT <p style="text-align: center;">2-3 Days ARO</p>
F.O.B. <p style="text-align: center;">Delivered</p>	SHIPPED FROM <p style="text-align: center;">Kingsford, MI</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">1 Unit</p>	

The terms and conditions of this Contract are those of **ITB #07115200168** this Contract Agreement and the vendor's quote dated **April 6, 2005**. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$1,090,943.20**

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

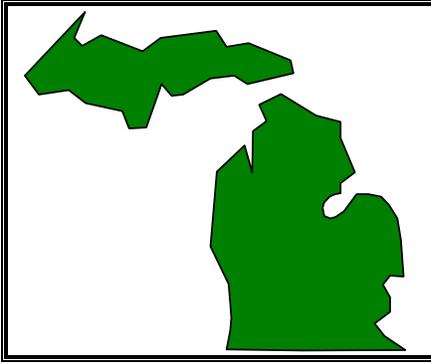
CONTRACT NO. 071B5200299
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR <p style="text-align: center;">The Nelson Paint Company Three Nelson Drive Kingsford, MI 49802</p>		TELEPHONE: Laurie Massicotte (906) 774-5566 ext. 140 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-2619 Seleana Samuel
Contract Compliance Inspector: Kristina Squibb 517-373-7987 <p style="text-align: center;">TREE MARKING AND BOUNDARY PAINT-DNR</p>		
CONTRACT PERIOD: From: August 8, 2005 To: June 30, 2007		
TERMS <p style="text-align: center;">Net 45</p>	SHIPMENT <p style="text-align: center;">2-3 Days ARO</p>	
F.O.B. <p style="text-align: center;">Delivered</p>	SHIPPED FROM <p style="text-align: center;">Kingsford, MI</p>	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">1 Unit</p>		
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of ITB #071I5200168 this Contract Agreement and the vendor's quote dated April 6, 2005. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p>		
Estimated Contract Value: \$1,090,943.20		

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the [ITB No.071I5200168](#). Orders for delivery of equipment will be issued directly by the [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.

<p>FOR THE VENDOR:</p> <p style="text-align: center;">The Nelson Paint Company _____ Firm Name</p> <p style="text-align: center;">_____ Authorized Agent Signature</p> <p style="text-align: center;">_____ Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____ Date</p>	<p>FOR THE STATE:</p> <p style="text-align: center;">_____ Signature William C. Walsh, CPPB, Buyer Manager Name/Title Commodities Division, Acquisition Services _____ Title</p> <p style="text-align: center;">_____ Date</p>
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STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services

Contract No. 071B5200299
The Nelson Paint Company

Buyer Name: Seleana L. Samuel
Telephone Number: 517-241-2619
E-Mail Address: samuels1@michigan.gov

Tree Marking & Boundary Paint

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**Article1 – Statement of Work (SOW)****1.0 Introduction****1.001 DEFINING DOCUMENT**

This Contract is for tree marking and boundary paint for use by the Department of Natural Resources (DNR). However, if the Contractor and the State agree, additional State agencies may participate should the need develop.

1.002 PROJECT TITLE AND DESCRIPTION (RESERVED)**1.03 PROJECT CONTROL**

The Contractor will carry out this Contract under the direction of DNR.

1.004 COMMENCEMENT OF WORK

Contractor shall show acceptance of this agreement by signing two copies of this Contract and returning them to the Buyer. Contractor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms.

1.1 Product Quality**1.101 SPECIFICATIONS**

Specifications are per the Item Listing on page 19 of this document.

1.102 RESEARCH AND DEVELOPMENT (RESERVED)

The Contractor has a group of chemist on staff, which conducts research on product improvement.

1.103 QUALITY ASSURANCE PROGRAM

The Contractor conducts daily quality checks prior to producing and packaging products. These quality checks include (but are not limited to): temperature control (for raw materials), humidity control (for raw materials), machinery maintenance, filter, inventory and batch testing.

1.104 WARRANTY FOR PRODUCTS OR SERVICES

There is a one- year warranty of product (with proper application of product, storage and paint application equipment sold by the Contractor). Any alleged product failures must be reported to Laurie Massicotte at 1-800-236-9278 extension 140 or Doyle Yoder at 800-236-9278 extension 127. It will be required that samples of failed material are submitted to the Contractor, allowing them to confirm product quality level. For defective paint equipment notify Ken Draper at 800 236-91277 extension 115 or 124. Defective parts and products will be replaced without charge if proper maintenance was performed on said product.

1.2 Service Capabilities**1.201 CUSTOMER SERVICE/ORDERING**

The Contractor has the capacity to receive orders electronically, by phone, facsimile, and by written order. The Contractor has provided a statewide toll-free telephone number for phone orders. The Contractor's customer service and order entry staff are trained to screen orders for any quantities that appear to be abnormal or excessive. The Customer Service department is available from 8:00 AM to 5:00 PM weekdays. The Contractor shall have experienced sales representatives make timely personal visits to State accounts.

Orders may be placed as follows:

Mail: Nelson Paint Company, Three Nelson Drive, Kingsford, MI 49802
 Fax: 1-906-774-4264 Telephone: 1-800-236-9278 or 1-906-774-5566
 e-mail: massicottel@nelsonpaint.com or www.nelsonpaint.com

All orders are acknowledged with a telephone call, fax or e-mail from the Contractor. The purpose of the acknowledgement is to verify correct product, quantity, price, delivery method and location.

In addition, the Contractor has a 24-hour Emergency Hotline for spills (1-800-255-3924).

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

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

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

1.202 TRAINING

The Contractor shall provide training to individual agencies, when necessary, on aspects of ordering, shipping, billing, and receiving. At the request of the Contract Administrator, the Contractor shall provide in-service training to agency personnel on products, installation, and product safety issues. The Contractor shall also provide agency training jointly with the State as needed during the period covered by this Contract at no additional charge. Below is a list of training coordinators for the Contractor:

<u>Training</u>	<u>Contact</u>
Forestry/Tree Marking Equipment	Ken Draper 1-800-236-9278 ext 115 or 124
Purchasing/Billing/Receiving/Equipment	Laurie Massicotte 1-800-236-9278 ext 140
Accounts Receivable/Billing	Stephanie VanPembrok 1-800-236-9278 ext 133
Safety/Material Safety Data Sheets	Nick Goriegsky 1-800-236-9278 ext 144

1.203 REPORTING

The Contractor has a completely integrated computer system which allows them to formulate and format any or all reports that may be required concerning this Contract, but not limited to, total items purchased State-wide and by individual agencies, open invoice reports, delivery compliance reports, quantity reports, service compliance reports and any other pertinent information.

1.204 SPECIAL PROGRAMS (RESERVED)

1.205 SECURITY

The Contractor hires established and safe nationally known freight carriers to transport product. The two most commonly used carriers are U.P. Special Delivery and Fed Ex. Both companies require the following safety checks: Motor Vehicle, Department of Transportation Compliance, Nationwide Criminal, County Criminal and drug testing.

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

The Contractor and its subcontractors shall comply with the security access requirements of individual State facilities and any additional request that the State may have regarding security.

1.3 Delivery Capabilities**1.301 TIME FRAMES**

The Contractor will deliver products in the Upper Peninsula of Michigan within 1 –2 days. Product being delivered the Lower Peninsula of Michigan will be delivered within 2-3 days. If the Contractor depletes stock of a certain type of product it will be manufactured and shipped within fifteen (15) calendar days after receipt of order.

1.302 MINIMUM ORDER

The minimum order is \$200.00 for all orders regardless of the unit of measure (quart, can or gallon, etc.).

Any order below \$200.00 will be billed collect.

1.303 PACKAGING

Packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet the requirements of Department of Transportation (D.O.T.) and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

All reels, drums, pallets and containers are included in the price of each item, and become the property of the State of Michigan.

1.304 PALLETIZING

Shipments shall be palletized whenever possible and shall conform to the following:

- Manufacturers standard 4-way shipping pallets are acceptable.
- Maximum height: 5'6"; including pallet.
- Maximum weight: 3500 pounds; including pallet.
- Pallets are to be securely banded or shrink-wrapped.
- The cost of palletizing must be included in the unit price.

1.305 DELIVERY TERM

Prices are "F.O.B. Delivered" with transportation charges prepaid on all orders of \$200.00 or more to the State. Other F.O.B. terms will not be accepted.

Freight Charges - Should an agency order below the minimum order requirement of a Contract, or should a Contractor quote F.O.B. Shipping Point on one-time purchases, the Contractor for shipping products must use one of the following carriers. Orders being shipped from or to in the State of Michigan or the States of Illinois, Indiana, Ohio, and Wisconsin, use Alvan Motor Freight (Tel: (800) 632-4172, attention Earl Batenburg); orders being shipped from or to ALL other states, use Roadway Express, Inc. (Tel: (800) 253-3193, attention David Lewis).

United Parcel Service (UPS) must be used in instances where the weight of the shipment is less than 150 lbs., or where shipments could be separated into smaller parcels such as three (3) 50 lb. packages. Also, if the shipment weighs less than 150 lbs, but costs \$3000 or more, it must be sent by the appropriate carrier listed above.

If the Contractor fails to follow these shipping instructions, the State shall pay the carrier used and deduct the difference from the Contractor's invoice for the amount that was charged and the amount that would have been charged if the requested carrier had been used.

1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION

1.4 Project Price**1.401 PROPOSAL PRICING**

Pricing is per the Item Listing on page 19 of this document.

1.402 QUICK PAYMENT TERMS (RESERVED)**1.403 PRICE TERM**

Prices quoted are the maximum for a period of 365 days from the date this Contract becomes effective.

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

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

1.5 Quantity term

Requirements – Contractor agrees to supply all that the State requires

1.6 Other Terms and Conditions Needed for this Contract (RESERVED)



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

This Contract is for tree marking and boundary paint for the State of Michigan. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by the Department of Natural Resources (DNR) on the Purchase Order Contract Release Form.

Indicated on the Contract cover page is the "ship to" address for the participating agency. However, if the Contractor and the State agree, additional State agencies may participate should the need develop.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

This Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the Department of Natural Resources, hereinafter known as *DNR*. Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

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

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

All communications covering this procurement must be addressed to:

Department of Management and Budget
Acquisition Services
Attn: Seleana L. Samuel
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 241-2619
samuels1@michigan.gov

2.003 NOTICE

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

2.004 CONTRACT TERM

The term of this Contract will be for two (2) years and will commence with the issuance of a Contract. This will be approximately August 8, 2005 through June 30, 2007.



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

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

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

2.005 GOVERNING LAW

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

2.006 APPLICABLE STATUTES

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

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.

**2.007 RELATIONSHIP OF THE PARTIES**

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

2.008 HEADINGS

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

2.009 MERGER

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

2.010 SEVERABILITY

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

2.011 SURVIVORSHIP

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

2.012 NO WAIVER OF DEFAULT

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

2.013 PURCHASE ORDERS (RESERVED)**2.1 Vendor/Contractor Obligations****2.101 ACCOUNTING RECORDS**

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

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.
2. The Contractor shall also notify the Acquisition Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.



The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Acquisition Services or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 SOFTWARE COMPLIANCE (RESERVED)

2.104 ADMINISTRATIVE FEE

The Nelson Paint Company will pay the State of Michigan a 5% quarterly administrative fee on all sales throughout the life of this Contract. Checks for payment of administrative fee to the State should be made payable to the State of Michigan and sent to:

Department of Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut Street
P.O. Box 30681
Lansing, MI 48909

In addition, reports shall be submitted to the buyer for the period covered by the check. The report shall include the date of the check, amount of the check, and the volume of sales the user administrative fee is based upon for both the State of Michigan and MiDeal members.

2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE) (RESERVED)

2.106 PREVAILING WAGE (RESERVED)

2.107 PAYROLL AND BASIC RECORDS (RESERVED)

2.108 COMPETITION IN SUB-CONTRACTING

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

2.109 CALL CENTER DISCLOSURE

Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this agreement.

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

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

**2.202 CONTRACT PAYMENT SCHEDULE (RESERVED)****2.203 POSSIBLE PROGRESS PAYMENTS (RESERVED)****2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (RESERVED)****2.205 ELECTRONIC PAYMENT AVAILABILITY**

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

2.206 PERFORMANCE OF WORK BY CONTRACTOR (RESERVED)**2.3 Contract Rights and Obligations****2.301 INCURRING COSTS**

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

2.302 CONTRACTOR RESPONSIBILITIES

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

2.303 ASSIGNMENT AND DELEGATION

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

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

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

2.304 TAXES

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

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

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

2.305 INDEMNIFICATIONGeneral Indemnification

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

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in this Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or



proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Code Indemnification

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

Indemnification Obligation Not Limited

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

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of this Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Indemnification Procedures

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

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity



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

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

2.306 LIMITATION OF LIABILITY

The Contractor's liability for damages to the State shall be limited to two times the value of this Contract or \$1,000,000.00 which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

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

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

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

2.310 PURCHASING FROM OTHER STATE AGENCIES (RESERVED)

**2.311 TRANSITION ASSISTANCE**

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 90 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

2.312 RESERVED**2.313 RESERVED****2.314 WEBSITE INCORPORATION**

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

2.4 Contract Review and Evaluation**2.401 CONTRACT COMPLIANCE INSPECTOR**

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

Kristina A. Squibb, Buyer
Mich. Dept. of Natural Resources
Grants, Contracts & Customer Systems
517.373.7987
Email: squibbk@michigan.gov

2.402 PERFORMANCE REVIEWS

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

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

**2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS**

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

2.5 Quality and Warranties**2.501 PROHIBITED PRODUCTS**

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

2.502 QUALITY ASSURANCE

The State reserves the right to periodically test products, which have been received to verify compliance with specifications. If laboratory analysis shows that the product does not meet specifications or fails to perform satisfactorily at any time, the Contractor shall be responsible for:

1. All costs of testing and laboratory analysis.
2. Disposal and/or replacement of all products which fail to meet specifications.
3. All costs of repair and/or replacement of equipment deemed to have been damaged by substandard products as determined by the State.

2.503 INSPECTION

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of this Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The Contractor shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. The Contractor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The State has the authority to dispose of the goods without further liability to the State in the event the Contractor fails to make arrangements within the specified time period.

2.504 GENERAL WARRANTIES (goods)

Warranty of Merchantability – Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.

Warranty of fitness for a particular purpose – When Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

Warranty of title – Contractor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under this agreement, shall be delivered free of any rightful claim of any third person by or infringement or the like.

**2.505 CONTRACTOR WARRANTIES (RESERVED)****2.506 STAFF (RESERVED)****2.507 RESERVED****2.508 EQUIPMENT WARRANTY (RESERVED)****2.509 RESERVED****2.6 Breach of Contract****2.601 BREACH DEFINED**

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

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

2.602 NOTICE AND THE RIGHT TO CURE

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

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under this Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under this Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of this Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) this Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the



Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under this Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.7 Remedies

2.701 CANCELLATION

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

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

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

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

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

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in this Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of this Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel this Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.



4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.702 RIGHTS UPON CANCELLATION

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

2.703 LIQUIDATED DAMAGES (RESERVED)

2.704 STOP WORK (RESERVED)

2.705 SUSPENSION OF WORK (RESERVED)

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

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

2.802 TIME EXTENTIONS

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

2.803 MODIFICATION

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



ACCEPTABLE TO THE STATE, THIS CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.

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

2.804 AUDIT AND RECORDS UPON MODIFICATION

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

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

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

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

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

2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of this Contract, including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
 - (1) The date, circumstances, and source of the order; and
 - (2) That the Contractor regards the order as a change order.
- (b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

ITEM LISTING/PRICE SHEET

Item #	Part Number	Description	U/M	Price
1	630-64-28-0710	BLACK, QUART, TREE MARKIN	Qt	\$3.39
2	630-64-28-0820	BLACK, QUART, BOUNDARY GR	Qt	\$3.50
3	630-64-28-0850	BLACK, BOUNDARY GRADE, 12	CN	\$2.49
4	630-64-28-1020	BLUE, QUART, TREE MARKING	Qt	\$3.39
5	630-64-28-1040	BLUE, QUART, BOUNDARY GRA	Qt	\$3.50
6	630-64-28-1050	BLUE, BOUNDARY GRADE, 12	CN	\$2.49
7	630-64-28-4100	LIGHT BLUE, QUART, BOUNDA	Qt	\$3.50
8	630-64-28-4200	LIGHT GREEN, QUART, TREE	Qt	\$3.39
9	630-64-28-4230	LIGHT GREEN, BOUNDARY GRA	CN	\$2.49
10	630-64-28-5140	ORANGE, QUART, BOUNDARY G	Qt	\$4.50
11	630-64-28-5160	ORANGE, QUART, LEADED BOU	Qt	\$4.50
12	630-64-28-5180	ORANGE, QUART, TRACER PAI	Qt	\$3.99
13	630-64-28-5200	ORANGE, QUART, TREE MARKI	Qt	\$3.33
14	630-64-28-5215	ORANGE, BOUNDARY GRADE, 1	CN	\$2.49
15	630-64-28-5220	ORANGE, GALLON, TREE MARK	Gallon	\$11.24
16	630-64-28-5340	ORANGE, GALLON, BOUNDARY	Gallon	\$15.24
17	630-64-28-7480	RED, QUART, TREE MARKING	Qt	\$3.50
18	630-64-28-7490	RED, QUART, BOUNDARY GRAD	Qt	\$4.25
19	630-64-28-7500	RED, GALLON, TREE MARKING	Gallon	\$11.24
20	630-64-28-7520	RED, GALLON, BOUNDARY GRA	Gallon	\$13.99
21	630-64-28-7700	TRACER PAINT TEST KITS	Gallon	\$19.00
22	630-64-28-9100	YELLOW, BOUNDARY GRADE, 1	CN	\$2.49
23	630-64-28-9162	YELLOW, QUART, TREE MARKI	Qt	\$3.50
24	630-64-28-9164	YELLOW, QUART, BOUNDARY G	qt	\$4.70
25	630-64-28-9170	YELLOW, GALLON, TREE MARK	Gallon	\$11.24
26	630-64-28-9220	YELLOW, GALLON, BOUNDARY	Gallon	\$15.50
27	630-64-28	PAINT, SPRAY, MARKING	Qt	\$3.40
28	630-64-28	PAINT, SPRAY, MARKING	CN	\$2.49
29	630-64-28	PAINT, SPRAY, MARKING	Gallon	\$13.99