

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

December 22, 2008

CHANGE NOTICE NO. 1  
 TO  
 CONTRACT NO. 071B6200128  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF VENDOR		TELEPHONE: (231) 510-8122
<b>Beem Fencing dba Mark Beem</b> <b>861 N. Green Road</b> <b>Lake City, MI 49651</b>  <b>info@beemfencing.com</b>		<b>Mark Beem</b>
		BUYER/CA (517) 373-6535 <b>William C. Walsh, CPPB</b>
Contract Compliance Inspector: Brett Nelson (517) 241-2934		
<b>Woven Wire Fencing – Department of Agriculture</b>		
CONTRACT PERIOD: From: <b>February 1, 2006</b>		To: <b>January 31, 2010</b>
TERMS	SHIPMENT	
<b>2% - 30, Net 45</b>	<b>As Required</b>	
F.O.B.	SHIPPED FROM	
<b>Delivered</b>	<b>Lake City, MI</b>	
MINIMUM DELIVERY REQUIREMENTS		
<b>N/A</b>		

**NATURE OF CHANGE(S):**

Effective November 24, 2008, this Contract is hereby EXTENDED to January 31, 2010, per section 2.004 of the Contract which states:

“The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately February 1, 2006, through January 31, 2009.

Option. The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and Beem Fencing’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.”

NOTE: The fax number for Beem Fencing is (231) 839-1139.

All other terms, conditions, and pricing not noted above shall remain the same.

**AUTHORITY/REASON:**

Per agency request (PRF dated 11/21/08), vendor agreement (fax dated 12/9/08), and DMB/Purchasing Operations’ approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: **\$750,000.00**

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

**NOTICE  
 OF  
 CONTRACT NO. 071B6200128  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR		TELEPHONE: Mark Beem <b>(231) 510-8122</b>
<b>Beem Fencing dba Mark Beem 861 N. Green Road Lake City, MI 49651</b>		
		BUYER/CA (517) 373-6535 <b>William C. Walsh, CPPB</b>
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<b>2% - 30, Net 45</b>	<b>As Required</b>	
F.O.B.	SHIPPED FROM	
<b>Delivered</b>	<b>Lake City, MI</b>	
MINIMUM DELIVERY REQUIREMENTS		
<b>N/A</b>		

**The terms and conditions of this Contract are attached.**

**Total Estimated Contract Value: \$ 750,00.00**

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

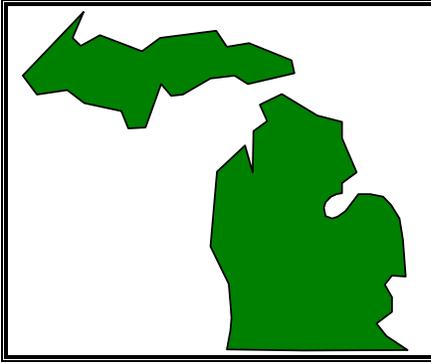
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CONTRACT PERIOD: From: <b>February 1, 2006</b>		To: <b>January 31, 2009</b>
TERMS <b>2% - 30, Net 45</b>	SHIPMENT <b>As Required</b>	
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>Lake City, MI</b>	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		
MISCELLANEOUS INFORMATION:  <b>The terms and conditions of this Contract are attached.</b>  <b>Total Estimated Contract Value: \$ 750,00.00</b>		

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the **ITB No. 07116200042**. Orders for delivery of equipment will be issued directly by the **Department of Agriculture** through the issuance of a Purchase Order Form.

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

<b>FOR THE VENDOR:</b>  <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="text-align: center;"><b>Beem Fencing dba Mark Beem</b></p> <p style="text-align: center;">Firm Name</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="text-align: center;">Authorized Agent Signature</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="text-align: center;">Date</p>	<b>FOR THE STATE:</b>  <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="text-align: center;">Signature <b>William C. Walsh, CPPB, Buyer Manager</b></p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="text-align: center;">Name/Title <b>Commodities Division, Acquisition Services</b></p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="text-align: center;">Division</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="text-align: center;">Date</p>
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**STATE OF MICHIGAN**  
**Department of Management and Budget**  
**Acquisition Services**

Contract No. 071B6200128  
[Fencing of Farms to Prevent the Spread of Bovine Tuberculosis](#)

Buyer Name: William C. Walsh  
Telephone Number: 517 373-6535  
E-Mail Address: [walshw@michigan.gov](mailto:walshw@michigan.gov)



**Fencing of Farms to Prevent the Spread of Bovine Tuberculosis**

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## **Article1 – Statement of Work (SOW)**

### **1.0 Introduction**

#### **1.001 DEFINING DOCUMENT**

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

#### **1.002 PROJECT TITLE AND DESCRIPTION**

This Contract is for the installation of woven wire fencing on designated farms in Northern Michigan to exclude deer from feed storage areas to fight the spread of Bovine Tuberculosis.

#### **1.003 PROJECT CONTROL**

##### Project Control

Beem Fencing will carry out this project under the direction and control of the Michigan Department of Agriculture in conjunction with the United States Department of Agriculture Wildlife Services.

#### **1.004 COMMENCEMENT OF WORK**

Beem Fencing shall show acceptance of this agreement by signing both copies of this Contract and returning it to the Contract Administrator. Beem Fencing 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**

The USDA Wildlife Service will be responsible for performing initial consultation and designing the fencing for qualifying farms. The Michigan Department of Agriculture will be responsible for issuing the purchase order to complete the project.

Beem Fencing shall provide all labor and materials to complete each project per the following specifications:

##### **Woven Wire Fence**

- a. Woven wire fences shall be a minimum of 10 feet tall.
- b. Woven wire material must be a minimum of 12.5 gauge galvanized steel wire. All wire crossings must be knotted with a no-slip knot. The distance between vertical and horizontal stay wires shall not exceed 12 inches.

##### **Posts**

- a. All gate, corner and end posts must be non-galvanized steel and a minimum of 4 inches in diameter, ¼ inch thick by 14 feet long.
- b. All line posts must be non-galvanized steel and a minimum of 2 inches in diameter, ¼ inch thick by 14 feet long.
- c. All posts must be sunk a minimum of 4 feet in ground (soil permitting). All posts must be hydraulically pounded or driven into the ground.
- d. All corner, gate and end posts must contain a minimum of single H-bracing.



**Gates**

- a. Gates must be 14 feet wide by 8 feet tall and hung no more than 12 inches off the ground.
- b. Gate frames must be constructed of Schedule 40 galvanized tubular steel no less than 1.5 inches outside diameter with either woven wire or chain link fence material stretched across the frame and securely fastened.

**General**

- a. Upon completion of installation, fence shall be straight, tight and must not sag.
- b. Contractor shall be responsible for clean-up and removal of all fencing debris upon completion of work.
- c. Contractor shall be responsible for communications with landowner regarding work schedule at their site.
- d. Aside from unforeseen circumstances, Contractor is expected to complete installation of fence in a timely manner.
- e. Payments will not be made until completion of each fence installation and inspection by USDA Wildlife Service.

**1.102 RESEARCH AND DEVELOPMENT-RESERVED**

**1.103 QUALITY ASSURANCE PROGRAM-RESERVED**

**1.104 WARRANTY FOR PRODUCTS OR SERVICES**

Bidders shall discuss all aspects of their warranty. This shall include the warranty associated with the actual product being proposed, as well as the warranty associated with any service work performed under the Contract. Bidders shall also discuss how they will handle any repairs that need to be made due to damaged or defective product, how installation problems will be rectified, and the process State agencies should follow to report warranty issues.

**1.2 Service Capabilities**

**1.201 CUSTOMER SERVICE/ORDERING-RESERVED**

**1.202 TRAINING-RESERVED**

**1.203 REPORTING-RESERVED**

**1.204 SPECIAL PROGRAMS-RESERVED**

**1.205 SECURITY-RESERVED**

**1.3 Delivery Capabilities**

**1.301 TIME FRAMES-RESERVED**

**1.302 MINIMUM ORDER - RESERVED**

**1.303 PACKAGING - RESERVED**

**1.304 PALLETIZING - RESERVED**

**1.305 DELIVERY TERM**

Prices shall be quoted "F.O.B. Delivered" Work Site with transportation charges prepaid on all orders.



**1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION**

**1.4 Project Price**

**1.401 PRICING**

The following shall be the pricing for this Contract. Any changes to this pricing shall be negotiated and be in writing in the form of a Contract Change Notice.

Fence, Woven Wire, 12.5 Gauge Galvanized Steel Wire, 10 Feet High \$450.00 Per Roll

Steel Posts Gate/Corner Posts, Non-Galvanized Steel, 4" Diameter, 1/4" Thick by 14' Long \$45.00 Per Post

Line Posts, Non-Galvanized Steel, 2' Diameter, 1/4" Thick by 14' Long \$35.00 Per Post

Gates, 14' Wide by 8" High, Schedule 40 Galvanized Tubular Steel, on less than 1.5 inch Outside Diameter. Gate price to include all mounting hardware including : hinges, latches, etc. \$400.00 Per Gate

Labor \$6.50 Per Foot

**1.402 QUICK PAYMENT TERMS**

A 2% discount will apply if payment is made within 30 days from date of invoice.

**1.403 PRICE TERM**

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

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

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

**1.5 Quantity term**

Vendor 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 the installation of woven wire fencing on designated farms in Northern Michigan to exclude deer from feed storage areas to fight the spread of Bovine Tuberculosis for the State of Michigan. Exact quantities to be purchased are unknown, however Beem Fencing 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 Beem Fencing by various State Agencies on the Purchase Order Contract Release Form.

#### **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 Michigan Department of Agriculture, hereinafter known as MDA. Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

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

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

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

Department of Management and Budget  
Acquisition Services  
Attn: William C. Walsh  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
(517) 373-3565  
walshw@michigan.gov

#### **2.003 NOTICE**

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

#### **2.004 CONTRACT TERM**

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately February 1, 2006 through January 31, 2009.

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



**Extension.** At the sole option of the State, the Contract may also be extended. Contractor performance, quality of products, price, cost savings, and Beem Fencing’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 Beem Fencing within 30 days, provided that the State gives Beem Fencing a preliminary written notice of its intent to extend at least 60 days before the Contract expires. The preliminary notice does not commit the State to an extension. If the State 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, Beem Fencing 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 Beem Fencing is that of client and independent Contractor. No agent, employee, or servant of Beem Fencing or any of its sub-Contractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. Beem Fencing will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and sub-Contractors 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 this 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 Beem Fencing'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**

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

**2.1 Vendor/Contractor Obligations**

**2.101 ACCOUNTING RECORDS**

Beem Fencing and all sub-Contractors 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 this Contract or extension thereof.

**2.102 NOTIFICATION OF OWNERSHIP**

Beem Fencing shall make the following notifications in writing:

1. When Beem Fencing 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, Beem Fencing shall notify Acquisition Services within 30 days.
2. Beem Fencing 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.



Beem Fencing 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 Beem Fencing's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Beem Fencing ownership or officer change.

**2.103 SOFTWARE COMPLIANCE - RESERVED**

**2.104 RESERVED**

**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**

Beem Fencing shall select sub-Contractors (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**

Beem Fencing and/or all sub-Contractors 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-RESERVED**

**2.202 CONTRACT PAYMENT SCHEDULE**

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

The specific payment schedule for this Contract will be mutually agreed upon by the State and Beem Fencing. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

**2.203 POSSIBLE PROGRESS PAYMENTS - RESERVED**

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

**2.205 ELECTRONIC PAYMENT**

Electronic transfer of funds is available to State Contractors. It is **MANDATORY** that vendors 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](http://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 Beem Fencing prior to signing of this Contract. The State fiscal year is October 1st through September 30th. Beem Fencing 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

Beem Fencing will be required to assume responsibility for all Contractual activities, whether or not they perform them. Further, the State will consider Beem Fencing 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 sub-Contracted, this Contract must include a list of sub-Contractors, including firm name and address, contact person and a complete description of work to be sub-Contracted. The State reserves the right to approve sub-Contractors and to require Beem Fencing to replace sub-Contractors found to be unacceptable. Beem Fencing is totally responsible for adherence by the sub-Contractor to all provisions of this Contract. Any change in sub-Contractors must be approved by the State, in writing, prior to such change.

#### 2.303 ASSIGNMENT AND DELEGATION

Beem Fencing 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, Beem Fencing may not assign the right to receive money due under this Contract without the prior written consent of the Director of Acquisition Services.

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

**Beem Fencing must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that Beem Fencing 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 Beem Fencing upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

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

#### 2.305 INDEMNIFICATION

##### General Indemnification

To the fullest extent permitted by law, Beem Fencing 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 Beem Fencing or any of its sub-Contractors 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 Beem Fencing of any representation or warranty made by Beem Fencing 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 Beem Fencing 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 Beem Fencing, by any of its sub-Contractors, 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 Beem Fencing or any of its sub-Contractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, Beem Fencing 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 Beem Fencing or its sub-Contractors, 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 Beem Fencing's opinion be likely to become the subject of a claim of infringement, Beem Fencing shall at Beem Fencing'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 Beem Fencing, (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 Beem Fencing'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, Beem Fencing 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 Beem Fencing or any of its sub-Contractors, 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 Beem Fencing or any of its sub-Contractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

### Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect not withstanding the expiration or early termination of 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 Stateal 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 Stateal or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the



claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

**2.306 LIMITATION OF LIABILITY**

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

**2.307 CONTRACT DISTRIBUTION**

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

**2.308 FORM, FUNCTION, AND UTILITY-RESERVED**

**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, Beem Fencing 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-RESERVED**

**2.312 RESERVED**

**2.313 RESERVED**

**2.314 WEBSITE INCORPORATION**

State expressly states that it will not be bound by any content on Beem Fencing's website, even if Beem Fencing'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, the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Acquisition Services. The Contract Compliance Inspector for this project is:

Brett Nelson  
 Michigan Department of Agriculture  
 Animal Industry Division  
 P.O. Box 30017, Lansing, MI 48909  
 517 241-2934  
 nelsonb@michigan.gov

**2.402 PERFORMANCE REVIEWS**

Acquisition Services in conjunction with the Michigan Department of Agriculture may review with Beem Fencing 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, Beem Fencing shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Acquisition Services, the Contract may be canceled for default. Delivery by Beem Fencing 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**

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

**2.502 QUALITY ASSURANCE - RESERVED****2.503 INSPECTION - RESERVED****2.504 GENERAL WARRANTIES (goods) - RESERVED****2.505 CONTRACTOR WARRANTIES**

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

1. Beem Fencing will perform all services in accordance with high professional standards in the industry;
2. Beem Fencing will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. Beem Fencing will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. Beem Fencing will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. Beem Fencing will perform the services in a manner that complies with all applicable laws and regulations;
6. Beem Fencing has duly authorized the execution, delivery and performance of the Contract;
7. Beem Fencing is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract.
8. The Contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the Contract's requirements.



- 9. Beem Fencing is qualified and registered to transact business in all locations where required.
- 10. Neither Beem Fencing nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any Contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- 11. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

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

**2.603 EXCUSABLE FAILURE**

- 1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another Contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its sub-Contractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-



- performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to Beem Fencing as of the date specified by the State in a written notice of cancellation to Beem Fencing. Beem Fencing 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 Beem Fencing which are caused by acts or omissions of its sub-Contractors will not relieve Beem Fencing of its obligations under the Contract except to the extent that a sub-Contractor is itself subject to any excusable failure condition described above and Beem Fencing 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.

## 2.7 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 Beem Fencing. In the event that Beem Fencing breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to Beem Fencing, 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, Beem Fencing shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

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

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

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not



- limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving Beem Fencing 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. Beem Fencing 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 Beem Fencing. The State shall give Beem Fencing 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 Beem Fencing, an officer of Beem Fencing, or an owner of a 25% or greater share of Beem Fencing, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or sub-Contract; 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 Beem Fencing's business integrity.
  5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

## 2.702 RIGHTS UPON CANCELLATION

### A. Rights and Obligations Upon Termination

- (1) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that Beem Fencing maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those sub-Contracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (2) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for partially completed Deliverables, on a percentage of completion basis. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive



equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

- (3.) If any such termination by the State is for cause, the State shall have the right to set-off against any amounts due Contractor the amount of any damages for which Contractor is liable to the State under this Contract or pursuant to law or equity.
- (4.) Upon a good faith termination, the State shall have the right to assume, at its option, any and all sub-Contracts and agreements for services and materials provided under this Contract, and may further pursue completion of the Services under this Contract by replacement Contract or otherwise as the State may in its sole judgment deem expedient.

**2.703 LIQUIDATED DAMAGES-RESERVED**

**2.704 STOP WORK-RESERVED**

**2.8 Changes, Modifications, and Amendments**

**2.801 APPROVALS**

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

**2.802 TIME EXTENTIONS**

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

**2.803 MODIFICATION**

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

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

**2.804 AUDIT AND RECORDS UPON MODIFICATION**

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

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this Contract to the Contract Administrator in Acquisition Services. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state



shall have the right to examine and audit all of Beem Fencing's records, including computations and projections, related to:

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

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

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

**2.805 CHANGES**

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the Contract, including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the State-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 Beem Fencing gives the Contract Administrator written notice stating:
  - (1) The date, circumstances, and source of the order; and
  - (2) That Beem Fencing 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 Beem Fencing to an equitable adjustment.



### **Article 3 – Certifications and Representations**

#### **3.102 FREEDOM OF INFORMATION ACT**

All information in Beem Fencing's proposal and this Contract is subject to the provisions of the Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq

#### **3.302 WORKPLACE SAFETY**

1. In performing work under this Contract on State premises, Beem Fencing shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Beem Fencing shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation by Beem Fencing of such safety requirements, rules, laws or regulations shall be a material breach of the Contract subject to the cancellation provisions contained herein.
2. In performing services for the State pursuant to this Contract, Beem Fencing shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, Beem Fencing shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to Beem Fencing. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

#### **3.303 WORKPLACE DISCRIMINATION**

Beem Fencing represents and warrants that in performing services for the State pursuant to this Contract, Beem Fencing agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental handicap or disability. Beem Fencing further agrees that every subContract entered into for the performance of any Contract or purchase order resulting here from will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each sub-Contractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq., and the Persons With Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq., and any breach thereof may be regarded as a material breach of the Contract or purchase order.

Vendor hereby represents that in performing this Contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or 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.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

#### **3.304 LABOR RELATIONS**

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq., the State shall not award a Contract or subContract to an employer whose name appears in the current register of employers failing to correct an **unfair labor practice** compiled pursuant to Section 2 of the Act. A Contractor of the State, in relation to the Contract, shall not enter into a Contract with a sub-Contractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Beem Fencing as an employer, or the name of the sub-Contractor, manufacturer or supplier of Beem Fencing appears in the register.

Beem Fencing represents and warrants that the company does not appear in the current register of employers failing to correct an unfair labor practice.



3.307 LIABILITY INSURANCE

A. Insurance

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

Beem Fencing waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies Beem Fencing is required to maintain pursuant to this Contract.

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

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

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

See [www.michigan.gov/cis](http://www.michigan.gov/cis)

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

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

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

- 1. Commercial General Liability with the following minimum coverage:

\$2,000,000	General Aggregate Limit other than Products/Completed Operations
\$2,000,000	Products/Completed Operations Aggregate Limit
\$1,000,000	Personal & Advertising Injury Limit
\$1,000,000	Each Occurrence Limit
\$500,000	Fire Damage Limit (any one fire)

Beem Fencing must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability certificate. Beem Fencing also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.



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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

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

**B. Sub-Contractors**

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

**C. Certificates of Insurance and Other Requirements**

Contractor shall furnish to the Office of Acquisition Services certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, Beem Fencing shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If



Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.