

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 22, 2006

NOTICE  
OF  
CONTRACT NO. 071B6200284  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR  <b>Zea Corporation 3101 Gardner Ave. Kansas City, MO 64120</b>	TELEPHONE: Susan Wintz <b>(816) 231-7700</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1650 <b>Terry Harris</b>
Contract Compliance Inspector: Mark Sandel <b>Epoxy Flood Coating Material – Michigan Department of Transportation - MDOT</b>	
CONTRACT PERIOD: From: <b>June 7, 2006</b> To: <b>June 7, 2009</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>10 – 14 Days ARO</b>
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>No Minimum Order</b>	

The terms and conditions of this Contract are those of **ITB #07116200117** this Contract Agreement and the vendor's quote dated **March 16, 2006**. 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: **\$206,085.00**

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 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
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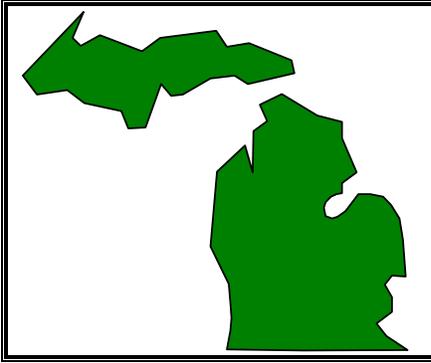
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**between**  
**THE STATE OF MICHIGAN**  
**and**

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MISCELLANEOUS INFORMATION: <p><b>The terms and conditions of this Contract are those of <a href="#">ITB #071I6200117</a> this Contract Agreement and the vendor's quote dated <a href="#">March 16, 2006</a>. 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.</b></p>	
Estimated Contract Value: <b>\$206,085.00</b>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the [ITB No.071I6200117](#). Orders for delivery of equipment will be issued directly by the [Department of Transportation](#) through the issuance of a Purchase Order Form.

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

<p><b>FOR THE VENDOR:</b></p> <p style="text-align: center;"><b>Zea Corporation</b></p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	<p><b>FOR THE STATE:</b></p> <hr/> <p style="text-align: center;">Signature  <a href="#">Jeffrey A. White, Buyer Manager</a></p> <hr/> <p style="text-align: center;">Name/Title  <b>Commodities Division, Purchasing      Operations</b></p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p>
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**STATE OF MICHIGAN**  
**Department of Management and Budget**  
**Purchasing Operations**

Contract No. [071B6200284](#)  
[EPOXY FLOOD COATING MATERIAL - MDOT](#)

Buyer Name: [Terry Harris](#)  
Telephone Number: [\(517\) 241-1650](#)  
E-Mail Address: [Harrist@michigan.gov](mailto:Harrist@michigan.gov)



**Epoxy Flood Coating Material**

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Attachments:

Specifications  
Item Listing/Pricing Page



## **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 Epoxy flood coating material.

#### **1.003 PROJECT CONTROL**

##### Project Control

- a. Zea Corporations will carry out this project under the direction and control of the Michigan Department of Transportation.
- b. Although there will be continuous liaison with Zea Corporation team, the client agency's project director will meet as necessary, with State agency Key Personnel for the purpose of reviewing progress and providing necessary guidance to Zea Corporation in solving problems that arise.

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

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

See attached for specifications.

#### **1.102 RESERVED**

#### **1.103 RESERVED**

#### **1.104 WARRANTY FOR PRODUCTS OR SERVICES - RESERVED**

### **1.2 Service Capabilities**

#### **1.201 CUSTOMER SERVICE/ORDERING**

Zea Corporation shall have the capacity to receive orders electronically, by phone, facsimile, and by written order. Zea Corporation shall provide a statewide toll-free phone number for phone orders. Zea Corporation shall have internal controls, approved by Purchasing Operations, to insure that authorized individuals with the State place orders. Zea Corporations shall verify orders that have quantities that appear to be abnormal or excessive.

Zea Corporation shall have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. Zea Corporation shall have experienced sales representatives make timely personal visits to State accounts. Zea Corporation customer service must respond to State agency inquires promptly. Zea Corporation shall provide a statewide toll-free number for customer service calls.



Zea Corporation contact for this Contract:

Susan Wintz  
Zea Corporation  
3101 Gardener Ave.  
Kansas, MO 64120  
(816) 231-7700  
susan@unitex-chemicals.com

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, the Contract shall control.

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

**1.202 TRAINING - RESERVED**

**1.203 REPORTING**

Zea Corporation shall discuss their capabilities related to generating reports. Contractor shall be able to provide various reports, when requested by the State. Examples include itemized report of total items (commodities and services) purchased by all agencies or individual agencies, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.

**1.204 SPECIAL PROGRAMS - RESERVED**

**1.205 RESERVED**

**1.3 Delivery Capabilities**

**1.301 TIME FRAMES**

All orders shall be delivered within 10- 14 calendar days after receipt of order.

**1.302 MINIMUM ORDER**

There is no minimum order.

**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.

**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**

( X ) F.O.B.

Prices shall be quoted "F.O.B. Delivered" with transportation charges prepaid on all orders to the State, or on all orders totaling or in excess of the bidder's minimum order requirement stated on the Item Listing. Other F.O.B. terms will not be accepted and shall disqualify a bidder from further consideration. This supersedes Instruction #8 on the reverse side of the Invitation To Bid cover page.

Freight Charges - Should an agency order below the minimum order requirement of a Contract, or should a vendor 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****1.4 Project Price****1.401 PROPOSAL PRICING**

See Attached Item Listing.

**1.402 QUICK PAYMENT TERMS - RESERVED****1.403 PRICE TERM**

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

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



## Article 2 – General Terms and Conditions

### 2.0 Introduction

#### 2.001 GENERAL PURPOSE

This Contract is for epoxy flood coating material 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 various State Agencies on the Purchase Order Contract Release Form.

#### 2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

This Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the Michigan Department of Transportation, hereinafter known as MDOT. Where actions are a combination of those of Purchasing Operations and the State agencies, the authority will be known as the State.

Purchasing Operations 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. Purchasing Operations is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Purchasing Operations will remain the SOLE POINT OF CONTACT throughout the procurement process.

**Zea Corporation 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 Purchasing Operations and the listed contract administrator**

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

Department of Management and Budget  
Purchasing Operations  
Attn: *Terry Harris*  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
(517) 241-1650  
[harrist@michigan.gov](mailto:harrist@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 *June 7, 2006* through *June 7, 2009*.

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



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

Written notice will be provided to the Zea Corporation within thirty (30) days, provided that the State gives the Zea Corporation a preliminary written notice of its intent to extend at least sixty (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, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

## 2.006 APPLICABLE STATUTES

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

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)  
 MI OSHA MCL §§ 408.1001 – 408.1094  
 Freedom of Information Act (FOIA) 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 Zea Corporation is that of client and independent Contractor. No agent, employee, or servant of the Zea Corporation or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. Zea Corporation 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 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 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**

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

**2.1 Vendor/Contractor Obligations****2.101 ACCOUNTING RECORDS**

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

**2.102 NOTIFICATION OF OWNERSHIP**

Zea Corporation shall make the following notifications in writing:

1. When Zea Corporation 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, Zea Corporation shall notify Purchasing Operations within 30 days.
2. Zea Corporation shall also notify the Purchasing Operations 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.



Zea Corporation shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Purchasing Operations 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 Zea Corporation'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 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**

Zea Corporation shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

**2.109 CALL CENTER DISCLOSURE-RESERVED**

**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 the Contractor after the proposed Contract Agreement has been signed and accepted by both Zea Corporation and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Contract(s) entered into, as the State and Zea Corporation will mutually agree upon the result of this Contract. 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 STATE ADMINISTRATIVE FEE (IF APPLICABLE)-RESERVED**

**2.205 ELECTRONIC PAYMENT AVAILABILITY**

Electronic transfer of funds is MANDATORY for State contractors. Zea Corporation is required 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](http://www.cpexpress.state.mi.us).



## 2.206 MiDEAL PROGRAM (IF APPLICABLE)

**Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior colleges.** As a result of the enactment of this legislation, the MiDEAL Program has been developed. This program extends the use of State contracts to program members. The State agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of State secure a greater return for the expenditure of public funds. It is the policy of Purchasing Operations, Department of Management and Budget, that the final approval to utilize any such Contract in this manner must come from Zea Corporation.

In such cases, Contract Zea Corporation supply merchandise at the established State of Michigan Contract prices and terms. Inasmuch as these are non-State agencies, all purchase orders will be submitted by, invoices will be billed to, and the authorized MiDEAL member on a direct and individual basis in accordance with Contract terms will remit payment.

Therefore, it is required that Zea Corporation indicate, by checking the appropriate box below, whether they will (first box) or will not (second box) honor orders on any Contract resulting from this Request for Quotation from State of Michigan authorized MiDEAL members. It is the responsibility of Zea Corporation to ensure the non-State agency is an authorized MiDEAL member prior to extending the State Contract price.

## 2.3 Contract Rights and Obligations

### 2.301 INCURRING COSTS

The State of Michigan is not liable for any cost incurred by Zea Corporation prior to signing of this Contract. The State fiscal year is October 1st through September 30th. Zea Corporation 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

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

### 2.303 ASSIGNMENT AND DELEGATION

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

Zea Corporation shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing Operations has given written consent to the delegation.

**Zea Corporation must obtain the approval of the Director of Purchasing Operations before using a place of performance that is different from the address that Zea Corporation provided in the bid.**



## 2.304 TAXES

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

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

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

## 2.305 INDEMNIFICATION

### General Indemnification

To the fullest extent permitted by law, Zea Corporation 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 Zea Corporation 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 Zea Corporations in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that Zea Corporations 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 Zea Corporations, 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 Zea Corporations 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, Zea Corporations 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 Zea Corporations 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 Zea Corporation's opinion be likely to become the subject of a claim of infringement, Zea Corporations shall at Zea Corporation'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 Zea Corporation'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, Zea Corporation 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 Zea Corporation or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for Zea Corporation 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 the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

#### Indemnification Procedures

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

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



obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan State 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 State 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 Zea Corporation 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 Zea Corporation; 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 Zea Corporation shall be limited to the value of the Contract.

#### **2.307 CONTRACT DISTRIBUTION**

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

#### **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, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

#### **2.310 LIABILITY INSURANCE**

##### **A. Insurance**

Zea Corporation 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 Zea Corporation's performance of services under the terms of this Contract, whether such services are performed by Zea Corporation, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.



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

Zea Corporation 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)

Zea Corporation must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. Zea Corporation 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, Zea Corporation 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.

Zea Corporation must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. Zea Corporation 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 Zea Corporation'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.

Zea Corporation 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

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

**B. Subcontractors**

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



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

Zea Corporation shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before this Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, Zea Corporation 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.

Zea Corporation shall maintain all required insurance coverage throughout the term of this 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 Zea Corporation under this Contract to any indemnified party or other persons. Zea Corporation shall be responsible for all deductibles with regard to such insurance. If Zea Corporation 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 Zea Corporation 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 Zea Corporation, or Zea Corporation shall pay the entire cost (or any part thereof) upon demand by the State.

#### **2.311 WORKPLACE SAFETY**

1. In performing work under this Contract on State premises, Zea Corporation shall conform to any specific safety requirements contained in this Contract or as required by law or regulation. Zea Corporation shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation by Zea Corporation of such safety requirements, rules, laws or regulations shall be a material breach of this Contract subject to the cancellation provisions contained herein.
2. In performing services for the State pursuant to this Contract, Zea Corporation shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, Zea Corporation 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 Zea Corporation. 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).

#### **2.312 WORKPLACE DISCRIMINATION**

Zea Corporation represents and warrants that in performing services for the State pursuant to this Contract, Zea Corporation 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. Zea Corporation 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 subcontractor. 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 this 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.

### 2.313 RESERVED

### 2.314 WEBSITE INCORPORATION

State expressly states that it will not be bound by any content on Zea Corporation's website, even if Zea Corporation'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 Purchasing Operations of the properly executed Contract Agreement(s), the person named below will be allowed to oversee this 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 such Contract(s). That authority is retained by Purchasing Operations.** The Contract Compliance Inspector for this project is:

Mark Sandel  
MDOT Central Maintenance Division  
6333 Old Lansing Rd. Lansing MI 48917  
sandelm@michigan.gov

### 2.402 PERFORMANCE REVIEWS

Purchasing Operations in conjunction with the Michigan Department of Natural Resources may review with Zea Corporation their performance under this Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Zea Corporation'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 Purchasing Operations, Zea Corporation 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 Purchasing Operations, this Contract may be canceled for default. Delivery by Zea Corporation 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

Zea Corporation agrees that the State may, upon 24-hour notice, perform an audit at Zea Corporation's location(s) to determine if Zea Corporation is complying with the requirements of this Contract. Zea Corporation agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with this 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 Zea Corporation 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 Purchasing Operations 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, Zea Corporation 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. Zea Corporation shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. Zea Corporation 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 Zea Corporation fails to make arrangements within the specified time period.

### **2.504 GENERAL WARRANTIES (goods)**

*Warranty of Merchantability* – Goods provided by vendor 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 vendor or on the container or label.

*Warranty of fitness for a particular purpose* – When vendor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the vendor'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* – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor 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 vendor, under this agreement, shall be delivered free of any rightful claim of any third person by of 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 Zea Corporation 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 Zea Corporation, the State shall provide Zea Corporation 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, workaroud 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 Zea Corporation as of the date specified by the State in a written notice of cancellation to Zea Corporation. Zea Corporation 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 Zea Corporation which are caused by acts or omissions of its subcontractors will not relieve Zea Corporation of its obligations under this Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and Zea Corporation cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaroud 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 Zea Corporation. In the event that Zea Corporation 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 Zea Corporation, 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, Zea Corporation 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 Zea Corporation 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 Zea Corporation 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. Zea Corporation 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 Zea Corporation. The State shall give Zea Corporation 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 Zea Corporation, an officer of Zea Corporation, or an owner of a 25% or greater share of Zea Corporation, 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 Zea Corporation'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 this 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

Purchasing Operations 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 Zea Corporation 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 this Contract vendor.** The item(s) may be included on this Contract, only if prior written approval has been granted by Purchasing Operations.

### 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



Zea Corporation shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Purchasing Operations. 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 Zea Corporation'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 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 Zea Corporation gives the Contract Administrator written notice stating:
  - (1) The date, circumstances, and source of the order; and
  - (2) That Zea Corporation 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 Zea Corporation to an equitable adjustment.



**MICHIGAN**  
**DEPARTMENT OF TRANSPORTATION**  
**MAINTENANCE DIVISION**

**COMMODITY:** #315-30  
**COATINGS, PROTECTIVE (FOR MASONRY INCL. CONCRETE FLOORS),**  
 Epoxy, Deck Flood coat, Type II (Double Broom & Seed)

Two component 100% solids epoxy or epoxy urethane, for use on concrete bridge decks. Quantities shown shall be shipped to locations on the delivery schedule in **55 gallon drums**, furnish parts A & B clearly marked “**Part A**” or “**Part B**” in the proper proportions to yield the amounts specified. Material to be clearly marked with product name and mixing instructions. Delivery to be made between 7:00 am and 2:00 PM on Monday through Thursday. Material safety data sheets (three each) shall be sent with each shipment. **FOB Delivered. 24 Hour notification required before delivery.**

**MATERIAL SPECIFICATIONS:**

<u>PROPERTY</u>	<u>REQUIREMENT</u>	<u>TEST METHOD</u>
Pot life	15 to 45 minutes @ 75F	ASTM C881 (50 ml sample in Paper cup)
Tensile Strength	2,000 to 5,000 psi @ 7 days	ASTM D638
Tensile Elongation	30 to 70 percent @ 7 days	ASTM D638
Viscosity	7 to 25 poises	ASTM D2393
Minimum compressive strength @ 3 hours	1,000 psi @ 75F	ASTM C109 (Use plastic inserts)
Minimum compressive strength @ 24 hours	5,000 psi @ 75F	ASTM C109
Minimum adhesion strength @ 24 hours	250 psi @ 75F	VTM-92

**APPROVED PRODUCTS LIST**

<b><u>BRAND</u></b>	<b><u>TYPE</u></b>	<b><u>VENDOR</u></b>
Unitex	Propoxy Type 3	Unitex, Inc. (Jerry Byrnrne) 3101 Gardner Kansas City, MO 64120 (816) 231-7700 FAX (816) 483-3149
E-Bond	526	Jeene Technology (Stan Bosscher) 1900 Chicago Dr. S.W. Grand Rapids, MI 49509 (616) 245-2300 Fax (616) 246-1243
Tamms	Flexolith	Tamms Industries, Inc. (Brad Nuemunitis) 3835 State Route 72 Kirkland, IL 60146 (800) 218-2667 Fax (815) 522-2323
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Poly-Carb	Flexogrid	Poly-Carb, Inc (Bruce Roeder) 33095 Brainbridge Road Cleveland, OH 44139 Phone (440) 248-1223 Fax (440) 248-1513
Axson	Akabond 811	Axson North America, Inc. ( John Maher ) 1611 Hults Dr. Eaton Rapids, MI 48827 (517) 663-8191



**PRICING**

**Estimated Annual Requirements and Delivery Schedule**

**Deliver 2,000 gallons of material on or about 5/15 annually to:**

MDOT BRIDGE MAINT.	SITE #59359	
725 SENECA PLACE	Contact: Lyn Zuiderveen	
CADILLAC, MI 49601	(231) 775-4101	Cost for site <b><u>\$12.49/Gallon</u></b>

**Deliver 8,000 gallons of material on or about 5/15 annually to:**

MDOT BRIDGE MAINT.	SITE # 59382	
800 CHANTER ROAD	Contact: Bob DuBois	
JACKSON, MI 49201	(517) 783-2871	Cost for site <b><u>\$12.49/Gallon</u></b>

**Deliver 2,700 gallons of material on or about 5/15 annually to:**

MDOT ATLANTA GARAGE.		
13490 M-32/M-33	Contact: Robert Ciupka	
ATLANTA, MI 49709	(989) 785-3514	Cost for site <b><u>\$12.49/Gallon</u></b>

**Deliver 800 gallons of material on or about 5/15 annually to:**

MDOT SPECIAL CREWS		
6345 AMERICAN AVE.	Contact: Kevin Roberts	
KALAMAZOO, MI 49001	(269) 327-4499	Cost for site <b><u>\$12.49/Gallon</u></b>

**Deliver 3,000 gallons of material on or about 5/15 annually to:**

MDOT BRIDGE MAINT		
3510 E. WASHINGTON	Contact: Mike Metiva	
SAGINAW, MI 48601	(989) 755- 8261	Cost for site <b><u>\$12.49/Gallon</u></b>

<b><u>Annual Price</u></b>	<b><u>\$68,695.00</u></b>
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<b><u>The Total price for three years</u></b>	<b><u>\$206,085.00</u></b>
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