

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

CHANGE NOTICE NO. 4
 to
CONTRACT NO. 071B1300212
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Burt Forest Products	Wellington Burt	wburt@burtforest.com
PO Box 73389	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
Ann Arbor, MI 48107-7388	(800) 322-2878	-0258

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MDOT	Tami LaFleur	(906) 786-7830	lafleurt@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Valerie Hiltz	(517) 284-7026	hiltzv@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Treated Wood Sign Posts – Michigan Department of Transportation (MDOT)			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 16, 2011	March 15, 2014	2, one year	March 15, 2016
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 30 Days	Delivered	As Required	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
Lower Peninsula – Half Truck Load, Upper Peninsula – Full Truck Load			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		March 15, 2016
CURRENT VALUE	VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE		
\$1,019,458.38	\$0.00	\$1,019,458.38		

DESCRIPTION:

Effective May 18, 2015, this contract is hereby AMENDED to reflect added item pricing on treated wood sign posts, per revised Attachment A, pricing attached. Please note the buyer is changed to Valerie Hiltz, DTMB-Procurement. All other terms, conditions, pricing and specifications remain the same. Per agency request, vendor agreement and approval from DTMB Procurement.

Contract No. 071B1300212

Attachment A. Price Proposal

Unit prices reflect F.O.B. Delivered cost per post.									
Ship to Location	Bill to Location	Post, Wood Treated 4"x6"x16' with holes	Post, Wood Treated 4"x6"x20' with holes	Post, Wood Treated 4"x6"x22' with holes	Post, Wood Treated 4"x6"x24' with holes	Post, Wood Treated 6"x8"x20' with holes	Post, Wood Treated 6"x8"x22' with holes	Post, Wood Treated 6"x8"x24' with holes	
59359 Cadillac Special Crews 725 Seneca Cadillac, MI	Same	\$30.97	\$40.43			\$109.30		\$133.23	
59392 Kalamazoo Sign Shop 6345 American Ave. Portage, MI	Same	\$30.97	\$40.43		\$66.07		\$122.12	\$133.23	
59412 Grand Rapids Sign Shop 1420 Front NW Grand Rapids, MI	Same	\$30.97	\$40.43			\$109.30	\$122.12		
59732 Saginaw Sign Shop 3510 E. Washington Saginaw, MI	Same	\$30.97	\$40.43			\$109.30	\$122.12	\$133.23	
59601 Atlanta Maint. Garage 13490 M-32/M-33 Atlanta, MI	Same	\$30.97	\$40.43				\$122.12		

Contract No. 071B1300212

Attachment A. Price Proposal (Continued)

Unit price quoted should reflect F.O.B. Delivered cost per post.								
Ship to Location	Bill to Location	Post, Wood Treated 4"x6"x16' with holes	Post, Wood Treated 4"x6"x20' with holes	Post, Wood Treated 4"x6"x22' with holes	Post, Wood Treated 4"x6"x24' with holes	Post, Wood Treated 6"x8"x20' with holes	Post, Wood Treated 6"x8"x22' with holes	Post, Wood Treated 6"x8"x24' with holes
59071 L'Anse Maint. Garage 301 Winter St. L'Anse, MI	Same	\$33.55	\$44.09					\$139.89
59001 UP Sign Shop 816 Clark Drive. Gladstone, MI	1818 Third Ave North, Escanaba, MI 49829	\$ 33.55	\$44.09			\$114.77		
59086 Central Warehouse 7575 Crowner Ave. Lansing, MI	Same	\$30.97	\$40.43	\$60.60	\$66.07	\$109.30	\$122.12	\$133.23

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

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B1300212
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Burt Forest Products Company, Inc. P.O. Box 7389 Ann Arbor, MI 48107-7389	Wellington Burt	burtforest@sbcglobal.net
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 322-2878	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Gene Pline	(517) 322-5559	Plineg2@michigan.gov
BUYER	DTMB	Lymon C. Hunter, CPPB	(517) 284-7015	hunterL@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Treated Wood Sign Posts – Michigan Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 16, 2011	March 15, 2014	Two One-Year Options	March 15, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 30 Days	Delivered	7 Calendar Days ARO	Ann Arbor, MI
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
Lower Peninsula-Half Truckload, Upper Peninsula-Full Truckload			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	12 months	March 15, 2016
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$1,019,458.38		
Effective March 15, 2015 the second option year available on this contract is hereby exercised. . The new contract end date is March 15, 2016. Also, the buyer on this contract has been changed to Lymon C. Hunter. Additionally, the Contract Compliance Inspector has also been changed to Gene Pline.				
All other terms, conditions, specifications, and pricing remain unchanged.				
Per agency request dated January, 31 2015, DTMB, Procurement request dated February 4, 2015 and vendor agreement by email dated February 6, 2015.				

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

CHANGE NOTICE NO. 2
to
CONTRACT NO. 071B1300212
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Burt Forest Products Company, Inc. P.O. Box 7389 Ann Arbor, MI 48107-7389	Wellington Burt	burtforest@sbcglobal.net
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 322-2878	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Tim Croze	(517) 322-3394	crozet@michigan.gov
BUYER	DTMB	Sue Cieciva	(517) 284-7007	ciecivas@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Treated Wood Sign Posts – Michigan Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 16, 2011	March 15, 2014	Two One-Year Options	April 15, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 30 Days	Delivered	7 Calendar Days ARO	Ann Arbor, MI
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
Lower Peninsula-Half Truckload, Upper Peninsula-Full Truckload			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11 months	March 15, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$1,019,458.38		
Effective April 16, 2014, the remaining 11 months of the first option year are exercised, therefore the contract expiration date is CHANGED to March 15, 2015.				
All other terms, conditions, specifications, and pricing remain unchanged.				
Per agency request dated February 28, 2014, DTMB, Procurement request dated March 3, 2014, and vendor agreement by email dated March 4, 2014.				

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

CHANGE NOTICE NO. 1
 to
CONTRACT NO. 071B1300212
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Burt Forest Products Company, Inc. P.O. Box 7389 Ann Arbor, MI 48107-7389	Wellington Burt	burtforest@sbcglobal.net
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 322-2878	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Tim Croze	517-322-3394	crozet@michigan.gov
BUYER	DTMB	Sue Ciecwa	517-284-7007	ciecwas@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Treated Wood Sign Posts – Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 16, 2011	March 15, 2014	2, one year	March 15, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 30 Days	Delivered	7 Calendar Days ARO	Ann Arbor, MI
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
Lower Peninsula-Half Truckload, Upper Peninsula-Full Truckload			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 month	April 15, 2014
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$1,019,458.38		
Effective March 15, 2014, this contract hereby utilizes one month of an available option year. New contract end date is April 15, 2014. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and DTMB Procurement approval.				

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

March 16, 2011

NOTICE
OF
CONTRACT NO. 071B1300212
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Burt Forest Products Company, Inc. P.O. Box 7389 Ann Arbor, MI 48107-7389 Email: burtforest@sbcglobal.net	TELEPHONE Wellington Burt (800) 322-2878
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-0301 Sue Cieciwa
Contract Compliance Inspector: Tim Croze (517) 322-3394 Treated Wood Sign Posts – Department of Transportation	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: March 16, 2011 To: March 15, 2014	
TERMS Net 30 Days	SHIPMENT 7 Calendar Days ARO
F.O.B. Delivered	SHIPPED FROM Ann Arbor, MI
MINIMUM DELIVERY REQUIREMENTS Lower Peninsula-Half Truckload, Upper Peninsula-Full Truckload	
MISCELLANEOUS INFORMATION:	

This Contract is Extended to Local Units of Government through the MiDeal program.

TOTAL ESTIMATED CONTRACT VALUE: \$1,019,458.38

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

CONTRACT NO. 071B1300212
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE Wellington Burt (800) 322-2878
Burt Forest Products Company, Inc.		CONTRACTOR NUMBER/MAIL CODE
P.O. Box 7389		BUYER/CA (517) 373-0301
Ann Arbor, MI 48107-7389		Sue Cieciva
Email: burtforest@sbcglobal.net		
Contract Compliance Inspector: Tim Croze (517) 322-3394		
Treated Wood Sign Posts – Department of Transportation		
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: March 16, 2011 To: March 15, 2014		
TERMS	SHIPMENT	
Net 30 Days	7 Calendar Days ARO	
F.O.B.	SHIPPED FROM	
Delivered	Ann Arbor, MI	
MINIMUM DELIVERY REQUIREMENTS		
Lower Peninsula-Half Truckload, Upper Peninsula-Full Truckload		
MISCELLANEOUS INFORMATION:		
The terms and conditions of this Contract are those of RFP #07111300066, this Contract Agreement and the vendor's quote dated February 1, 2011. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.		
Estimated Contract Value: \$1,019,458.38		

This Contract is Extended to Local Units of Government through the MiDeal program.

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP No. 07111300066. Orders for delivery will be issued directly by the Michigan 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.

FOR THE CONTRACTOR:

Burt Forest Products Company, Inc.

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Sue Cieciva, Buyer Specialist

Name/Title

**Commodities Division, Purchasing
Operations**

Division

Date



STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

Contract No. 071B1300212
Treated Wood Sign Posts
Michigan Department of Transportation

Buyer Name: Sue Ciecwa
Telephone Number: (517) 373-0301
E-Mail Address: Ciecwas@michigan.gov

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MDOT Typical Plan for Wood Post VIII-210E (5 pages)		

Definitions

This section provides definitions for terms used throughout this document.

Business Day - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am through 5:00pm Eastern Time unless otherwise stated.

Buyer – the DTMB-Purchasing Operations employee identified on the cover page of this Contract.

Chronic Failure - as defined in applicable Service Level Agreements.

Contract – based on this RFP, an agreement that has been approved and executed by the awarded bidder, the DTMB-Purchasing Operations Director, and the State Administrative Board.

Contractor – the awarded bidder after the Effective Date.

Days - Business Days unless otherwise specified.

Deleted, Not Applicable - the section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

Deliverable(s) - physical goods or commodities as required or identified in a Statement of Work.

Eastern Time – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

Effective Date - the date that a binding contract is executed by the final party.

Final Acceptance - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article 1.

Key Personnel - any personnel designated as Key Personnel in Sections 1.3.3, Staff, Duties, and Responsibilities, and 2.4.2, Contractor Key Personnel, subject to the restrictions of Section 2.4.2.

Post-Industrial Waste - industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Purchase Order - a written document issued by the State that requests full or partial performance of the Contract.

State - the State of Michigan.

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

Stop Work Order - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.

Subcontractor - a company or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

Unauthorized Removal - the Contractor's removal of Key Personnel without the prior written consent of the State.



Article 1 – Statement of Work

1.1 Project Identification

1.1.1 Project Request

This Contract is for various sizes of wood posts for the Michigan Department of Transportation (MDOT).

1.1.2 Background

The wood posts are for use statewide by MDOT direct forces and MiDeal program members (authorized local units of government).

1.2 Scope of Work and Deliverable(s)

1.2.1 In Scope – ~~[Deleted, Not Applicable]~~

1.2.2 Deliverable(s)

The Contractor must provide the following Deliverable(s):

The Contractor must deliver wood posts to the drop point locations listed in **Attachment A – Price Proposal** per **Attachment B - Specifications**.

Definite specifications - All Deliverable(s) must conform to the specifications.

1.2.3 Quantity

The State is not obligated to purchase in any specific quantity.

1.2.4 Ordering

The State will issue a Purchase Order, which must be approved by the Contract Compliance Inspector, to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

1.2.5 Alternate Bids – ~~Deleted, Not Applicable~~

1.3 Management and Staffing

1.3.1 Project Management

The Contractor will carry out this project under the direction and control of MDOT, Operations Division.

1.3.2 Reports

The Contractor must submit the following periodic reports to the State: usage reports, including quantity and dollars for State and MiDEAL members. In addition, the Contractor must provide the following reports, when requested by MDOT:

Reports should include status of delivery, production, material test data, performance investigations and remedial actions, and any and all developments that may be vital to appropriate execution and application of all contract terms. Reports should be submitted electronically to the MDOT, Operations Division.

1.3.3 Staff, Duties, and Responsibilities

Contractor's Key Personnel and physical location during Contract performance:

Wellington R. Burt, President
Burt Forest Products Company
227 Felch Street



Ann Arbor, Michigan 48103
Telephone: (800) 322-2878
Email: burtforest@sbcglobal.net

Michael G. Cranston, General Manager
Burt Forest Products Company
227 Felch Street
Ann Arbor, Michigan 48103
Telephone: (800) 322-2878
Email: mike@burtforest.com

1.3.4 Meetings

The State may request a kick-off meeting with the Contractor within thirty (30) days of the Effective Date. The State may request other meetings as it deems appropriate.

1.3.5 Place of Performance

The following is a list the location of all facilities that will be involved in performing this Contract:

Full address of place of performance	Owner/operator of facility to be used	Percent (%) of Contract value to be performed at listed location
Burt Forest Products Co. 227 Felch Street Ann Arbor, Michigan 48103	Wellington Burt, Owner	42 %
Biewer Lumber Company 6111 West Mount Hope Hwy. Lansing, MI 48917	Biewer Lumber Company 512 S. Riverside Avenue St. Clair, MI 48079	58 %

1.3.6 Reserved

1.3.7 Binding Commitments

The Contractor identifies its representatives with the authority to make binding commitments on the Contractor's behalf and state the extent of that authority, as follows:

Wellington R. Burt, President – Complete authority to make binding commitments on Contractor's behalf.

Michael G. Cranston, General Manager – Complete authority to make binding commitments on Contractor's behalf.

1.3.8 Training

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

1.3.9 Security

The Contractor may be required to make frequent deliveries to State facilities. The Contractor shall ensure the security and safety of these facilities, including, but not limited to, performance of background checks on its personnel. The Contractor must explain how background checks are performed, what the background check consists of, the name of the company that performs the background checks, whether the Contractor uses uniforms and ID badges, etc. If background checks are performed, the Contractor must provide a document stating that its personnel have satisfactorily completed a background check and are suitable for State work.



The State may issue State ID badges to the Contractor's delivery personnel or accept the ID badge issued to delivery personnel by the Contractor. The State may decide to perform an additional background check under Section 2.4.9, Background Checks. If so, the Contractor must provide a list of all personnel, including name and date of birth, that will be assigned to State work.

1.4 Delivery and Acceptance

1.4.1 Time Frames

All Deliverable(s) must be delivered within **7 Calendar Days** after receipt of order. The receipt of order date is governed in the same manner as notices sent under Section 2.3.6, Notices.

Orders will be accepted Monday through Friday between 7 am and 2 pm, excluding legal State holidays. Contractor shall notify agency at least 48 hours prior to delivery, unloading of delivery truck may be delayed if the delivery location is not properly notified. Orders shall be shipped on truck(s) or trailer(s) with removable side rails to allow access of industrial fork truck.

1.4.2 Minimum Order

The minimum order is **half a truckload** for the Lower Peninsula and a **full truckload** for the Upper Peninsula.

1.4.3 Packaging

Orders shall be shipped on truck(s) or trailer(s) with removable side rails to allow access of industrial fork truck.

Bundles shall be securely banded or wired. Maximum number of pieces per bundle shall be **twenty (24)** for the **4"x 6" posts** (either lengths), and **twelve (12)** for the **6"x 8" posts** (either lengths). Mixed or varying lengths of posts within a bundle will not be accepted. Total weight of each bundle shall not exceed 2000 pounds.

Packaging and containers must meet the current requirements of state and federal law applicable to rail and motor carrier freight classifications, which will permit application of the lowest freight rate.

1.4.4 Palletizing – Deleted, Not Applicable

1.4.5 Delivery Term

Unless specified otherwise below, delivery is governed by Section 2.8.2, Delivery Responsibilities.

Prices are quoted "F.O.B. Destination, within Government Premises" with transportation charges prepaid on all orders that meet the minimum order requirement specified in Section 1.4.2, Minimum Order.

1.4.6 Acceptance Process

The acceptance process is defined in Section 2.8.4, Acceptance of Deliverable(s), unless otherwise defined in this section.

1.4.7 Criteria

The State will use the following criteria to determine acceptance of Deliverable(s):

The MDOT representative, or their designee, will inspect wood posts and approve acceptance of goods upon delivery.



1.5 Proposal Pricing

1.5.1 Pricing

The Contractor specified the fixed prices for all Deliverable(s), and the associated payment milestones and payment amounts as required by Section 2.2.1, Fixed Prices for Deliverable(s). The pricing details are provided in **Attachment A**.

The Contractor has included the [administrative fee in Section 2.22.2, State Administrative Fee](#), in the Contract prices.

1.5.2 Quick Payment Terms- Deleted, Not Applicable

1.5.3 Price Term

Prices in **Attachment A** are firm with prospective renegotiation at an agreed upon time. The criteria for a re-determination of pricing are under Section 2.3.5, Price Changes.

1.5.4 Tax Excluded from Price

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. DTMB-Purchasing Operations will furnish exemption certificates for sales tax upon request.

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

1.5.5 Invoices

The Contractor must submit invoices that, at a minimum, include:

- (a) Date
- (b) PO #
- (c) Quantity
- (d) Deliverable
- (e) Unit Price
- (f) Total Price

1.6 Commodity Requirements

1.6.1 Customer Service

The Contractor is able to receive orders by any of the following methods: electronically, phone, facsimile transmission, or by written order. The Contractor must have internal controls, approved by DTMB-Purchasing Operations, to: (a) ensure that only authorized individuals place orders; and (b) verify any orders that appear to be abnormal.

The Contractor must have: (a) one or more knowledgeable individual(s) specifically assigned to State of Michigan accounts that will respond to State agency inquiries promptly; and (b) a statewide toll-free number for customer service calls.

Burt Forest Products Company, Inc. Customer Service

Contacts: Wellington Burt, Michael Cranston
Phone: (800) 322-2878



1.6.2 Research and Development

The Contractor shall invest in new research and development.

1.6.3 Quality Assurance Program

The Contractor shall have a Quality Assurance Program(s) currently in place within their organization.

1.6.4 Warranty for Deliverable(s)

The warranty for products or procured under this Contract shall be for manufacturing defects. MDOT will report to the Contractor any warranty issues for replacement or repair, as needed.

1.6.5 Special Incentives - Deleted, Not Applicable

1.6.6 Energy Efficiency - Deleted, Not Applicable

1.6.7 Environmental Requirements

The State prefers to purchase products that impact the environment less than competing products. Environmental components that may be considered include: recycled content, recyclability, and the presence of undesirable materials in the products, especially persistent, bioaccumulative, and toxic chemicals. The Contractor intends to provide the following:

- 35% recycled content on pressure treatment chemicals
- 100% recycled content on 2"x 4"x 4' wood bundle separators.
- Treatment chemicals although not toxic, are required for a long and useful life for the MDOT Specification Treated Wood Sign Posts.

1.6.8 Recycled Content and Recyclability

(a) **Deliverable(s).** Without compromising performance or quality, the State prefers Deliverable(s) containing higher percentages of recycled materials. The Contractor indicates an estimate of the percentage of recycled materials, if any, contained in each Deliverable:

100% (total estimated percentage of recovered material)

100% (estimated percentage of post-consumer material)

N/A % (estimated percentage of post-industrial waste)

(b) **Packaging.** The State prefers packaging materials that:

- (i) are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
- (ii) minimize or eliminate the use of polystyrene and other difficult to recycle materials;
- (iii) minimize or eliminate the use of packaging and containers or, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;
- (iv) provide for a return program where packaging can be returned to a specific location for recycling; and
- (v) contain materials that are easily recyclable in Michigan.

The Contractor provides wood bundle separators that are 100% Recyclable, and steel banding that can be 100% recycled, as well.

1.6.9 Materials Identification and Tracking

(a) **Hazardous Chemical Identification.** The Contractor must list any hazardous chemical, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item



Number. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.

Chemical (if none, enter 'None')	Identification Number
Level of treatment = .50 CCA Chromated Copper Arsenate	

(b) **Mercury Content.** Under MCL 18.1261d, the Contractor must offer mercury-free products whenever possible. The Contractor does not intend to provide products containing mercury. The MDOT Specifications Treated Wood Sign Posts do not contain mercury. All products containing mercury must be labeled as containing mercury.

(c) **Brominated Flame Retardants.** The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The MDOT Specifications Treated Wood Sign Posts do not contain Brominated Flame Retardants.

(d) **Environmental Permits and Requirements.** The Contractor's facilities are not in violation of any environmental laws. The Contractor must immediately notify DTMB-Purchasing Operations of the receipt of any EPA, State, or local agency communication indicating that any of the Contractor's facilities are in violation of applicable environmental laws.

1.7 Extended Purchasing

1.7.1 MiDEAL

The Management and Budget Act, MCL 18.1263, permits the State to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, or community or junior college (MiDEAL Members). A current listing of approved MiDEAL Members is available at: www.michigan.gov/mideal. Estimated requirements for MiDEAL Members are not included in the quantities shown in RFP#071I1300066.

The Contractor must supply Deliverable(s) to the State and MiDEAL Members at the established State Contract prices and terms, subject to Section 2.22.1, MiDEAL Requirements.

1.7.2 State Employee Purchases –Deleted, Not Applicable



Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

The Contract term begins **March 16, 2011** and expires **March 15, 2014**. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the State, unless otherwise agreed to in writing by DTMB-Purchasing Operations. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect until the next September 30.

2.1.2 Options to Renew

This Contract may be renewed for up to **two (2)** additional **one-year** periods. Renewal must be by mutual written agreement of the parties, not less than 30 days before expiration of the Contract.

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s) and for all of the associated payment milestones and amounts.

2.2.2 Payment Deadlines

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within 45 days after receipt.

2.2.3 Invoicing and Payment – In General [Deleted, Not Applicable]

2.2.4 Pro-ration [Deleted, Not Applicable]

2.2.5 Final Payment and Waivers

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party's continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverable(s) not reasonably known to be defective or substandard.

2.2.6 Electronic Payment Requirement

As required by MCL 18.1283a, the Contractor must electronically register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer (EFT) payments.

2.2.7 Employment Taxes

The Contractor must collect and pay all applicable federal, state, and local employment taxes.

2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.



2.3 Contract Administration

2.3.1 Issuing Office

This Contract is issued by DTMB-Purchasing Operations on behalf of MDOT (State). **DTMB-Purchasing Operations is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DTMB-Purchasing Operations for this Contract is:

Sue Ciecwa, Buyer Specialist
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: ciecwas@michigan.gov
Phone: (517) 373-0301
Fax: (517) 335-0046

2.3.2 Contract Compliance Inspector

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a day-to-day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Tim Croze
Roadway Operations Engineer
MDOT-Operations Division
6333 Old Lansing Rd.
Lansing, MI 48917
Email: crozet@michigan.gov
Telephone: (517) 322-3394
Fax: (517) 322-3385

2.3.3 Project Manager – Deleted, Not Applicable

2.3.4 Contract Changes

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Purchasing Operations will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until DTMB-Purchasing Operations issues a duly executed Contract Change Notice for the proposed change.



2.3.5 Price Changes

If allowed by Section 1.5.3, Price Term, the State and the Contractor will complete a pricing review (Review) every 365 days following the Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) The State may request a Review upon 30 days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

(c) In the event the Review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the Review reveals that changes may be recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then the State may eliminate all remaining Contract renewal options.

(f) Any changes based on the Review must be implemented through the issuance of a Contract Change Notice.

2.3.6 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan
DTMB-Purchasing Operations
Attention: Sue Ciecwa
PO Box 30026
530 West Allegan
Lansing, MI 48909
Email: ciecwas@michigan.gov
Fax: (517) 335-0046

If to Contractor:

Burt Forest Products Company, Inc.
P.O. Box 7389
Ann Arbor, MI 48107-7389
E-mail: burtforest@sbcglobal.net
Fax: (734) 663-1277

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

2.3.7 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.



2.3.8 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The State may, however, assign this Contract to any other State agency, department, or division without the prior approval of the Contractor.

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

2.3.9 Equipment

The State will not provide equipment and resources unless specifically identified in the Statement(s) of Work or other Contract exhibits.

2.3.10 Facilities [Deleted, Not Applicable]

2.4 Contract Management

2.4.1 Contractor Personnel Qualifications

All persons assigned by the Contractor to perform work must be employees of the Contractor or its majority-owned subsidiaries, or a State-approved Subcontractor, and must be fully qualified to perform the work assigned to them. The Contractor must include this requirement in any subcontract.

2.4.2 Contractor Key Personnel

(a) The Contractor must provide the Contract Compliance Inspector with the names of Key Personnel.

(b) The Contractor must dedicate Key Personnel to perform work for the duration of the Contract as provided in Section 1.3.3, Staff, Duties, and Responsibilities.

(c) Before assigning a new individual to any Key Personnel position, the Contractor must notify the State of the proposed assignment, introduce the individual to the appropriate State representatives, and provide the State with a resume and any other reasonably requested information. The State must approve or disapprove the assignment, reassignment, or replacement of any Key Personnel. The State may interview the individual before making its decision. If the State disapproves an individual, the State will provide a written explanation outlining the reasons for the rejection.

(d) The Contractor may not remove any Key Personnel from their assigned roles without the prior consent of the State. The Contractor's removal of Key Personnel without the prior consent of the State constitutes Unauthorized Removal. Unauthorized Removal does not include replacing Key Personnel for reasons beyond the Contractor's reasonable control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. Unauthorized Removal does not include replacing Key Personnel because of promotions or other job movements allowed by the Contractor's personnel policies or Collective Bargaining Agreement(s), as long as the Contractor assigns the proposed replacement to train the outgoing Key Personnel for 30 days. Any Unauthorized Removal will be considered a material breach of the Contract.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 Days before redeploying non-Key Personnel to other projects.



2.4.3 Removal or Reassignment of Personnel at the State's Request

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected.

2.4.4 Contractor Personnel Location

Subject to availability, the State may allow selected Contractor personnel to use State office space.

2.4.5 Contractor Identification

The Contractor's employees must be clearly identifiable while on State property by wearing a State-issued badge, and must clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.4.6 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with the State and its agents and other contractors, including the State's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

2.4.7 Relationship of the Parties

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

2.4.8 Contractor Return of State Equipment/Resources

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

2.4.9 Background Checks

The State may investigate the Contractor's personnel before granting access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine eligibility for working within State facilities and systems. The investigations will include a Michigan State Police background check (ICHAT) and may include a Criminal Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check.

2.4.10 Compliance With State Policies

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources, available at <http://www.michigan.gov/pcpolicy>. Contractor personnel must agree to the State's security and acceptable use policies before the State grants access to its IT equipment and resources. The Contractor must provide these policies to prospective personnel before requesting access from the State. Contractor personnel must comply with all physical security procedures in State facilities.

2.5 Subcontracting by Contractor

2.5.1 Contractor Responsible

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers.



Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

2.5.2 State Approval of Subcontractor

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless DTMB-Purchasing Operations gives prior approval to the delegation. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the Effective Date. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.

(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement. If this requirement results in a delay, the delay will not be counted against any applicable Service Level Agreement (SLA).

2.5.3 Subcontract Requirements

Except where specifically approved by the State, Contractor must include the obligations in Sections 2.24.2, Media Releases, 2.4, Contract Management, 2.11, Confidentiality, 2.12, Records and Inspections, 2.13, Warranties, 2.14, Insurance, and 2.23, Laws, in all of its agreements with Subcontractors.

2.5.4 Competitive Selection

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

2.6 Reserved

2.7 Performance

2.7.1 Time of Performance

(a) The Contractor must immediately notify the State upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must immediately notify the State and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.7.2 Service Level Agreements -Deleted, Not Applicable

2.7.3 Liquidated Damages – Deleted, Not Applicable

2.7.4 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot



reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Days, and the State reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to the State, the State may: (a) procure the affected Deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure or to payments for Deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

2.8 Acceptance of Deliverable(s)

2.8.1 Quality Assurance

By tendering any Deliverable to the State, the Contractor certifies to the State that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; and (c) it has corrected all material deficiencies discovered during the quality assurance activities and testing. To the extent that testing occurs at State Locations, the State is entitled to observe and otherwise participate in the testing.

2.8.2 Delivery Responsibilities

Unless otherwise specified by the State in Section 1.4.5, Delivery Term, the following are applicable to all deliveries:

(a) The Contractor is responsible for delivering the Deliverable(s) by the applicable delivery date to the location(s) specified in the SOW or individual Purchase Order.

(b) The Contractor must ship the Deliverable(s) "F.O.B. Destination, within Government Premises."

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

2.8.3 Process for Acceptance of Deliverable(s)

The State's review period for acceptance of the Deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify the State's review period, it is by default 30 Days for a Deliverable (State Review Period). The State will notify the Contractor by the end of the State Review Period that either:

- (a) the Deliverable is accepted in the form delivered by the Contractor;
- (b) the Deliverable is accepted, but noted deficiencies must be corrected; or
- (c) the Deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the Deliverable.



If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the Deliverable(s) with an explanation that demonstrates all corrections have been made to the original Deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected Deliverable.

2.8.4 Acceptance of Deliverable(s)

(a) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of the Deliverable(s). The State Review Period will begin on the first Business Day following the State's receipt of the Deliverable(s).

(b) The State may inspect the Deliverable to confirm that all components have been delivered without material deficiencies. If the State determines that the Deliverable or one of its components has material deficiencies, the State may reject the Deliverable without performing any further inspection or testing.

(c) The State will only approve a Deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, in its discretion, conditionally approve a Deliverable that contains material deficiencies if the State elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct, within a reasonable time at the Contractor's expense, all deficiencies in the Deliverable that remain outstanding at the time of State approval.

(d) If, after three opportunities the Contractor is unable to correct all deficiencies, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep the Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of the State's cost to cure the deficiency; or (iii) fully or partially terminate the Contract for default by giving notice to the Contractor. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(e) The State, at any time and in its reasonable discretion, may reject the Deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable.

2.8.5 Process for Approval of Written Deliverable(s) [Deleted, Not Applicable]

2.8.6 Process for Approval of Services [Deleted, Not Applicable]

2.8.7 Final Acceptance

Unless otherwise stated in the Statement of Work, "Final Acceptance" of a Deliverable occurs when that Deliverable has been accepted by the State following the applicable State Review Period.

2.9 Ownership [Deleted, Not Applicable]

2.10 State Standards [Deleted, Not Applicable]

2.11 Confidentiality

2.11.1 Confidential Information

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

- (a) disclosable under the Michigan Freedom Of Information Act (FOIA);
- (b) now available or becomes available to the public without breach of this Contract;
- (c) released in writing by the disclosing party;



(d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;

(e) publicly disclosed pursuant to federal or state law; or

(f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

2.11.2 Protection and Destruction of Confidential Information

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

2.11.3 Exclusions

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.11.4 No Obligation to Disclose

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

2.11.5 Security Breach Notification

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

2.12 Records and Inspections

2.12.1 Inspection of Work Performed

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



or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.12.2 Retention of Records

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

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

2.12.3 Examination of Records

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

2.12.4 Audit Resolution

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

2.12.5 Errors

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

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

2.13 Warranties

2.13.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the Contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for the State (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to



the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other bidder before the award of the Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify DTMB-Purchasing Operations if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

2.13.2 Warranty of Merchantability

The Deliverable(s) provided by the Contractor must be merchantable.

2.13.3 Warranty of Fitness for a Particular Purpose

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this Contract.

2.13.4 Warranty of Title

The Contractor must convey good title to any Deliverable(s) provided to the State. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

2.13.5 Equipment Warranty - Deleted, Not Applicable

2.13.6 New Deliverable(s)

The Contractor must provide new Deliverable(s) where the Contractor knows or has the ability to select between new or like-new Unless specified in Article 1, Statement of Work, equipment that is assembled



from new or serviceable used parts that are like new in performance is acceptable only where the Contractor does not have knowledge or the ability to select one or the other.

2.13.7 Prohibited Products

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of the Contract, unless DTMB-Purchasing Operations has approved a change order under Section 2.3.4, Contract Changes.

2.13.8 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

2.14 Insurance

2.14.1 Liability Insurance

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

(a) The following apply to all insurance requirements:

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

(ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

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

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

(b) The Contractor must:

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

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

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

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



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

(vi) pay all deductibles.

(vii) pay for and provide the type and amount of insurance checked ☒ below:

☒ **(A) Commercial General Liability Insurance**

Minimal Limits:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations;

\$2,000,000 Products/Completed Operations Aggregate Limit;

\$1,000,000 Personal & Advertising Injury Limit; and

\$1,000,000 Each Occurrence Limit.

Deductable maximum:

\$50,000 Each Occurrence

Additional Requirements:

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

☐ **(B) Umbrella or Excess Liability Insurance**

Minimal Limits:

\$10,000,000 General Aggregate

Additional Requirements:

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

☒ **(C) Motor Vehicle Insurance**

Minimal Limits:

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

☐ **(D) Hired and Non-Owned Motor Vehicle Coverage**

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

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

☒ **(E) Workers' Compensation Insurance**



Minimal Limits:

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

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

Additional Requirements:

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

☒ (F) **Employers Liability Insurance**

Minimal Limits:

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

Additional Requirements:

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

2.14.2 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.14.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.14.3 Certificates of Insurance and Other Requirements

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide DTMB-Purchasing Operations with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to the Director of DTMB-Purchasing Operations. The notice to the Director of DTMB-Purchasing Operations must include the applicable Contract or Purchase Order number.

2.15 Indemnification

2.15.1 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend, and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable



attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.15.2 Code Indemnification [Deleted, Not Applicable]

2.15.3 Employee Indemnification

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

2.15.4 Patent/Copyright Infringement Indemnification

(a) To the extent permitted by law, the Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

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

2.15.5 Continuing Obligation

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.15.6 Indemnification Procedures

These procedures apply to all indemnity obligations:

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days



following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorney fees, incurred by the State in defending against the claim during that period.

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

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

2.15.7 Limitation of Liability

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

2.16 Termination by the State

2.16.1 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a 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.

2.16.2 Termination for Cause

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.



(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

2.16.3 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

2.16.4 Termination for Non-Appropriation

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available. The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

2.16.5 Termination for Criminal Conviction

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

2.16.6 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963,



Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.16.7 Rights and Obligations upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must:
- (i) stop all work as specified in the notice of termination;
 - (ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;
 - (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
 - (iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);
 - (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
 - (vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

2.16.8 Reservation of Rights

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

2.16.9 Contractor Transition Responsibilities

If this Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed **30 days** from the date of termination. The Contractor must provide any required reports and documentation.

2.16.10 Transition Payments

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e., costs incurred after the expiration within the time period in Section 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.



2.17 Termination by the Contractor

2.17.1 Termination

If the State breaches the Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

2.18 Stop Work

2.18.1 Stop Work Order

The State may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, the State must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.16, Termination by the State.

2.18.2 Termination of Stop Work Order

The Contractor must resume work if the State terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to the State; provided that, the State may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 2.3.4, Contract Changes.

2.18.3 Allowance of the Contractor's Costs

If the State fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 2.16, Termination by the State, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. The State is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 2.18, Stop Work.

2.19 Reserved

2.20 Dispute Resolution

2.20.1 General

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.



2.20.2 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Purchasing Operations, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Purchasing Operations, or such other time as agreed to by the parties, the Director of DTMB-Purchasing Operations will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Purchasing Operations within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Purchasing Operations is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

(e) DTMB-Purchasing Operations will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

2.20.3 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

2.20.4 Continued Performance

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

2.21 Disclosure Responsibilities

2.21.1 Disclosure of Litigation

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation Proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.



(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

2.21.2 Other Disclosures

The Contractor must notify DTMB-Purchasing Operations within 30 days of:

- (a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or
- (b) any changes to company affiliations.

2.21.3 Call Center Disclosure – Deleted, Not Applicable

2.22 Extended Purchasing

2.22.1 MiDEAL Requirements

(a) The Contractor must ensure that all purchasers are MiDEAL Members before extending the Contract pricing.

(b) The Contractor must submit quarterly reports of MiDEAL purchasing activities to DTMB-Purchasing Operations.

(c) To the extent that MiDEAL Members purchase Deliverable(s) under this Contract, the quantities of Deliverable(s) purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

(d) The Contractor must submit invoices to and receive payment from MiDEAL Members on a direct and individual basis.

2.22.2 State Administrative Fee

The Contractor must collect an administrative fee on all sales transacted under this Contract, and remit the fee within 30 days after the end of each quarter. The administrative fee equals **one percent (1%)** of the total quarterly sales reported.

The Contractor must pay the administrative fee by check payable to the State of Michigan. The Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: the applicable Contract Number, the total quarterly sales by volume and dollar amount, and the quarter covered.

The Contractor must send the check to the following address:

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

2.22.3 State Employee Purchase Requirements- Deleted, Not Applicable



2.23 Laws

2.23.1 Governing Law

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

2.23.2 Compliance with Laws

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).

2.23.3 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

2.23.4 Nondiscrimination

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

2.23.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

2.23.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use,



handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

2.23.7 Freedom of Information

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq.*

2.23.8 Workplace Safety and Discriminatory Harassment [Deleted, Not Applicable]

2.23.9 Prevailing Wage [Deleted, Not Applicable]

2.23.10 Abusive Labor Practices

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

2.24 General Provisions

2.24.1 Bankruptcy and Insolvency

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

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

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

2.24.2 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

2.24.3 Contract Distribution

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



2.24.4 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of the Contract.

2.24.5 Website Incorporation

The State is not bound by any content on the Contractor's website unless incorporated directly into this Contract.

2.24.6 Future Bidding Preclusion [Deleted, Not Applicable]

2.24.7 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract.

2.24.8 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority.

2.24.9 Legal Effect

The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

2.24.10 Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

2.24.11 Order of Precedence

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

- (a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);
 - (b) The most recent Statement of Work related to this Contract;
 - (c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);
 - (d) Any attachment or exhibit to the Contract documents;
 - (e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract;
- and
- (f) Bidder Responses contained in any of the RFP documents.

2.24.12 Headings

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

2.24.13 Form, Function and Utility

If this Contract is for statewide use, but the Deliverable(s) does not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the Deliverable(s) from another source.



2.24.14 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

2.24.15 Approval

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

2.24.16 No Waiver of Default

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.24.17 Survival

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

**Attachment A, Price Proposal**

Unit prices reflect F.O.B. Delivered cost per post.								
Ship to Location	Bill to Location	Post, Wood Treated 4"x6"x16' with holes	Post, Wood Treated 4"x6"x20' with holes	Post, Wood Treated 4"x6"x22' with holes	Post, Wood Treated 4"x6"x24' with holes	Post, Wood Treated 6"x8"x20' with holes	Post, Wood Treated 6"x8"x22' with holes	Post, Wood Treated 6"x8"x24' with holes
59359 Cadillac Special Crews 725 Seneca Cadillac, MI	Same	\$30.97	\$40.43			\$109.30		\$133.23
59392 Kalamazoo Sign Shop 6345 American Ave. Portage, MI	Same	\$30.97	\$40.43		\$66.07		\$122.12	\$133.23
59412 Grand Rapids Sign Shop 1420 Front NW Grand Rapids, MI	Same	\$30.97	\$40.43			\$109.30	\$122.12	
59732 Saginaw Sign Shop 3510 E. Washington Saginaw, MI	Same	\$30.97	\$40.43			\$109.30	\$122.12	\$133.23
59601 Atlanta Maint. Garage 13490 M-32/M-33 Atlanta, MI	Same	\$30.97	\$40.43				\$122.12	

**Attachment A, Price Proposal (Continued)**

Unit price quoted should reflect F.O.B. Delivered cost per post.								
Ship to Location	Bill to Location	Post, Wood Treated 4"x6"x16' with holes	Post, Wood Treated 4"x6"x20' with holes	Post, Wood Treated 4"x6"x22' with holes	Post, Wood Treated 4"x6"x24' with holes	Post, Wood Treated 6"x8"x20' with holes	Post, Wood Treated 6"x8"x22' with holes	Post, Wood Treated 6"x8"x24' with holes
59071 L'Anse Maint. Garage 301 Winter St. L'Anse, MI	Same	\$33.55	\$44.09					\$139.89
59001 UP Sign Shop 816 Clark Drive. Gladstone, MI	1818 Third Ave North, Escanaba, MI 49829	\$ 33.55	\$44.09					
59086 Central Warehouse 7575 Crowner Ave. Lansing, MI	Same	\$30.97	\$40.43	\$60.60	\$66.07	\$109.30	\$122.12	\$133.23



912.01

Section 912. TIMBER AND LUMBER

912.01 General Requirements. Dimensions and engineering requirements for timber and lumber, timber piles, posts and blocks for guard-rails, sign posts, mailbox posts, guard posts, guide posts, fence posts, and timber for rustic construction must conform to this section. Dimensional requirements, species, and wood quality must conform to the requirements specified.

When preservative treated material is specified, the chemical preservative and method of treatment must conform to the applicable AWP and ASTM Standards as modified herein.

In case of a conflict between AWP and ASTM Standards, AWP will prevail.

Machine and/or manufacture all material, including bored holes, saw cuts, routs and kerfs, to the final shape prior to preservative treatment. Field treat cuts, holes, and injuries to the surface of the wood which occur after pressure treatment, according to subsection 912.04.

The commercial and common names used for domestic hardwood and softwood timber and lumber referenced in this specification are according to ASTM D 1165.

Subsection 912.05 includes illustrations of how shakes, checks, splits, knots, and slope of grain are measured.

912.02 Species and Grade. Manufacture all material from the species specified. Grade material before shipment according to grading rules in ASTM D 245. Place the approved grading agency stamp indicating mill origin, species, and grade on all material. Furnish a signed certificate of inspection covering each shipment of material.

912.03 Quality Control.

A. General. The supplier has the primary responsibility for quality control and inspection of material furnished. Apply the stamp. The treater is responsible for assuring that the required grading agency stamp or marking is present on a wide face at the trimmed end before treatment and that it is legible after treating.



912.04

B. Inspection Prior to Preservative Treatment. Inspect timber and lumber for quality, size and straightness prior to treating. This inspection does not constitute a waiver of the Department's right to inspect and reject any material, as specified in subsection 105.05.

C. Inspection of Preservative Treatment. Inspect chemical preservatives, treatment processes and treated material according to AWWA Standards M 2 *Standard for Inspection of Treated Timber Products* and M 3, *Standard Quality Control Procedures for Wood Preserving Plants*, and applicable associated AWWA Standards. The treater must determine that the preservatives used conform to the requirements. Analyze the preservative at least once per charge for the occasional single charge inspected. In the case of consecutive treatments from the same working tank, analyze the first and at least one of every five additional charges, selected at random.

Collect preservative samples to be representative of the solution used in the actual treatment process.

D. Results of Treatment. Conform to ASTM D 1760 and associated AWWA Standards for treatment results, including preservative analysis and penetration and retention determinations.

E. Inspection Records. Make copies of treating records, analysis records, and other records that may be necessary to assure conformance with specifications available to Department personnel or designated representatives upon request. Required information is listed in AWWA Standard M 2. Retain these records at the treating plant for a minimum of five years from date of material shipment.

F. Painting Treated Wood. Air-season wood for at least 30 days, and remove any preservative dust remaining on the wood, prior to painting.

912.04 Field Treatment of Preservative Treated Material.

A. General. Field-treat all saw cuts, routs, kerfs, holes, and injuries to the surface of preservative treated material covered by this specification that occur after pressure treatment by brushing, dipping, soaking, or coating. Spraying is not permitted. Thoroughly saturate all injuries, such as abrasions and nail and spike holes, with the field-treating solution. Fill bored holes with preservative. Horizontal holes may be filled by pouring the preservative into the holes with a bent funnel after temporarily plugging the other end of the hole.



912.04

B. Preservative. Use a 20 percent solution of copper naphthenate, based on copper as metal, meeting the requirements of AWP Standard P 8 for field treatment. The copper naphthenate must be applied by a State of Michigan Certified Commercial Pesticide Applicator.

912.05 Terminology Used in Timber and Lumber Specifications. Refer to Figure 912-1.

Annual Ring. The growth layer produced by the tree in a single growth year, including earlywood and latewood.

Bark. The layer of a tree, outside the cambium, comprising the inner bark, or thin, inner living part (phloem), and the outer bark, or corky layer, composed of dry, dead tissue.

Bird Peck. A small hole or patch of distorted grain resulting from birds pecking through the growing cells in the tree. Bird peck usually resembles a carpet tack with the point toward the bark, and it is usually accompanied by discoloration extending for a considerable distance along the grain and to a much lesser extent across the grain. The discoloration produced by bird peck causes what is commonly known as mineral streak.

Boxed Heart. The term used when the pith falls entirely within the four faces of a piece of wood anywhere in its length. Also called boxed pith.

Check. A lengthwise separation of the wood that usually extends across the rings of annual growth and commonly results from stresses set up in wood during seasoning. Checks are measured as an average of the penetration perpendicular to the wide face. Where two or more checks appear on the same face, only the deepest one is measured. Where two checks are directly opposite each other, the sum of their depths is used.

Contiguous Checks. Individual checks that are adjoining though not in contact with adjacent checks.

Crook or Sweep. A distortion of a piece of lumber or post in which there is a deviation in a direction perpendicular to the edge from a straight line from end to end of the piece.

Decay. The decomposition of wood substance caused by action of wood destroying fungi, resulting in softening, loss of strength and weight and often in change of texture and color.



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Advanced (or typical) Decay. The older stage of decay in which the destruction is readily recognized because the wood has become punky, soft and spongy, stringy, ring-shaked, pitted, or crumbly. Decided discoloration or bleaching of the rotted wood is often apparent.

Incipient Decay. The early stage of decay that has not proceeded far enough to soften or otherwise perceptibly impair the hardness of the wood. It is usually accompanied by a slight discoloration or bleaching of the wood.

Defect. Any irregularity or imperfection occurring in or on the wood that may lower its durability or strength.

Grain. The direction, size, arrangement, appearance, or quality of the fibers in wood or lumber.

Heartwood. The wood extending from the pith to the sapwood, the cells of which no longer participate in the life processes of the tree. Heartwood may be infiltrated with gums, resins, and other materials that usually make it darker and more decay resistant than sapwood.

Knot. That portion of a branch or limb which has been surrounded by subsequent growth of the wood of the trunk or other portion of the tree. As a knot appears on the sawed surface it is merely a section of the entire knot, its shape depending upon the direction of the cut. Knot diameter is measured as shown. The least dimension is used to determine size of the knot.

Knot Cluster. Three or more knots in a compact, roughly circular group, with the grain between them highly contorted. Two or more knots laterally arranged and without contortion of the fibers between them do not constitute a knot cluster.

Loose Knot. A knot that is not held firmly in place by growth or position and that cannot be relied upon to remain in place.

Sound Knot. A knot that is solid across its face, at least as hard as the surrounding wood, and shows no indication of decay.

Unsound Knot. A knot that, due to decay, is softer than the surrounding wood.



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Mineral Streak. An olive to greenish-black or brown discoloration of undetermined cause in hardwoods, particularly hard maples; commonly associated with bird pecks and other injuries; occurs in streaks usually containing accumulations of mineral matter.

Peeling (clean). The removal of all outer bark and at least 80 percent of the inner bark distributed over the surface of the post, pile, or block.

Pith. The small, soft core occurring in the structural center of a tree trunk, branch, twig, or log.

Plugged Hole. Any opening, or defect, which has been filled, or repaired, through the use of wooden plugs, plastic wood, or other methods. Holes resulting from the taking of test cores by an increment borer to check penetration or retention of preservative and filled with tight-fitting pressure treated plugs are not considered as plugged holes for rejection purposes.

Sapwood. The living wood of pale color near the outside of the log. Under most conditions the sapwood is more susceptible to decay than heartwood.

Shake. A separation along the grain, the greater part of which occurs between the rings of annual growth. Shakes are measured at the ends of pieces between lines parallel with the two faces that give the least dimension.

Slope of Grain. Slope of grain is the deviation of the wood fiber from a line parallel to the edges of a piece. The deviation is expressed as a ratio such as a slope of grain of 1 in 8, etc. Generally, slope of grain is measured over sufficient length and area to be representative of the general slope of the fibers, disregarding local variations.

Split. A lengthwise separation of the wood extending through the piece from one surface to an opposite or to an adjoining surface, due to the tearing apart of wood cells. Splits are measured as the penetration of a split from the end of the piece and parallel to edges of the piece.

Twist. A distortion caused by the turning or winding of the edges of a board so that the four corners of any face are no longer in the same plane.

Unightly Gaps. The term as used in these specifications is interpreted as being any gap, or opening, which is more than $\frac{3}{8}$ inch at its maximum width and more than 12 inches in length.



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Wane. Bark, or lack of wood from any cause, on edge or corner of piece.

Refer to: ASTM D 9, *Standard Terminology Relating to Wood*, and AWP Standard M 5, *Glossary of Terms Used in Wood Preservation* for definitions of additional terms relating to wood and wood preservation.

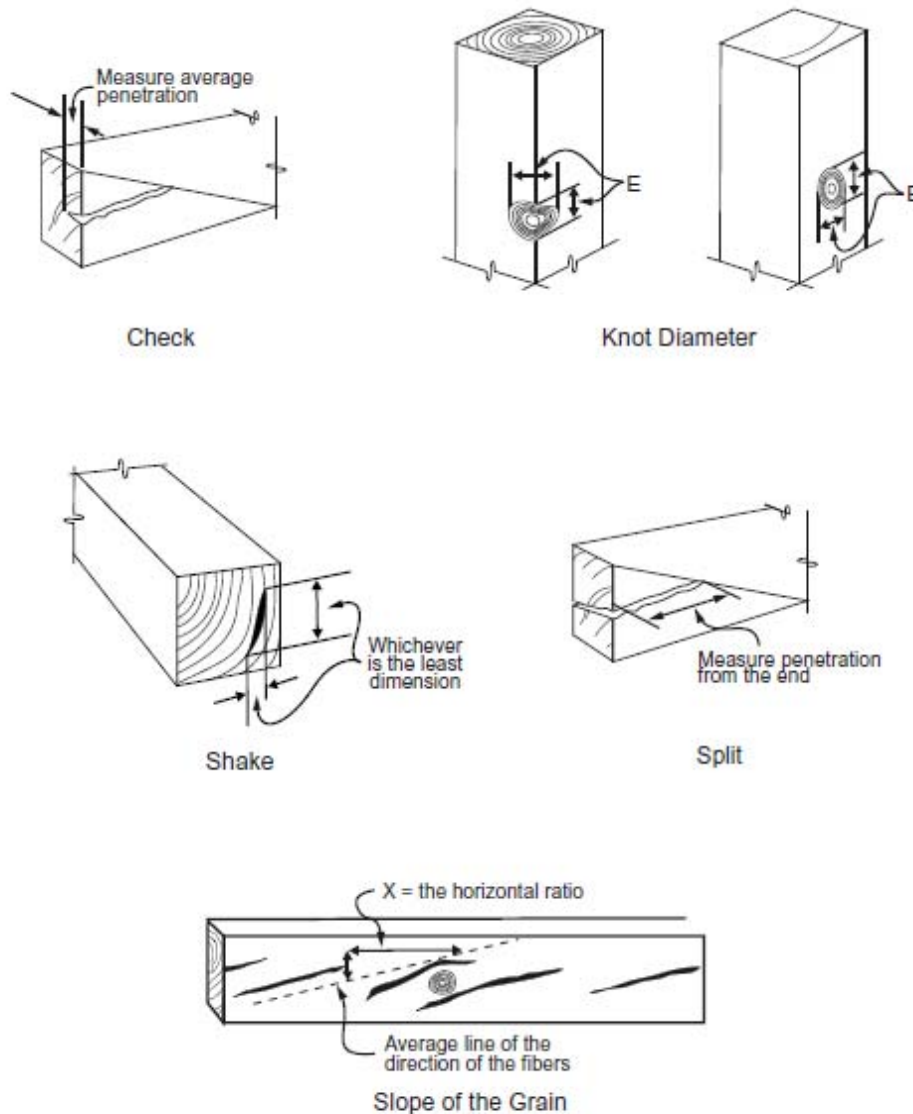


Figure 912-1 Timber and Lumber Terminology



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912.06 Structural Timber and Lumber.

A. **Grade.** Use structural timber and lumber graded according to the grading and dressing rules in ASTM D 245 and conforming to the contract documents

B. **Species.** Secure prior Department approval for the use of species not specifically included in ASTM D 1760. Treat according to the requirements for red oak.

C. **Preservative Treatment.** Condition and treat structural timber and lumber according to ASTM D 1760, Table 1, Ground Contact.

D. **Preservatives.** Use a chemical preservative listed in ASTM D 1760 and associated AWP Standards.

912.07 Timber Piles.

A. **Physical Characteristics and Species.** Prior to preservative treatment, timber piles must meet the requirements of ASTM D 25, Standard Specification for Round Timber Piles, except as modified in this subsection. Timber piles must be douglas-fir, western larch, southern pine, cypress, red pine, eastern white pine (northern white pine), tamarack, or red oak.

B. **Dimensions.** Pile circumference, measured under the bark, must conform to Table 912-1, except that 10 percent of the piles in any shipment lot may have circumferences 2 inches less than the tabulated minimum values. Do not exceed a maximum to minimum diameter ratio of 1:2 measured at the butt of the pile.

Table 912-1 Circumferences and Diameters of Timber Piles

Length, ft	3 Feet from Butt				At Tip	
	Minimum		Maximum		Minimum	
	Circumference, in.	Diameter approx., in	Circumference, in	Diameter approx. in	Circumference, in	Diameter approx., in
Douglas Fir, Larch, Pine, or Tamarack						
Under 40	38	12	63	20	25	8
40 to 50 incl.	38	12	63	20	22	7
Over 50 to 70 incl.	41	13	63	20	22	7
Over 70 to 90 incl.	41	13	63	20	19	6
Over 90	Dimensions must be as specified in the proposal or on the plans					
Oak and Cypress						
Under 30	38	12	57	18	25	8
30 to 40 incl.	41	13	63	20	22	7
Over 40	41	13	63	20	19	6



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C. **Sapwood.** Use only piles with minimum sapwood thickness of 1 inch at the butt end.

D. **Straightness.** A line drawn from the center of the butt to the center of the tip must lie wholly within the body of the pile. Use only piles with a uniform taper from butt to top and free from short crooks.

E. **Knots.** Piles must be free from unsound and loose knots. Sound knots not exceeding 4 inches in diameter or one-third of the least diameter or dimension of the pile at the point where they occur are permitted, except that in piles for use as structural members in exposed work, sound knots of a diameter exceeding one-quarter of the least diameter or dimension of the pile at the point where they occur, are not permitted.

F. **Checks.** Checks wider than $\frac{1}{4}$ inch or deeper than 2 inches are not permitted.

G. **Peeling (Shaving).** All piles must meet the requirements for clean-peeled piles.

H. **Preservative Treatment.** Conform to ASTM D 1760, Table 2 for conditioning and preservative treatment of timber piles

912.08 Posts.

A. **General.** Use only posts cut from live timber and free from bird pecks and insect holes. Saw all posts square at both ends.

B. **Species and Grades.** Manufacture fence posts, guide posts, guard posts, and mailbox posts from the species listed in Table 912-2.



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Table 912-2 Species and Grading Requirements for Posts

Species	Round Posts Grade	Sawn Posts Agency (a)
Hardwoods	ASTM D 245	MDOT
Red Oak (Northern Red, Black, Pin Laurel, Cherry-Bark, Scarlet, Water, and Willow Oaks) (b) Hard Maple (Black & Sugar) and Red Maple White Ash White-Heartwood Beech Yellow Birch		
Softwoods	No. 1 or better No. 2 or better No. 2 or better	NHPMA WCLIB, WWPA SPIB
Northern White Cedar Red Pine, and Eastern White Pine (Northern White Pine) Douglas-fir Southern Pine Species		
a. NHPMA (Northern Hardwood and Pine Manufacturers Assoc.); WWPA (Western Wood Products Assoc.); WCLIB (West Coast Lumber Inspection Bureau); and SPIB (Southern Pine Inspection Bureau) b. Southern Red Oak is not permitted.		

C. Marking. Posts must show the applicable grading agency stamp indicating mill origin, species, and grade.

D. Dimensions. Furnish line posts 7 feet long with either a nominal 4-inch square cross section or a round cross section with a minimum diameter of 4½ inches.

Furnish end, corner, gate, intersection and intermediate braced posts 8 feet long with either a nominal 6-inch square cross section or a round cross section with a minimum diameter of 8 inches.

Mailbox posts must be 6 feet long and must have either a nominal 4-inch square cross section or a round cross section with a minimum diameter of 4½ inches.

E. Dimensional Tolerances. Furnish round posts within a tolerance of + ¾ inches and -¼ inches of the specified diameter and equal to the specified nominal length ±2 inches. The size of a post not perfectly round will be determined by its average top diameter.

F. Decay. Butt rot in excess of 5 percent of the area of the butt is not permitted. Tops of all posts must be sound, except that one pipe rot not to exceed ¾ inch in diameter is permitted in posts with nominal top size of 6 inches or more.



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G. **Knots.** Sound knots are permitted providing they do not significantly impair the strength of the post and are trimmed flush with the surface of the post.

H. **Crook or Bow.** Short crooks, one way sweep exceeding 2 inches, and winding twists that are unsightly and exaggerated are not permitted.

I. **Surface.** Furnish fence posts that are peeled or shaved their entire length to remove all outer bark. Shaving to remove all inner bark is not required.

Round posts for mailbox posts, guard posts, and guide posts must have the inner and outer bark completely removed.

J. **Preservative Treatment.** Condition and treat all round posts, except northern white cedar, with a preservative according to AWPAS Standards C 5 and ASTM Standard D 1760. Treat sawn posts according to AWPAS Standards C 1 and C 2 and ASTM D 1760.

K. **Conditioning.** When air seasoned, stack posts in a manner approved by the Department until the average moisture content does not exceed 19 percent.

L. **Preservatives.** Conform to the following.

Material	AWPAS Standard
pentachlorophenol in Type A hydrocarbon solvent	P8, P9
chromated copper arsenate (CCA)	P5
ammoniacal copper arsenate (ACA)	P5
ammoniacal copper zinc arsenate (ACZA)	P5

M. **Results of Treatment.** Minimum preservative penetration and retention determined according to AWPAS Standards are shown in Table 912-3.



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Table 912-3 Treatment Results Requirements

Preservative	Minimum Retention 0.0-0.6 in zone	AWPA Standard
Pentachlorophenol Type A CCA, ACA, ACZA	0.60 pcf 0.60 pcf	A 5 A 11
Minimum Penetration		
Species	Heartwood	Sapwood
Hardwoods & Douglas-fir	0.3 in. min.	0.6 in. or 90% whichever is greater
Softwoods		2.0 in. or 90% whichever is greater

912.09 Sawn Timber Posts and Blocks for Beam Guardrail and Highway Signs.

A. **Species and Grades.** Furnish wood posts for guardrail, wood blocks and sign posts of the species listed, and meeting the grading requirements listed in Table 912-4, Table 912-5 and Table 912-6, respectively. The approved stamp must be applied to the middle one-third of each sign post on the wider face.

Furnish nominal 6 by 8 inch cross section wood posts and blocks for guardrails, except that jack pine for posts, furnished in No. 1 Grade or better must have a nominal 8 by 8 inch cross section. Furnish nominal 4 by 6 inch or 6 by 8 inch cross section sawed wood posts for signs.



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**Table 912-4 Species and Grading Requirements for
Sawn Timber Guardrail Posts**

Species	Posts & Timbers Grade	Grading Rules Agency (a)
Hardwoods	Grade GRP	MDOT
Red Oak (Northern Red, Black, Pin, Laurel, Cherry-Bark, Scarlet, Water, and Willow Oaks) (b) Hard Maple (Black & Sugar) and Red Maple White Ash White-Heartwood Beech Yellow Birch Hickory (Mockernut, Pignut, Shagbark, and Shellbark Hickories)		
Softwoods	No. 1 or better	WWPA or WCLIB
Douglas-fir, Douglas-fir/Larch		
Southern Pine	No. 1 or better	SPIB
Jack Pine 8 in. x 8 in.	No. 1 or better	NHPMA
a. NHPMA (Northern Hardwood and Pine Manufacturers Assoc.); WWPA (Western Wood Products Assoc.); WCLIB (West Coast Lumber Inspection Bureau); and SPIB (Southern Pine Inspection Bureau). b. Southern Red Oak is not permitted.		

1. MDOT Grade GRP. The requirements for MDOT Grade GRP (Guardrail Posts) are as follows:

- a. **Splits.** Not more than 3 inches in the plane of the bolt hole; 6 inches all other locations.
- b. **Checks.** Single checks must not be greater than 3 inches deep and checks opposite each other must not total more than 3 inches deep, as measured with a probe that is not more than $\frac{1}{16}$ inch in thickness or in diameter.

Single checks $\frac{1}{4}$ inch wide, or wider, measured at the widest point, must not extend more than one-third of the length of the post.

Single checks, measured at the widest point, must not exceed $\frac{3}{8}$ inch in width.

- c. **Shakes.** Not more than 2 inches, measured in the least dimension.
- d. **Splits, Checks, and Shakes.** Not present be in combinations that could cause the post to separate into several pieces.



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- e. **Stains.** Stained heartwood, not caused by decay, must not exceed 25 percent of the piece.
 - f. **Slope of Grain.** Not to exceed 1:10.
 - g. **Wane.** Less than $\frac{1}{4}$ of any face.
 - h. **Knots.** Knots must be sound and tight. The sum of the least dimensions of all knots in any 6-inch length of post (all faces) must be less than 5 inches. Grain distortion caused by knot clusters must not exceed $2\frac{1}{2}$ inches. Knots are permitted on all faces but knots must not exceed $2\frac{1}{2}$ inches in the least dimension.
2. **MDOT Grade GRB.** The requirements for MDOT Grade GRB (guard-rail blocks) are as follows:
- a. **Splits.** Not more than 3 inches in the plane of the bolt hole; 5 inches all other locations.
 - b. **Checks.** Same as MDOT Grade GRP
 - c. **Shakes.** Not more than 3 inches, measured in the least dimension and not extending beyond half the standard grading length of the piece.
 - d. **Splits, Checks, and Shakes.** Not present in combinations which would cause the block to separate into several pieces.
 - e. **Stains.** Stained heartwood, not caused by decay, must not exceed 25 percent of the piece.
 - f. **Wane.** Less than $\frac{1}{3}$ of any face.
 - g. **Knots.** Grain distortion caused by knot clusters must not exceed 4 inches. Knots are permitted on all faces but knots must not exceed 4 inches in the least dimension.



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**Table 912-5 Species and Grading Requirements for
Sawn Timber Guardrail Blocks**

Species	Blocks Grade	Grading Rules Agency (a)
Hardwoods	Grade GRB	MDOT
Red Oak (Northern Red, Black, Pin, Laurel, Cherry-Bark, Scarlet, Water, and Willow Oaks) (b) Hard Maple (Black & Sugar) and Red Maple White Ash White-Heartwood Beech Yellow Birch Hickory (Mockernut, Pignut, Shagback, and Shellbark Hickories)		
Softwoods	No. 2 or better	WCLIB, WWPA
Douglas-fir and Douglas-fir/Larch	No. 2 or better	SPIB
Southern Pine Species		
Jack Pine, Red Pine, and Eastern White Pine (Northern White Pine)	No. 1 or better	NHPMA
a. NHPMA (Northern Hardwood and Pine Manufacturers Assoc.); WWPA (Western Wood Products Assoc); WCLIB (West Coast Lumber Inspection Bureau); and SPIB (Southern Pine Inspection Bureau). b. Southern Red Oak is not permitted.		

Table 912-6 Species and Grading Requirements for Sawed Sign Posts

Species	Grade	Grading Rules Agency (a)
4 in. by 6 in. (nominal) Posts Balsam Fir Douglas Fir Eastern Hemlock Tamarack(Eastern Larch) Eastern White Pine Southern Pine	No. 1 (Joists-Planks) No. 1 (Joists-Planks) No. 1 (Joists-Planks) No. 1 (Joists-Planks) Select Structural (Joists-Planks) No. 1 (Joists-Planks)	NELMA WCLIB NHPMA NHPMA NELMA SPIB
6 in. by 8 in. (nominal) Posts Douglas Fir Southern Pine Eastern Hemlock Tamarack(Eastern Larch)	No. 1 Dense (Posts-Timbers) No. 1 SR (Stress Rated Timbers) Select Structural (Posts-Timbers) Select Structural (Posts-Timbers)	WWPA SPIB NELMA NELMA
a. NHPMA (Northern Hardwood and Pine Manufacturers Assoc.); WWPA (Western Wood Products Assoc); WCLIB (West Coast Lumber Inspection Bureau); and SPIB (Southern Pine Inspection Bureau).		

B. General Requirements. Meet the following general requirements:

1. **Decay.** Posts and blocks must be free from decay before treatment.
2. **Crook or Bow.** Not to exceed 1 inch per 10 foot length. (Example: 0.7 inch in 7 feet, 0.8 inch in 8 feet, etc.)



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3. **Dimensional Tolerances.**

Cross-section	-1/2 inch
Length (blocks)	-1/2 inch
Length (posts)	-2 inches

C. **Incising.** Incise all posts before treatment. Blocks are not required to be incised. The incisor must have teeth of nominal $\frac{7}{8}$ inch length to make cuts spaced at $2\frac{1}{2}$ inches lengthwise of the piece, in rows $\frac{3}{4}$ inch apart, with alternate rows staggered by $1\frac{1}{4}$ inches to form diamond patterns of incisions (diamonds being $2\frac{1}{2}$ inches long and $1\frac{1}{2}$ inches wide center to center of incision marks), approximately 60 per square foot. Southern pine may be incised with $\frac{3}{4}$ inch teeth.

Incising posts according to Article 3.6.2 of the AREA *Manual for Railway Engineering* is an approved alternate method.

D. **Inspection Before Treatment.** Inspect material that has been air dried or kiln dried for moisture content as specified in subsection 912.09.E, according to AWPAs Standard M2. Test representative pieces. The minimum number of tests is the lesser of 5 percent or 50 pieces out of a charge.

E. **Test for Moisture Content.** Test with an electrical resistance type moisture meter with insulated needles of $1\frac{1}{2}$ inches in length. Correct readings for species and temperature readings per meter instructions. Take readings on one surface at mid-length with needles driven to their full length. The lot will be considered acceptable when the average moisture content does not exceed 19 percent. Any individual piece exceeding 23 percent moisture content will be rejected and must be removed from the lot.

F. **Preservative Treatment.** Treat wood for guardrail posts and blocks according to AWPAs Standards C1 and C2, ASTM D 1760, and this subsection. In addition, treat wood for sign posts according to AWPAs C14.

G. **Preservatives.** Conform to subsection 912.08.L

H. **Sorting and Spacing.** All material in any charge must be the same species or consist of species within any one group shown in Table 912-7. The material must have similar moisture content and be of similar form and size.



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Blocks and posts may be treated in the same charge following the retention requirements of subsection 912.09.K. Separate pieces in the charge with horizontal spacers so that preservative and steam (if used) will contact all horizontal surfaces.

Table 912-7 Species Groupings for Treatment in Same Charge Group

Group	Species
A	Southern Pine
B	Douglas-Fir, Balsam Fir, Eastern Hemlock, Tamateck
C	Jack Pine, Red Pine and Eastern White Pine
D	Hardwoods

I. **Conditioning.** Use air seasoning, kiln drying, Boulton drying, vapor drying, steaming, or heating in preservative.

Material that is air seasoned or kiln dried must have an average moisture content not exceeding 19 percent before treatment.

When steam conditioning, the maximum temperature indicated in Table 912-8 must not be reached in less than one hour. If a vacuum is applied after steaming, it must be a minimum of 22 inches of mercury. In addition, when using CCA, ACA or ACZA, material must be removed from the cylinder and allowed to cool to 120 °F, or below, after steaming and before the preservative is applied. When treating douglas-fir with pentachlorophenol, steaming is not permitted. When treating southern pine, jack pine, and red pine with CCA, ACA or ACZA, steaming is only permitted to thaw frozen or ice coated material.

When conditioning by heating in preservative, the solution must cover the material. Table 912-8 lists maximum permitted temperatures. Conditioning by heating in water-borne preservatives (CCA, ACA or ACZA) is not permitted.



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**Table 912-8 Conditioning Methods and Temperature Requirements
for Method Used**

Species	Conditioning Methods Permitted	Steaming		Heating in Preservative	
		Max. Temp. °F	Max. Duration hours	Max. Temp. °F	Max. Duration hours
Hard Maple	Air drying only No steaming	—	—	—	—
Other Hardwoods (a)	See I. Conditioning	—	—	220	No limit
Southern Pine	See I. Conditioning	245	17	220	No limit
Eastern White Pine	See I. Conditioning	240	4½	210	6 (c)
Other Softwoods (b)	See I. Conditioning	240	6	210	6 (c)
a. Red Oak, White Ash, White-Heartwood Beech, Yellow Birch, Hickory, and Red Maple. b. Jack Pine, Douglas Fir, and Red Pine, Balsam Fir, Eastern Hemlock, Tamarack. c. If seasoned material is used, otherwise no limit.					

J. Treatment. Treatment must achieve the retentions specified in subsection 912.09.K and the penetrations in subsection 912.09.L.

Increase pressure to at least the minimum but not higher than the maximum levels shown in Table 912-9 and maintain until the desired volume of preservative has entered the wood.

Do not exceed the following preservative temperatures at any time during the pressure period.

Preservative	Maximum Temperature
Pentachlorophenol in Type A hydrocarbon solvent	210 °F
Ammoniacal copper arsenate (ACA)	150 °F
Chromated copper arsenate (CCA)	120 °F
Ammoniacal copper zinc arsenate (ACZA)	150 °F

When treating with pentachlorophenol, an expansion bath or a final steaming may be applied to the indicated species after completion of the pressure phase of the treatment, as specified in Table 912-9.



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Table 912-9 Pressure Requirements by Species

Species	Pressure		Where Preservative is Penetachlorophenol in Type A Hydrocarbon Solvent		
			Expansion Bath Max. Temp., °F	Final Steaming (a)	
	Min. (psi)	Max. (psi)		Max. Temp., °F	Max. Duration, hours
Red Oak	125	250	Not Permitted	240	1
Other Hardwoods	125	200	Not Permitted	240	1
Jack Pine, Red Pine	75	175	220	240	2
Southern Pine	75	200	220	240	2
Douglas Fir, Balsam Fir, Eastern Hemlock, Tamarack	50	150	220	240	2
Eastern White Pine	50	135	220	240	1
a. If seasoned material is used, post-steaming at 225 °F for a maximum period of 15 hours will be permitted.					

K. **Retention.** Table 912-10 lists the minimum retention in pounds per cubic foot for the outer 0.6 inches of guardrail posts, blocks, and sign posts. Retention must be determined by chemical assay with samples taken after treatment according to subsection 912.09.M, and following AWPA standards listed in Table 912-10. If blocks are treated along with posts, retention of the charge must be determined by assay of borings from posts.

Table 912-10 Minimum Retention Requirements

Preservative	Minimum Retention, pcf			AWPA Standard
	Guardrail Posts	Sign Posts	Blocks	
Pentachlorophenol CCA, ACA, or ACZA	0.60 0.60	0.50 0.50	0.40 0.40	A5 A11

L. **Penetration.** Table 912-11 specifies the penetration requirements for heartwood and sapwood. Samples to determine penetration must be taken after treatment according to subsection 912.09.M.

Table 912-11 Penetration Requirements-Posts and Blocks

All Permitted Species (a)	Minimum Penetration	
	Heartwood	Sapwood
Guardrail Posts and Blocks	0.3 in.	0.6 in. or 90 percent, whichever is greater
Sign Posts	0.5 in.	
a. For Red Oak, 65 percent of the total annual rings must be penetrated; however, if this is not possible, properly conditioned wood may be treated to refusal.		



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M. Inspection After Treatment. Following treatment, the charge must be examined by the treater for cleanliness, mechanical damage to individual pieces, treatment damage such as severe checking, splitting, or honeycombing, and for any untreated areas resulting from air pockets, floating material, or insufficient height of preservative. Any such material must be removed before shipment.

Sampling and testing for preservative retention and penetration will be done by the Department. Sampling will be done according to MTM 713.

N. Branding. All posts and blocks must be burn branded clearly and permanently on one of the wide faces; on guardrail posts, the brand must be within one foot of the top of the post and on sign posts the brand must be within the middle one-third of the post. The brand must show: treater ID, plant designation, year of treatment (the month may be included), species (or group code designation shown in Table 912-12), and preservative type, and retention, all according to AWP standard M 6.

Table 912-12 Group Coding as an Alternate to Species Coding

Group	Code (a)
Hardwoods	MH
Jack Pine	J
Other Softwoods	MS
Southern Pine	SP
Douglas Fir	DF
a. Species designated in Tables 912-4, 912-5, and 912-6.	

O. Conformance. The treating plant supplying the material must supply a certificate indicating the species, grade, preservative type, retention, year, and name of treater.

P. Degradation After Treatment. Guardrail posts or blocks developing any the following prior to installation will be rejected regardless of any prior approvals.

1. Single checks greater than 3 inches deep or checks opposite each other totaling more than 3 inches deep, measured with a probe not more than $\frac{1}{16}$ inch thick,
2. Single checks $\frac{1}{4}$ inch wide or wider measured at the widest point, and extending more than one-third of the length of the post or block,



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3. Single checks greater than $\frac{3}{8}$ inch wide measured at the widest point,
4. Splits greater than 3 inches long which are in the plane of the bolt hole,
5. Crooks or bows exceeding 1 inch per 10 foot length, and any twists,
6. Combinations of checks, splits, or shakes which otherwise meet specifications but which could cause the post or block to separate into several pieces.

Q. Alternate materials for guardrail offset blocks are permitted; select from the Qualified Products List.

912.10 Timber for Rustic Construction.

A. **Species and Grade.** Furnish sound unfinished eastern white pine (northern white pine), red pine, ponderosa pine, douglas-fir, northern white cedar, southern pine for all logs, posts, timbers, and split rails designated for rustic construction. All material must be free from decay and must have the bark removed. Salvaged rails obtained from existing rail fences and reasonably sound and uniform in straightness and size are permitted.

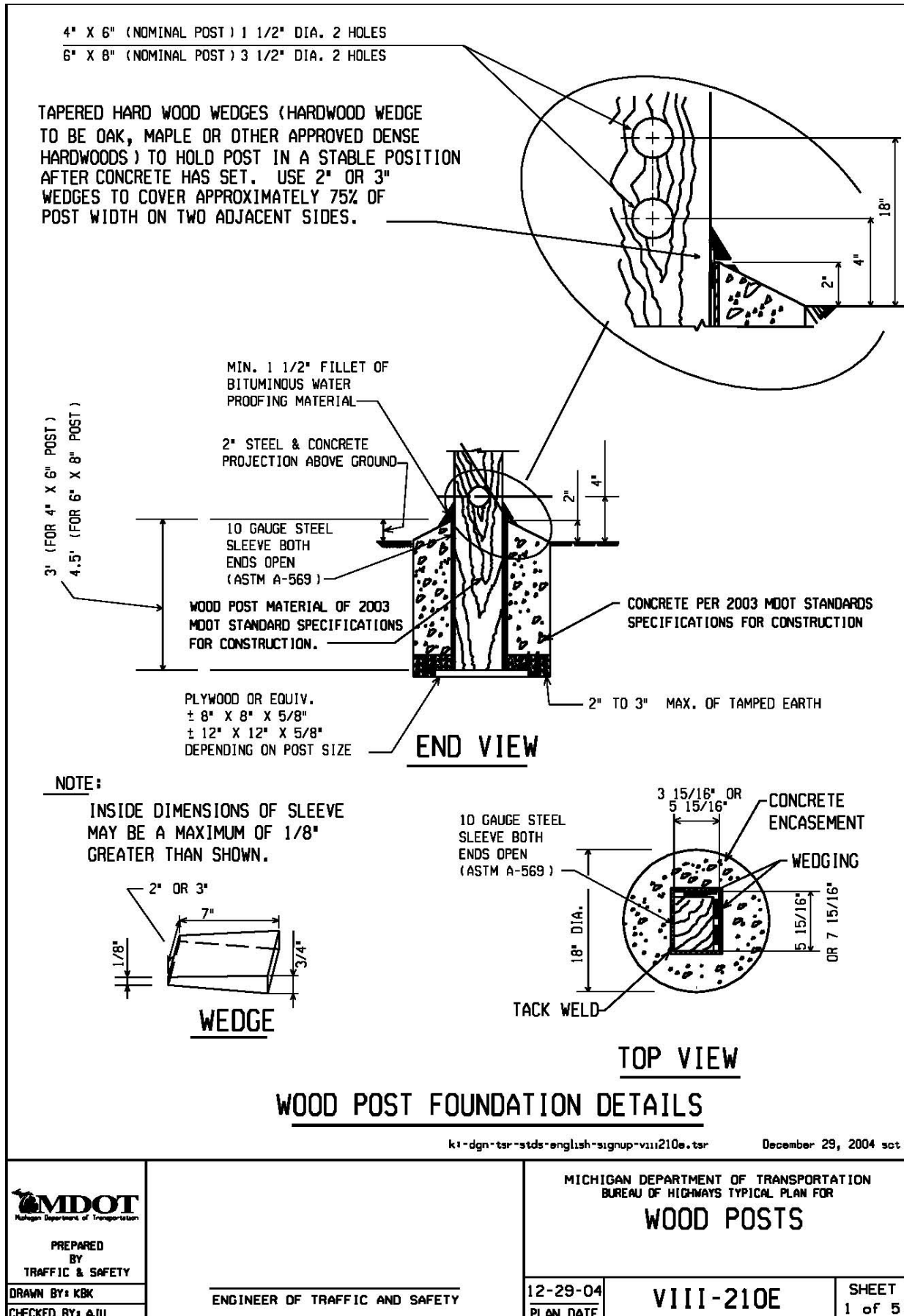
B. **Shape and Dimensions.** Furnish uniformly straight materials of the dimensions specified, except where curved or angular logs are indicated on the plans. Furnish logs and posts with average diameter at the small end of not less than the specified diameter minus $\frac{1}{4}$ inch.

C. **Preservative Treatment.** Condition and pressure treat wood used in rustic construction, other than northern white cedar, according to ASTM D 1760, Table 1, Ground Contact.

D. **Preservatives.** Conform to subsection 912.08.L.

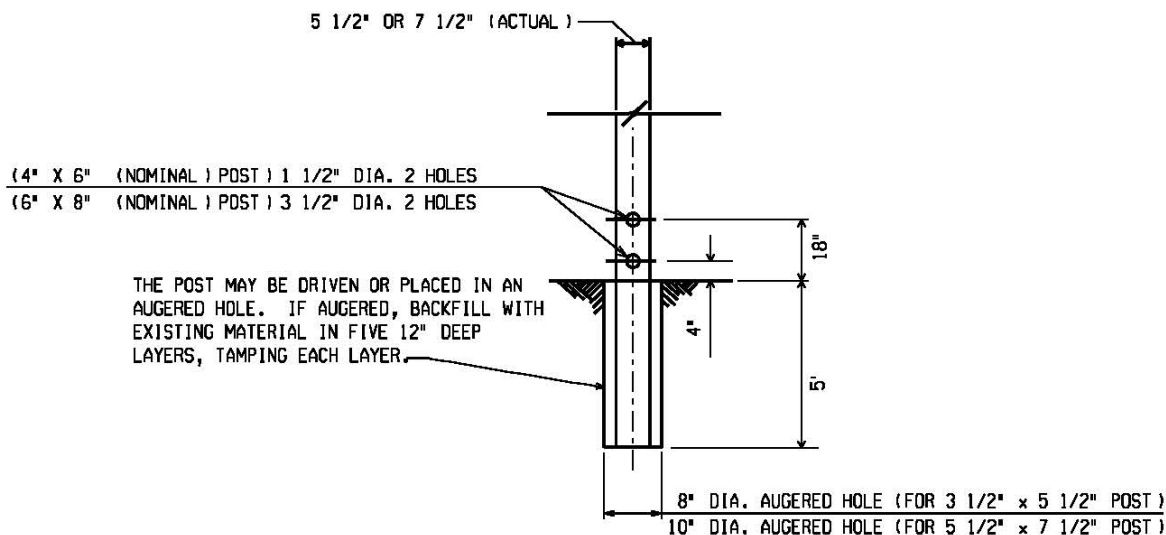
E. **Results of Treatment.** Determine results of treatment, including preservative analysis and penetration and retention determinations according to ASTM D 1760 and associated AWWA standards.

Contract No. 071B1300212
Attachment B, Specifications





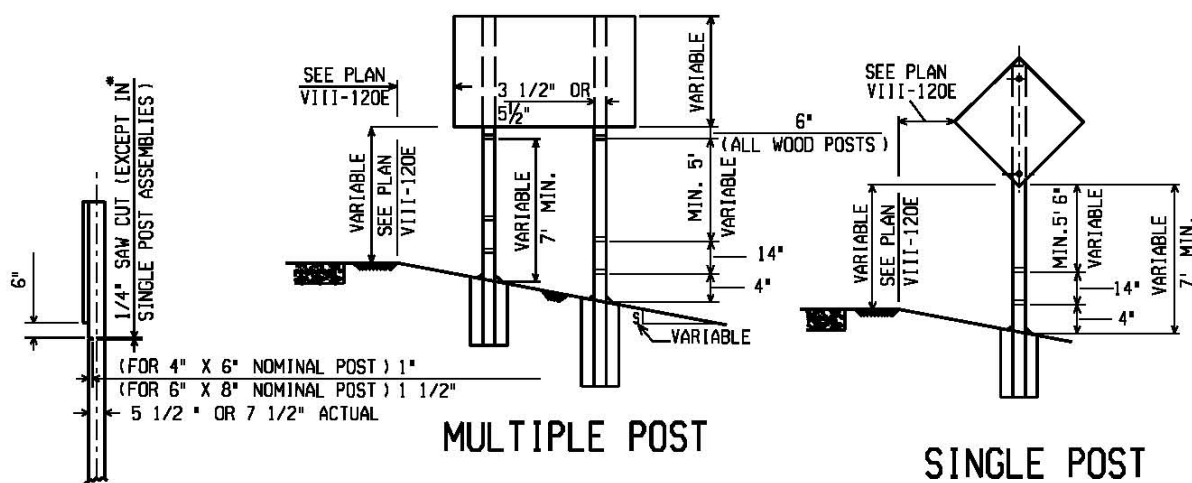
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Attachment B, Specifications



END VIEW

WOOD POST DIRECT EMBEDMENT DETAIL
SINGLE POST INSTALLATIONS ONLY

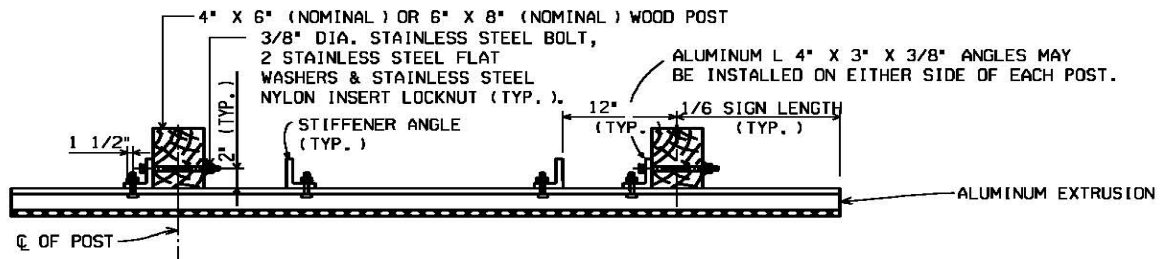
NOTE: DIRECT EMBEDMENT ONLY AT LOCATIONS IDENTIFIED IN PLANS OR PROPOSAL.



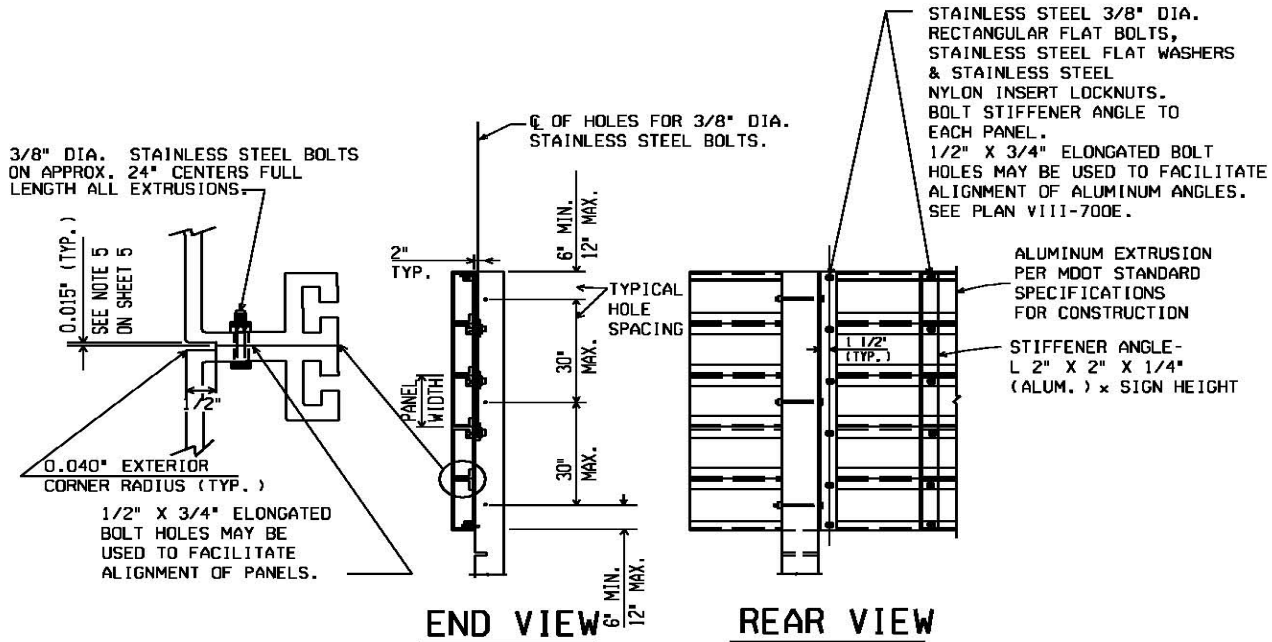
SAW CUT DETAIL

BREAKAWAY HOLES/SAWCUT RELATIONSHIP

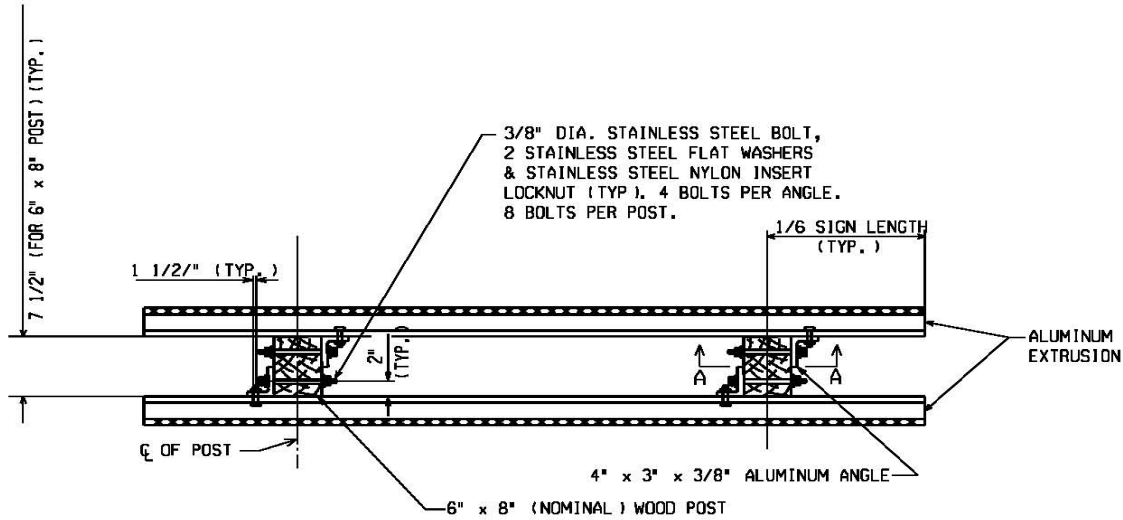
*SAW CUT SHALL BE PLACED ON
APPROACH TRAFFIC SIDE OF POST.



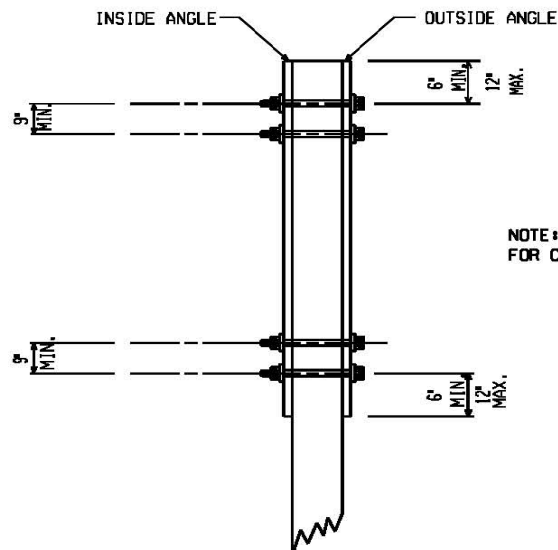
TOP VIEW
SINGLE TYPE I SIGN



END VIEW **REAR VIEW**
TYPE I SINGLE SIGN - ERECTION DETAILS



TOP VIEW
BACK-TO-BACK TYPE I SIGNS



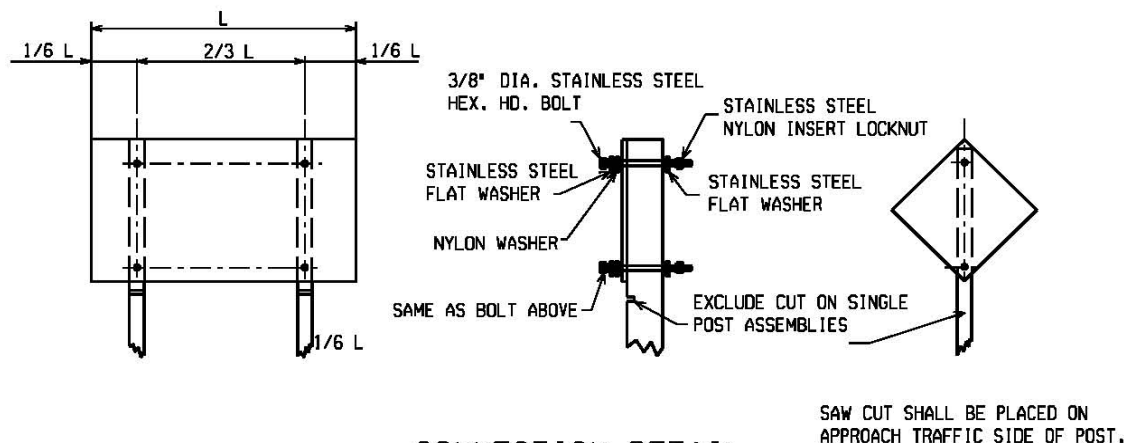
NOTE: REFER TO TYPE I SIGN-ERECTION DETAILS
FOR CONNECTING ANGLES TO BACK OF SIGNS.

SECTION A-A

TYPE I BACK-TO-BACK SIGNS-ERECTION DETAILS



Contract No. 071B1300212
Attachment B, Specifications



CONNECTION DETAIL

TYPES II & III SIGNS - ERECTION DETAILS

NOTES:

1. THE DRILLED BREAKAWAY HOLES ARE TO BE CAREFULLY CENTERED ON THE POSTS.
2. ALL CONCRETE FOUNDATIONS SHALL BE FINISHED AS SHOWN AND ANY SURPLUS MATERIAL SHALL BE COMPLETELY REMOVED FROM RIGHT-OF-WAY. SIGNS SHALL NOT BE ERECTED ON WOOD POSTS FOR A MINIMUM OF 24 HOURS AFTER PLACEMENT OF THE CONCRETE.
3. THE PAY ITEM "SIGN, TYPE ..." INCLUDES ALL ATTACHING DEVICES AND HARDWARE.
4. WOOD POSTS MAY BE DIRECTLY EMBEDDED ONLY AT THOSE LOCATIONS IDENTIFIED IN THE PLANS OR PROPOSAL.
5. A 0.500" WIDE X 0.015" DEEP GROOVE SHALL RUN THE ENTIRE LENGTH AT TOP AND BOTTOM OF ALL EXTRUDED ALUMINUM PANELS TO ACCOMMODATE OVERLAP SHEETING.
6. ALL STAINLESS STEEL BOLTS, NUTS, AND WASHERS SHALL BE 2003 MDOT STANDARDS SPECIFICATIONS FOR CONSTRUCTION.
7. FIELD DRILL ALUMINUM ANGLES AND WOOD POSTS.