



**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **3**  
 to  
 Contract Number **071B7700197**

<b>CONTRACTOR</b>	NORTHERN OIL I INC
	150 U.IS. 41 South
	Baraga, MI 49908
	Dale Parkila
	906-353-6185
	dpark@up.net
	CV0031579

<b>STATE</b>	Program Manager	Various	SW
Contract Administrator	Yvon Dufour	DTMB	
	(517) 249-0455		
	dufour@michigan.gov		

**CONTRACT SUMMARY**

GASOLINE AND DIESEL FUEL DELIVERY SERVICE FOR ONTO

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
August 17, 2017	September 30, 2020	5 - 1 Year	September 30, 2021
PAYMENT TERMS		DELIVERY TIMEFRAME	
1% 10, Net 30			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	one year	<input type="checkbox"/>		September 30, 2022
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$630,425.16	\$0.00	\$630,425.16		

**DESCRIPTION**

Effective 9/29/2021, Option Year 2 of this contract is exercised and the new expiration date is changed to 9/30/2022. All other terms, conditions, specifications and pricing remain the same, per Vendor agreement, and DTMB Central Procurement Services approval.

**Program Managers  
for  
Multi-Agency and Statewide Contracts**

AGENCY	NAME	PHONE	EMAIL
DNR	Samantha Fusco	517-284-5973	FuscoS@michigan.gov



**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **2**

to

Contract Number **071B7700197**

<b>CONTRACTOR</b>	NORTHERN OIL I INC
	150 U.IS. 41 South
	Baraga, MI 49908
	Dale Parkila
	906-353-6185
	dpark@up.net
	CV0031579

<b>STATE</b>	Program Manager	Various	SW
	Contract Administrator	Steve Motz	DTMB
		517-331-6086	
		motzs1@michigan.gov	

**CONTRACT SUMMARY**

**GASOLINE AND DIESEL FUEL DELIVERY SERVICE FOR ONTO**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
August 17, 2017	September 30, 2020	5 - 1 Year	September 30, 2020
PAYMENT TERMS		DELIVERY TIMEFRAME	
1% 10, Net 30		3 Days ARO	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

300 gallons for Baraga County; 500 gallons for Houghton County; 750 gallons for Ontonagon

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1-Year	<input type="checkbox"/>		September 30, 2021
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$630,425.16	\$0.00	\$630,425.16		

**DESCRIPTION**

Effective 9/21/2020, Option Year 1 of this contract is exercised and the new expiration date is changed to 9/30/2021 and the Contract Administrator has been changed to Steve Motz. All other terms, conditions, specifications and pricing remain the same. Per Vendor agreement, and DTMB Central Procurement Services approval.

**Program Managers  
for  
Multi-Agency and Statewide Contracts**

AGENCY	NAME	PHONE	EMAIL
DNR	Samantha Fusco	517-284-5973	FuscoS@michigan.gov



**STATE OF MICHIGAN**  
**ENTERPRISE PROCUREMENT**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number 1

to

Contract Number 071B7700197

<b>CONTRACTOR</b>	Northern Oil 1, Inc.
	150 U.I.S. 41 South
	Baraga, MI 49908
	Dale Parkila
	906-353-6185
	dpark@up.net
	CV0031579

<b>STATE</b>	<b>Program Manager</b>	VARIOUS	SW
		@Michigan.gov	
		Steve Rigg	DTMB
	<b>Contract Administrator</b>	(517) 249-0454	
		riggs@michigan.gov	

**CONTRACT SUMMARY**

**GASOLINE AND DIESEL FUEL DELIVERY SERVICE FOR ONTONAGON, HOUGHTON, AND BARAGA COUNTIES**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
August 17, 2017	September 30, 2020	5 - 1 Year	September 30, 2020
PAYMENT TERMS		DELIVERY TIMEFRAME	
1% 10, Net 30		3 Days ARO	
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**

300 gallons for Baraga County; 500 gallons for Houghton County; 750 gallons for Ontonagon

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		September 30, 2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$130,425.16	\$500,000.00	\$630,425.16		

**DESCRIPTION**

Effective July 24, 2018, the Cedar River State dock is hereby added to this contract for fuel delivery service at \$.28 per gallon delivery charge over OPIS. The 1% Administrative Fee obligation is hereby removed from this contract and is now not required. This contract is hereby increased by \$500,000.00. All other terms, conditions, specifications and pricing remain the same. Per Agency and Vendor agreement, and DTMB Central Procurement Services approval.



# STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management and Budget  
525 W. Allegan St.  
P.O. Box 30026  
Lansing, Michigan 48913

## NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **071B7700197**  
between  
THE STATE OF MICHIGAN  
and

<b>CONTRACTOR</b>	Northern Oil 1, Inc.
	150 U.S. 41 South
	Baraga, MI 49908
	Dale Parkila
	906-353-6185
	DPark@UP.net
	*****2170

<b>STATE</b>	Program Manager	Multiple - Statewide	SW
	Contract Administrator	Steve Rigg	DTMB
		517-284-7043	
		RiggS@michigan.gov	

CONTRACT SUMMARY			
<b>DESCRIPTION: Gasoline and Diesel Fuel Delivery Service for Ontonagon, Houghton, and Baraga Counties</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
8/17/2017	9/30/2020	5 – 1 year options	
PAYMENT TERMS		DELIVERY TIMEFRAME	
1% 10, Net 30		3 Days ARO	
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			
300 gallons for Baraga County; 500 gallons for Houghton County; 750 gallons for Ontonagon			
MISCELLANEOUS INFORMATION			
<b>The terms and conditions of this Contract are those of RFP 007117B0010853, this Contract Agreement and the vendor's quote. 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.</b>			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			<b>\$130,425.16</b>



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Northern Oil, Inc. (“**Contractor**”), a Michigan Corporation. This Contract is effective on 8/17/2017 (“**Effective Date**”), and unless terminated, expires on 9/30/2020.

This Contract may be renewed for up to five (5) additional one (1) year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.]

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule A – Statement of Work – Gasoline and Diesel Fuel** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Schedule A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims 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; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 2. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Steve Rigg Constitution Hall 525 W. Allegan St, 1 <sup>st</sup> Floor, NE P.O. Box 30026 Lansing, MI 48909 RiggS@michigan.gov 517-284-7043	Northern Oil 1, Inc. Dale Parkila 150 US 41 South Baraga, MI 49908 <a href="mailto:noil@UP.net">noil@UP.net</a> 906-353-6185

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State: Steve Rigg Constitution Hall 525 W. Allegan St, 1 <sup>st</sup> Floor, NE P.O. Box 30026 Lansing, MI 48909 RiggS@michigan.gov 517-284-7043	Contractor: Northern Oil 1, Inc. Dale Parkila 150 US 41 South Baraga, MI 49908 <a href="mailto:noil@UP.net">noil@UP.net</a> 906-353-6185
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State: Steve Rigg Constitution Hall 525 W. Allegan St, 1 <sup>st</sup> Floor, NE P.O. Box 30026 Lansing, MI 48909 RiggS@michigan.gov 517-284-7043	Contractor: Northern Oil 1, Inc. Dale Parkila 150 US 41 South Baraga, MI 49908 <a href="mailto:noil@UP.net">noil@UP.net</a> 906-353-6185
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
<b>Automobile Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.



<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Environmental and Pollution Liability (Errors and Omissions)</b>	
Minimal limits: \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate	Contractor must have their policy: (1) be applicable to the work being performed, including completed operations equal to or exceeding statute of repose; (2) not have exclusions or limitations related to Transportation (upset overturn, spills during loading or unloading, Hazardous Materials Handling, and Non Owned disposal site liability; and (3) endorsed to add "the State of Michigan, its departments, division, agencies, offices, commissions, officers, employees, and agents" as additional insured.

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. **Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract with MiDEAL members. Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget  
Cashiering  
P.O. Box 30681  
Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

- 8. Extended Purchasing Program.** This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal). Upon written agreement between the State and Contractor, this contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

- 9. Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
- 10. Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
- 11. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 12. Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- 13. Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 14. Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.
- In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.
- 15. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.

16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging becomes the State's exclusive property upon acceptance.
18. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Schedule A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

If the State breaches any provision of this agreement, and if such breach is not cured within sixty (60) days after receiving written notice from the Contractor specifying such breach in reasonable detail, the Contractor shall have the right to terminate this agreement by giving written notice to the State Contract Administrator, which shall go into effect sixty (60) days after receipt of termination notice.

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all

outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

26. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

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. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against 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.
28. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.

31. **State Data. – Reserved**

**32. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term “**Confidential Information**” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (c) 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 or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other

party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

**33. Data Privacy and Information Security. - Reserved**

**34. Payment Card Industry Data Security Standard. - Reserved**

**35. CEPAS Electronic Receipt Processing Standard. – Reserved**

**36. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

**37. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

**38. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

**39. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

**40. Prevailing Wage. - Reserved**

**41. State Printing. - Reserved**

**42. Nondiscrimination.** 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.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

**43. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

**44. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

**45. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

**46. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

**47. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

**48. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

**49. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

**50. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-



WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

51. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
52. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
53. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
54. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

# STATE OF MICHIGAN

## Gasoline and Diesel Fuel Delivery Service

### SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

#### SCOPE

This mandatory contract for all State of Michigan agencies is for the delivery of all gasoline, diesel fuel, and recreation gas for Houghton, Ontonagon, Baraga, and Marquette (truck transport only) Counties.

No guarantee shall be made as to the number of gallons that may be purchased during the forthcoming contract period. Contractor shall be responsible for the furnishing of any and all quantities.

#### REQUIREMENTS

##### 1. General Requirements

##### 1.1. Product Specifications

Contractor must be able to provide all products and services as defined in this contract and as outlined in the most recent **Schedule C-Price Sheet** and to the counties also outlined on the most recent **Schedule C-Price Sheet**.

##### 1.2. Contract Flexibility

The State of Michigan reserves the right to add/delete available fuel types, delivery regions, counties, locations, and end users during the Contract term to meet the needs of the State. Adding or deleting locations to be serviced does not require a change notice. Contractor will send an updated list of all delivery locations on an as needed basis or as request by the State.

The installation and/or removal of storage tank(s) shall be subject to reasonable weather conditions and operating parameters.

##### 1.3. Fuel Types Available

Fuel Type	Description
Diesel	Ultra-Low Sulfur #1
Diesel	Ultra-Low Sulfur #2
Diesel	Ultra-Low Sulfur Off-Road Diesel
Ethanol Free Unleaded Gasoline	Regular
Ethanol Free Unleaded Gasoline	Mid-Grade
Ethanol Free Unleaded Gasoline	Premium

##### 1.4. Marine Fuel/Recreational Gas

Contractor offers 87 octane ethanol free recreation gas.

##### 1.5. Training

It is preferred that the Contractor's staff delivering gasoline and diesel fuel have the proper certification through the Certified Employee Training Program (CETP) for hauling and installation of gasoline and diesel fuel and storage tanks.

Training to include, but not limited to, the following topics:

- How to check tank levels.
- How to recognize and identify leaks.
- How to handle emergencies.
- How to set up new service.
- How to recognize potential hazards.

The contractor shall have a training program for employees as required in the code of federal regulations number 49, part 172.700.

**The Code of Federal Regulations Title 49: Transportation Subpart H – Training Paragraph §172.700 - Purpose and scope.**

- (a) *Purpose.* This subpart prescribes requirements for training hazmat employees.
- (b) *Scope.* Training as used in this subpart means a systematic program that ensures a hazmat employee has familiarity with the general provisions of this subchapter, is able to recognize and identify hazardous materials, has knowledge of specific requirements of this subchapter applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures and accident prevention methods and procedures (see §172.704).
- (c) *Modal-specific training requirements.* Additional training requirements for the individual modes of transportation are prescribed in parts 174, 175, 176, and 177 of this subchapter.

**1.6. Recall Requirements and Procedures**

In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, or adulterated, the Contractor shall be responsible to notify the Contract Administrator and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal.

Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

**1.7. Incentives**

A 1% payment discount is applied to all invoices paid within 10 days.

**2. Service Levels**

**2.1. Delivery –**

Gasoline and Diesel Fuel will be delivered either by tank wagon or truck transport.

Definite specifications - All delivered Gasoline and Diesel Fuel must conform to the most current ASTM International specifications.

All delivered fuel must be in compliance with all Michigan laws pertaining to pollution which includes the Michigan Air Pollution act, Act 348 of 1965 and Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). All State of MI facilities have permits which provide authorization to burn non-waste fuel oils, therefore, all fuel oils supplied in reference to this Contract must not be "non-waste oil". Additionally, all State of Michigan Fuel oils must comply with United States Environmental Protection Agency, Clean Air Act of 1990.

The Contractor will be required to review the specific needs of each state agency that appear on the Contract prior to making initial shipments to ensure compliance with all State and Federal Laws. The Contractor will also be responsible for identification, containment, notification to authorize, cleanup, disposal, and damages associated with any leak or discharge up to and including the State's hose connection point.

**2.2. New Service**

Adding services to a new location located within the awarded region will not require a change notice. The new location will be added to the Contractor's service roster and submitted to the current Contract Manager identified on the most recent change notice.

**2.3. Quantity**

The State is not obligated to purchase in any specific quantity. However, the Contractor agrees to supply all that the state requires.

If a location cannot meet the minimum order, that location can pursue other non-contracted vendors to purchase their necessary fuel under agency delegated authority.

**2.4. Reporting**

The State may periodically request reporting to show usage by agency and/or location being serviced. This report would include, but not limited to, the following:

- Account Number
- State Agency/Account Name
- Delivery Location's Street Address, City, Zip Code, and County of physical location of tank
- Contract Number
- Purchase Order Number
- Order Date
- Tank Ownership – Contractor Owned or State Owned
- Number of Tanks at each location
- Capacity of each tank
- Product Description
- Number of Gallons Delivered
- Base Price Terminal
- Total Cost

Spot reporting for auditing purpose may also be requested to verify the following:

- Order Date
- Delivery Date
- Gallons Delivered
- Price Per Gallon for that delivery
- Base Price Terminal

**2.5. Meetings**

The **Contract Administrator** is responsible for scheduling and facilitating Contractor Progress Meetings. A “**Contract Progress Meeting**” is intended to assist the State and Contractor in, including but not limited to, reviewing the Contract Compliance Report, addressing outstanding items on the Issue Tracking Log and Vendor Performance in SIGMA, reviewing overall contract compliance, discuss market trends that will assist the State in understanding changes in the industry, and solicit contractor recommendations for increasing contract efficiency and reducing costs.

Contract Progress Meetings can be held (in person or by conference call) at any time, but at a minimum the Contract Administrator should hold a Contract Progress Meeting at least yearly. The Contract Administrator, Program Manager and any individual identified by the parties should participate.

**3. Staffing**

**3.1. Contractor Representative**

The Contractor must appoint one individual, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the “Contractor Representative”).

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

**3.2. Customer Service and Technical Support**

To place an order, or to speak to a customer service representative, call 906-353-6185. The Contractor Representative is available for calls during the hours of 8 am to 5 pm EST Monday through Friday.

**3.3. Disclosure of Subcontractors**

If the Contractor is going to utilize subcontractors, or would ever need to utilize subcontractors, the Contractor must disclose the following:

- a) The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- b) The relationship of the subcontractor to the Contractor.
- c) Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- d) A complete description of the Contract Activities that will be performed or provided by the subcontractor.

### 3.4. Security

Contractor's staff may be required to make deliveries to or enter State facilities. The Contractor must: (a) explain how it intends to ensure the security of State facilities, (b) whether it uses uniforms and ID badges, etc., (c) identify the company that will perform background checks, and (d) the scope of the background checks. The State may require the Contractor's personnel to wear State issued identification badges.

The Contractor will be subject to the following security procedures as required by the Department of Corrections. Current versions of these policies are available through the Program Manager.

- a) Prison Rape Elimination Act (PREA)
- b) The Department of Corrections Vendor Handbook
- c) Correctional Facilities Administration Security Regulations

### 4. Pricing

#### 4.1. Price Term

Pricing is firm for the initial 3 year term of any contract(s) and firm for every additional 1 year optional period after that ("Pricing Period"). The first pricing period begins on the Effective Date. Adjustments may be requested, in writing, by either party and will take effect no earlier than the next Pricing Period.

#### 4.2. Price Changes

- a) Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.
- b) Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.
- c) The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

#### 4.3. Pricing

The "Mark-up Price" shall be the amount in cents per gallon that the Contractor adds to the "Base Price" to arrive at the final delivered price to a destination. This "Mark-Up Price" shall include all transportation, handling costs, overhead, dye for off-road fuel, inspection fee and profit. No other costs for normal delivery shall be accepted, except for applicable taxes and fees. The Mark-Up Price which the Contractor quotes shall be firm for the initial term of the contract.

Example:

If the Mark-Up Price is nine and three quarter's cent per gallon, express as .0975.

If the Mark-Up Price is three quarters of a cent per gallon, express as .0075.

The total price of the product delivered to destination shall consist of two components. These components are:

- A. The Base Price
- B. The Mark-Up Price

The "Base Price" will be based on Contractor's actual cost, which will be visible on each receipt and/or invoice, which they receive from their DTN Fuel System interface. In the event market prices are not available for a commodity in a location, the nearest available commodity prices shall be referenced for that location.

The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

Throughout the term of this contract, and it is determined that it would be beneficial to all parties involved, the State reserves the right to re-negotiate how the "Base Price" is determined utilizing the Average Rack Rate price of any terminal that is reported within the Contractor's DTN Fuel System interface.

Base Price Terminal Rack Rate	Abbreviation
Green Bay – Wisconsin	GB

#### **4.4. Tax Exempt**

(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.

#### **4.5. Environmental Protection Regulation Fee**

Sales to the State of Michigan and/local units of government under this Contract are not exempt from the Environmental Protection Regulatory Fee imposed pursuant to Section 8, 1989 Public Act 518, as amended by Public Act 152 of 1989, being MCLA 299.808. effective August 1, 1989, the State will pay this 7/8 (\$0.01) cent per gallon fee for each gallon of fuel oil purchased in addition to the price per gallon determined pursuant to the price clause of these terms and conditions. This regulatory fee shall be set forth separately and clearly identified in the billing document.

### **5. Ordering**

#### **5.1. Authorizing Document**

The appropriate authorizing document for the Contract will be a Purchase Order, which must be approved by the Program Manager, to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

#### **5.2 Order Verification**

The Contractor must have internal controls, approved by DTMB-Procurement, to verify abnormal orders and to ensure that only authorized individuals place orders.

### **6. Delivery**

#### **6.1. Delivery Time Frames**

All Deliverable(s) must be delivered within three (3) calendar days after receipt of order, unless otherwise specified under special delivery requirements on the attached item listing for individual location. The receipt of order date is governed in the same manner as notices sent under Section 2.3.6, Notices. The Contractor must explain in detail its various delivery programs (e.g., Tank Wagon or Truck Transport), including any limitations such as quantity. Delivery will be made within the counties as described in **Schedule C – Price Sheet** and any location added after the execution of the contract.

#### **6.2. Minimum Delivery**

There is a minimum amount of fuel that needs to be ordered to receive standard contract pricing and are as follows:

Baraga County – 300 Gallons - Additional charges apply if not meeting the minimum order. See most recent **Schedule C – Price Sheet** for current fee.

Houghton County – 500 Gallons - Additional charges apply if not meeting the minimum order. See most recent **Schedule C – Price Sheet** for current fee.

Ontonagon County – 750 Gallons - Additional charges apply if not meeting the minimum order. See most recent **Schedule C – Price Sheet** for current fee.

#### **6.3 Delivery Term**

Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.

#### **6.4. Acceptance of Delivery**

The State will use the following criteria to determine acceptance of the Contract Activities:

Gasoline and Diesel Fuel will be delivered to the ordering entity within three (3) business days after receipt of a purchase order. The delivery location will be noted on the purchase order issued by the ordering entity. Acceptance (transfer of title) will occur upon the inspection and written confirmation by the ordering State Agency that the fuel delivered conform to the requirements set forth in the Contract. Unless otherwise provided in the Contract, acceptance shall be conclusive except as regards to latent defects, fraud, or such gross mistakes as amount to fraud.

Unless it is an emergency delivery as requested by the ordering entity, delivery is to be during the location's normal working hours. It is the Contractor's responsibility to contact the Ordering Entity or delivery location to identify acceptable delivery hours. Delivery at other times may not be accepted, or if accepted and requires facility overtime wages, the facility's cost of paying overtime may be deducted from future invoices.

## **7. Invoice and Payment**

### **7.1. Invoice Requirements**

Invoices shall consist of an original and one copy. All invoices shall contain the following information:

- Contract Number
- Purchase Order Date
- Ordering Entity
- Date of Sale
- Name and address of seller
- Name and address of purchaser
- Number of gallons purchased
- Delivered Price per gallon: (Mark-up Bid Price plus the Terminal Price)
- Price paid by the contractor at the terminal and the terminal name
- Receipt of payment
- A copy of the delivery ticket for each delivery being invoiced shall be included

### **7.2. Payment Methods**

The State will make payment for Contract Activities by Electronic Funds Transfer (EFT).

## **8. Additional Requirements**

### **8.1. Hazardous Chemical Identification**

In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, *et seq.*, as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals, 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.

All MSDS sheets are available from Contractor upon request.

### **8.2. Mercury Content**

Pursuant to MCL 18.1261d, mercury-free products must be procured when possible. The Contractor must explain if it intends to provide products containing mercury, the amount or concentration of mercury, and whether cost competitive alternatives exist. If a cost competitive alternative does exist, the Contractor must provide justification as to why the particular product is essential. All products containing mercury must be labeled as containing mercury.

### **8.3. Brominated Flame Retardants**

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs.

### **8.4. Spills**

Accidental release or spillage during delivery of product by the contractor will result in the contractor being held responsible for all costs of cleanup and disposal of all contaminated soil. Cleanup and disposal must be conducted in accordance with state and federal EPA regulations and guidelines.

### **8.5. Damages**

The contractor shall be held liable for any damages due to equipment malfunctions that may occur due to furnishing contaminated product, furnishing fuel other than specified, or failure to make deliveries when ordered.

## **9. Contract Flexibility**

The State of Michigan reserves the right to add/delete fuel types, delivery regions, counties, locations, and end users during the Contract term to meet the needs of the State. Adding or deleting locations to be serviced does not require a change notice. Contractor will send an updated list of all delivery locations on an as needed basis or as request by the State. To make additions, the State shall adhere to the following procedure:

- Step 1 The location shall first be offered to the contractor serving the region nearest location currently on the contract, for a mark-up price not to exceed that of the contractor's nearest location on contract.

Step 2 If the offer from Step 1 is declined, the agency may pursue alternative procurement methods in compliance with state policies and procedures. Alternative procurement methods may include, but are not limited to: best judgment, simplified bids, and Request for Bids.

**10. Ultra-Low Sulfur Diesel Fuel (ULSD)**

Diesel fuel oil purchased for the State of Michigan will be classified as ultra-low sulfur diesel and will have a sulfur content no greater than 15 ppm. The below specifications will be adhered to.

**Specifications:**

Specification	Test Method	ULSD #2
Appearance	Visual	Clear
Color	D-1500	1.5
Density @ 15C, kg/m3	D-4052	860
API	Calculated	33
Cetane Index	D-4737	40
Distillation-90% recovered, C	D-86	282-338
Viscosity, cSt @ 40C	D-445	2.0-4.0
Sulfur, ppm, Max	D-5453	15
Ash, mass %, max	D-482	0.01
Flash Point PM, C, Min	D-93	52



# Gasoline and Diesel Fuel Price List

Region Name	Region	Counties	Fuel Type	"Base Price" Terminal Choice	Mark-Up Price per Gallon - Tank Wagon Delivery	Tank Wagon Minimum and Maximum Storage Range	Mark-Up Price per Gallon - Truck Transport Delivery	Truck Transport Minimum and Maximum Storage Range	Minimum Gallons to Order for a Delivery if Applicable	Mark-Up Price per Gallon if Minimum Can't be Met	Sunday, Emergency or After Hours Mark-Up Price per Gallon		
Western UP Prosperity Region	1a	Baraga	Ethanol Free 87 Octane Unleaded Gasoline	Green Bay	\$0.370				300	\$0.410			
			Ethanol Free 89 Octane Unleaded Gasoline	Green Bay	\$0.370				300	\$0.410			
			Ethanol Free 91 Octane Unleaded Gasoline	Green Bay	\$0.370				300	\$0.410			
			#2 Clear Ultra Low Sulfur Diesel	Green Bay	\$0.370				300	\$0.410			
			#2 Dyed Ultra Low Sulfur Diesel	Green Bay	\$0.370				300	\$0.410			
			Blend Dyed Low Sulfer Diesel	Green Bay	\$0.370				300	\$0.410			
		Gogebic	Ethanol Free 87 Octane Unleaded Gasoline	Gogebic County is not covered by any contract									
			Ethanol Free 89 Octane Unleaded Gasoline										
			Ethanol Free 91 Octane Unleaded Gasoline										
			#2 Clear Ultra Low Sulfur Diesel										
			#2 Dyed Ultra Low Sulfur Diesel										
			Blend Dyed Low Sulfer Diesel										
		Houghton	Ethanol Free 87 Octane Unleaded Gasoline	Green Bay	\$0.370					500	\$0.410		
			Ethanol Free 89 Octane Unleaded Gasoline	Green Bay	\$0.370					500	\$0.410		
			Ethanol Free 91 Octane Unleaded Gasoline	Green Bay	\$0.370					500	\$0.410		
			#2 Clear Ultra Low Sulfur Diesel	Green Bay	\$0.370					500	\$0.410		
			#2 Dyed Ultra Low Sulfur Diesel	Green Bay	\$0.370					500	\$0.410		
			Blend Dyed Low Sulfer Diesel	Green Bay	\$0.370					500	\$0.410		
		Iron	Ethanol Free 87 Octane Unleaded Gasoline	Iron County is not covered by any contract									
			Ethanol Free 89 Octane Unleaded Gasoline										
			Ethanol Free 91 Octane Unleaded Gasoline										
			#2 Clear Ultra Low Sulfur Diesel										
			#2 Dyed Ultra Low Sulfur Diesel										
			Blend Dyed Low Sulfer Diesel										
		Keweenaw	Ethanol Free 87 Octane Unleaded Gasoline	Keweenaw County is not covered by any county									
			Ethanol Free 89 Octane Unleaded Gasoline										
			Ethanol Free 91 Octane Unleaded Gasoline										
			#2 Clear Ultra Low Sulfur Diesel										
			#2 Dyed Ultra Low Sulfur Diesel										
			Blend Dyed Low Sulfer Diesel										
Ontonagon	Ethanol Free 87 Octane Unleaded Gasoline	Green Bay	\$0.410					750	\$0.450				
	Ethanol Free 89 Octane Unleaded Gasoline	Green Bay	\$0.410					750	\$0.450				
	Ethanol Free 91 Octane Unleaded Gasoline	Green Bay	\$0.410					750	\$0.450				
	#2 Clear Ultra Low Sulfur Diesel	Green Bay	\$0.410					750	\$0.450				
	#2 Dyed Ultra Low Sulfur Diesel	Green Bay	\$0.410					750	\$0.450				
	Blend Dyed Low Sulfer Diesel	Green Bay	\$0.410					750	\$0.450				
Central UP Prosperity Region	1b	Marquette	Ethanol Free 87 Octane Unleaded Gasoline	Green Bay	N/A		\$0.240		7500	must meet minimum			
			Ethanol Free 89 Octane Unleaded Gasoline	Green Bay	N/A		\$0.240		7500	must meet minimum			
			Ethanol Free 91 Octane Unleaded Gasoline	Green Bay	N/A		\$0.240		7500	must meet minimum			
			#2 Clear Ultra Low Sulfur Diesel	Green Bay	N/A		\$0.240		7500	must meet minimum			
			#2 Dyed Ultra Low Sulfur Diesel	Green Bay	N/A		\$0.240		7500	must meet minimum			
			Blend Dyed Low Sulfer Diesel	Green Bay	N/A		\$0.240		7500	must meet minimum			