Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

August 20, 2009

CHANGE NOTICE NO 2
TO
CONTRACT NO. 071B6200073
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE: (800) 322-2878 **Wellington R. Burt**
Burt Forest Products Company, Inc. **P.O. Box 7389** **Ann Arbor, MI 48107-7389** **Email: burtforest@sbcglobal.net**	VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-6327 **Mary Ostrowski**
Contract Compliance Inspector: Tim Croze (517) 322-3394 **Treated Lumber Posts – Department of Transportation**	
CONTRACT PERIOD: From: **October 1, 2005** To: **October 1, 2008**	
TERMS **Net 30 Days**	SHIPMENT **14 –21 Days ARO**
F.O.B. **Delivered**	SHIPPED FROM **Ann Arbor, MI**
MINIMUM DELIVERY REQUIREMENTS	
Half Truck Load for Lower Peninsula – Full Truck Load for Upper Peninsula	

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

NATURE OF CHANGE (S):

Effective immediately this Contract is hereby EXTENDED to September 30, 2010.

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

AUTHORITY/REASON:

Per vendor contact (Wellington Burt) dated June 18, 2009 and DMB/Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $1,191,549.54

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

August 7, 2008

CHANGE NOTICE NO 1
OF
CONTRACT NO. 071B6200073
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE: (800) 322-2878 **Wellington R. Burt**
Burt Forest Products Company, Inc. **P.O. Box 7389** **Ann Arbor, MI 48107-7389** **Email: burtforest@sbcglobal.net**	VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-6327 **Mary Ostrowski**
Contract Compliance Inspector: Tim Croze (517) 322-3394 **Treated Lumber Posts – Department of Transportation**	
CONTRACT PERIOD: From: **October 1, 2005** To: **September 30, 2009**	
TERMS **Net 30 Days**	SHIPMENT **14 –21 Days ARO**
F.O.B. **Delivered**	SHIPPED FROM **Ann Arbor, MI**
MINIMUM DELIVERY REQUIREMENTS	
Half Truck Load for Lower Peninsula – Full Truck Load for Upper Peninsula	

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

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby EXTENDED to September 30, 2009.

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

Please Note: The buyer for this Contract is changed to Mary Ostrowski

AUTHORITY/REASON:

Per vendor contact (Wellington Burt) dated February 29, 2008 and DMB/Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $1,191,549.54

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

November 23, 2005

NOTICE OF CONTRACT NO. 071B6200073 between THE STATE OF MICHIGAN and

NAME & ADDRESS OF VENDOR	TELEPHONE: (800) 322-2878 **Wellington R. Burt**
Burt Forest Products Company, Inc. **P.O. Box 7389** **Ann Arbor, MI 48107-7389**	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-6535 **William C. Walsh, CPPB**

Contract Compliance Inspector: Tim Croze (517) 322-3394 **Treated Lumber Posts – Department of Transportation**			
CONTRACT PERIOD:	From: **October 1, 2005**	To: **October 1, 2008**	
TERMS **Net 30 Days**		SHIPMENT **14 –21 Days ARO**	
F.O.B. **Delivered**		SHIPPED FROM **Ann Arbor, MI**	
MINIMUM DELIVERY REQUIREMENTS			
Half Truck Load for Lower Peninsula – Full Truck Load for Upper Peninsula			

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

The terms and conditions of this Contract are attached.

Estimated Contract Value: $1,191,549.54

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

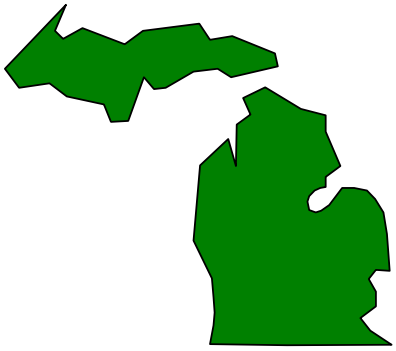
CONTRACT NO. 071B6200073
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Burt Forest Products Company, Inc.** **P.O. Box 7389** **Ann Arbor, MI 48107-7389**	TELEPHONE: (800) 322-2878 **Wellington R. Burt** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-6535 **William C. Walsh, CPPB**
Contract Compliance Inspector: Tim Croze (517) 322-3394 **Treated Lumber Posts – Department of Transportation**	
CONTRACT PERIOD: From: **October 1, 2005** To: **October 1, 2008**	
TERMS **Net 30 Days**	SHIPMENT **14 –21 Days ARO**
F.O.B. **Delivered**	SHIPPED FROM **Ann Arbor, MI**
MINIMUM DELIVERY REQUIREMENTS **Half Truck Load for Lower Peninsula – Full Truck Load for Upper Peninsula**	
MISCELLANEOUS INFORMATION: **This Contract is Extended to Local Units of Government through the MiDEAL program.** **The terms and conditions of this Contract are attached.** **Estimated Contract Value: $1,191,549.54**	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No.071I5200337. Orders for delivery of equipment will be issued directly by the Department of Transportation through the issuance of a Purchase Order Form.

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

FOR THE VENDOR:	**FOR THE STATE:**
Burt Forest Products Company, Inc. Firm Name	Signature
Authorized Agent Signature	**Anthony DesChenes, Director** Name
Authorized Agent (Print or Type)	**Commodities Division, Acquisition Services** Title
Date	Date



STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services

Contract No. 071B6200073
Treated Lumber Posts

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

Article 1 – Statement of Work (SOW) 8
1.0 Project Identification 8
1.001 PROJECT REQUEST 8
1.002 BACKGROUND-RESERVED 8
1.1 Scope of Work and Deliverables 8
1.101 IN SCOPE 8
1.102 OUT OF SCOPE - RESERVED 9
1.103 ENVIRONMENT- RESERVED 9
1.104 WORK AND DELIVERABLE 9
1.2 Roles and Responsibilities 9
1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES-RESERVED 9
1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES-RESERVED 9
1.203 OTHER ROLES AND RESPONSIBILITIES-RESERVED 9
1.3 Project Plan 9
1.301 PROJECT PLAN MANAGEMENT-RESERVED 9
1.302 REPORTS 10
1.4 Project Management 10
1.401 ISSUE MANAGEMENT-RESERVED 10
1.402 RISK MANAGEMENT-RESERVED 10
1.403 CHANGE MANAGEMENT 10
1.5 Acceptance 10
1.501 CRITERIA-RESERVED 10
1.502 FINAL ACCEPTANCE-RESERVED 10
1.6 Compensation and Payment 10
1.7 Additional Terms and Conditions Specific to this SOW 10
Article 2 – General Terms and Conditions 11
2.010 Contract Structure and Administration 11
2.011 Definitions 11
2.012 Attachments and Exhibits 11
2.013 Statements of Work 11
2.014 Issuing Office 11
2.015 Contract Compliance Inspector 12
2.016 Project Manager-RESERVED 12
2.020 Contract Objectives/Scope/Background 12
2.021 Background-RESERVED 12
2.024 Interpretation - RESERVED 12
2.025 Form, Function and Utility - RESERVED 12
2.030 Legal Effect and Term 12
2.031 Legal Effect 12
2.032 Contract Term 13
2.033 Renewal(s) 13
2.040 Contractor Personnel 13
2.041 Contractor Personnel 13
2.042 Burt Forest Products Company, Inc. Identification 13
2.043 Cooperation with Third Parties 13
2.044 Subcontracting by Burt Forest Products Company, Inc. 14

2.045 Burt Forest Products Company, Inc. Responsibility for Personnel 14
2.050 State Standards 14
2.051 Existing Technology Standards 14
2.052 PM Methodology Standards -RESERVED 14
2.053 Adherence to Portal Technology Tools -RESERVED 14
2.054 Acceptable Use Policy-RESERVED 14
2.60 Deliverables 14
2.061 Ordering 14
2.062 Software - RESERVED 15
2.063 Hardware - RESERVED 15
2.064 Equipment to be New and Prohibited Products 15
2.070 Performance 15
2.071 Performance, In General 15
2.072 Time of Performance 15
2.073 Liquidated Damages RESERVED 15
2.074 Bankruptcy 15
2.080 Delivery and Acceptance of Deliverables 16
2.081 Delivery Responsibilities 16
2.082 Delivery of Deliverables 16
2.083 Testing-RESERVED 16
2.084 Reserved 16
2.085 Reserved 16
2.086 Process for Approval of Physical Deliverables 16
2.087 Final Acceptance 16
2.090 Financial 17
2.091 Pricing 17
2.092 Invoicing and Payment Procedures and Terms 17
2.093 State Funding Obligation 18
2.094 Holdback - RESERVED 18
2.095 Electronic Payment Availability 18
2.100 Contract Management 18
2.101 Contract Management Responsibility 18
2.102 Problem and Contract Management Procedures 18
2.104 System Changes - RESERVED 19
2.105 Reserved 19
2.106 Change Requests 19
2.110 Records and Inspections 20
2.111 Records and Inspections 20
2.112 Errors 20
2.120 State Responsibilities 20
2.121 State Performance Obligations 20
2.130 Security 21
2.131 Background Checks 21
2.140 Reserved 21
2.150 Confidentiality 21
2.151 Freedom of Information 21
2.152 Confidentiality 21
2.153 Protection of Confidential Information 22
2.154 Exclusions 22

2.155 No Implied Rights 22
2.156 Remedies 22
2.157 Security Breach Notification 23
2.158 Survival 23
2.159 Destruction of Confidential Information 23
2.160 Proprietary Rights - RESERVED 23
2.163 Rights in Data - RESERVED 23
2.164 Ownership of Materials - RESERVED 23
2.165 Standard Software - RESERVED 23
2.166 Pre-existing Materials for Custom Software Deliverables - RESERVED 23
2.167 General Skills 23
2.170 Warranties And Representations 23
2.171 Warranties and Representations 23
2.175 Standard Warranties 25
2.176 Consequences For Breach 25
2.180 Insurance 25
2.181 Liability Insurance 25
2.190 Indemnification 27
2.191 Indemnification 27
2.192 Continuation of Indemnification Obligations 28
2.193 Indemnification Procedures 28
2.200 Limits of Liability and Excusable Failure 29
2.201 Limits of Liability 29
2.202 Excusable Failure 29
2.203 Disaster Recovery 30
2.210 Termination/Cancellation by the State 30
2.211 Termination for Cause 30
2.212 Termination for Convenience 31
2.213 Non-Appropriation 31
2.214 Criminal Conviction 32
2.216 Rights and Obligations Upon Termination 32
2.217 Reservation of Rights 33
2.218 Contractor Transition Responsibilities 33
2.219 State Transition Responsibilities 33
2.220 Termination by Contractor. 34
2.230 Stop Work -RESERVED 34
2.231 Reserved 34
2.232 Cancellation or Expiration of Stop Work Order -RESERVED 34
2.233 Allowance of Burt Forest Products Company, Inc. Costs- RESERVED 34
2.240 Reserved 34
2.250 Dispute Resolution 34
2.251 Reserved 34
2.252 Informal Dispute Resolution 34
2.253 Injunctive Relief 35
2.254 Continued Performance 35
2.260 Federal and State Contract Requirements 35
2.261 Nondiscrimination 35
2.262 Unfair Labor Practices 35
2.263 Workplace Safety and Discriminatory Harassment 35

2.270 Litigation 35
2.272 Governing Law 36
2.273 Compliance with Laws 36
2.274 Jurisdiction 36
2.280 Environmental Provision 36
2.281 Environmental Provision 36
2.290 General 37
2.291 Amendments 37
2.292 Assignment 37
2.293 Entire Contract; Order of Precedence 37
2.294 Headings 38
2.295 Relationship of the Parties (Independent Contractor Relationship) 38
2.296 Notices 38
2.297 Media Releases and Contract Distribution 38
2.298 Reformation and Severability 39
2.299 Consents and Approvals 39
2.300 No Waiver of Default 39
2.301 Survival 39
2.302 Covenant of Good Faith 39
2.303 Permits 39
2.304 Website Incorporation 39
2.305 Taxes 39
2.306 Prevailing Wage - RESERVED 40
2.307 Call Center Disclosure 40
2.308 Future Bidding Preclusion-RESERVED 40
2.310 Reserved 40
2.320 Extended Purchasing 40
2.321 MiDEAL 40

Attachment A – Treated Wood Sign Post Delivery Locations
Attachment B – Pricing Sheet
Attachment C – Specifications and Drawings

NOTE: ITEMS NOTED AS RESERVED DO NOT PERTAIN TO THIS CONTRACT

Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

This Contract is for treated lumber posts for the Michigan Department of Transportation (MDOT).

1.002 BACKGROUND-RESERVED

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The following items will be provided by Burt Forest Products Company, Inc. under this Contract:

1. Post, Wood, Treated, 4"X6"X16', With Holes Per Michigan Department of Transportation 2003 Standard Specifications For Construction 912.01 Special Provisions And Drawings Viii-210e (Attachment A).

   Estimated quantity 6,000 Each

2. Post, Wood, Treated, 4"X6"X20, With Holes Per Michigan Department of Transportation 2003 Standard Specifications For Construction 912.01 Special Provisions And Drawings Viii-210e (Attachment A).

   Estimated quantity 4,200 Each

3. Post, Wood, Treated, 4"X6"X22, With Holes Per Michigan Department of Transportation 2003 Standard Specifications For Construction 912.01 Special Provisions And Drawings Viii-210e (Attachment A).

   Estimated quantity 1,500 Each

4. Post, Wood, Treated, 4"X6"X24, With Holes Per Michigan Department of Transportation 2003 Standard Specifications For Construction 912.01 Special Provisions And Drawings Viii-210e (Attachment A).

   Estimated quantity 1,500 Each

5. Post, Wood, Treated, 6"X8"X20', With Holes Per Michigan Department of Transportation 2003 Standard Specifications For Construction 912.01 Special Provisions And Drawings Viii-210e (Attachment A).

   Estimated quantity 1,200 Each

6. Post, Wood, Treated, 6"X8"X22', With Holes Per Michigan Department of Transportation 2003 Standard Specifications For Construction 912.01 Special Provisions And Drawings Viii-210e (Attachment A).

   Estimated quantity 1,386 Each

7. Post, Wood, Treated, 6"X8"X24', With Holes Per Michigan Department of Transportation 2003 Standard Specifications For Construction 912.01 Special Provisions And Drawings Viii-210e (Attachment A).

   Estimated quantity 1,350 Each

Minimum Order

The minimum order for this Contract is full truckload quantity for the Upper Peninsula, and one-half (1/2) truckload quantity for the Lower Peninsula.

F.O.B Point

Prices shall be quoted "F.O.B. Delivered" with transportation charges prepaid on all orders totaling or in excess of Burt Forest Products Company, Inc. minimum order requirement stated on the item listing.

Delivery

All orders shall be delivered within thirty (30) calendar days after receipt of order (ARO). Orders will be accepted Monday through Thursday between 7 am and 2 pm, excluding legal State holidays. Burt Forest Products Company, Inc. 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.

Bundling

Bundles shall be securely banded or wired. Maximum number of pieces per bundle shall be twenty (20) for the 4"x6" posts (either lengths), and fifteen (15) for the 6"x8" 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.

1.102 OUT OF SCOPE - RESERVED

1.103 ENVIRONMENT- RESERVED

1.104 WORK AND DELIVERABLE

Burt Forest Products Company, Inc. shall provide wood posts as required by MDOT.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES-RESERVED

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES-RESERVED

1.203 OTHER ROLES AND RESPONSIBILITIES-RESERVED

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT-RESERVED

1.302 REPORTS

Burt Forest Products Company, Inc. will be required to furnish MDOT quarterly reports that state the quantity of posts ordered for each drop point, the date the order was placed and the date of delivery.

1.4 Project Management

1.401 ISSUE MANAGEMENT-RESERVED

1.402 RISK MANAGEMENT-RESERVED

1.403 CHANGE MANAGEMENT

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a request for change to the Department of Management and Budget, Acquisition Services Buyer, who will make recommendations to the Director of Acquisition Services regarding ultimate approval/disapproval of change request. If the DMB Acquisition Services Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Acquisition Services Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Burt Forest Products Company, Inc. shall not provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Acquisition Services. If provided, Burt Forest Products Company, Inc. shall risk non-payment for products and/or services provided.**

1.5 Acceptance

1.501 CRITERIA-RESERVED

1.502 FINAL ACCEPTANCE-RESERVED

1.6 Compensation and Payment

1.7 Additional Terms and Conditions Specific to this SOW

Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

Capitalized terms used in this Contract (including its Attachments and Exhibits) shall have the meanings given below, unless the context requires otherwise:

(a) "Days" means calendar days unless otherwise specified.
(b) "24x7x365" means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
(c) "Additional Service" means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Burt Forest Products Company, Inc. with additional consideration.
(d) "Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
(e) "Deliverable" means physical goods and/or commodities as required or identified by a Statement of Work
(f) "Key Personnel" means any Personnel designated in **Article 1, Section 1.201** as Key Personnel.
(g) "State Location" means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
(h) "Sub-Contractor" means a company Burt Forest Products Company, Inc. delegates performance of a portion of the services to, but does not include independent Contractors engaged by Burt Forest Products Company, Inc. solely in a staff augmentation role.

2.012 Attachments and Exhibits

All Attachments and/or Exhibits attached to any, and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

2.013 Statements of Work

(a) The parties agree that the Services/Deliverables to be rendered by Burt Forest Products Company, Inc. pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders executed under this Contract. Burt Forest Products Company, Inc. shall not be obliged or authorized to commence any work to implement a Statement of Work until it is signed by both parties. Burt Forest Products Company, Inc. shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.

2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Office of Acquisition Services ("OAS") and Michigan Department of Transportation (MDOT), collectively, including all other relevant State of Michigan departments and agencies, the "State"). OAS is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **OAS is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Burt Forest Products Company, Inc. Administrator within the Office of Acquisition Services for this Contract is:

William C. Walsh, CPPB
Office of Acquisition Services
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
walshw@michigan.gov
(517) 373-6535

2.015 Contract Compliance Inspector

Upon receipt at OAS of the properly executed Contract, it is anticipated that the Director of DMB Acquisition Services, in consultation with MDOT, will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Office of Acquisition Services**. The Contract Compliance Inspector for this Contract is:

Tim Croze
Michigan Department of Transportation
PO Box 30050
Lansing, MI 48909
crozet@michigan.gov
(517) 322-3394

2.016 Project Manager-RESERVED

2.020 Contract Objectives/Scope/Background

2.021 Background-RESERVED

2.22 Purpose

This Contract is for the purchase of treated lumber posts for use by the Michigan Department of Transportation for various projects. Posts shall be the sizes indicated and per the drawings provided in this Contract. Quantities and delivery points shall be in compliance with

2.023 Objectives and Scope-RESERVED

2.024 Interpretation - RESERVED

2.025 Form, Function and Utility - RESERVED

2.030 Legal Effect and Term

2.031 Legal Effect

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Burt Forest Products Company, Inc. or payment under this Contract until Burt Forest Products Company, Inc. is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.032 Contract Term

This Contract is for a period of three (3) years commencing on the date that the last signature required to make the Contract enforceable, is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. This Contract may be renewed for up to two (2) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

2.040 Contractor Personnel

2.041 Contractor Personnel

Personnel Qualifications. All persons assigned by Burt Forest Products Company, Inc. to the performance of Services under this Contract shall be employees of Burt Forest Products Company, Inc. or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Sub Contractor) and shall be fully qualified to perform the work assigned to them. Burt Forest Products Company, Inc. shall include a similar provision in any subcontract entered into with a Sub Contractor. For the purposes of this Contract, independent Contractors engaged by Burt Forest Products Company, Inc. solely in a staff augmentation role shall be treated by the State as if they were employees of Burt Forest Products Company, Inc. for this Contract only; however, the State understands that the relationship between Burt Forest Products Company, Inc. and Sub Contractors is an independent Contractor relationship.

2.042 Burt Forest Products Company, Inc. Identification

Burt Forest Products Company, Inc. employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Burt Forest Products Company, Inc. employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.043 Cooperation with Third Parties

Burt Forest Products Company, Inc. agrees to cause its personnel and the personnel of any Sub Contractor to cooperate with the State and its agents and other Sub Contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other Contractors with reasonable access to Burt Forest Products Company, Inc.'s Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Burt Forest Products Company, Inc. receives reasonable prior written notice of such request. The State acknowledges that Burt Forest Products Company, Inc.'s time schedule for this Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Burt Forest Products Company, Inc.'s performance under this Contract with such requests for access.

2.044 Subcontracting by Burt Forest Products Company, Inc.

(a) Burt Forest Products Company, Inc. shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Burt Forest Products Company, Inc. to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

(b) Burt Forest Products Company, Inc. shall not delegate any duties under this Contract to a Sub Contractor unless the Department of Management and Budget, Office of Acquisition Services has given written consent to such delegation. The State shall have the right of prior written approval of all Sub Contractors and to require Burt Forest Products Company, Inc. to replace any Sub Contractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Sub Contractor(s) for the removed Sub Contractor shall be fully qualified for the position. If the State exercises this right, and Burt Forest Products Company, Inc. cannot immediately replace the removed Sub Contractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. .

(c) Burt Forest Products Company, Inc. shall select Sub Contractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

2.045 Burt Forest Products Company, Inc. Responsibility for Personnel

Burt Forest Products Company, Inc. shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Burt Forest Products Company, Inc. to perform the Services.

2.050 State Standards

2.051 Existing Technology Standards

Burt Forest Products Company, Inc. will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html.

2.052 PM Methodology Standards -RESERVED

2.053 Adherence to Portal Technology Tools -RESERVED

2.054 Acceptable Use Policy-RESERVED

2.60 Deliverables

Burt Forest Products Company, Inc. will be required to deliver the required number of posts as requested by the State to the location noted on the Purchase Order request.

2.061 Ordering

(a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

2.062 Software - RESERVED

2.063 Hardware - RESERVED

2.064 Equipment to be New and Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against this Contract, shall be considered default by Burt Forest Products Company, Inc. of the terms and conditions of this Contract and may result in cancellation of this Contract by the State. The brand and product number offered for all items shall remain consistent for the term of this Contract, unless Acquisition Services has approved a change order pursuant to **Section 2.106**.

2.070 Performance

2.071 Performance, In General

The State engages Burt Forest Products Company, Inc. to execute this Contract and perform the Services/provide the Deliverables, and Burt Forest Products Company, Inc. undertakes to execute and complete this Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

2.072 Time of Performance

(a) Burt Forest Products Company, Inc. shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.072(a)**, Burt Forest Products Company, Inc. shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

(c) If Burt Forest Products Company, Inc. believes that a delay in performance by the State has caused or will cause Burt Forest Products Company, Inc. to be unable to perform its obligations in accordance with specified Contract time periods, Burt Forest Products Company, Inc. shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Burt Forest Products Company, Inc. will not be in default for a delay in performance to the extent such delay is caused by the State.

2.073 Liquidated Damages RESERVED

2.074 Bankruptcy

If Burt Forest Products Company, Inc. shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Burt Forest Products Company, Inc. and not removed within thirty (30) days, or if Burt Forest Products Company, Inc. becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Burt Forest Products Company, Inc. and/or its affiliates are unable to provide reasonable assurances that Burt Forest Products Company, Inc. and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Burt Forest Products Company, Inc. will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Burt Forest Products Company, Inc.'s obligations hereunder, and any work which Burt Forest Products Company, Inc. may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.080 Delivery and Acceptance of Deliverables

2.081 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following shall be applicable to all orders issued under this Contract.

(a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." Burt Forest Products Company, Inc. shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
(b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
(c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within fourteen (14) days of receipt. Any damage must be reported to Burt Forest Products Company, Inc. within five (5) days of inspection. If this inspection does not occur and damages not reported within thirty (30) days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

2.082 Delivery of Deliverables

(a) Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Burt Forest Products Company, Inc. including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

2.083 Testing-RESERVED

2.084 Reserved

2.085 Reserved

2.086 Process for Approval of Physical Deliverables

Reserved

2.087 Final Acceptance

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in the Contract. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided, that conformed to the acceptance criteria.

2.090 Financial

2.091 Pricing

(a) Fixed Prices for Services/Deliverables
Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Price Schedule Attachment) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts.
(b) Adjustments for Reductions in Scope of Services/Deliverables
If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Burt Forest Products Company, Inc.'s charges under such Statement of Work commensurate with the reduction in scope.
(c) Services/Deliverables Covered
For all Services/Deliverables to be provided by Burt Forest Products Company, Inc. (and its Sub Contractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General
(i) Each Statement of Work issued under this Contract shall list the prices for all Services/Deliverables, and commodities to be provided, and the associated payment milestones and payment amounts.
(ii) Each Burt Forest Products Company, Inc. invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Prompt payment by the State is contingent on Burt Forest Products Company, Inc.'s invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.
(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)
The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Burt Forest Products Company, Inc., if requested.
(c) Out-of-Pocket Expenses
Burt Forest Products Company, Inc. acknowledges that the out-of-pocket expenses that Burt Forest Products Company, Inc. expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Burt Forest Products Company, Inc.'s fixed price for each Statement of Work. Accordingly, Burt Forest Products Company, Inc.'s out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Burt Forest Products Company, Inc. for such an expense at the State's current travel reimbursement rates. See http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html for current rates.
(d) Pro-ration
To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.
(e) Antitrust Assignment
Burt Forest Products Company, Inc. assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Burt Forest Products Company, Inc., toward fulfillment of this Contract.

(f) Final Payment
The making of final payment by the State to Burt Forest Products Company, Inc. does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under this Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Burt Forest Products Company, Inc.'s acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Burt Forest Products Company, Inc. against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Burt Forest Products Company, Inc. acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

2.094 Holdback - RESERVED

2.095 Electronic Payment Availability

Electronic transfer of funds is available to Burt Forest Products Company, Inc. Burt Forest Products Company, Inc. is required to register with the State electronically at http://www.cpexpress.state.mi.us. Senate Bill 850 / Public Act 533 of 2004, requires all payments be transitioned over to EFT by October 2005.

2.100 Contract Management

2.101 Contract Management Responsibility

(a) Burt Forest Products Company, Inc. shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Burt Forest Products Company, Inc.'s duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Burt Forest Products Company, Inc.'s own responsibilities) and providing timely notice to the State in Burt Forest Products Company, Inc.'s reasonable opinion if the State's failure to perform its responsibilities is likely to delay the timely achievement of any Contract tasks.
(b) The Services/Deliverables will be provided by the Burt Forest Products Company, Inc. either directly or through its affiliates, subsidiaries, Sub Contractors or resellers. Regardless of the entity providing the Service/Deliverable, Burt Forest Products Company, Inc. will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by this Contract and the applicable Statements of Work.

2.103 Reports and Meetings

Reports.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Burt Forest Products Company, Inc. to the State. Such reports may include:

(i) separately address Burt Forest Products Company, Inc.'s performance in each area of the Services;

(ii) for each area of the Services, assess the degree to which Burt Forest Products Company, Inc. has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;

(iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;

(iv) describe any circumstances that Burt Forest Products Company, Inc. anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;

(v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;

(vi) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.

2.104 System Changes - RESERVED

2.105 Reserved

2.106 Change Requests

The State reserves the right to request from time to time, any changes to the requirements and specifications of this Contract and the work to be performed by Burt Forest Products Company, Inc. under this Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) State Requests

If the State should require Burt Forest Products Company, Inc. to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Burt Forest Products Company, Inc. (a "Change"), the State shall submit a written request for Burt Forest Products Company, Inc. to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Burt Forest Products Company, Inc. Recommendations

Burt Forest Products Company, Inc. shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit this Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Burt Forest Products Company, Inc. shall examine the implications of the requested Change to the Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Burt Forest Products Company, Inc.'s proposal will include any associated changes in the specifications, Contract schedule and price and method of pricing of the Services. If Burt Forest Products Company, Inc. provides a written proposal and should Burt Forest Products Company, Inc. be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Burt Forest Products Company, Inc. written notice within a reasonable time, the State shall be entitled to accept a Burt Forest Products Company, Inc. proposal for Change, to reject it or to reach another agreement with Burt Forest Products Company, Inc. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this

Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) **No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Acquisition Services.**

(vi) If the State requests or directs Burt Forest Products Company, Inc. to perform any activities that Burt Forest Products Company, Inc. believes constitute a Change, Burt Forest Products Company, Inc. must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Burt Forest Products Company, Inc. fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Burt Forest Products Company, Inc., and Burt Forest Products Company, Inc. shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Burt Forest Products Company, Inc. commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Burt Forest Products Company, Inc. must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect this Contract.

2.107 Management Tools - RESERVED

2.110 Records and Inspections

2.111 Records and Inspections

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

2.112 Errors

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then Burt Forest Products Company, Inc. shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

(a) Equipment and Other Resources. To facilitate Burt Forest Products Company, Inc.'s performance of the Services/Deliverables, the State shall provide to Burt Forest Products Company, Inc. such equipment and resources as identified in the Statements of Work or other Contract Attachments and Exhibits as items to be provided by the State.

(b) Return. Burt Forest Products Company, Inc. shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for this Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(c) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Burt Forest Products Company, Inc..

However, Burt Forest Products Company, Inc. will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Burt Forest Products Company, Inc. provides the State with reasonable written notice of such nonperformance and Burt Forest Products Company, Inc. uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Burt Forest Products Company, Inc.'s performance or Burt Forest Products Company, Inc.'s cost of performance, Burt Forest Products Company, Inc. shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security

2.131 Background Checks

Burt Forest Products Company, Inc. shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case-by-case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Burt Forest Products Company, Inc. personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Burt Forest Products Company, Inc. personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Burt Forest Products Company, Inc. personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html. Furthermore, Burt Forest Products Company, Inc. personnel will be expected to agree to the State's security and acceptable use policies before Burt Forest Products Company, Inc. personnel will be accepted as a resource to perform work for the State. It is expected Burt Forest Products Company, Inc. will present these documents to the prospective employee before Burt Forest Products Company, Inc. presents the individual to the State as a proposed resource. Burt Forest Products Company, Inc. staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved

2.150 Confidentiality

2.151 Freedom of Information

All information in any proposal submitted to the State by Burt Forest Products Company, Inc. and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.152 Confidentiality

Burt Forest Products Company, Inc. and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Burt Forest Products Company, Inc. shall mean all non-public proprietary information of Burt Forest Products Company, Inc. (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Burt Forest Products Company, Inc. by the

State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Burt Forest Products Company, Inc. or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

2.153 Protection of Confidential Information

The State and Burt Forest Products Company, Inc. will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Burt Forest Products Company, Inc. nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right 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 to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Sub Contractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Sub Contractor is permissible where (A) use of a Sub Contractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Sub Contractor's scope of responsibility, and (C) Burt Forest Products Company, Inc. obligates the Sub Contractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Burt Forest Products Company, Inc. and of any Sub Contractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Burt Forest Products Company, Inc.'s and the Sub Contractor's obligations under this Section and of the employee's obligation to Burt Forest Products Company, Inc. or Sub Contractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

2.154 Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Burt Forest Products Company, Inc. can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such 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 such disclosure as reasonably requested by the furnishing party.

2.155 No Implied Rights

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.156 Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

2.157 Security Breach Notification

In the event of a breach of this Section, Burt Forest Products Company, Inc. shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Burt Forest Products Company, Inc. and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Burt Forest Products Company, Inc. shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

2.159 Destruction of Confidential Information

Promptly upon termination or cancellation of this Contract for any reason, Burt Forest Products Company, Inc. shall certify to the State that Burt Forest Products Company, Inc. has destroyed all State Confidential Information.

2.160 Proprietary Rights - RESERVED

2.162 Source Code Escrow - RESERVED

2.163 Rights in Data - RESERVED

2.164 Ownership of Materials - RESERVED

2.165 Standard Software - RESERVED

2.166 Pre-existing Materials for Custom Software Deliverables - RESERVED

2.167 General Skills

Notwithstanding anything to the contrary in this Section, each party, its Sub Contractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

2.170 Warranties And Representations

2.171 Warranties and Representations

Burt Forest Products Company, Inc. represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
(b) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Burt Forest Products Company, Inc. or developed by Burt Forest Products Company, Inc. under this Contract, and Burt Forest Products Company, Inc. has all of the rights necessary to convey to the State the ownership rights or

licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Burt Forest Products Company, Inc. to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(c) If, under this Contract, Burt Forest Products Company, Inc. procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Burt Forest Products Company, Inc. under Burt Forest Products Company, Inc.'s name), then in addition to Burt Forest Products Company, Inc.'s other responsibilities with respect to such items in this Contract, Burt Forest Products Company, Inc. shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(d) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Burt Forest Products Company, Inc..

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

(f) Neither Burt Forest Products Company, Inc. nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Burt Forest Products Company, Inc.'s performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Burt Forest Products Company, Inc. shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

(g) Neither Burt Forest Products Company, Inc. nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Burt Forest Products Company, Inc. or Affiliates or employee on behalf of the State would be influenced. Burt Forest Products Company, Inc. shall not attempt to influence any State employee by the direct or indirect offer of anything of value.

(h) Neither Burt Forest Products Company, Inc. 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 Burt Forest Products Company, Inc. or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(i) The prices proposed by Burt Forest Products Company, Inc. were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Burt Forest Products Company, Inc. to any other bidder; and no attempt was made by Burt Forest Products Company, Inc. to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(j) All financial statements, reports, and other information furnished by Burt Forest Products Company, Inc. to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Burt Forest Products Company, Inc. as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Burt Forest Products Company, Inc..

(k) All written information furnished to the State by or behalf of Burt Forest Products Company, Inc. in connection with this Contract, including its bid, it true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

(l) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Burt Forest Products Company, Inc. further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Burt Forest Products Company, Inc. failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties - RESERVED

2.173 Equipment Warranty - RESERVED

2.174 Physical Media Warranty - RESERVED

2.175 Standard Warranties

(a) Warranty of Merchantability
Deliverables shall be merchantable. All Deliverables shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by Burt Forest Products Company, Inc. on the container or label.
(b) Warranty of fitness for a particular purpose
When Burt Forest Products Company, Inc. has reason to know or knows any particular purpose for which the Deliverables are required, and when the State is relying on Burt Forest Products Company, Inc.'s skill or judgment to select or furnish suitable Deliverables, Burt Forest Products Company, Inc. warranties that the Deliverables are fit for such purpose.
(c) Warranty of title
Burt Forest Products Company, Inc. shall convey good title in those Deliverables, whose transfer is right and lawful. All Deliverables provided by Burt Forest Products Company, Inc. shall be delivered free from any security interest, lien, or encumbrance. Deliverables shall be delivered free of any rightful claim of any third person of ownership, interest, lien or encumbrance.

2.176 Consequences For Breach

In addition to any remedies available in law, if Burt Forest Products Company, Inc. breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of this Contract.

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

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

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

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

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

The insurers selected by Burt Forest Products Company, Inc. shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.
See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

Where specific limits are shown, they are the minimum acceptable limits. If Burt Forest Products Company, Inc.'s policy contains higher limits; the State shall be entitled to coverage to the extent of such higher limits.

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

Burt Forest Products Company, Inc. is required to pay for and provide the type and amount of insurance checked ☑ below:

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

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

Burt Forest Products Company, Inc. 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. Burt Forest Products Company, Inc. also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

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

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

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

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

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

☑ 4. Employers liability insurance with the following minimum limits:

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

Burt Forest Products Company, Inc. shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Burt Forest Products Company, Inc. under this Contract to any indemnified party or other persons. Burt Forest Products Company, Inc. shall be responsible for all deductibles with regard to such insurance. If Burt Forest Products Company, Inc. fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Burt Forest Products Company, Inc. at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Burt Forest Products Company, Inc., or Burt Forest Products Company, Inc. shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification
To the extent permitted by law, Burt Forest Products Company, Inc. shall indemnify, defend and hold harmless the State 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 Burt Forest Products Company, Inc. in the performance of this Contract and that are attributable to the negligence or tortious acts of Burt Forest Products Company, Inc. or any of its Sub Contractors, or by anyone else for whose acts any of them may be liable.
(b) Code Indemnification
To the extent permitted by law, Burt Forest Products Company, Inc. shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Burt Forest Products Company, Inc.'s breach of the No Surreptitious Code Warranty.
(c) Employee Indemnification
In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of Burt Forest Products Company, Inc. or any of its Sub Contractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for Burt Forest Products Company, Inc. or any of its Sub Contractors 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.
(d) Patent/Copyright Infringement Indemnification
To the extent permitted by law, Burt Forest Products Company, Inc. shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and

expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by Burt Forest Products Company, Inc. or its Sub Contractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Burt Forest Products Company, Inc.'s opinion be likely to become the subject of a claim of infringement, Burt Forest Products Company, Inc. shall at Burt Forest Products Company, Inc.'s sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to Burt Forest Products Company, Inc., (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 such option is not reasonably available to Burt Forest Products Company, Inc., (iii) accept its return by the State with appropriate credits to the State against the Burt Forest Products Company, Inc.'s charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, Burt Forest Products Company, Inc. shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by Burt Forest Products Company, Inc., including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by Burt Forest Products Company, Inc. under this Contract.

2.192 Continuation of Indemnification Obligations

Burt Forest Products Company, Inc.'s duty to indemnify pursuant to this Section 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 prior to expiration or cancellation.

2.193 Indemnification Procedures

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

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Burt Forest Products Company, Inc. of such claim in writing and take or assist Burt Forest Products Company, Inc. in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Burt Forest Products Company, Inc.. No failure to notify Burt Forest Products Company, Inc. shall relieve Burt Forest Products Company, Inc. of its indemnification obligations except to the extent that Burt Forest Products Company, Inc. can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Burt Forest Products Company, Inc. shall notify the State in writing whether Burt Forest Products Company, Inc. agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Burt Forest Products Company, Inc. of a claim and prior to the State receiving Burt Forest Products Company, Inc.'s Notice of Election, the State shall be entitled to defend against the claim, at Burt Forest Products Company, Inc.'s expense, and Burt Forest Products Company, Inc. will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If Burt Forest Products Company, Inc. delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Burt Forest Products Company, Inc. shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Burt Forest Products Company, Inc.'s financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Burt Forest Products Company, Inc. shall periodically advise the

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

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

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

Burt Forest Products Company, Inc.'s liability for damages to the State shall be limited to two times the value of the Contract or $200,000 (for low risk contracts – Select a higher amount for moderate to high risk contracts) which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of Burt Forest Products Company, Inc.; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to Burt Forest Products Company, Inc. shall be limited to the value of the Contract.

Neither Burt Forest Products Company, Inc. nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall 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 Burt Forest Products Company, Inc.; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other 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 such party; provided the non-performing party and its Sub Contractors are without

fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Burt Forest Products Company, Inc.'s performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Burt Forest Products Company, Inc. as of a date specified by the State in a written notice of termination to Burt Forest Products Company, Inc., except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

Burt Forest Products Company, Inc. will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Burt Forest Products Company, Inc. which are caused by acts or omissions of its Sub Contractors will not relieve Burt Forest Products Company, Inc. of its obligations under the Contract except to the extent that a Sub Contractor is itself subject to an Excusable Failure condition described above and Burt Forest Products Company, Inc. cannot reasonably circumvent the effect of the Sub Contractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.203 Disaster Recovery

Burt Forest Products Company, Inc. and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Burt Forest Products Company, Inc. personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

(a) In the event that Burt Forest Products Company, Inc. breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Burt Forest Products Company, Inc., terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Burt Forest Products Company, Inc. shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

(d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Burt Forest Products Company, Inc. was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

2.212 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in this Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, 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, in whole or in part, by giving Burt Forest Products Company, Inc. written notice at least thirty (30) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

2.213 Non-Appropriation

(a) Burt Forest Products Company, Inc. acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Burt Forest Products Company, Inc.. The State shall give Burt Forest Products Company, Inc. at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Burt Forest Products Company, Inc. for the agreed-to level of the Services or production of Deliverables to be provided by Burt Forest Products Company, Inc. are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Burt Forest Products Company, Inc., reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Burt Forest Products Company, Inc. pursuant to this Section, the State shall pay Burt Forest Products Company, Inc. for all Work-in-Process performed through the effective date of the

termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Burt Forest Products Company, Inc. from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.214 Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Burt Forest Products Company, Inc., an officer of Burt Forest Products Company, Inc., or an owner of a 25% or greater share of Burt Forest Products Company, Inc. is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Burt Forest Products Company, Inc.'s business integrity.

2.215 Approvals Rescinded

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Burt Forest Products Company, Inc. or may be effective as of the date stated in such written notice.

2.216 Rights and Obligations Upon Termination

(a) If this Contract is terminated by the State for any reason, Burt Forest Products Company, Inc. shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Burt Forest Products Company, Inc.'s possession, (c) return all materials and property provided directly or indirectly to Burt Forest Products Company, Inc. by any entity, agent or employee of the State, (d) in the event that the Burt Forest Products Company, Inc. maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Burt Forest Products Company, Inc. will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Burt Forest Products Company, Inc. for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Burt Forest Products Company, Inc. adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Burt Forest Products Company, Inc. for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Burt Forest Products Company, Inc. pursuant to this Contract shall, at the option of the State, become the State's property, and Burt Forest Products Company, Inc. shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Burt Forest Products Company, Inc. for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further

pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.217 Reservation of Rights

Any termination of this Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

2.218 Burt Forest Products Company, Inc. Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Burt Forest Products Company, Inc. agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Burt Forest Products Company, Inc. agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ninety (90) days. These efforts shall include, but are not limited to, the following:

(a) Personnel - The Burt Forest Products Company, Inc. shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Burt Forest Products Company, Inc. shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Burt Forest Products Company, Inc.'s Sub Contractors or vendors, as necessary to meet its needs, Burt Forest Products Company, Inc. agrees to reasonably, and with good-faith, work with the State to use the Services of Burt Forest Products Company, Inc.'s Sub Contractors or vendors. Burt Forest Products Company, Inc. will notify all of Burt Forest Products Company, Inc.'s Sub Contractors of procedures to be followed during transition.

(b) Information - The Burt Forest Products Company, Inc. agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Burt Forest Products Company, Inc. will provide the State with asset management data generated from the inception of this Contract through the date on which this Burt Forest Products Company, Inc. is terminated in a comma-delineated format unless otherwise requested by the State. The Burt Forest Products Company, Inc. will deliver to the State any remaining owed reports and documentation still in Burt Forest Products Company, Inc.'s possession subject to appropriate payment by the State.

(c) Software. - The Burt Forest Products Company, Inc. shall reasonably assist the State in the acquisition of any Burt Forest Products Company, Inc. software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Burt Forest Products Company, Inc. to perform the Services under this Contract. If the State transfers any software licenses to the Burt Forest Products Company, Inc., those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Burt Forest Products Company, Inc. may be required to freeze all non-critical changes to Deliverables/Services.

(d) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Burt Forest Products Company, Inc. will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Article 1, Attachment C**. The Burt Forest Products Company, Inc. will prepare an accurate accounting from which the State and Burt Forest Products Company, Inc. may reconcile all outstanding accounts.

2.219 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Burt Forest Products Company, Inc. agree:

(a) Reconciling all accounts between the State and the Burt Forest Products Company, Inc.;

(b) Completing any pending post-project reviews.

2.220 Termination by Burt Forest Products Company, Inc.
If the State materially breaches its obligation to pay Burt Forest Products Company, Inc. undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Burt Forest Products Company, Inc. to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Burt Forest Products Company, Inc. (such time period not to be less than thirty (30) days), then Burt Forest Products Company, Inc. may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Burt Forest Products Company, Inc. must discharge its obligations under **Section 2.250** before any such termination.

2.230 Stop Work -RESERVED

2.231 Reserved

2.232 Cancellation or Expiration of Stop Work Order -RESERVED

2.233 Allowance of Burt Forest Products Company, Inc. Costs- RESERVED

2.240 Reserved

2.250 Dispute Resolution

2.251 Reserved

2.252 Informal Dispute Resolution
(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Acquisition Services, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Burt Forest Products Company, Inc. and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Burt Forest Products Company, Inc. representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within sixty (60) calendar days, the Director of Acquisition Services, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the Burt Forest Products Company, Inc. and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Burt Forest Products Company, Inc. will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.254 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

In the performance of this Contract, Burt Forest Products Company, Inc. 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, physical or mental disability. Burt Forest Products Company, Inc. further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Sub Contractor. This covenant is required pursuant to the Elliot 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.

2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq*., the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Burt Forest Products Company, Inc. of the State, in relation to the Contract, shall not enter into a contract with a Sub Contractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Burt Forest Products Company, Inc. as an employer or the name of the Sub Contractor, manufacturer or supplier of Burt Forest Products Company, Inc. appears in the register.

2.263 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Burt Forest Products Company, Inc. shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Burt Forest Products Company, Inc. shall comply with Civil Service regulations and any applicable agency rules provided to the Burt Forest Products Company, Inc.. For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

2.270 Litigation

2.271 Burt Forest Products Company, Inc. Notifications

Burt Forest Products Company, Inc. shall make the following notifications in writing:

(1) Within thirty (30) days of Burt Forest Products Company, Inc. becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Burt Forest Products Company, Inc. shall notify the Office of Acquisition Services.

(2) Burt Forest Products Company, Inc. shall also notify the Office of Acquisition Services within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Burt Forest Products Company, Inc. shall also notify Acquisition Services within thirty (30) days whenever changes to company affiliations occur.

2.272 Governing Law

This Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.273 Compliance with Laws

Burt Forest Products Company, Inc. shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.

2.274 Jurisdiction

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Burt Forest Products Company, Inc. consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Burt Forest Products Company, Inc. agrees to appoint agents in the State of Michigan to receive service of process.

2.280 Environmental Provision

2.281 Environmental Provision

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., 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. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act. This Contract does not cover the handling, removal, or disposal of all Hazardous Materials.

(a) The Burt Forest Products Company, Inc. shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Burt Forest Products Company, Inc.'s Work. Prior to the commencement of Work, the State shall advise Burt Forest Products Company, Inc. of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Burt Forest Products Company, Inc. encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Burt Forest Products Company, Inc. shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Burt Forest Products Company, Inc., or does not result in whole or in part from any violation by the Burt Forest Products Company, Inc. of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Burt Forest Products Company, Inc. for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Burt Forest Products Company, Inc., or results in whole or in part from any violation by the Burt Forest Products Company, Inc. 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 Burt Forest Products Company, Inc., the Burt Forest Products Company, Inc. shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agenc(ies). If the Burt Forest Products Company, Inc. fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 General

2.291 Amendments

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties, and implemented via a Contract Change Notice issued by the DMB Office of Acquisition Services.

2.292 Assignment

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Burt Forest Products Company, Inc. and Burt Forest Products Company, Inc. may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Burt Forest Products Company, Inc. may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Burt Forest Products Company, Inc. shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

2.293 Entire Contract; Order of Precedence

(a) This Contract, including any Statements of Work, Attachments, and Exhibits, to the extent not contrary to this Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(b) In the event of any inconsistency between the terms of this Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of this Contract, which may be modified or amended only by a formal Contract amendment.

2.294 Headings

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

2.295 Relationship of the Parties (Independent Burt Forest Products Company, Inc. Relationship)

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

2.296 Notices

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

State:
State of Michigan
Office of Acquisition Services
Attention:
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Burt Forest Products Company, Inc.:
Burt Forest Products Company, Inc.
P.O. Box 7389
Ann Arbor, MI 48107-7389

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

(b) Binding Commitments
Representatives of Burt Forest Products Company, Inc. identified in **Article 1, Attachment B** shall have the authority to make binding commitments on Burt Forest Products Company, Inc.'s behalf within the bounds set forth in such table. Burt Forest Products Company, Inc. may change such representatives from time to time upon written notice.

2.297 Media Releases and Contract Distribution

(a) Media Releases
Neither Burt Forest Products Company, Inc. nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Burt Forest Products Company, Inc. nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Burt Forest Products Company, Inc. must be obtained from authorized representatives.

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

2.298 Reformation and Severability

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

2.299 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

2.300 No Waiver of Default

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

2.301 Survival

Any provisions of this Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of this Contract for any reason. Specific references to survival in this Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.302 Covenant of Good Faith

Each party agrees that, in its dealings with the other party or in connection with this Contract, it shall act reasonably and in good faith. Unless stated otherwise in this Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under this Contract.

2.303 Permits

Burt Forest Products Company, Inc. shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.304 Website Incorporation

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

2.305 Taxes

Burt Forest Products Company, Inc. is expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in this Contract.

The State may refuse to award a Contract to any Burt Forest Products Company, Inc. who has failed to pay any applicable State taxes. Prior to Contract award, the State will verify whether Burt Forest Products Company, Inc. has any outstanding debt with the State.

2.306 Prevailing Wage - RESERVED

2.307 Call Center Disclosure

Burt Forest Products Company, Inc. and/or all Sub Contractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this Contract.

2.308 Future Bidding Preclusion-RESERVED

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html. Unless otherwise stated, it is the responsibility of the Burt Forest Products Company, Inc. to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Burt Forest Products Company, Inc. will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.
To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.322 State Employee Purchases –RESERVED

Treated Wood Sign Posts

Ship to Location	Bill to Location	Post, Wood Treated 4” x 6” x 16’ with holes	Post, Wood Treated 4” x 6” x 20’ with holes	Post, Wood Treated 4” x 6” x 22’ with holes	Post, Wood Treated 4” x 6” x 24’ with holes	Post, Wood Treated 6” x 8” x 20’ with holes	Post, Wood Treated 6” x 8” x 22’ with holes	Post, Wood Treated 6” x 8” x 24’ with holes
59359 Cadillac Special Crews 725 Seneca Cadillac, MI	Same	600	450			150		300
	Price Per Board	$35.66	$45.20			$116.27		$146.40
59392 Kalamazoo Sign Shop 6345 American Ave. Portage, MI	Same	900	900				450	300
	Price Per Board	$35.14	$44.77				$131.40	$146.40
59412 Grand Rapids Sign Shop 1420 Front NW Grand Rapids, MI	Same	600	600			450	450	
	Price Per Board	$35.14	$44.77			$116.27	$131.40	
59732 Saginaw Sign Shop 3510 E. Washington Saginaw, MI	Same	450	450			450	450	300
	Price Per Board	$35.14	$44.77			$116.27	$131.40	$146.40
59601 Atlanta Maint. Garage 13490 M-32/M-33 Atlanta, MI	Same	900	300				36	
	Price Per Board	$35.66	$45.20				$132.89	
59071 L’Anse Maint. Garage 301 Winter St. L’Anse, MI	Same	1350	900					450
	Price Per Board	$36.20	$47.14					$151.79

Pricing Sheet

Ship to Location	Bill to Location	Post, Wood Treated 4” x 6” x 16’ with holes	Post, Wood Treated 4” x 6” x 20’ with holes	Post, Wood Treated 4” x 6” x 22’ with holes	Post, Wood Treated 4” x 6” x 24’ with holes	Post, Wood Treated 6” x 8” x 20’ with holes	Post, Wood Treated 6” x 8” x 22’ with holes	Post, Wood Treated 6” x 8” x 24’ with holes
59001 UP Sign Shop 816 Clark Drive Gladstone, MI	818 Third Ave. North Escanaba, MI 49829	600	300					
	Price Per Board	$36.20	$47.14					
59212 Engadine Maint. Garage M117 Engadine, MI	Same	600	300			150		
	Price Per Board	$36.20	$47.14			$120.06		
59086 Central Warehouse 7575 Crowner Ave. Lansing, MI	Same	1650	900	500	500	300	300	150
	Price Per Board	$35.00	$44.57	$67.20	$72.60	$116.00	$129.00	$144.80
Estimated total for 3 Years		**7650**	**5100**	**500**	**500**	**1200**	**1686**	**1500**