

C-18-0535

Tracking No. 18080050

**MEMORANDUM OF UNDERSTANDING FOR
CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA and
CITY OF LINCOLN-LANCASTER COUNTY PUBLIC BUILDING COMMISSION
COOPERATIVE CONTRACT
MOU031**

Contract Title: Paint and Related Products

Lead Entity and Contract Number: University of Nebraska RFP #2951-18-7215

(Hereinafter referred to as “the Lead Contract”)

THIS MEMORANDUM OF UNDERSTANDING (MOU) is hereby issued to **Sherwin-Williams Company, 235 N. 46th Street, Lincoln, NE 68503** hereinafter called “Contractor”, from the City of Lincoln, Nebraska, a municipal corporation, and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, and the City of Lincoln-Lancaster County Public Building Commission hereinafter called the “Owners” for the purpose of the Contractor and the Owners agreeing to the terms and conditions provided in this MOU

The Contractor and the Owners hereby agree to the following supplemental Terms and Conditions from those in the Lead Contract listed above:

TERMS AND CONDITIONS

A. PARTICIPATING TERM

The Owners shall participate in the Lead Contract for Paint and Related Products. The MOU will be effective upon execution through July 31, 2019. Upon conclusion of the initial term, the parties have the option of renewing under the same terms and conditions according to the renewals allowed by the Lead Contract for four (4) additional one (1) year terms, with written mutual consent.

B. SCOPE

The Contractor shall provide the same scope of services and provide the same products as set forth in the Lead Contract.

C. PRICING

Pricing for these goods and/or services shall be pursuant to the Lead Contract, a copy thereof is attached to this Memorandum

D. CONFLICTING TERMS

To the extent other terms and conditions attached hereto conflict with the terms and conditions stated herein, the parties agree that conflicts among the documents comprising this Memorandum shall be resolved according to priority, and that a document's priority shall be determined according to the order in which the document appears in the list below in section "E. MOU Documents".

E. MOU DOCUMENTS

The following documents comprise the Memorandum of Understanding:

1. This Memorandum of Understanding and associated Terms and Conditions;
2. University of Nebraska Master Agreement and Appendix A of RFP #2951-18-7215
3. Tax Forms

F. LAWS

The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this Memorandum of Understanding. During the term of the MOU, the Contractor shall perform all services and/or supply all goods in accordance with the established and applicable standards and in accordance with applicable State and Local laws.

G. IMPLIED REQUIREMENTS

All products and services not specifically mentioned in this document or the Lead Contract, but which are necessary to provide the functional capabilities described in the Lead Contract, shall be included.

H. CONTRACT MODIFICATION

The MOU shall be modified only by a written MOU amendment and approval of the parties. No alteration or variation of the terms and conditions of this Memorandum shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

I. TERMINATION

This MOU may be terminated by the following:

1. Termination for Convenience. Either party may terminate this MOU upon thirty (30)

- days written notice to the other party, for any reason, without penalty.
2. Termination for Cause. The Owners may terminate this MOU for cause if the Contractor:
 - a. Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or products pursuant to the Lead Contract or;
 - b. Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders or;
 - c. Otherwise commits a substantial breach or default of any provision of the Lead Contract or this MOU. In the event of a substantial breach or default the Owners will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the MOU shall terminate.
 3. In the event that funding is not available to continue with services as written, the Owner(s) reserve the right to terminate use of the MOU for convenience with no financial obligation to the Contractor, Subcontractors or other stakeholders except for any amount due for services rendered or products supplied prior to notice of cancellation.

The Owner(s) may terminate this MOU in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of the Owner(s). In the event of unavailability of funds to pay any amounts due under the MOU, the Owner(s) shall immediately notify the Contractor and the MOU shall terminate without penalty or expense to the Owner(s). Upon termination, the Owner(s) shall pay the Contractor for any approved and documented services or products completed or purchased up to the date of termination, but not to exceed the maximum amount allowed by the Lead Contract or this MOU.

J. SEVERABILITY

If any provision of this MOU is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the MOU shall not be affected and each provision of the MOU shall be enforced to the fullest extent permitted by law.

K. ASSIGNMENT

This MOU shall not be transferred to/or assigned to another Contractor without prior written consent confirming approval by the Owners. Any assignment without such prior written consent shall be absolutely void.

L. FORCE MAJEURE

Neither party shall be liable for any costs or damages from its inability to perform any of its obligations under the MOU due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the Lead Contract or this MOU. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The Owners may grant relief from performance of the MOU if the Contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest on the Contractor. To be released based on a Force Majeure Event, the Contractor shall file a written request for relief with the City of Lincoln/Lancaster County Purchasing Division. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the Contract.

M. ATTORNEY'S FEES

In the event of any litigation, appeal, or other legal action to enforce any provision of the MOU, the Contractor agrees to pay all expenses of such action, as permitted by law, including Attorney's fees and costs, if the Owner is the prevailing party.

N. OWNER INCLUSION

It is understood and agreed by all parties that "Owner/s" shall include the City of Lincoln, Lancaster County, Nebraska and Lincoln-Lancaster County Public Building Commission. Whenever in the Contract documents, a singular entity is referenced (i.e., "the City" or "the County" or "Building Commission") it shall mean the "Owners" encompassing the City of Lincoln, Lancaster County and Lincoln-Lancaster County Building Commission. Notwithstanding the foregoing, the duties and obligations of the City, the County, and the Building Commission pursuant to the MOU shall be treated as divisible and severable duties and obligations, and default by any one of the City, the County, or the Building Commission shall not be attributed to any other of the Owners, but shall remain the sole obligation of the defaulting entity.

O. PAYMENT

Unless stated otherwise, the Owners will initiate payment within thirty (30) calendar days after:

1. All work has been performed and all equipment or other merchandise has been delivered.
2. All such labor and equipment and other materials have met all MOU specifications.
3. All such work has been approved by the Owner.
4. An invoice has been submitted which corresponds with the MOU amount and any subsequent changes approved by the Owners.

P. TAXES AND TAX EXEMPTION CERTIFICATE

The Owners are generally exempt from any taxes imposed by the State or Federal government. A Tax Exemption Certificate will be provided as applicable.

The Water Division of the City of Lincoln is taxable per Reg. 066.14A and no exemption certificate will be issued.

Q. INDEPENDENT CONTRACTOR

Employees of the Contractor shall not be deemed to be employees of the Owners and employees of the Owners shall not be deemed to be employees of the Contractor. The Contractor and the Owners shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the Owners' employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.

R. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the carrying out of this project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion

or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

S. E-VERIFY

In accordance with Neb. Rev. Stat. 4-108 through 4-114, the Contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, [go to www.uscis.gov/everify](http://www.uscis.gov/everify).

T. CITY AUDIT ADVISORY BOARD

All parties doing business with the Owners shall be subject to audit (City of Lincoln - Chapter 4.66 of the Lincoln Municipal Code) and shall make available to a Contract Auditor copies of all financial and performance related records and materials germane to the MOU/purchase order, as allowed by law.

U. INDEMNIFICATION

The Contractor shall indemnify and hold harmless the Owners from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the MOU that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the Owners for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of the Owners.

In any and all claims against the Owners or any of its elected officials, members, officers or employees by an employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation listed herein shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

V. WAIVER

Owners' failure or neglect to enforce any of its rights under this Memorandum will not be deemed to be a waiver of the Owners' rights.

W. THIRD PARTIES

This Memorandum is not intended to, and does not, create any rights or benefits on behalf of any person, whether an individual or an entity, other than the Parties involved. Owners shall not be obligated or liable hereunder to any person, whether an individual or an entity, other than Contractor.

X. AUDIT

This MOU shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and all parties shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

The Contractor and the Owners hereby agree that all the terms and conditions of this MOU shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

The Contractor hereby agrees to this MOU upon completion of signatures on the Vendor Signature Page.

Vendor Signature Page

COOPERATIVE CONTRACT
Paint and Related Products
MOU031

City of Lincoln, Lancaster County, Nebraska and
City of Lincoln-Lancaster County Public Building Commission
Sherwin-Williams Company

EXECUTION BY CONTRACTOR

IF A CORPORATION:

Attest:

— KK ATTAKHO — Seal
Secretary

THE SHERWIN-WILLIAMS COMPANY
Name of Corporation

235 N. 46TH ST, LINCOLN, NE 68503-3712
Address

By: [Signature] RICHARD RAY
Duly Authorized Official

MANAGER - CONTRACT SERVICES
Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Name of Organization

Type of Organization

Address

By: _____
Member

By: _____
Member

IF AN INDIVIDUAL:

Name

Address

Signature

City of Lincoln Signature Page

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MOU031
City of Lincoln, Lancaster County, Nebraska and
City of Lincoln-Lancaster County Public Building Commission
Sherwin-Williams Company**

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

City Clerk

CITY OF LINCOLN, NEBRASKA

Chris Beutler, Mayor

Approved by Executive Order No. _____

dated _____

Lancaster County Signature Page

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Paint and Related Products
MOU031
City of Lincoln, Lancaster County, Nebraska and
City of Lincoln-Lancaster County Public Building Commission
Sherwin-Williams Company**

EXECUTION BY LANCASTER COUNTY, NEBRASKA

Contract Approved as to Form:

Deputy Lancaster County Attorney

The Board of County Commissioners of
Lancaster, Nebraska

dated _____

**City of Lincoln-Lancaster County Public Building Commission
Signature Page**

**COOPERATIVE CONTRACT
Paint and Related Products
MOU031**

**City of Lincoln, Lancaster County, Nebraska and
City of Lincoln-Lancaster County Public Building Commission
Sherwin-Williams Company**

EXECUTION BY LINCOLN-LANCASTER COUNTY PUBLIC BUILDING COMMISSION

ATTEST:

Public Building Commission Attorney

Chairperson, Public Building Commission

dated _____