

SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and Kwal Howells Inc., hereinafter referred to as "Service Provider".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Scope of Services. The Service Provider agrees to provide services in accordance with the scope of services attached hereto as Exhibit "A", consisting of one (1) page and incorporated herein by this reference.

2. Contract Period. This Agreement shall commence April 15, 2007, and shall continue in full force and effect until April 14, 2008, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed four (4) additional one year periods. Renewals and pricing changes shall be negotiated by and agreed to by both parties. The Denver Boulder Greeley CPIU published by the Colorado State Planning and Budget Office will be used as a guide. Written notice of renewal shall be provided to the Service Provider and mailed no later than ninety (90) days prior to contract end.

3. Delay. If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition.

4. Early Termination by City/Notice. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written

notice of termination to the Service Provider. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

City:
City of Fort Collins, Purchasing
PO Box 580
Fort Collins, CO 80522

Service Provider:
Kwal Howes Inc. *KWAL HOWES INC*
3900 Joliet St
Denver, CO 80239

In the event of early termination by the City, the Service Provider shall be paid for services rendered to the date of termination, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

5. Contract Sum. The City shall pay the Service provider for the performance of this Contract, subject to additions and deletions provided herein, per the attached Exhibit "B", consisting of one (1) page, and incorporated herein by this reference.

6. City Representative. The City will designate, prior to commencement of the work, its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the services provided under this agreement. All requests concerning this agreement shall be directed to the City Representative.

7. Independent Service provider. The services to be performed by Service Provider are those of an independent service provider and not of an employee of the City of Fort Collins. The City shall not be responsible for withholding any portion of Service Provider's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.

8. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall

neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the City.

9. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.

10. Warranty.

- (a) Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.
- (b) Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.
- (c) Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.

11. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.

12. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. If the non-defaulting party

commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

13. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

14. Indemnity/Insurance. a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.

b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within Exhibit C, consisting of one (1) page, attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder, shall deliver to the City's Director of Purchasing and Risk Management, P. O. Box 580 Fort Collins, Colorado 80522 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the City.

15. Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding on the parties.

16. Law/Severability. The laws of the State of Colorado shall govern the construction

interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

17. Prohibition Against Employing Illegal Aliens. This paragraph shall apply to all Contractors whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work. Pursuant to Section 8-17.5-101, C.R.S., *et. seq.*, Contractor represents and agrees that:

A. As of the date of this Agreement:

1. Contractor does not knowingly employ or contract with an illegal alien; and
2. Contractor has participated or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "Basic Pilot Program") in order to verify that Contractor does not employ any illegal aliens.

B. Contractor shall not knowingly employ or contract with an illegal alien to perform works under this Agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Contractor shall continue to apply to participate in the Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Contractor is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Basic Pilot Program is discontinued.

D. Contractor is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

E. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

1. Notify such subcontractor and the City within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- F. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.
- G. If Contractor violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City may terminate this Agreement. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.
- H. The City will notify the Office of the Secretary of State if Contractor violates this provision of this Agreement and the City terminates the Agreement for such breach.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: James B. O'Neill II
James B. O'Neill II, CPPO, FNIGP
Director of Purchasing and Risk Management

Date: 4/20/07

Kwal Howells, Inc.

By: Jim Gamborg
Jim Gamborg VP
PRINT NAME

CORPORATE PRESIDENT OR VICE PRESIDENT

Date: _____
(Corporate Seal)

ATTEST:



CORPORATE SECRETARY

EXHIBIT A

SPECIFICATIONS FOR FIELD MARKING LATEX PAINT

1) GENERAL

- Paint to be Acrylic Modified Vinyl Flat that is recommended for temporary marking paint for use on grass, artificial turf and gravel tracks. Paint is readily removable and will not be used where durability is required.
- Paint to contain no lead and complies with EPA's voluntary 33/50 program.
- Paint must be able to be applied by brush, roller, conventional or airless sprayer.
- Paint to be set to touch within 30 minutes and thoroughly dry within 1 hour.
- Clean up must be with water only or water with soap.
- Paint must not be allowed to freeze.
- The specification shall be considered a minimum specification.
- Minimum ingredient (or approved equal) specification is:

A.	Water	45-<60 weight percent
	Calcium Carbonate	10-<20 weight percent
	Titanium Dioxide	10-<20 weight percent
	Propylene Glycol	1-<5 weight percent
	Crystalline Silica-Quartz	.1-<5 weight percent

Approved equal

B.	(+or- 2%)	
	Pigment	47%
	TiO2	10 %
	Carbonate	37%
	Vehicle	53%

2) ORDERING and DELIVERY REQUIREMENTS

- Awarded vendor must deliver paint only when ordered by an agency and in quantities specified.
- Minimum paint ordered may be 10 (ten) gallons.
- Paint must be delivered in 5 gallon container.
- Delivery must be within 48 hours ARO.
- Awarded vendor must provide MSDS to each agency prior to paint delivery.

V. ESTIMATED QUANTITIES AND BID FORM

THE QUANTITIES ARE ESTIMATES ONLY. AWARD WILL BE BASED ON LOWEST, RESPONSIVE AND RESPONSIBLE PRICE PER GALLON.

QUANTITY	COLOR	PRICE PER GALLON
15545 GALLONS	WHITE	\$ <u>3.28</u>
700 GALLONS	YELLOW, RED, GREEN, BLUE, ORANGE	\$ <u>4.64</u>

SIGNATURE PAGE

The undersigned Bidder, having examined these documents, and having full knowledge of the condition under which the work described herein must be performed, hereby proposes that he will fulfill the obligations contained herein in accordance with all terms, conditions, and specifications set forth; and that he will furnish all required products and pay all incidental costs in strict conformity with these documents, for the stated prices as payment in full.

Submitting Firm: KWAL HOWELLS INC.

(Corporation, DBA, Partnership, LLC, or PC?)

Address: 3900 JOLIET ST.

DENVER, CO. 80239

Telephone Number: 970-226-0891

Name of Agent (print/type): DERK MASTERS

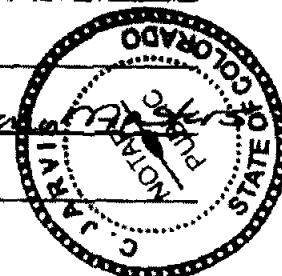
Title: AREA MANAGER

Authorized Signature: *[Signature]*

Date: 3-28-07

Attest: 3-28-07 by Derk Andrew Heacer

My Commission Expires: 7-13-08



CORPORATE SEAL

EXHIBIT C

INSURANCE REQUIREMENTS

1. The Service Provider will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Service Provider shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement:

"The insurance evidenced by this Certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the City of Fort Collins."

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Service Provider, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Service Provider under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Service Provider's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2. Insurance coverages shall be as follows:

A. Workers' Compensation & Employer's Liability. The Service Provider shall maintain during the life of this Agreement for all of the Service Provider's employees engaged in work performed under this agreement:

1. Workers' Compensation insurance with statutory limits as required by Colorado law.
2. Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.

B. Commercial General & Vehicle Liability. The Service Provider shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle, shall not be less than \$500,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Service Provider shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

08/03/2007

DATE (MM/DD/YY)
09/12/2006

PRODUCER
Lockton Companies
444 W. 47th Street, Suite 900
Kansas City Mo 64112-1906
(816) 960-9000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
1072127 PROFESSIONAL PAINT, INC.
KWAL-HOWELLS INC.
ATTN: PAMELA WASHBURN
3900 JOLIET STREET
DENVER CO 80239

INSURER A: AM. INT. SPECIALTY LINES(AIG-CHI)
INSURER B: COMMERCE & INDUSTRY INS. CO.***
INSURER C: ***(AIG CHICAGO)
INSURER D: XL SPECIALTY INS. CO - NY
INSURER E:

COVERAGES PROP01 ZR

THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	1950155	08/03/2006	08/03/2007	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$ 1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> POLLUTION LEGAL LIAB				PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> CLAIMS MADE FORM				GENERAL AGGREGATE \$ 2,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG \$ 1,000,000
<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
B B	AUTOMOBILE LIABILITY	8087121 (AOS) CA717-10-58 (TX)	08/03/2006	08/03/2007	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$ XXXXXXXX
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$ XXXXXXXX
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
	<input checked="" type="checkbox"/> HIRED AUTOS				
<input checked="" type="checkbox"/> NON-OWNED AUTOS					
<input checked="" type="checkbox"/> \$1,000 Comp Ded					
<input checked="" type="checkbox"/> \$1,000 Coll Ded					
GARAGE LIABILITY					AUTO ONLY - EA ACCIDENT \$ XXXXXXXX
<input type="checkbox"/> ANY AUTO					OTHER THAN AUTO ONLY: EA ACC \$ XXXXXXXX
NOT APPLICABLE					AGG \$ XXXXXXXX
EXCESS LIABILITY					EACH OCCURRENCE \$ XXXXXXXX
<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE					AGGREGATE \$ XXXXXXXX
NOT APPLICABLE					\$ XXXXXXXX
<input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> UMBRELLA FORM					\$ XXXXXXXX
RETENTION \$					\$ XXXXXXXX
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	RWD9435148	08/03/2006	08/03/2007	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER \$
	E.L. EACH ACCIDENT \$ 1,000,000				
	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000				
	E.L. DISEASE - POLICY LIMIT \$ 1,000,000				
OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS

CERTIFICATE HOLDER 2658949	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION [M85936]
FOR INFORMATION PURPOSES ONLY		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
		AUTHORIZED REPRESENTATIVE <i>Barbara J. Foster</i>

SCHEDULE OF NAMED INSUREDS

PROFESSIONAL PAINT, INC.
GENERAL PAINT, INC.
FRAZEE INDUSTRIES HOLDINGS, INC.
FRAZEE INDUSTRIES, INC.
KWAL-HOWELLS HOLDINGS, INC.
KWAL-HOWELLS, INC.
PARKER PAINT HOLDINGS, INC.
FRAZEE FRANCHISE CORP.
STELLAR PAINT (DBA)
GENERAL PAINT CORP.
SOPHIR MORRIS HOLDINGS, INC.
SMC ACQUISITIONN CORP.
STELLAR KWAL PAINT (DBA)
STELLAR ACQUISITION CORP.
STELLAR HOLDINGS, INC.
DUCKBACK ACQUISITION CORP.
DUCKBACK PRODUCTS (DBA)
DUCKBACK HOLDINGS, INC.
CLASSIC PAINT (DBA)
KWAL PAINT (DBA)
IDEAL PAINTS (DBA)
COMEX USA, INC.
POWDERHORN ACQUISITION CORP.
STELLAR ACQUISITION DBA AMERIMEX PAINT CENTERS
COMERCIAL MEXICANA DE PINTURAS S.A. DE C.V.*
CONSORCIO COMEX S.A. DE C.V.(
COLOR WHEEL PAIN MFG. CO., INC.
COLOR WHEEL PAINTS AND COATINGS
COLOR WHEEL PAINTS
THE PAINT STORE
COLOR WHEEL DECORATING CENTER
STRUBE PROPERTIES, LTD.
STRUBE HOLDINGS, INC.
COLOR WHEEL ACQUISITION CORP.
COLOR WHEEL HOLDINGS, INC.

*AS RESPECTS PRODUCTS SOLD IN THE UNITED STATES