



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Michigan Department of Transportation

425 W. Ottawa St. Lansing, Michigan 48933
P.O. Box 30050, Lansing, Michigan 48909

CONTRACT CHANGE NOTICE

Change Notice Number 6
to
Contract Number 591M200000000584

CURRENT CONTRACTOR	National Highway Maintenance Systems, LTD. LLC
	P.O. Box 5315
	Akron, OH 44334
	Michael Leahy
	(888) 922-3630 or (330) 256-5744
	nhmsltd@gmail.com
	CV0015727

NEW CONTRACTOR	Crafcu, Inc.
	6165 W. Detroit St.
	Chandler, AZ 85226
	Todd Ziems
	(602) 276-0406
	Todd.Ziems@Crafcu.com
	CV0138479

STATE CONTACTS					
Program Manager	James Roath	MDOT	Contract Administrator	Terry Harris	MDOT
	(517) 230-5361			(517) 249-0870	
	RoathJ1@michigan.gov			Harrist@michigan.gov	
CONTRACT SUMMARY					
DESCRIPTION: Fiber Asphalt, Mastic, Rubber Sealant, and Equipment, Michigan Department of Transportation (MDOT) Statewide.					
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW		
March 30, 2020	March 29, 2023	2 one-year options	March 29, 2025		
PAYMENT TERMS			DELIVERY TIMEFRAME		
Net 45 days			N/A		
ALTERNATE PAYMENT OPTIONS				EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS					
N/A					
DESCRIPTION OF CHANGE NOTICE					
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE	
<input type="checkbox"/>		<input type="checkbox"/>		March 29, 2025	
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$9,926,216.30		\$0.00	\$9,926,216.30		
DESCRIPTION: Upon execution, the Contract vendor name changed to Crafcu, Inc. and contact person is Todd Ziems for as needed contract for Fiber Asphalt, Mastic, Rubber Sealant, and Equipment Statewide. All other terms, conditions, and specifications remain the same.					

FOR THE CONTRACTOR:

Company Name

E-SIGNED by Todd Ziems
on 2025-02-06 10:47:21 EST

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

E-SIGNED by Michael Meddaugh
on 2025-02-06 12:02:48 EST

Signature

For Director

Michigan Department of Transportation
Agency



STATE OF MICHIGAN PROCUREMENT

Michigan Department of Transportation

425 W. Ottawa St., Lansing, MI 48913

P.O. Box 30050, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number 5
to
Contract Number 591M200000000584

CONTRACTOR	National Highway Maintenance Systems, LTD.LLC
	P.O. Box 5315
	Akron, OH 44334
	Michael Leahy
	(888) 922-3630 or (330) 256-5744
	nhmsltd@gmail.com

STATE	Program Manager	James Roath	MDOT
		(517) 230-5361	
		RoathJ1@michigan.gov	
	Contract Administrator	Terry Harris	MDOT
		(517) 335-2507	
		Harrist@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Fiber Asphalt, Mastic, Rubber Joint Sealant, and Equipment, Michigan Department of Transportation (MDOT)				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
March 30, 2020	March 29, 2023	2 one-year options	March 29, 2025	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 days		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE	VALUE OF CHANGE NOTICE		ESTIMATED AGGREGATE CONTRACT VALUE	
\$7,426,216.30	\$2,500,000.00		\$9,926,216.30	
DESCRIPTION: Upon execution, the Contract is increased by \$2,500,000.00 for as-needed contract for Mastic/Fiber Asphalt, Rubber Joint Sealant and Equipment Statewide. All other terms, conditions, and specifications remain the same.				

FOR THE CONTRACTOR:

National Highway Maintenance Systems, Ltd. LLC

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

For Director
Michigan Department of Transportation

Agency



STATE OF MICHIGAN PROCUREMENT

Michigan Department of Transportation

425 W. Ottawa St., Lansing, MI 48913

P.O. Box 30050, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number **4**
to
Contract Number **591M200000000584**

CONTRACTOR	National Highway Maintenance System, LLC
	P.O. Box 5315
	Akron, OH 44334
	Michael Leahy
	(888) 922-3630 or (330) 256-5744
	nhmsltd@gmail.com

STATE	Program Manager	James Roath	MDOT
		(517) 230-5361	
		RoathJ1@michigan.gov	
	Contract Administrator	Terry Harris	MDOT
		(517) 335-2507	
		Harrist@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Fiber Asphalt, Mastic, Rubber Joint Sealant, and Equipment, Michigan Department of Transportation (MDOT)				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
March 30, 2020	March 29, 2023	2 one-year options	March 29, 2024	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 days		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		March 29, 2025
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$5,826,216.30		\$1,600,000.00	\$7,426,216.30	
DESCRIPTION: Upon execution, the Contract is exercising one option year renewal, and is increased by \$1,600,000.00 for as-needed contract for Mastic/Fiber Asphalt, Rubber Joint Sealant and Equipment Statewide. All other terms, conditions, and specifications remain the same. Per Contractor and Agency agreement. State administration Board approval dated 10/24/2023.				

FOR THE CONTRACTOR:

National Highway Maintenance System, LLC

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

For Director
Michigan Department of Transportation

Agency



STATE OF MICHIGAN PROCUREMENT

Michigan Department of Transportation

425 W. Ottawa St., Lansing, MI 48913

P.O. Box 30050, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number 3
to
Contract Number 591M20000000584

CONTRACTOR	National Highway Maintenance System, LLC
	P.O. Box 5315
	Akron, OH 44334
	Michael Leahy
	(888) 922-3630 or (330) 256-5744
	nhmsltd@gmail.com

STATE	Program Manager	James Roath	MDOT
		(517) 230-5361	
		RoathJ1@michigan.gov	
	Contract Administrator	Terry Harris	MDOT
		(517) 335-2507	
		Harrist@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Fiber Asphalt, Mastic, Rubber Joint Sealant, and Equipment, Michigan Department of Transportation (MDOT)				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
March 30, 2020	March 29, 2023	2 one-year options	March 29, 2023	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 days		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		March 29, 2024
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$5,826,216.30		\$0.00	\$5,826,216.30	
DESCRIPTION: Upon execution, this contract is exercising the first option year. The amendment also, includes adding a new line item for this as-needed contract: Equipment Rental Crafcoc Mastic Patcher II Applicator w/Tools and Chute \$6,995.95 per unit. All other terms, conditions, and specifications remain the same. Per Contractor and Agency agreement				

FOR THE CONTRACTOR:

National Highway Maintenance System, LLC

Company Name

Authorized Agent Signature

Michael Leahy, Manager

Authorized Agent (Print or Type)

3/30/2023

Date

FOR THE STATE:

Signature

Carol Rademacher, for the Department Director

Name & Title

Michigan Department of Transportation

Agency

3/31/2023

Date



STATE OF MICHIGAN PROCUREMENT

Michigan Department of Transportation

425 W. Ottawa St., Lansing, MI 48913

P.O. Box 30050, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number 2
to
Contract Number 591M20000000584

CONTRACTOR	National Highway Maintenance System, LLC
	P.O. Box 5315
	Akron, OH 44334
	Michael Leahy
	(888) 922-3630 or (330) 256-5744
	nhmsltd@gmail.com

STATE	Program Manager	James Roath	MDOT
		(517) 230-5361	
		RoathJ1@michigan.gov	
	Contract Administrator	Terry Harris	MDOT
		(517) 335-2507	
		Harrist@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Fiber Asphalt, Mastic, Rubber Joint Sealant, and Equipment, Michigan Department of Transportation (MDOT)				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
March 30, 2020	March 29, 2023	2 one-year options	March 29, 2023	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 days		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$3,326,216.30		\$2,500,000.00	\$5,826,216.30	
DESCRIPTION: Change Notice #2 contract is amended to add funds. All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement				



STATE OF MICHIGAN PROCUREMENT

Michigan Department of Transportation

425 W. Ottawa St., Lansing, MI 48913

P.O. Box 30050, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1
to
Contract Number 591M20000000584

CONTRACTOR	National Highway Maintenance System, LLC
	P.O. Box 5315
	Akron, OH 44334
	Michael Leahy
	(888) 922-3630 or (330) 256-5744
	nhmsltd@gmail.com

STATE	Program Manager	James Roath	MDOT
		(517) 230-5361	
		RoathJ1@michigan.gov	
	Contract Administrator	Terry Harris	MDOT
		(517) 335-2507	
		Harrist@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Fiber Asphalt, Mastic, Rubber Joint Sealant, and Equipment, Michigan Department of Transportation (MDOT)				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
March 30, 2020	March 29, 2023	2 one-year options	March 29, 2023	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 days		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$826,216.30		\$2,500,000.00	\$3,326,216.30	
DESCRIPTION: Change Notice #1 contract is amended to add Mastic Asphalt and increase funds. All other terms, conditions, specifications and pricing remain the same. Per Contractor and Agency agreement				

FOR THE CONTRACTOR:

National Highway Maintenance System, LLC
Company Name

Authorized Agent Signature

Michael Leahy
Authorized Agent (Print or Type)

8/18/2020
Date

FOR THE STATE:

Signature

Carol Rademacher, for the Department Director
Name & Title

Michigan Department of Transportation
Agency

8/25/2020
Date



STATE OF MICHIGAN PROCUREMENT

Purchasing Unit

Department of Transportation
425 W. Ottawa St., Lansing, Michigan 48913
P.O. Box 30050, Lansing, Michigan 48933

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **591M20000000584**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	National Highway Maintenance System, LLC
	P.O. Box 5315
	Akron, OH 44334
	Michael Leahy
	(888) 922-3630 or (330) 256-5744
	nhmsltd@gmail.com

STATE	Program Manager	James Roath	MDOT
		(517) 230-5361	
		RoathJ1@michigan.gov	
	Contract Administrator	Terry Harris	MDOT
		517 335-2507	
		Harrist@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Fiber Asphalt, Mastic, Rubber Joint Sealant, and Equipment, Michigan Department of Transportation (MDOT)			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 30, 2020	March 29, 2023	2 one-year options	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$826,216.30

FOR THE CONTRACTOR:

National Highway Maintenance System, LTD, LLC
Company Name

Authorized Agent Signature

Michael Leahy, Manager
Authorized Agent (Print or Type)

3/18/2020
Date

FOR THE STATE:

Signature

Carol Rademacher
Name & Title

Department of Transportation
Agency

3/25/2020
Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and [National Highway Maintenance System Ltd LLC] ("**Contractor**"), an Ohio limited liability company]. This Contract is effective on 3/30/2020 ("**Effective Date**"), and unless terminated, expires on 3/29/2023.

This Contract may be renewed for up to 2 additional 1-year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
Terry Harris 425 W. Ottawa Street Lansing, MI. 48909 Email: harrist@michigan.gov Phone: (517) 335-2507	National Highway Maintenance System Ltd LLC PO Box 5315 Akron, OH 44334 nhmsltd@gmail.com 888-922-3630

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

State:	Contractor:
Terry Harris 425 W. Ottawa Street Lansing, MI. 48909 Email: harrist@michigan.gov Phone: (517) 335-2507	Michael Leahy PO Box 5315 Akron, OH 44334 nhmsltd@gmail.com 888-922-3630

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State:	Contractor:
James Roath 2522 West Main Street Lansing, MI 48917 Email: RoathJ1@michigan.gov Phone: (517) 230-5361	Michael Leahy PO Box 5315 Akron, OH 44334 nhmsltd@gmail.com 888-922-3630 and 330-256-5744

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.
Umbrella or Excess Liability Insurance	
<u>Minimum Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy follow form.

Automobile Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

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

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

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

7. Reserved
8. Reserved
9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of

Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

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

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

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

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

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

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an

involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

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

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

- 24. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 25. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
28. **Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
31. **Reserved**
32. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
 - a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently

summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State’s Confidential Information in confidence. At the State’s request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party’s possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State’s legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor’s Confidential Information will be destroyed after the retention period expires.

33. Reserved

34. Payment Card Industry Data Security Standard

- a. Undertaking by Contractor. Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the Payment Card Industry Data Security Standard (PCI DSS). The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

- b. Cooperation to Notify of Breach. The Contractor must notify the State's Contract Administrator, within 48 hours of discovery, of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. The Contractor must provide, at the request of the State, the results of such third-party security review. At the State's sole discretion, the State may perform its own security review, either by itself or through a PCI approved third party.
 - c. Responsibilities for Costs Incurred. The Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or State initiated security review. Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.
 - d. Disposing of Cardholder Data. The Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. The Contractor must continue to treat cardholder data as confidential upon contract termination.
 - e. Audit by Contractor. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance or a Report on Compliance showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.
35. **CEPAS Electronic Receipt Processing Standard.** All electronic commerce applications that allow for electronic receipt of credit or debit card and electronic check transactions must be processed via the State's Centralized Electronic Payment Authorization System (CEPAS). To minimize the risk to the State, full credit/debit card numbers, sensitive authentication data, and full bank account information must never be stored on state-owned IT resources.
36. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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

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

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and

accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes;(h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
40. **Reserved**
41. **Reserved**
42. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and Executive Directive 2019-09. Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
43. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
44. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
45. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
46. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
47. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business

days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

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

48. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
49. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
50. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
51. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
52. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
53. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
54. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

STATE OF MICHIGAN

Fiber Asphalt, Mastic, Rubber Joint Sealant, and Equipment

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

BACKGROUND

Product is needed to seal cracks in existing pavements to prevent extensive deterioration of the road.

SCOPE

This contract is for the purchase of Fiber Asphalt Sealant and Rubber Joint and Crack Sealant that must meet the specifications listed within Schedule C; and when requested the use of the contractor supplied application equipment to include 125 Gallon double drum diesel melter pot with air compressor.

This contract is also for the purchase of Mastic sealant that must meet the specifications listed within Schedule C; and when requested the use of the contractor supplied application equipment to include the Crafcro Patcher I or II.

REQUIREMENTS

1. General Requirements

1.1. Product Specifications

The Contractor must provide the following:

Quantity: 40+Melters and 11 Mastic Applicators

Size: 125 Gallon and 200 Gallon Mastic Applicators

Color: Safety Red Melters and Black Mastic Patchers, Black Sealant

Maximum or minimum dimensions: Sealant 30# boxes, 75 boxes per pallet, Melters and Mastic Patchers: Dual Axles

Quality: Good

New: New Sealants, Used Melters and Mastic Applicators

Repairs: Performed by NHMS at no technical service costs.

Maintenance, parts, supplies: NHMS uses Crafcro Parts

Manufacturer brand, part number: Crafcro

Qualified products list: Crafcro Super shot 125DC Melters; Crafcro 34515T Crack Sealant and Crafcro 34544 Fiber sealant.

Design, performance, or combination: Crafcro SuperShot 125DC – internal material pump. Crafcro tested Materials

Market grades: Sealants Meet AASHTO and/or federal specifications.

Material & manufacturing method: Sealants made in Youngstown, OH; Allentown, PA and Halls, TN.

Equipment made in Chandler, AZ

Industry standards: High

1.2. Warranties

Crafcro provides warranty that at the time of shipment, the sealants specified (34515T and 34544) meet AASHTO and Federal specifications. Lab Reports for testing the materials can be provided by contractor to MDOT showing that the sealants shipped are in compliance with the contract. The contractor will handle the warranties by coming to the locations. Warranty or repairs on equipment is handled by contractor and arrange pickup and replacement at no cost to the State.

The State reserves the right to require additional warranties other than those identified by the Contractor.

1.3. Recall Requirements and Procedures

Contractor will handle all recalls pertaining to the equipment, pickup and replace to prevent any downtime of production. For recalls call 888-922-3630 and contractor will work with the State to get resolved.

1.4. Quality Assurance Program

Sealants shipped by the contractor (from CrafcO factories) meet the Federal specifications to obtain the highest quality of performance. The contractor provides documentations and reports showing the quality and performance of the CrafcO sealant, including the Federal Strategic Highway Research Program (SHRP H-106) Report.

1.5. Incentives

Pricing provided is based on the quantity discount for large sealant orders. The contractor will work with the State on a Trade-in program for any melter or Mastic applicator.

2. Service Levels

2.1. Time Frames

All Contract Activities will be delivered in 7 Business Days from receipt of order. The receipt of order date is pursuant to Section 2, Notices, of the Standard Contract Terms.

2.2. Delivery

Delivery will be expected in 7 Business Days from receipt of order. Delivery will be made to the given garage shipping address on the order. Prior to delivery, Contractor will verify with garages their respective delivery time frames.

2.4. Technical Support and Repairs

When providing technical support, the Call Center will resolve the caller's issue within 60 minutes. If the caller's issue cannot be resolved within one (1) hour, on-site service must be scheduled. The on-site service must be performed within two (2) hours of the time the issue was scheduled for service. If equipment is need contractor will provide an exchange.

2.5. Maintenance

On-site maintenance will be performed according the recommended manufacturer maintenance schedule.

2.6. Training

The contractor will provide operator training on the optional use of supplied application equipment, at each specified State location, on an annual basis, to a minimum of ten state personnel, the hours of duration to be determined (estimate two hour or less) at no cost.

2.7. Reporting

The Contractor will provide reports of any or all transactions, all deliveries include a Bill of Lading or delivery slip and copy of the delivery of sealant or equipment. The State reserves the right to ask for the following periodic reports: usage, quantity and dollars.

2.8. Meetings

The contractor agrees with the State to have meetings as it deems appropriate.

3. Staffing

3.1. Contractor Representative

The Contractor appointed individuals, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

The Contractor will notify the Contract Administrator at least 10 calendar days before removing or assigning a new Contractor Representative.

Michael Leahy, Managing Member, 888-922-3630, mobile 330-256-5744
Juliann Cronin, Member/Administrator, 888-922-3630

Rev 10/16/2019

Kevin Owings, Field Sales, 888-922-3630, mobile 517-802-8322
Timothy Lohman, Sales, 888-922-3630

3.2. Key Personnel

The Contractor appointed Michael Leahy who will be directly responsible for the day to day operations of the Contract ("Key Personnel"). Michael Leahy will be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 24 hours.

The Contractor may not remove or assign Key Personnel without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. The State may request a résumé and conduct an interview before approving a change. The State may require a 30-calendar day training period for replacement personnel.

The Contractor identify Michael Leahy, indicate where they will be physically located throughout Southeast and Southwest Region of Michigan, doing sales and training in respect to pavement maintenance products.

3.3. Non-Key Personnel

The Contractor will notify the Contract Administrator at least 10 calendar days before removing or assigning non-key personnel.

3.4. Organizational Chart

Provide an overall organizational chart that details staff members, by name and title, and subcontractors.

Michael Leahy, Managing Member
Juliann Cronin, Member/Administrator
Kevin Owings, Sales; Timothy Lohmann, Sales
Mindi Mack, Secretary
Craig Musser, Sales

3.5. Customer Service Toll-Free Number

The Contractor toll-free number is (888) 922-3630 for the State to make contact with the Contractor Representative. The Contractor Representative will be available for calls during the hours of 8 am to 5 pm EST.

3.6. Technical Support, Repairs and Maintenance

The Contractor toll-free number (888) 922-3630 for the State to make contact with the Contractor for technical support, repairs and maintenance. The Contractor will be available for calls and service during the hours of 8 am to 5 pm EST.

3.7. Disclosure of Subcontractors

No subcontractor for this Contract.

3.8. Security

The contractor will notify the State before entering any State of Michigan building, will submit names and picture ID and reason for entering. The contractor will have company name on vehicle and background checks has been done for all employees. The contractor will comply.

4. Pricing

4.1. Price Term

Pricing is firm for the entire length of the Contract.

4.2. Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

4.3 Reserved

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be delivery order (DO) through Sigma or by P-Card.

5.2 Order Verification

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

5.3 Quantities

Quantities Specified, are estimates based on prior purchases. The State is not obligated to purchase in these or any other quantities.

6. Delivery

6.1. Delivery Programs

The State's requested minimum order is 2000 pounds. One pallet equals approximately 2000 pounds of product. All deliveries are included at no cost, shipment directly from Crafcro factory and parts are delivered by sales personnel or by UPS.

6.2. Packaging and Palletizing

Delivery trucks shall be equipped with removable side rails.

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

All deliveries will be made on non-returnable pallets not to exceed, 40 pounds per box at a maximum of 2000 pounds per pallet.

Shipments will be palletized whenever possible. Manufacturer's standard 4-way shipping pallets must be used. The bidder must explain if it cannot meet these standards.

7. Acceptance

7.1. Acceptance, Inspection and Testing

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

The Contractor must provide certification, as defined in the Michigan Department of Transportation Materials Quality Assurance Manual, that the material furnished meets the requirements of the specifications outlined in Schedule C. MDOT may require product testing. Testing will be at a facility of the departments choosing. All testing will be at the supplier's expense. Testing may be required prior to bid award, at the department's discretion.

Quantities ordered will be verified visually and or weighed.

The Contractor must provide certification, as defined in the Michigan Department of Transportation Materials Quality Assurance Manual, that the material furnished meets the requirements of the specifications outlined in Schedule C.

7.2. Final Acceptance

Final acceptance occurs when the invoice is paid.

8. Invoice and Payment

8.1. Invoice Requirements

The agency will use the invoice language defined in Section 20, Terms of Payment, of the Standard Contract Terms.

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price.

8.2. Payment Methods

The State will make payment for Contract Activities by EFT or P-card.

8.3. Reserved

9. Reserved

10. Licensing Agreement

The Contractor provided a copy of applicable licensing agreement.

11. Liquidated Damages

Contractor agrees to late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$1,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

12. Additional Requirements

12.1. Environmental and Energy Efficient Products

The Contractor must identify any energy efficient, bio-based, or otherwise environmentally friendly products used in the products, in which there isn't any. Contractor must include any relevant third-party certification, including the verification of a United States department of agriculture certified bio-based product label.

12.2. Hazardous Chemical Identification

No hazardous chemical in the sealants or mastic.

12.3. Mercury Content

No mercury is in the sealant or mastic specifications

12.4. Brominated Flame Retardants

No brominated flame retardants.

STATE OF MICHIGAN

Fiber Asphalt, Mastic, Rubber Joint Sealant, and Equipment

SCHEDULE B PRICING

Bidder: National Highway Maintenance System Ltd LLC

Product	Product Manufacturer/Model	Delivered Unit Price (per lb)
Fiber Asphalt Sealant, Product Only	Crafco Inc./#34544	\$0.48
Fiber Asphalt Sealant, With Equipment	Crafco Inc./#34544	\$0.98
Rubber Joint and Crack Sealant, Product Only	Crafco Inc./#34515T	\$0.48
Rubber Joint and Crack Sealant, With Equipment	Crafco Inc./#34515T	\$0.98
Mastic, Product Only	Crafco Inc./#33339	\$0.54
Mastic, With Equipment	Crafco Inc./#33339	\$1.49

Shipping Location will be indicated on Delivery Order.

All bids must be F.O.B. Destination with transportation charges prepaid on the order.
Other F.O.B. terms will not be accepted.

Lead Time for Delivery: 5 days

SCHEDULE C

Specifications

MDOT Specification for Fiber Asphalt Sealant (Hot Applied, for Concrete and Asphalt Pavements). This specification applies to contract items Fiber Asphalt Sealant, (Product Only) and Fiber Asphalt Sealant, (With Equipment).

Specification: must meet ASTM D5167, minimum application temperature of 350F (177C), Maximum heating temperature of 400F (204C), softening point (ASTM D36) 190F (88C) min, Flexibility, 1" (25mm) 20F (-29C) and viscosity, 400F (204C) (ASTM D4402): 4000cp min. MDOT may require product testing. Testing will be at a facility of the departments choosing. All testing will be at the supplier's expense. Testing may be required prior to bid award, at the department's discretion. Product shall be shipped on pallets of boxes not to exceed 40 pounds/box.

Make: Crafcro Product: 34544or MDOT approved alternate

Brand Preference: Brand Name or Approved Equal

Manufacturer: Crafcro

Model Number: 34544

MDOT Specification for Rubber Joint and Crack Sealant (Hot Applied, for Concrete and Asphalt Pavements). This specification applies to contract items Rubber Joint and Crack Sealant, (Product Only) and Rubber Joint and Crack Sealant, (With Equipment).

Specification: Must meet, ASTM D 6690-07 (AASHTO M324) Type I. Temperature performance limits will be 61-22 for crack sealing and 64-28 for crack filling. Resilience 77degrees F (ASTM D5329) - 25-60% Ductility, 77 degrees F (ASTM D113) - 40 cm min. Bond @ 0 degree F, 100% - Pass 5 Cycles Cone Penetration @ 77degrees F, with a limit of 50-90 Flow, 140 degrees - 0.5 cm max. Softening Point - 176 degrees min. Impact 0 degrees - Pass Compression Recovery - 0.40 min. MDOT may require product testing. Testing will be at a facility of the departments choosing. All testing will be at the supplier's expense. Testing may be required prior to bid award, at the department's discretion. Product shall be shipped on pallets of boxes not to exceed 40 pounds/box.

Make: Crafcro Product: 34515T or MDOT approved alternate.

Brand Preference: Brand Name or Approved Equal

Manufacturer: Crafcro

Model Number: 34515T

MDOT Specification for Mastic (Hot Applied, for Concrete and Asphalt Pavements). This specification applies to contract item Mastic, (Product Only) and Mastic, (With Equipment).

Specification: Must meet standards that apply under ASTM, AASHTO, Federal or State specifications. ***Binder Specs:*** Cone Penetration 77-degrees F, 60 max (ASTM D5329), Cone Penetration 122-degrees F, 120 max (ASTM D5329), Softening Point 200-degrees F min (ASTM D36), Flexibility 1", 180-degrees F, 10 second, Pass at 32-degrees F (ASTM D3111 Modified), ***Aggregate:*** Abrasion Resistance 35% max (ASTM C131), ***Blended Product:*** Flexibility, 32-

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degrees F, Pass (PTM 3), Adhesion, 77-degrees F, 25 PSI min (PTM 4), Specific Gravity, 1.7-2.0, Minimum Application Temperature, 375-degrees F, Maximum Application Temperature 400-degrees F. MDOT may require product testing. Testing will be at a facility of the departments choosing. All testing will be at the supplier's expense. Testing may be required prior to bid award, at the department's discretion. Product shall be shipped on pallets of boxes not to exceed 40 pounds/box.

Make: Crafcro Product: 33339 or MDOT approved alternate.

Brand Preference: Brand Name or Approved Equal

Manufacturer: Crafcro

Model Number: 33339

SCHEDULE C Specifications

Requirements for Vendor supplied Equipment:

In Addition to meeting sealant specifications, the awarded vendor shall also provide a 125 Gallon Double Drum Diesel Melter Pot with Air Compressor, the Crafcro Patcher I or II, or MDOT approved equivalent for up to six months at each shipping location. This service also includes requested equipment maintenance and operator training. Costs for these services shall be included in the unit price for Fiber Asphalt Sealant, (With Equipment) or Rubber Joint and Crack Sealant, (With Equipment), Mastic, (With Equipment).

Contract Items:	Unit
Fiber Asphalt Sealant, (Product Only)	Pounds
Fiber Asphalt Sealant, (With Equipment)	Pounds
Rubber Joint and Crack Sealant, (Product Only)	Pounds
Rubber Joint and Crack Sealant, (With Equipment)	Pounds
Mastic, (Product Only).....	Pounds
Mastic, (With Equipment)	Pounds