STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

DTMB
320 S Walnut Street Lansing, MI 48933
P.O. Box 30026, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number **3**
to
Contract Number **MA220000001337**

CONTRACTOR	
	B & B CONTRACTING,CALUMET, INC.
	55670 Hwy M-26
	Calumet MI 49913
	Brian Bonen
	906.281.2587
	babonen@hotmail.com
	CV0008451

STATE			
	Program Manager	James Roath	MDOT
		517.230.5361	
		roathj1@Michigan.gov	
	Contract Administrator	Amanda Smart	DTMB
		517-730-8796	
		SmartA1@michigan.gov	

CONTRACT SUMMARY			
Aggregate			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
August 30, 2022	August 29, 2025	2 - 1 Year	August 29, 2027
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45		10 Business Days	
ALTERNATE PAYMENT OPTIONS		**EXTENDED PURCHASING**	
☐ P-Card ☐ Direct Voucher (PRC) ☐ Other		☒ Yes ☐ No	
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐	0 Years	
CURRENT VALUE	**VALUE OF CHANGE NOTICE**		**ESTIMATED AGGREGATE CONTRACT VALUE**	
$453,360.00	$0.00		$453,360.00	

DESCRIPTION

Effective 8/12/25, please note the Contract Administrator has been changed to Amanda Smart.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.

STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
320 S. Walnut Street 2nd Floor Lansing, MI 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **2**
to
Contract Number **MA220000001337**

CONTRACTOR	
	B & B CONTRACTING,CALUMET, INC.
	55670 Hwy M-26
	Calumet MI 49913
	Brian Bonen
	906.281.2587
	babonen@hotmail.com
	CV0008451

STATE			
	Program Manager	James Roath	MDOT
		517.230.5361	
		roathj1@Michigan.gov	
	Contract Administrator	Melissa Beck	DTMB
		(517) 897-1502	
		beckm3@michigan.gov	

CONTRACT SUMMARY			
Aggregate			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
August 30, 2022	August 29, 2025	2 - 12 Months	August 29, 2025
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45		10 Business Days	
ALTERNATE PAYMENT OPTIONS		**EXTENDED PURCHASING**	
☐ P-Card ☐ Direct Voucher (PRC) ☐ Other		☒ Yes ☐ No	
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☒	12 Months	☐	2 Years	August 29, 2027
CURRENT VALUE	**VALUE OF CHANGE NOTICE**		**ESTIMATED AGGREGATE CONTRACT VALUE**	
$453,360.00	$0.00		$453,360.00	

DESCRIPTION

Effective 6/12/2025, the following is hereby incorporated to this Contract:

Exercise option years. New expiration date is 8/29/2027.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.

STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
320 S. Walnut Street 2nd Floor Lansing, MI 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **1**
to
Contract Number **MA220000001337**

CONTRACTOR	
	B & B Contracting, Calumet, Inc.
	55670 Hwy M-26
	Calumet MI 49913
	Brian Bonen
	906.281.2587
	babonen@hotmail.com
	CV0008451

STATE			
	Program Manager	James Roath	MDOT
		517-230-5361	
		RoathJ1@michigan.gov	
	Contract Administrator	Melissa Beck	DTMB
		517-897-1502	
		Beckm3@michigan.gov	

CONTRACT SUMMARY			
Aggregate			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
August 30, 2022	August 29, 2025	2 - 12 Months	August 29, 2025
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45		10 Business Days	
ALTERNATE PAYMENT OPTIONS		**EXTENDED PURCHASING**	
☐ P-Card ☐ Direct Voucher (PRC) ☐ Other		☒ Yes ☐ No	
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐		
CURRENT VALUE	**VALUE OF CHANGE NOTICE**	**ESTIMATED AGGREGATE CONTRACT VALUE**		
$453,360.00	$0.00	$453,360.00		

DESCRIPTION

Effective 12/17/2024 the Contract Administrator has been changed to Melissa Beck, Beckm3@michigan.gov, 517-897-1502.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency

agreement, and DTMB Central Procurement approval.

STATE OF MICHIGAN PROCUREMENT

Department of Technology Management & Budget
320 South Walnut Street
PO Box 30026
Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **220000001337**
between
THE STATE OF MICHIGAN
and

CONTRACTOR	
	B & B Contracting, Calumet, Inc.
	55670 Hwy M-26
	Calumet, MI 49913
	Brian Bonen
	906-281-2587
	babonen@hotmail.com
	CV0008451

STATE			
	Program Manager	James Roath	MDOT
		517-230-5361	
		roathj1@michigan.gov	
	Contract Administrator	Christopher Martin	DTMB
		517-643-2833	
		martinc20@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Aggregate			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW**
8/30/2022	8/29/2025	2 – one year	8/29/2025
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45		10 Business Days	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-card ☐ Payment Request (PRC) ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
MISCELLANEOUS INFORMATION			
Secondary Award – Pricing by Region/Garage. This is a MIDeal Contract that is also available to all participating members including Municipalities, Counties, etc.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			**$453,360.00**

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name & Title

Agency

Date

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

BACKGROUND

This Contract is for aggregates from pre-qualified pits to be delivered to designated drop points.

SCOPE

Contractor will provide 23A, 21AA, and 32FA Limestone aggregates to designated drop points from pre-qualified pits. Provided aggregates are required to meet the 2020 Standard Specs for Aggregates along with Schedule C- Aggregate Specs. This will be for a three-year base contract with up to two one-year options.

REQUIREMENTS

1. General Requirements

1.1. Product Specifications

The Contractor must provide the following:

- Quantity
- Size
- Maximum or minimum dimensions
- Quality
- Qualified products list
- Industry standards

Brands or trade names are for identification purposes only and do not limit the Contractor to such brands or trade names.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s): Testing results will be provided from each pit stockpile as requested upon Contract award.	

1.2. Warranties

Describe any warranties included in the bid – add additional rows as needed. Explain the process for reporting warranty issues and how the Contractor will handle any repairs or replacements.

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

by the Contractor in its response to this RFP.

Bidder must provide detailed information requested below:

Describe any warranties included in the bid (if none, write N/A):N/A
Provide the length of the warranty:
Explain the process for reporting warranty issues:
Explain how any repairs or replacements are made, including timing, etc.:
If the warranty is provided through a third-party or manufacturer, the Contractor must confirm that the manufacturer's warranty passes through to the State:
Provide the name, address, contact name, phone number and email address of the party responsible for the warranty:

1.3. Reserved

1.4. Quality Assurance Program

Explain your Quality Assurance Program(s).

Bidder must provide detailed information as requested in the above requirement(s):
Aggregates tested during production and stockpiled according to MDOT and industry standards.

1.5. Incentives

Explain any special incentives or services including, but not limited to, return policies, trade-in programs, quantity discounts, etc.

Bidder must provide detailed information as requested in the above requirement(s). If none, enter N/A.
N/A

1.6. Transition

A. Post-Contract Transition: Invoices must be sent within 45 days after expiration of contract. Any invoices received after 45 days will result in a non-payment of invoice.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.

List all exception(s):
Bidder must describe how they comply with the above requirement(s): Invoices will be sent within 3 days of delivery completion.

2. Service Requirements

2.1. Timeframes

All Contract Activities must be delivered within 10 business days from receipt of order. The receipt of order date is pursuant to the **Notices** section of the *Standard Contract Terms*.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s): Aggregate is stockpiled and readily available for delivery.	

2.2. Delivery

Delivery will be expected within 10 business days upon date of order during the specified times and at the designated drop point.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s): Aggregate is stockpiled and readily available for delivery.	

2.3. Reserved

2.4. Technical Support and Repairs

When providing technical support, the Call Center must acknowledge the caller's issue within 30 minutes. If the caller's issue cannot be resolved within 24 hours, on-site service must be scheduled.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

Bidder must describe how they comply with the above requirement(s): Staff available 24/7 via mobile phone.

2.5. Reserved

2.6. Reserved

2.7. Reserved

2.8. Meetings

The Contractor must attend the following meetings:

The mandatory pre-bid meeting.

The State may request other meetings as it deems appropriate.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

3. Staffing

3.1. Contractor Representative

The Contractor must appoint a Program Manager and Product Representative, individuals specifically assigned to State of Michigan accounts who will respond to State inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the "Contractor Representative").

The Contractor must notify the Contract Administrator at least 5 business days before removing or assigning a new Contractor Representative.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

3.2. Key Personnel

The Contractor must appoint a Program Manager and Product Representative, individuals who will be directly responsible for the day to day operations of the Contract ("Key Personnel"). Key Personnel must 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 bidder must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.

List all exception(s):

1) Key Personnel
Program Manager: Hans Haapala or Brian Bonen
Product Representative: Brian Bonen or Hans Haapala

2) Physical Location of Key Personnel: Calumet, MI

Functions each Key Personnel will perform: Manages receipt and fulfillment of orders. Produce invoices.

4) Current Chronological Résumés (attach): Attached.

3.3. RESERVED

3.4. Organizational Chart

The Bidder must provide an overall organizational chart that details staff members, by name and title, and subcontractors - either in this response box or identified here as an attachment to this RFP labelled as Org Chart.

Program Manager – Hans Haapala

Product Representative – Brian Bonen

Secretary – Laura Bonen

3.5. Customer Service Toll-Free Number

The Contractor must specify its toll-free number for the State to contact the Contractor Representative who must be available for calls during the hours of 8 am to 5 pm ET Monday through Friday, at a minimum. Identify customer service availability for this proposal by hours and days of the week.

☒	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
The Bidder must specify its toll-free number for the State to make contact with the Contractor Representative. Office 906-337-0017 Hans Haapala 906-281-6908 Brian Bonen 9006-281-2587	
Identify customer service availability for this proposal by hours and days of the week. 8 am to 5 pm Monday thru Friday	

3.6. Technical Support, Repairs and Maintenance

The Contractor must specify its toll-free number for the State to contact the Contractor for technical support, repairs and maintenance. The Contractor must be available for calls and service during the hours of 8 am to 5 pm ET Monday through Friday, at a minimum. Identify availability for this proposal by hours and days of the week.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s): Brian Bonen 906-281-2587 or Hans Haapala 906-281-6908	

3.7. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

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

Bidder must provide detailed information as requested in the requirement(s):

The legal business name, address, telephone number of the subcontractor(s):	None at this time.
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities:	
The relationship of the subcontractor to the Bidder:	
Whether the Bidder has a previous working experience with the subcontractor. **If yes, provide the details of that previous relationship:**	
A complete description of the Contract Activities that will be performed or provided by the subcontractor:	
Of the total bid, the price of the subcontractor's work:	

3.8. Security

The Contractor will be subject the following security procedures: The State may decide to perform background checks on Contractor staff entering State facilities.

The Contractor must explain any additional security measures in place to ensure the security of State facilities.

The Contractor's staff may be required to make deliveries to or enter State facilities. The State may require the Contractor's personnel to wear State issued identification badges.

The Contractor must: (a) explain how it intends to ensure the security of State facilities, (b) whether it uses uniforms and ID badges, etc., (c) identify the company that will perform background checks, and (d) the scope of the background checks.

☐	I have reviewed the above requirement and agree with no exception.

☒	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s): It may be problematic to perform background checks on third party carriers and meet the delivery schedules. These background checks may not be necessary for truck drivers that are making deliveries into yard or stockpile areas and not entering physical buildings.	
Bidder must describe how they comply with the above requirement(s):	

4. Pricing

4.1. Price Term

Pricing is firm for a 365-day period ("Pricing Period"). The first pricing period begins on the Effective Date. Adjustments may be requested in writing by either party and will take effect no earlier than the next Pricing Period.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

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.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

4.3. Electronic Catalog

To enable catalog management functionality, the Contractor must supply the State with product and pricing information as identified in Schedule B. The Contractor must supply the State with updated product and pricing information over the duration of the Contract using the then- current catalog template provided by the State. Product and price changes provided in this manner will not take effect until the catalog is updated in the State's procurement system.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s): Product and pricing information will only be submitted via Schedule B or other catalog temp- late provided by state.	

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be a Delivery Order.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

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.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s): Orders will be verbally verified with authorized individuals and receipt confirmation submitted via email message to those authorized individuals as provided by the state.	

6. Delivery

6.1. Delivery Programs

The Contractor must explain in detail its delivery programs (e.g., standard delivery and quick-ship), including any limitations such as quantity.

The Contractor must explain the transportation method (e.g., UPS, FedEx, Contractor fleet, or other third-party carrier) it intends on utilizing in delivery of the Contract Activities.

Bidder must describe how they comply with the above requirement(s): Delivery is by our fleet or third party carrier.

6.2. Packaging and Palletizing

Packaging must be optimized to permit the lowest freight rate. Shipments must be palletized whenever possible using manufacturer's standard 4-way shipping pallets.

☐	I have reviewed the above requirement and agree with no exception.
☒	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):Delivery to be by bulk container (dump truck or trailer) with minimum order of 19 tons.	
Bidder must describe how they comply with the above requirement(s):	

7. Acceptance

7.1. Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities: Deliveries are subject to gradation tests, prior to acceptance.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

7.2. Final Acceptance

Final Acceptance occurs when the designated drop point is satisfied with the delivered product (passed gradation test if requested).

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

8. Invoice and Payment

8.1. Invoice Requirements

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); (g) vendor-generated invoice number; and (h) total price.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

8.2. Payment Methods

The State will make payment for Contract Activities by EFT or, if approved by the Chief Procurement Officer, PCard.

Users of this contract could potentially place orders via Procurement Card (PCard). Please explain your process for ordering and accepting this payment method. If an account needs to be created on your purchasing platform, please submit documentation that shows the steps for completing this process.

☐	I have reviewed the above requirement and agree with no exception.
☒	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):B & B Contracting, Calumet, Inc. does not currently accept any payment cards. We do not intend to begin accepting at this time.	
Bidder must explain their process for accepting the PCard payment method. If an account needs to be created on your purchasing platform, please submit documentation that shows the steps for completing this process.	

8.3. Reserved

9. Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager.

Upon Contract Award: A final project plan must be submitted for final approval within 30-calendar days of the Effective Date. The plan must also include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, and resources required.

Project Plan

1) Aggregate produced per spec and stockpiled at various locations either owned by Contractor or arranged by Contractor.
2) Delivery Order placed by authorized individual. Order to be verified by Contractor

staff.

3) Aggregate requested delivered to specified drop point by Contractor fleet or third party shipper.
4) Final acceptance of delivery requested from authorized individual who placed order.
5) Invoice created and submitted to authorized individual within 3 days.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must provide detailed information as required above – either in this response box or identified here as an attachment to this RFP. Attached.	

10. Licensing Agreement

The Contractor must provide a copy of any applicable licensing agreement.

Bidder must provide a copy of any applicable licensing agreement either in this response box or identified here as an attachment to this RFP.

11. Liquidated Damages

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.

Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, the State may assess liquidated damages against Contractor as specified below.

- The State is entitled to collect $1,000.00 per individual per day for the removal of any Key Personnel without prior approval of the State.
- The State is entitled to collect $1,000.00 per individual per day for an unapproved or untrained key personnel replacement.

☒	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.

List all exception(s):

12. Additional Requirements

12.1. Environmental and Energy Efficiency Product Standards

The Contractor must provide products that meet the environmental standards.

☒	I confirm the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.

List all exceptions – either in this response box or identified here as an attachment to this RFP. *(Add more rows as necessary.)*

Item #:	Response:

Bidder must describe how products that meet these requirements are identified or otherwise labelled.

12.2. Hazardous Chemical Identification

In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, *et seq.*, as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number.

The Contractor must identify any hazardous chemicals that will be provided under any resulting contract.

☒	I confirm the above requirement and agree with no exception.

12.3. Mercury Content

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

☒	I confirm the above requirement and agree with no exception.

12.4. Brominated Flame Retardants

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

requirements are identified or otherwise labelled.

☒	I confirm the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.

List all exception(s): *(Add rows as necessary.)*

Item #:	**Response:**

12.5 Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)

The Contractor must confirm that the provided products do not intentionally contain PFAS. This consists of all components of the provided products, including product packaging.

☒	I confirm the above requirement and agree with no exception.

13. Reserved

SCHEDULE B - PRICING

1. The Contractor must provide a pricing schedule for the proposed Contract Activities using Excel. The pricing schedule should be submitted in a modifiable format (e.g. Microsoft Word or Excel); however, you may also submit an additional pricing schedule in a non-modifiable format (e.g., PDF). Failure to complete the pricing schedule as requested may result in disqualification of your proposal.

2. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).

3. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

   Quick payment terms: NO % discount off invoice if paid within N/A days after receipt of invoice.

4. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

Schedule B - Pricing

23A Aggregate Pricing

Location	Estimated 23A Aggregate Quantity (Tons)	Price Per Ton ($)	Estimated Total Price for 23A ($)	Contact	Delivery day/hours	"Store" Representive
SUPERIOR REGION						
ENGADINE GARAGE N7045 State Hwy M-117 Engadine, MI 49827	3000	No bid	0	Nick LaChapelle LaChapelleN@michigan.gov 906-630-5600	Mon - Thurs 6:30 am - 4:30 pm	Nick LaChapelle LaChapelleN@michigan.gov 906-630-5600
ST. IGNACE GARAGE 500 FERRY LANE St. Ignace, MI 49781	6000	No bid	0	Nick LaChapelle LaChapelleN@michigan.gov 906-630-5600	Mon - Thurs 6:30 am - 4:30 pm	Nick LaChapelle LaChapelleN@michigan.gov 906-630-5600
Houghton Garage 51750 Industrial Drive Calumet, MI 49913	3200	$15.05	$48,160.00	Thomas Deschaine DeschaineT@michigan.gov 906-250-7920	Mon - Thurs 6:30 am - 4:30 pm	Harmony Michaud MichaudH@michigan.gov 906-485-4270
L'Anse Garage 301 Winter Street L'Anse, MI 49946	12,000	$16.05	$192,600.00	John Pietrzyk PietrzykJ@michigan.gov 906-280-7740	Mon - Thurs 6:30 am - 4:30 pm	Harmony Michaud MichaudH@michigan.gov 906-485-4270
Covington Facility Spring Street/School Road Junction Covington, MI 49919	8000	$16.05	$128,400.00	To Be Determined		
Ontonagon Garage US-45, Ontonagon MI, 49953 (County drop point)	2000	$22.05	$44,100.00	To Be Determined		
Bruce Crossing Garage 5346 W. M-28 Bruce Crossing, MI, 49967 (County drop point)	2000	$20.05	$40,100.00	To Be Determined		
			$453,360.00			

Schedule C
Specifications

1. DENSE GRADED AGGREGATE, 23A

Dense Graded Aggregate, 23A The material shall be in accordance with the **Michigan Department of Transportation 2020 Standard Specifications for Construction per "Section 902 AGGREGATES."** The gradation shall meet the requirements in Tables 902-1 and 902-2 of Section 902 AGGREGATES. The Dense Graded Aggregate, 23A shall be from tested materials or a pre-qualified aggregate supplier as described in MDOT's "Materials Quality Assurance Procedures Manual" and the "Materials Sampling Guide."

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and B&B Contracting Calumet, Inc. ("**Contractor**"), a This Contract is effective on 8/16/2022 ("**Effective Date**"), and unless terminated, expires on 8/15/2025.

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:
Christopher Martin PO Box 30026 Lansing, MI 48909 martinc20@michigan.g ov 517-643-2833	Hans Haapala 55670 Hwy M-26 Calumet, MI 49913 hanshaapala@gmail.com 906-281-6908

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:
Christopher Martin PO Box 30026 Lansing, MI 48909 martinc20@michigan.gov 517-643-2833	Hans Haapala 55670 Hwy M-26 Calumet, MI 49913 hanshaapala@gmail.com 906-281-6908

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 6333 Lansing Road Lansing, Michigan, 48917 roathj1@michigan.gov 517-230-5361	Brian Bonen 55670 Hwy M-26 Calumet, MI 49913 babonen@hotmail.com 906-281-2587

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 – Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise 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	
Minimum Limits: $1,000,000 Each Occurrence $1,000,000 Personal & Advertising Injury $2,000,000 Products/Completed Operations $2,000,000 General Aggregate	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 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
Minimum Limits: $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	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: $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 delivery order number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurance contained in this Section; (c) notify the Contract Administrator within five (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. **Administrative Fee and Reporting.** Contractor must pay an Administrative Fee on the sales transacted under this Contract including MDOT, other State agencies, and MiDEAL members. The Administrative Fee equals $.05 per ton of the total sales. Administrative fee payments must be made online by check or credit card at: https://www.thepayplace.com/mi/dtmb/adminfee

   Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity, the number of tons purchased, and the total amount in fees. Reports should be emailed to MiDeal@michigan.gov.

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

8. **Extended Purchasing Program.** This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal.

   Upon written agreement between the State and Contractor, this contract may also be extended to: (a) other states (including governmental subdivisions and authorized entities) and (b) State of Michigan employees.

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

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

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

   Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under

the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

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.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in Schedule A, 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 within 30 days of any public announcement or otherwise once legally permitted to do so, 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. All prices are exclusive 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

delivery 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. **Reserved**

35. **Reserved**

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

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

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

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will

not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes;(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. **Schedules**. All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A	Statement of Work
Schedule B	Pricing
Schedule C	Aggregate Specifications

51. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, 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.

52. **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.

53. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.

54. **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.

55. **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.