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 **MA240000000307**

CONTRACTOR	
	VIKING-CIVES MIDWEST, INC.
	3700 Mansell Road Suite 500
	Alpharetta GA 30022
	Dave Wentzel
	573-262-3545
	naspo@vikingcives.com
	VS0203732

STATE			
	Program Manager	Various	MDOT
	Contract Administrator	Melissa Beck	DTMB
		(517) 897-1502	
		beckm3@michigan.gov	

CONTRACT SUMMARY			
Purchase, and Parts and Maintenance & Repair for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
March 1, 2024	February 28, 2027	2 - 1 Year	February 28, 2027
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45		Max 120 days or within 14 days of agreed delivery date (at time of order)	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card ☐ Direct Voucher (PRC) ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
FOB Destination			

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**	
$2,749,000.00	$0.00		$2,749,000.00	

DESCRIPTION

Effective August 14, 2025, the contract administrator is being updated 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.

Program Managers

for

Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Scott Poyer	517-284-6448	PoyerS@michigan.gov
MDOT	Erin Reincke	517 855 1986	ReinckeE@michigan.gov

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 **2**
to
Contract Number **MA240000000307**

CONTRACTOR	
	VIKING-CIVES MIDWEST, INC.
	3700 Mansell Road Suite 500
	Alpharetta GA 30022
	Dave Wentzel
	573-262-3545
	naspo@vikingcives.com
	VS0203732

STATE			
	Program Manager	Various	MDOT
	Contract Administrator	Lisa Spitzley	DTMB
		(517) 249-0440	
		SpitzleyL4@michigan.gov	

CONTRACT SUMMARY			
Purchase, and Parts and Maintenance & Repair for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
March 1, 2024	February 28, 2027	2, 1-Year	February 28, 2027
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45		Max 120 days or within 14 days of agreed delivery date (at time of order)	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card ☐ Direct Voucher (PRC) ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
FOB Destination			

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**		
$749,000.00	$2,000,000.00	$2,749,000.00		

DESCRIPTION

Effective July 15, 2025, this contract is hereby increased by $2,000,000.00. All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, DTMB Procurement approval, and State Administrative Board approval on July 15, 2025.

Program Managers

for

Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Erin Reincke	517 855 1986	ReinckeE@michigan.gov
MDOT	Scott Poyer	517-284-6448	PoyerS@michigan.gov

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 **MA240000000307**

CONTRACTOR	
	VIKING-CIVES MIDWEST, INC.
	3700 Mansell Road Suite 500
	Alpharetta GA 30022
	Dave Wentzel
	573-262-3545
	naspo@vikingcives.com
	VS0203732

STATE			
	Program Manager	Erin Reincke	MDOT
		517 855 1986	
		ReinckeE@michigan.gov	
	Contract Administrator	Yvon Dufour	DTMB
		517 249 0455	
		dufoury@michigan.gov	

CONTRACT SUMMARY			
Purchase, and Parts and Maintenance & Repair for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
March 1, 2024	February 28, 2027	2 - 12 Months	February 28, 2027
PAYMENT TERMS		**DELIVERY TIMEFRAME**	

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
$500,000.00	$249,000.00	$749,000.00

DESCRIPTION

Effective 3/18/2025, this contract is hereby increased by $249,000.00. All other terms, conditions, specifications and pricing remain the same. Per agency request, and DTMB Procurement approval.

STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management, and Budget
320 South Walnut, Lansing, Michigan 48933
P.O. Box 30026 Lansing, Michigan 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **240000000307**
between
THE STATE OF MICHIGAN
and

CONTRACTOR	
	Cives Corporation – Viking Cives Group
	3700 Mansell Road, Suite 500
	Alpharetta, GA 30022
	Dave Wentzel
	(573) 262-3545
	dwentzel@vikingcives.com
	CV0005578

STATE			
	Program Manager	Scott Poyer	MDOT
		(517) 284-6448	
		Poyers@michigan.gov	
	Contract Administrator	Yvon Dufour	DTMB
		(517) 249-0455	
		dufoury@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Purchase, and Parts and Maintenance & Repair for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW**
March 1, 2024	February 28, 2027	2, one year	
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
45 Days			
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
F.O.B. Destination			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #210000000535. Orders for delivery will be issued directly by the Department in accordance to Attachment B, section B4.3 Ordering.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			**$500,000.00**

Master Agreement Number 240000000307
for
Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services
between
the State of Michigan
and
Cives Corporation

This Master Agreement is entered into by the State of Michigan ("Lead State") and the following contractor (each a "Party" and collectively the "Parties") as a result of Solicitation Number 210000000535 (the "RFP") for the purpose of providing Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services through the NASPO ValuePoint cooperative purchasing program:

Cives Corporation. ("Contractor")
22956 Highway 61.
Oran, Missouri, 63771

MASTER AGREEMENT CONTACTS.

Contractor's contact for this Master Agreement is:

Dave Wentzel
General Manager
dwentzel@vikingcives.com
(573) 262-3545

Lead State's contact for this Master Agreement is:

Yvon Dufour
Category Specialist
dufoury@michigan.gov
(517) 249-0455

TERM. This Master Agreement is effective as of the date of the last signature below or 3/1/2024, whichever is later, and will terminate on 2/28/2027 unless terminated sooner or extended or renewed in accordance with the terms set forth herein. Renewals totaling up to two years following the initial term may be exercised upon mutual agreement by the Parties.

ATTACHMENTS. This Master Agreement includes the following attachments:

Attachment A: Master Agreement Terms and Conditions
Attachment B: Statement of Work
Attachment C: Pricing
Attachment D: Distributer/Dealer Agreement
Attachment E: Attachment E- Lead State Terms and Michigan Participating Addendum

Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

(1) A Participating Entity's Participating Addendum ("PA").
(2) NASPO ValuePoint Master Agreement, including all additions thereto.
(4) Statement of Work;
(5) Schedules and Attachments expressly incorporated into this contract;
(6) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions.
(7) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No terms on either party's Purchase Orders, Invoices, Ordering Documents, Website, Browse-Wrap, Shrink-Wrap, Click-Wrap, Clickthrough, or other Non-Negotiated Terms and Conditions provided with any contract activities will constitute a part or amendment of this Agreement or is binding for any purpose. All such other Terms and Conditions have no force and effect and are deemed rejected, even if access to or use of the contract activities requires affirmative acceptance of such Terms and Conditions

2. Definitions

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Embedded Software means one or more software applications which permanently reside on a computing device.

Intellectual Property means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State

Order or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposal is not required to participate through execution of a Participating Addendum.

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

a. The initial term of this Master Agreement is for 3 years. This Master Agreement may be extended beyond the original contract period for 2 additional years, with two separate 1 year extensions, at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. Participants and Scope

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO ValuePoint is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. **Resale**. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell

Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://calculator.naspovaluepoint.org. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices);

(6) Purchase Order date; (7) Ship Date; (8) and line item description, including (if applicable) pricing for each: chassis, body/equipment item, and installation by product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is Microsoft Excel or equivalent.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by

ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.

d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

9. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or

effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

10. Price and Rate Guarantee Period

Price and rate guarantee period information is outlined in **Sections B4.11, B4.12, & B4.13 (Attachment B).**

11. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

Administration of Orders

12. Ordering

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

(1) The services or supplies being delivered;
(2) The place and requested time of delivery;
(3) A billing address;
(4) The name, phone number, and address of the Purchasing Entity representative;
(5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
(6) A ceiling amount of the order for services being ordered; and
(7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

13. Shipping and Delivery

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. All deliveries will be "Inside Deliveries" as designated by a representative of the

Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

14. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

15. Inspection and Acceptance

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the

process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

16. Payment

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision “Purchasing Card” with no additional charge.

17. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor’s skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under

this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

General Provisions

19. Insurance

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence/$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating

States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order

20. Records Administration and Audit

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

21. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor 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 Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including

disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

22. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

23. Assignment/Subcontracts

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

24. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

25. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no

authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

26. Cancellation

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

27. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

28. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

(1) Nonperformance of contractual requirements; or

(2) A material breach of any term or condition of this Master Agreement; or

(3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or

(4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

(5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State,

in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

(1) Exercise any remedy provided by law; and

(2) Terminate this Master Agreement and any related Contracts or portions thereof; and

(3) Impose liquidated damages as provided in this Master Agreement; and

(4) Suspend Contractor from being able to respond to future bid solicitations; and

(5) Suspend Contractor's performance; and

(6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

29. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

30. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from

participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

31. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the

Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

32. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

33. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State

if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

34. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

35. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

36. Leasing or Alternative Financing Methods

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

Attachment B – Statement of Work

B1. SCOPE & FUNCTION REQUIREMENTS

B1.1 Scope – Bidders shall demonstrate they are qualified to provide, all or a portion thereof, of equipment/products and all related services necessary to deliver equipment/products to Purchasing Entities offered through a Master Agreement. The Scope of Work is intended to provide interested Offerors with sufficient basic information to submit a proposal. It is not intended to limit a proposal's content or exclude any relevant or essential data.

RESPONSE: Viking-Cives is fully capable of meeting the needs of the Lead State and other NASPO members across the country. We have strategically placed fabrication facilities, factory stores, and partnerships that expands our reach across the United States and Canada. We operate out of 13 locations and have carefully established reliable connections in 39 U.S. states with chassis manufacturers and their networks as well as partnerships with local truck equipment facilities in specific regions. There is no corner in the United States or Canada we could not service.
It is our philosophy to engineer and manufacture the highest-quality roadway equipment and snow and ice products in the market coupled with top-notch customer service. Our successful factory-direct business model allows us to provide customized or base model items to our valued customer base.

B1.2 Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services – The focus for this RFP is to provide equipment that is self-propelled (turnkey) or mounted to a chassis. The cost proposal in Attachment C – Pricing reflects that. Many Bidders may also provide additional equipment that does not meet the “self-propelled” or “chassis mounted” criteria. The lead State and NASPO’s intent is to include all associated equipment in a contract award to successful Proposers. Proposers that do not meet the criteria for “self-propelled” or “chassis mounted” equipment but do provide comparable equipment as those listed in the Attachment C, may submit a proposal. The Proposer shall insert their pricing information on the Attachment C, in the “other” section within the most applicable category.

Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services shall include, but is not limited to:

a) Aerial Equipment - boom cranes, buckets, digger derricks, knuckle booms, platforms and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Aerial Equipment”.

b) Refuse Equipment – Refuse/recycling bodies, Gripper systems, lift systems, loader-hopper bodies, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Refuse Equipment”.

c) Roadway Equipment – Asphalt distributer bodies, live bottom bodies, asphalt

flusher/sprinkler bodies, asphalt hot box/recycler, pothole patchers, roll-off patchers, asphalt sealers, dump bodies, service bodies, road ditch maintenance, van service bodies, roll-off cable hoists, hydro excavators, sprayers, lube skids, grease disposal, tanks, mechanic bodies, street sweepers, loading/grapple, and parts, supplies, and accessories related to the upkeep, repair or maintenance of "Roadway Equipment".

d) Snow & Ice Equipment – Airport equipment, sweepers, liquid de-icing systems, salt/sand spreaders, snow melters, plows, blades, blowers, wings, specialty vehicles, and parts, supplies, and accessories related to the upkeep, repair or maintenance of "Snow and Ice Equipment".

e) Vacuum/Sewer Equipment – tanks, flushing systems, catch basin cleaners, vacuum excavators, water recycling, vacuum bodies, and parts, supplies, and accessories related to the upkeep, repair or maintenance of "Vacuum/Sewer Equipment".

RESPONSE: The products we are offering include Snow and Ice Equipment, Turnkey units, Plows, Spreaders, and related equipment.

B1.3 Out of Scope - This solicitation should NOT be construed to include any of the following:

Construction and agricultural equipment, including but not limited to dozers, loaders, excavators, skid steers, agricultural tractors, mowers, trailers for hauling, and truck chassis (stand-alone).

B1.4 Solutions Based Solicitation - Because of the customization factor and the potential for multiple layers of pricing for upfitting equipment and services, the State of Michigan and NASPO are asking Bidders to provide solutions that meet industry and legal standards for the complex scope of truck upfitting.

The State of Michigan and NASPO ValuePoint RFP is a solicitation that does not contain detailed specifications. However, equipment guidelines are provided for pricing and evaluation purposes per Attachment C. Where items are specified, those items should be considered the minimum required.

When proposing solutions, successful Bidders should focus on the State's and NASPO's "Ultimate Goal". **The "Ultimate Goal" of this RFP is to provide a broad scope of needed equipment with all associated services (sales, warranty, parts, and maintenance & repair) to Purchasing Entities of all States and Territories of the USA, while providing the most competitive pricing available (Best Value) to Participating States.** The Bidders proposed business approach is the solution provided to achieve the "Ultimate Goal". It may be exactly how a Proposer conducts business currently, or it may be a slightly different approach in order to better achieve the "Ultimate Goal". For examples see **B. 1.5 and B.1.6** below. Proposals will be evaluated, in part, on the Bidders' demonstrated ability to meet or exceed the "Ultimate Goal". It is recommended that Proposers submit their complete line of products and services described in the scope of this RFP. The Lead State and NASPO, reserve the right to

accept any or all equipment/products and services proposed for award, for any reason.

The contractual solutions outlined in **B.1.6 a) and b)** are suggested, however, other proposed equitable contractual solutions shall be considered. Each primary equipment category will be awarded to one or more Bidders provided each category receives responsive, responsible bids. Due to the customization factor and the potential for multiple layers of pricing for upfitting equipment and services, the pricing model shall be one or a combination of the following:

- **i)** applicable quoted base pricing per proposed **Attachment C Pricing** including, but not limited to chassis, equipment item, installation, and delivery,
- **ii)** "Percentage off" of the Supplier's most current dated government or commercial catalog or price list, and
- **iii)** quoted installation per applicable hourly rate.

RESPONSE: Viking-Cives provides top quality products as well as repairs, parts sales, warranties, and service before, during, and after a sale. We offer our customers multiple variations of different products for their specific fleet through our direct-to-customer approach. We offer a full line of snowplows, combination dump (live) bodies, conventional dump bodies, material spreaders, de-icing material application equipment, and other custom municipal equipment. We also provide various hydraulic systems, platform bodies, lift gates, snow blowers, sweepers, and an assortment of related truck equipment.

B1.5 Business Solutions - The following items are suggested business solutions. The Proposer may provide a combination of any one of these solutions. The Lead State and NASPO are seeking Contractors that can provide the broadest scope of needed equipment, with all associated services (sales, warranty, rental, parts, and maintenance & repair). The Lead State and NASPO reserve the right to award one, all, or any combination of the following suggested solutions. **(Stand-alone contracts for rental, parts, and maintenance & repair will not be awarded. Rental, parts, and maintenance & repair shall only be included to awarded "Sales" contracts)**

a) Equipment Only – Purchasing Entity's intent is to purchase only the equipment/products to install themselves or have a third-party installer provide the installation services.

b) Equipment with Installation – Purchasing Entity's intent is to purchase equipment/products and have the Proposer, or their Dealer/Distributer, provide the installation services on a chassis provided by the Purchasing Entity.

c) Turn-Key – Purchasing Entity's intent is to purchase equipment/products installed on a chassis. The chassis is included in the purchase, providing the Purchasing Entity with a complete, fully functional vehicle ready for its intended function.

d) Equipment Rental – Purchasing Entity's intent is to rent "Turn-Key" equipment/products rather than purchase. **(Stand-alone contracts for equipment**

rental will not be awarded)

e) Equipment Parts – Purchasing Entity's intent is to purchase replacement parts for previously purchased equipment/product. **(Stand-alone contracts for equipment parts will not be awarded)**

f) Maintenance & Repair Service – Purchasing Entity's intent is to acquire maintenance and repair service from the Contractor. **(Stand-alone contracts for Maintenance & Repair Service will not be awarded)**

Any deviations from industry standards must be identified by the Proposer. The Proposer must explain how the equipment/products and services they propose will provide equivalent performance and functionality in all applicable aspects. Failure to do so may result in the rejection of the proposal, in whole or in part.

RESPONSE: As the Equipment manufacture, we are able to offer products for the following categories:

- Equipment only
- Equipment with installation
- Turnkey unit
- Equipment parts
- Maintenance and repair

B1.6 Contractual Solutions

a) Manufacturer as Contractor - Contractors may offer any brand for which they are a manufacturer. Sales, installation, parts, maintenance, repair, and warranty service would be achieved via the manufacturer's brick & mortar locations, and/or their dealers, distributers, or possibly their own or a third-party mobile maintenance/repair/warranty service provider. This solution would likely cover many States for sales & service requirements. However, the equipment selection would be limited to the manufacturer's offerings.

With their response to this solicitation, suppliers must provide a complete Microsoft Excel spreadsheet listing of all dealers or authorized representatives within the entire area to be covered. Minimum Dealer information required is the name of business, address, contact name(s), phone number(s) and email address(es) and website(s).

b) Distributor/Dealer as Contractor - Contractors may offer any brand for which they sell and service as an authorized distributor/dealer[1]. Sales, installation, maintenance, repair, and warranty service would be achieved via the distributer's and/or manufacturers' brick & mortar locations, manufacturers' dealers, and/or possibly their own, their manufacturers' or a third-party mobile maintenance/repair/warranty service provider. This solution would enable a regional distributer/dealer to provide multiple brands to many more states and territories.

[1] **Please refer to items i, ii, and iii in this section.**

Bidding distributor/dealers seeking to submit a proposal with this type of structure would be required to do the following:

i. Submit with your bid, a certified letter, from each participating manufacturer, that communicates agreement to participate with this contractual arrangement, and shall provide the most competitive pricing commensurate with a national cooperative contract with NASPO.
ii. Submit with your bid, from each participating manufacturer, a complete list of their authorized dealers in all states.
iii. If awarded a contract, Bidder will be required to negotiate Participating Addenda with each state wishing to participate in this agreement, and provide all other administrative services necessary to execute, manage and maintain their contract with each participating State, including, but not limited to, providing contract spend reports, process payments for the required administrative fees on a regular basis (quarterly), and process necessary addenda for contract activities.

B1.7 Contractor Responsibility - The Lead State and NASPO require a Contractor to take responsibility for the performance of all delivered equipment/products and services. It is assumed the Contractor retains sub-contractors in one or several functions required to provide products and services to the Purchasing Entity. The responsibility for all actions pertaining to delivery of product and services by sub-contractors would ultimately fall upon the Contractor.

B1.8 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.
- Authorized Dealers are not considered a "Subcontractor" for the purposes of this solicitation.

B2. PARTS, MAINTENANCE & REPAIRS REQUIREMENTS

B2.1 Parts - Quality of Parts under these specifications should be name brand, nationally advertised merchandise. Equivalent substitutions must be approved by the agency contact person. Aftermarket Repair parts must be equal to or exceed Contractor original equipment manufacturers (OEM) specifications. Repair parts must be packaged and distributed under their respective nationally known name brands. All rebuilt or remanufactured parts must meet the same requirements as listed above. Some repair parts may be required to be original equipment manufactured repair parts Contractor's dealer network must carry a complete line of OEM parts for all models of equipment they carry. Preservation, packaging, and packing and marking will be in accordance with best commercial practice to provide adequate protection against shipping damage.

B2.2 Warranty/Buy Back - Contractor are required to provide any buy-back, trade-in, or exchange policy concerning repair parts sold to Purchasing Entities. Contractor shall correct ordering errors without further cost to the Purchasing Entity. A copy of the Warranty shall be included for replacement parts purchased.

B2.3 Maintenance/Repair Facilities - Repair Facilities that will perform the warranty work of items under this Contract shall be identified as the Supplier's dealer network. The manufacturer, whether contracted directly, or associated with the Distributer by certified letter, is responsible for ensuring that the facilities are able to adhere to the contract requirements for warranty work performance.

B3. GENERAL REQUIREMENTS

B3.1 Licensing - Sales of motor vehicles are subject to state Motor Vehicle Statutes. License requirements for states participating in the contract will be addressed in each state's participating addendum.

B3.2 Warranty - Equipment/Options/Accessories/Attachments. The Contractor agrees the products furnished under this Contract shall be covered by all commercial warranties the Contractor or, if Contractor is a supplier only, that the product manufacturer provides for such products, and rights and remedies provided herein are in addition to and do not limit any rights afforded by any other clause of this Contract. The Contractor warrants that at the time of delivery, all equipment purchased under this Contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this Contract. All warranty work performed, and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved by the agency contact person prior to installation. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Supplier shall be required to make repairs or corrections at no additional cost to the agency. Supplier shall furnish a copy of their warranty applicable for the equipment. All equipment warranties shall start on the date of delivery and shall be for the full term of said warranty. Before actual warranty

work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Purchasing Entity requesting the service. The following information shall be provided in order to determine ownership of the equipment: Name of Purchasing Entity and division, if applicable. Make, Model, VIN, and equipment control number of Purchasing Entity (Inventory number). Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity. The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of this contract shall be authorized by the supplier and be fully qualified to perform the warranty work required. Warranty work shall be performed by trained certified, or authorized service technicians. Equipment that will remain in the supplier's possession overnight and for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any state-owned chassis and equipment in the Contractor's possession.

RESPONSE: As the equipment manufacturer, we only use genuine parts for warranties. Warranties are handled by our staff and locations, ensuring proper procedures are followed. Using our trained staff, repairs are made correctly and much quicker than with a third party.

B3.3 Ordering - No minimum orders will be considered under this Contract. Orders should not be implemented by the Purchasing Entity solely on the Contractor's catalog. The Catalog shall be used as a guide for identifying available equipment and options, and a source for confirming quoted pricing from the Contractor. The Purchasing Entity should **always** contact the Contractor's applicable point of Sale prior to issuing a Purchase Order. Options/Accessories/Attachments on ordered equipment shall include all standard items normally furnished by the Supplier's manufacturer/dealer for the equipment being purchased. Suppliers shall identify any websites that can be of assistance in determining needs and calculating total cost of items purchased.

B3.4 Payment - Contractor must accept mailed and electronic payments.

B3.5 Documents - Contractor shall furnish any required Safety Data Sheets or a composite concentration list prior to contract award, and with the product invoice, or at the request of the Purchasing Entity. At the Contract Administrator's or Purchasing Entity's request, Suppliers shall provide catalogs and current price lists at no charge. A copy of the catalog pricing page or price list is to be made available to the purchaser for their accounting divisions.

All equipment shall be delivered with one copy of the operator's manual, and an illustrated repair parts manual or list. If other manuals are required by the Purchasing Entity, they shall be offered at the discount offered in Attachment C Pricing.

B3.6 Changes in Contractor Contact - The Supplier shall notify the Contract Administrator of any changes in the company status, such as mergers, sell offs, discontinuation of equipment, addition of equipment lines, and changes in the contact information of the Contract. The Contract Administrator shall be able to contact the Supplier at all times during business hours.

B3.7 Invoices - To ensure prompt payment, the Contractor will provide necessary training for the dealer network to make sure the invoice shall include the following information: Purchase order number if applicable. Make, model, and VIN number of equipment. Name of Purchasing Entity. Description of equipment purchased or warranty services performed and/or parts, material and supplies provided. The Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered. The copy of the current, dated Supplier's Price List showing the price of the equipment if requested by the ordering party for their accounting purposes. Name of company who provided the products/services.

B3.8 Prompt Payment Discounts - Prompt payment discounts will not be considered in the evaluation of offers. However, any discount offered will be annotated on the award and may be taken if payment is made within the discount period.

B3.9 Delivery - Delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Supplier. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery. All equipment shall be delivered new, unused, assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Purchasing Entity. Liability for product delivery remains with the Supplier until delivered and accepted. Delivery shall be made in accordance with instructions on the purchase order from each agency. If there is a discrepancy between the purchase order and what is listed on the contract, the Supplier shall seek clarification from the ordering party and/or the Contracting Officer. Delivery on parts is to be made within 30 days. One operating manual, an illustrated parts manual or List, and the warranty shall be furnished for each new item purchased, as well as any proprietary tools necessary to perform routine service or adjustments, all at no additional cost. Some ordering entities will have the capacity to pick up their equipment from the dealer.

B3.10 Training - Supplier shall provide information for all training opportunities for the equipment being purchased, including CDs, DVDs, in house, orientation type training, maintenance, and operator.

RESPONSE: Most of our products will be delivered by our staff and orientation/training will be provided at that time. Many other items include electronic training support. We prefer to do hands on training for any customer needing it.

B3.11 Pricing - The State is requesting pricing for new equipment within the scope of this RFP for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services for purchase and/or rental, parts, maintenance & repairs. Specification guidelines are provided within the Pricing table per **Attachment C**, using the Good/Better/Best model for pricing similar models of equipment within the same equipment usage category. The pricing matrix is a percentage off the Supplier's Suggested Retail Price. Suppliers may submit actual pricing with the percentage discount already applied, as long as the Supplier list price is stated first, then the discount, then the final discounted price.

Pricing is firm for a 365-day period ("Pricing Period"). The first pricing period begins on the effective date of the Contract. Adjustments may be requested in writing by either party and will take effect no earlier than the next Pricing Period. Only one price adjustment is allowed per "Pricing Period".

B3.12 Price Adjustments - 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. If no agreement on an adjusted price is achieved after 30 days of negotiation, the Participating Entity may remove the item from the list of offerings, at its sole discretion.

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.

B3.13 Special Pricing - During periods of market instability due to fractures in the supply chain or other factors, pricing adjustments may be issued on a quote-by-quote basis by the Contractor for a specified period of time as designated in a contract amendment. These amendments are not subject to the price adjustment limitations in B4.12. During this limited period of time, the contract's current price sheet shall be used as "baseline pricing". The quotes shall be structured with "baseline pricing" plus or minus actual Contractor price impacts due to the current market conditions. All quotes provided shall be effective for a minimum of 30 days. Once the quote pricing period expires, pricing shall revert to the contract's current "baseline pricing".

B3.14 Price List – All "catalog" pricing must be published and available at all times via website access, and/or electronic/printed price pages. When price sheets are updated,

the successful Contractor will provide the Lead State Contract Administrator and Issuing Officer an electronic price list in Excel or Excel compatible in ".xls" format that includes both the published list prices, the discount used to compute the final cost, and the final NASPO ValuePoint cost.

B3.15 Allowable Charges Freight/Shipping/Set-up Fees -. Please provide freight costs policy guidelines for your dealers, whether it is a set rate per loaded mile, or the dealer is allowed to set the rate. Delivery is to be FOB Destination (of Purchasing Entity) freight collect. Any Freight, shipping and handling costs and set-up fees paid by the Purchasing Entity are to be annotated on the quote/invoice as a separate line item. Quotes shall show the Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered. Allied and incidental items requested by Purchasing Entities shall comply with their state or other government regulations.

RESPONSE: Any Freight, shipping and handling costs or set-up fees will be annotated on the quote/invoice as a separate line item.

B3.16 Allied Equipment

Allied Equipment may only be sold in connection with the sale of a contract item. Allied Equipment must be clearly labeled on the purchase order or quote as Allied Equipment. "Allied Equipment" means an incidental item, attachment, accessory, part, or a specific bundle of the foregoing that is not manufactured by the contract Supplier but has been requested by a Purchasing Entity to complete the purchase of equipment awarded on Contract. Allied Equipment may modify, the contract item with which it is being sold, but it may not substantially convert the contract item to such an extent that it would be substantially similar in purpose to, and compete with a contract item awarded to another Supplier.

a) Awarded Vendor(s) may offer Allied Equipment that compliment or enhance the Products and/or Services offered under the resulting Master Agreement(s). Allied Equipment will include:

- **i)** Accessories
- **ii)** Components
- **iii)** Upgraded parts

b) Allied Equipment may only be acquired through the Awarded Vendor(s) or their Authorized Dealer(s) and must be reported quarterly with all other sales under the resulting Master Agreement(s).

c) Allied Equipment must be priced at a minimum discount of 15% from MSRP or List Price.

d) Allied Equipment shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all Allied Equipment in a single Order shall be determined by the Participating State or Entity.

e) It shall be at the discretion of the Participating State or Entity to allow Allied Equipment in their Participating Addendum.

B3.17 New Products - All proposed equipment/products shall be delivered as new and fully operational to the Purchasing Entity's location. Exceptions must be clearly disclosed in the "Notes" section of **Attachment C Pricing.**

New Products may be added to the contract when pricing updates per section B 4.12 Pricing Adjustments are requested. The discount cannot be lowered throughout the Contract period.

B3.18 Discontinued Products - Suppliers are to notify the Contract Administrator of any changes in their schedule of equipment such as discontinued products or replacement models. The updating of new and discontinued products shall be completed when pricing adjustments are initiated per section

B3.19 Liquidated Damages - Late or improper completion of the Contract Activities will cause loss and damage to the Participating Entity and it would be impracticable and extremely difficult to fix the actual damage sustained by the Participating Entity. Therefore, if there is late or improper completion of the Contract Activities the Participating Entity is entitled to collect liquidated damages in the amount of $5,000 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 Participating Entity, and it would be impracticable and extremely difficult to fix the actual damage sustained by the Participating Entity. Therefore, the Participating Entity may assess liquidated damages against Contractor as specified below.

- The Participating Entity is entitled to collect $1,000 per individual per day for the removal of any Key Personnel without prior approval of the Participating Entity.
- The Participating Entity is entitled to collect $1,000 per individual per day for an unapproved or untrained key personnel replacement.

B3.20 Service-Level Agreements (SLAs)

A. The Contractor will be held accountable to meet the requirements and the service level requirements established in this Contract.

B. The Lead State reserves the right to reconsider or amend SLA amounts for split awards should they occur.

C. **Please Note**: Should Bidders require clarification or have any questions with regard to the SLAs, they should submit them during the *Question and Answer Period* of this solicitation; please see the **Proposal Instructions** for the timeline.

Service Level Agreements for this Contract will be as follows:

SLA Metric 1. Timely Deliveries	
Definition and Purpose	• Delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Supplier. Delivery shall not exceed the agreed upon delivery date by more than 14 calendar days. • Equipment purchases requiring installation services: Once the Contractor has secured parts for installation, a mutually agreed upon delivery date shall be established with the Purchasing Entity. Delivery shall not exceed the agreed upon delivery date by more than 7 calendar days.
Acceptable Standard	1. All deliveries must occur in accordance with the Purchasing Entity's receiving hours. 2. Extenuating circumstances must be communicated by the Contractor to the Program Manager prior to the scheduled delivery date and time. 3. Items, brands, and quantities delivered will match the Order Confirmation exactly. 4. Signed and dated packing slips will be provided to Purchasing Entity at the time of delivery. 5. The entire order must be delivered on the same day unless a partial delivery has been approved in advance by the Program Manager. 6. Orders not received in their entirety, as determined by a review of the Data Sources, will be considered inaccurate. The acceptable standard is 100% compliance.

SLA Metric 1. Timely Deliveries	
Credit Due for Failing to Meet the Service Level Agreements	1. 5% of the purchased price may be assessed for each of the first five occurrences of non-compliance in a given calendar year. 2. 10% of the purchase price may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year. Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed. At the discretion of the Participating Entity, these credits may be applied toward any amount payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.

Attachment D - Distributor (Dealer) Agreement

(Example of an Approved Distributor Agreement)

APPROVED DISTRIBUTOR (DEALER) AGREEMENT – [Name of State]
FOR Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services – RFP 210000000535

NASPO ValuePoint Contract Number: 240000000307

The State of_____(**State**) has entered into a contract with **Cives, Inc.** (**Manufacturer**) to provide Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services to the State and political subdivisions within the State resulting from State of Michigan Request for Proposal 210000000535 (**Contract)**.

Specific independent approved distributors will be authorized by **Manufacturer** to provide Truck Bodies, Seasonal Maintenance Equipment, and related services required for purchasing Truck Bodies, Seasonal Maintenance Equipment (equipment installation). ("Distributor(s)" herein includes **Manufacturer's** approved distributors).

This Distributor Agreement will identify the services to be provided by Dealer, as they may be used to satisfy Manufacturer's obligations under the terms of the Contract. Dealers will need to sign the Approved Distributor Agreement before the Dealer will be authorized to provide services to the State. This Agreement will be effective on the last signature date below.

The authorized Dealer agrees to the following:

1. **PROFESSIONAL SERVICES**
   Dealer agrees to provide the following services on behalf of Manufacturer in furtherance of Manufacturer's obligations under the terms of the Contract:

   [Insert List of Services to be Provided by Dealer]

   Dealer warrants that all services shall be performed in a professional and workmanlike manner consistent with standard industry practice; and in accordance with any approved Statement of Work under the Contract, if applicable. Dealer agrees to abide by all applicable laws, regulations, and industry standards when performing services for the State in furtherance of the Contract.

2. **INSURANCE REQUIREMENTS**
   The Dealer will agree to carry all insurance which may be required by federal and state laws, state and city ordinances, charters, regulations, and codes. The Dealer certifies that it has now and will continue to have in full force and effect the following certificates of insurance. Copies of the insurance certificates shall be provided to the State within ten (10) days upon request. All Insurance shall be issued by an insurance company authorized by the Insurance Department to transact business in the State. No policy shall expire, be canceled or materially changed to effect coverage available to the State without thirty (30) days written notice to the State.

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	Policy must be endorsed to add [Insert name of Participating State/Entity], 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.
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	
Garage keepers Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of [Insert name of Participating State/Entity], its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Garage Keepers Legal Liability coverage.

3. **INDEMNIFICATION/HOLD HARMLESS**
   The Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims arising from acts or omissions of the Dealer, its employees or subcontractors or volunteers.

4. **MANUFACTURER ACKNOWLEDGMENT**

   Manufacturer acknowledges and agrees that: (1) Dealer is a subcontractor, as it relates to any services that Dealer provides to State to satisfy an obligation of Manufacturer under the terms of the Contract; (2) Dealer is an approved distributer of Manufacturer; and (3) that Dealer will abide by and comply with the terms and conditions of the Contract.

IN WITNESS WHEREOF, by signing where indicated below, the authorized representative of the Dealer executes and agrees to the terms of this Distributor Agreement.

DEALER

[Signature of Dealer's Authorized Signer]_____

By: [Printer Name of Signer]

Its: [Title of Signer]

Date:

Manufacturer

[Signature of Manufacturer's Authorized Signer]_____

By: [Printer Name of Signer]

Its: [Title of Signer]

Date:

DEALER INFORMATION

Legal Status: Corporation † Partnership † Sole Proprietor

Dealer Name:_____

Address:_____

City, State, Zip:_____

Phone:_____ **Fax:_____**

Contact Name:_____

Email Address:_____

Federal Tax ID #:_____

Attachment E- Lead State Terms and Michigan Participating Addendum

These LEAD STATE TERMS AND CONDITIONS (or the State of Michigan's Participating Addendum) are agreed to between the State of Michigan (the "**State**") and Cives ("**Contractor**"), a Delaware Corporation. This Contract is effective on March 1, 2024 ("**Effective Date**"), and unless terminated, expires on February 28, 2027.

This Contract may be renewed for up to two one-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 **Attachment B – 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 **Attachment B**.

   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.

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 if, in the opinion of the State, it will ensure performance of the Contract.

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:
Yvon Dufour 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 284-6996	Dave Wentzel – General Manager 22956 Highway 61 Oran, Missouri 63771 dwentzel@vikingcives.com (573) 262-3545 CV0005578

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:
Yvon Dufour 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 284-6996	Dave Wentzel – General Manager 22956 Highway 61 Oran, Missouri 63771 dwentzel@vikingcives.com (573) 262-3545

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:
Scott Poyer Poyers@michigan.gov 517-719-6802	Dave Wentzel – General Manager 22956 Highway 61 Oran, Missouri 63771 dwentzel@vikingcives.com (573) 262-3545

5. 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	Policy must be 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	Policy must: (1) be 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	
Garage keepers Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	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 Garage Keepers Legal Liability coverage.

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).

6. Administrative Fee and Reporting. Contractor must pay an administrative fee of **.5%** on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, (including governmental subdivisions and authorized entities). 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 and the total dollar volume in sales. Reports should be mailed 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.

7. 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.

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.

8. 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.

9. 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. For the purposes of this Contract, any approved independent distributor (Dealer) of Contractor, having executed a Distributer/Dealer Agreement attached as **Attachment D** will be considered a subcontractor of Contractor, in accordance with the terms of this Section.

10. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

11. 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 **Attachment B**, 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.

12. 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.

13. 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.

14. Ordering. Contractor is not authorized to begin performance until receipt of authorization as identified in **Attachment B**.

15. 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 Attachment B. 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 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.

16. 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 **Attachment B**. All containers and packaging become the State's exclusive property upon acceptance.

17. 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.

18. Warranty Period. The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in **Attachment B**. 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.

19. 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 **Attachment B**. 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.

20. Liquidated Damages. Liquidated damages, if applicable, will be assessed as described in **Attachment B**.

21. 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.

22. 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 23, 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.

23. 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 24, 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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 22, Termination for Cause.

33. 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.

34. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. Website Incorporation. The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

43. Entire Agreement and Order of Precedence.

These Lead State Terms and Conditions which are also referred to herein as the State of Michigan's Participating Addendum (including all amendments and attachments hereto) and the Master Agreement (including all amendments and attachments thereto) (collectively, the "**Contract**") constitute the entire agreement between the parties concerning the subject matter of this Contract and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. The terms and conditions of this Participating Addendum (including all amendments and attachments hereto) shall prevail and govern in the case of any inconsistency or conflict with the terms and conditions of the Master Agreement as now or hereafter amended. This Contract may be modified only by a written document executed by the parties hereto.

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.

Any terms that may be contained in Attachment G or any other Purchasing Entity's or Participating State's Participating Addendum are expressly excluded from incorporation into this **Contract** and will have no legal effect on the contractual relationship between the Lead State of Michigan and Contractor. Further, the State of Michigan is not, and will not be, a party to any agreements or individual contracts entered into by and between Contractor and any other Purchasing Entity.

The following Attachment(s) and Exhibit(s) are hereby incorporated by reference and made part of these Lead State Terms and Conditions without difference:

Attachment A	**NASPO Terms**
Attachment B	**Statement of Work**
Attachment C	**Pricing**
Attachment D	**Distributer/Dealer Agreement**
Exhibit 1 to Attachment E	**Federal Provisions Addendum**
Exhibit 2 to Attachment E	**Byrd Anti-lobbying Certification**

44. 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.

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

46. 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.

47. 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.

EXHIBIT 1 TO ATTACHMENT E
FEDERAL PROVISIONS ADDENDUM

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Equal Employment Opportunity

If this Contract is a "**federally assisted construction contract**" as defined in 41 CFR Part 60-1.3, and except as otherwise may be provided under 41 CFR Part 60, then during performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the

administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Davis-Bacon Act (Prevailing Wage)

If this Contract is a **prime construction contract** in excess of $2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act (40 USC 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

3. Copeland "Anti-Kickback" Act

If this Contract is a contract for construction or repair work in excess of $2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which

prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

a. **Contractor**. The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. **Subcontracts**. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. **Breach**. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of $100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable, and during performance of this Contract the Contractor agrees as follows:

a. **Overtime requirements**. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

c. **Withholding for unpaid wages and liquidated damages**. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable

on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

d. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of $150,000,** the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as

amended, 33 U.S.C. 1251 et seq.

2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A "contract award" (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (51 FR 6370; February 21, 1986) and 12689 (54 FR 34131; August 18, 1989), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment

d. The Bidder or Proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **$100,000 or more** shall file the required certification in Exhibit 2 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal

contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under 2 CFR 200.322, Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

i. Competitively within a timeframe providing for compliance with the contract performance schedule;

ii. Meeting contract performance requirements; or

iii. At a reasonable price.

b. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.

c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

a. Access to Records. The following access to records requirements apply to this contract:

i. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions

ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed

iii. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract

In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

b. Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

c. DHS Seal Logo and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

d. Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

e. No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract."

f. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

EXHIBIT 2 TO ATTACHMENT E
BYRD ANTI-LOBBYING CERTIFICATION

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than $100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

   This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____

Signature of Contractor's Authorized Official

_____

Name and Title of Contractor's Authorized Official

_____

Date

Attachment F - Distribution Network

Fabrication Facilities

Viking-Cives (USA) – Harrisville, NY – 1960
Viking-Cives, Ltd. – Mt. Forest, Ontario Canada – 1984
Viking-Cives Midwest Inc.** – Morley, MO – 2006
Viking-Cives Great Lakes – Battle Creek MI – Under construction, scheduled to open November 1, 2023.

Factory Stores

Viking-Cives of Western New York – Oakfield, NY – 2007
Viking-Cives of Vermont – Williston, VT – 2009
Viking-Cives of Maine – Lewiston, ME – 2009
Viking-Cives of Tennessee – Whites Creek, TN – 2011
Viking-Cives of Utah – Salt Lake City, UT – 2012
Viking-Cives of Grain Valley – Grain Valley, MO - 2010
Viking-Cives of Alberta – Calgary, Alberta Canada – 2018
Viking-Cives of Connecticut – Waterbury, CT – 2019
Lindco Equipment Sales** – Merrillville, IN - 2021