

CRFQ DOT1800000035
REQUEST FOR QUOTATION
AASHTOWare Software Licenses or Equal

The following provisions of the Request for Quotation (RFQ) are hereby amended as follows:

A. GENERAL TERMS AND CONDITIONS:

1. **Clause 2.3.** Amend by adding the following at the end of the clause, "which shall include the AASHTO Master License Software Agreement already executed between West Virginia DOT and AASHTO, the AASHTO License Software Supplemental Agreement and the AASHTOWare Software Request Forms."

Please note AASHTO will sign the WV96A with the exceptions noted in the attached document as previously agreed upon. Clause 7 of the WV96A should be corrected as follows: "This paragraph has no applicability to paragraphs 25 (warranty) and 16 (defects) of the AASHTO License Software Supplemental Agreement.

2. **Clause 28, Warranty.** Delete and replace with: "All matters of warranty are subject to Clause 9 of the AASHTO Master License Software Agreement and Clause 25 of the AASHTO License Software Supplemental Agreement."

Please note AASHTO will sign the WV96A with the exceptions noted in the attached document as previously agreed upon. Clause 7 of the WV96A should be corrected as follows: "This paragraph has no applicability to paragraphs 25 (warranty) and 16 (defects) of the AASHTO License Software Supplemental Agreement.

3. **Clause 37, Indemnification** Delete and replace with: "Vendor agrees to indemnify licensee as provided under Clause 11 of the AASHTO Master License Software Agreement."

Please note AASHTO will sign the WV96A with the exceptions noted in the attached document as previously agreed upon. Clause 7 of the WV96A should be corrected as follows: "This paragraph has no applicability to paragraphs 25 (warranty) and 16 (defects) of the AASHTO License Software Supplemental Agreement.

B. SPECIFICATIONS

4. **Clause 5.1 Ordering** is amended as follows: Vendor shall provide the AASHTOWare Software Requests Forms (attached hereto) in conjunction with wvOASIS, if applicable, through regular mail, facsimile, e-mail or any other written form of communication.
5. **Clause 6.4.** Return of Unacceptable Items is deleted in its entirety.
6. **Clause 6.5.** Return Due to Agency Error is deleted in its entirety.

Clause 7.1.4. Vendor Default is amended by deleting the words “upon request” and adding the following, “subject to Clause 25 of the AASHTO License Software Supplemental Agreement and the applicable Work Plan.”

Please note AASHTO will sign the WV96A with the exceptions noted in the attached document as previously agreed upon. Clause 7 of the WV96A should be corrected as follows: “This paragraph has no applicability to paragraphs 25 (warranty) and 16 (defects) of the AASHTO License Software Supplemental Agreement.

7. Clause 8.2. Vendor Supply is deleted in its entirety.

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

Term Contract

Initial Contract Term: This Contract becomes effective on _____ upon award _____ and extends for a period of one (1) _____ year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed thirty-six (36) months in total. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

Fixed Period Contract: This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

Fixed Period Contract with Renewals: This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days.

Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional _____ successive one year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of this Contract is prohibited.

One Time Purchase: The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

Other: See attached.

4. NOTICE TO PROCEED: Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

Open End Contract: Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

Service: The scope of the service to be provided will be more clearly defined in the specifications included herewith.

Combined Service and Goods: The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

One Time Purchase: This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

BID BOND (Construction Only): Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

PERFORMANCE BOND: The apparent successful Vendor shall provide a performance bond in the amount of _____. The performance bond must be received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

LABOR/MATERIAL PAYMENT BOND: The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

MAINTENANCE BOND: The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

LICENSE(S) / CERTIFICATIONS / PERMITS: In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies mandated herein, including but not limited to, policy cancelation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of this contract. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

Commercial General Liability Insurance in at least an amount of:

Automobile Liability Insurance in at least an amount of: _____

Professional/Malpractice/Errors and Omission Insurance in at least an amount of:

Commercial Crime and Third Party Fidelity Insurance in an amount of:

Cyber Liability Insurance in an amount of: _____

Builders Risk Insurance in an amount equal to 100% of the amount of the Contract.

9. WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. LITIGATION BOND: The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

11. LIQUIDATED DAMAGES: Vendor shall pay liquidated damages in the amount of

for _____

This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.

14. PAYMENT: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

15. PURCHASING CARD ACCEPTANCE: The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-6.1.e.

20. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. BANKRUPTCY: In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

31. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

32. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

33. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

34. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

35. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

36. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

37. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

38. PURCHASING AFFIDAVIT: In accordance with West Virginia Code § 5-22-1(i), the contracting public entity shall not award a contract for a construction project to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Accordingly, prior to contract award, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

39. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

40. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

41. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.requisitions@wv.gov.

42. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

43. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

44. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

45. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$100,000, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. "Interested parties" means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract. The Agency shall submit a copy of the disclosure to the Ethics Commission within 15 days after receiving the supplemental disclosure of interested parties.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Name, Title)
Angelique Williams, AASHTOWare Business Operations Manager

(Printed Name and Title)
444 N. Capitol Street, N.W, Suite 249, Washington, DC 20001

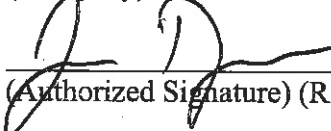
(Address)
202-624-5808/202-624-5469

(Phone Number) / (Fax Number)
angelw@aaashto.org

(email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

American Association of State Highway and Transportation Officials (AASHTO)
(Company)

 _____ C. O. O.
(Authorized Signature) (Representative Name, Title)

Jim Tymon, Chief Operating Officer/Director of Policy and Management
(Printed Name and Title of Authorized Representative)

10/26/17
(Date)

202-624-5800/202-624-5469
(Phone Number) (Fax Number)

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SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Department of Transportation (WVDOT) to establish an open-end contract for American Association of State Highways Transportation Officials (AASHTO) AASHTOWARE Software Licenses (or equal) and Service Units. The term of this contract shall be for one (1) year with three (1) one year options for renewal.
2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **“Contract Item”** or **“Contract Items”** means the list of items identified in Section 3.1 below and on the Pricing Pages.
 - 2.2 **“Pricing Pages”** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the Solicitation responses.
 - 2.3 **“Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
 - 2.4 **“Software License Agreement”** refers to the contract between the licensor and the purchaser of the software product that details how and when the software can be used.

3. **GENERAL REQUIREMENTS:**

- 3.1 **Contract Items and Mandatory Requirements:** Vendor must provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

If alternate 'or equal' products are proposed, the vendor must include as part of their bid, all software, hardware and services needed to migrate systems and data/files; train WVDOT staff; test systems; and test ALL migrated data/files. All information currently residing in the existing system(s) must be migrated. This process must be done with no interruption to the current business process within WVDOT and be totally completed within three (3) months of contract award.

Vendor shall include all Software License Agreement(s) for the products specified in this RFQ as part of the response to the bid.

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- 3.1.1 General Requirements** – applies to ALL software modules/licenses.
- 3.1.1.1** Modules must be licensed on an annual license fee basis which includes software maintenance and support.
 - 3.1.1.2** WVDOT must have the ability to install the software on unlimited WVDOT personal computers for unlimited WVDOT users unless otherwise noted in the specifications below.
 - 3.1.1.3** Source code for the software modules must be available for WVDOT to use and modify as part of the annual license fee.
 - 3.1.1.4** Software must allow for integration and data transfer between all modules. This includes both client/server and web-based applications.
 - 3.1.1.5** Software must be compatible with WVDOT's current network environment and minimum hardware/software specifications for all client PC and Server Window's operating systems (see **Attachments 1 and 2**)
 - 3.1.1.6** Software must be capable of operating within a client/server, stand-alone and web-based configured environments as specified in the requirements below. Software must be computable current minimum WVDOT database standards (Oracle Administrative Client 11.2.0.1 32-bit (this includes ODBC 11.2.0.1 driver and required support files for use with 32-bit and 64-bit operating systems, Oracle11g Server RDBMS 11.2.0.4 and Oracle12.1c Server RDBMS)
 - 3.1.1.7** Re-establishment of license fees/cost for noncontiguous license use must be detailed in the cost proposal.
 - 3.1.1.7.1** Current Licenses expired on 7/01/2015.
 - 3.1.1.7.2** The reinstatement costs associated with these licenses shall be for year one only.
 - 3.1.1.8** Software must meet all Federal Highway Administration (FHWA) regulation standards for the modules listed in this RFQ.
 - 3.1.1.9** WVDOT will have the opportunity to be involved and influence the direction of the software development. This can be through participation in Task Force, Committees, Beta Testing and Focus Groups. WVDOT will have the ability to vote on software direction/enhancements/fixes for upcoming releases.
 - 3.1.1.10** The vendor may bid a yearly license rate fee that changes each year. At each renewal year, WVDOT will submit a request that includes the software products they will be

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using, to the vendor for renewal. The price for that year, will be based on the price bid on Exhibit A Pricing Pages.

3.1.1.11 Vendor should provide with their bid a copy of any Software Terms and Conditions or Licenses that the State of West Virginia or the Agency will have to agree or accept as a part of this solicitation. This information will be required before a Purchase Order is issued.

3.1.2 AASHTOWARE PROJECT Software –or equal. Equal products must meet the mandatory specifications as listed in the following sections. Vendor must bid both Individual license (option 1) and Site License (option 2) models for PROJECT software – or equal, as detailed on the pricing page. It will be at the discretion of WVDOT which modules will be purchased. Since this is an open-end contract, WVDOT may add modules included in this contract during the life of the contract.

3.1.2.1 PROJECT Bid Analysis Management System/Decision Support System (BAMS/DSS) – or equal.

- 3.1.2.1.1** Must be capable of providing a complete project historical data warehouse.
- 3.1.2.1.2** Must provide the ability to perform statistical models analysis and ad hoc analysis on data obtained through integration with other modules being bid for this contract.
- 3.1.2.1.3** Must provide Bid Monitoring and reporting such Ad Hoc reports (custom reports by user) and Collusion Detection reports (built-in reports).
- 3.1.2.1.4** Must provide a data structure and architecture within the database that is capable of including and storing the following:
 - Vendor information (contractor, subcontractor)
 - DBE (Disadvantage Business Enterprise)
 - Surety information,
- 3.1.2.1.5** Must provide Item Price Estimation.
- 3.1.2.1.6** Must provide Planning and Budgeting Process.
- 3.1.2.1.7** Must perform long term-term bidding pattern analysis.
- 3.1.2.1.8** Must perform analysis to identify collusion detection.

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3.1.2.2 PROJECT Preconstruction – or equal. This product is used for generating information for the construction proposal, estimates, letting and project award.

3.1.2.2.1 Must provide bid-based pricing at both the project and proposal level.

3.1.2.2.2 Must be able to generate Engineering & Construction percentages.

3.1.2.2.3 Must provide Cost plus Time designations.

3.1.2.2.4 Must provide for alternate specifications at both the category and line item levels.

3.1.2.2.5 Must have the capability to generate the Plans, Specifications and Estimates package (PS&E) for transportation construction projects.

3.1.2.2.6 Must be able to combine Estimates into Proposals.

3.1.2.2.7 Must be able to combine Proposals to create a Bid Letting Package that will include the following standard reports:

- **Final Detail Estimate:** must use bid prices from the awarded vendor and/or valid low bidder to provide a project, prime project, or proposal view of costs, including add-on percentages and funding breakdowns.

- **Proposal Price Schedule** – must use the engineer's estimated values to produce five sub reports. When this report is generated a user must be able to choose to include one, several, or all of the sub reports.:

***Proposal Cover Sheet,**

***Proposal Schedule of Items,**

***Proposal Estimate** - The Unit Price field for each proposed item must be populated with the Proposal Item Unit Price for the corresponding proposal item. The Unit Price for lump sums, hybrid lump sums, and fractional lump sum items remains LUMP SUM. The Extended Amount field for each proposal item must be populated with the Proposal Item Extended Amount for the corresponding proposal item. The Total Bid value for the proposal must be replaced by the Estimated Total, which is the estimated low cost total proposal cost taking design alternates into consideration.

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***Quantity Sheet Summary**

***Proposal DBE Interest Report**

- 3.1.2.2.8 Agencies must have the ability to define and produce custom reports.
- 3.1.2.2.9 Must have the ability to advertise proposals.
- 3.1.2.2.10 Must be able to track plan and proposal holders.
- 3.1.2.2.11 Must be able to process bid information electronically to reflect accurate and up-to-date bid data.
- 3.1.2.2.12 Must be able to track Disadvantaged Business Enterprise (DBE) commitments information.
- 3.1.2.2.13 Must be able to generate the following reports in pdf format:
 - Notice to Contractors.** This report serves as a legal notice to the public that proposals are available for bid and is submitted to the media for publication. The report must contain two parts, a cover page and a proposal item quantities list.
 - Bid Tabulation Report:** uses bid information received from proposal vendors to produce a listing of item bid information in a cross-tab format. Bidders must be listed according to their vendor bid ranking, with the highest ranked bidder listed first
 - Analysis of Received Bids:** must be derived from the actual bids through the web site used by WVDOT for contractor bidding. The data must be imported in the software and be used to generate reports for human analysis. Must include capabilities of viewing of funds available amount and compare vendor bids received for a proposal defined with additive sections.
 - Bid Tabulation analysis report** must use bid information to produce a listing of bid item information in a cross tab format. Bidders must be listed according to their vendor bid ranking, with the highest ranked bidder listed first.
 - Vendor Ranking** report must include a list of bidders ranked according to bid total for each selected proposal in the selected bid letting.
 - **Low Bid Item Analysis** must compare the item prices from the low bidder to those in the

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Engineer's estimate for each selected proposal in the bid letting.

-Low Bid Summary report must list bid letting totals, and is used to identify the low bidder and compare the corrected low bid value to the Engineer's estimate. The report must calculate the low bid as a percentage of the Engineer's estimate and shows how much the bid is over or under the Engineer's estimate

-Bid Letting Summary Reports: must be comprised of the following five individual sub reports. When the Bid Letting Summary is Generated, you should be able to include one, several, or all of these sub reports.

***Proposal Addenda Detail,**

***Bid Letting History,**

***Letting Award Summary,**

***Bid Letting Comparison Form,**

***Bid Letting Prequalification.**

3.1.2.2.14 Must include plan holder management.

-Must have the ability to maintain the plan holders list.

-Must have the ability to produce mailing lists and plan holder invoices.

3.1.2.2.15 Must include online and batch data entry facilities for vendor bids.

3.1.2.2.16 Must include a unified database and consolidated security model, with PROJECT web based applications, or equal such as CRLMS or equal, and PROJECT Construction and Materials or equal).

3.1.2.2.17 Must provide workflow/phase handling.

3.1.2.2.18 Must interface with all PROJECT modules – or equal.

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3.1.2.3 PROJECT Civil Rights Labor Management System (CRLMS) – or equal.

- 3.1.2.3.1** Licensing of this module will be at the OPTION of WVDOT.
- 3.1.2.3.2** Must meet the guidelines for processing data to meet federal and state requirements for civil rights and labor compliance activities.
- 3.1.2.3.3** Must be a web-based platform.
- 3.1.2.3.4** Must provide for the administration of an agency's external civil rights and labor compliance activities. This must include but not be limited to:
 - Contractor payrolls and labor compliance
 - Wage decisions
 - Disadvantaged Business Enterprise (DBE) certification
 - Vendor data management
 - DBE commitments,
 - On-the-Job Trainees (OJT) tracking and monitoring
 - Subcontractor data and prompt pay tracking
 - Bidder/Quoter submittals
 - Trucking types and tracking
- 3.1.2.3.5** Must interface with client/server environment and contract compliance reviews.
- 3.1.2.3.6** Must provide secure, limited access to non-agency users (e.g. contractors and subcontractors). This is to allow submission of electronic information such as payroll and subcontractor payment information.
- 3.1.2.3.7** Must provide a spreadsheet conversion utility to assist contractors in creating an Extensible Markup Language (XML) formatted payroll file for import into the system.
- 3.1.2.3.8** Must provide a XML Developer's Resource kit to assist payroll software companies to create XML formatted payroll files for import into the system.

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3.1.2.4 EXPEDITE – Module License – or equal.

- 3.1.2.4.1** WVDOT is migrating from Expedite to PROJECT Bids, or equal. During the migration period, WVDOT must be responsible for paying for only one licensed product.
- 3.1.2.4.2** Expedite, or equal must provide a tool for bidders to receive proposal information. This must include:
 - Item schedules.
 - DBE requirements
 - Affidavits
- 3.1.2.4.3** Must provide the ability to enter proposal information and designate specific data fields as mandatory for a proposal to be valid. Must validate each proposal on the basis that all required information has been received.
- 3.1.2.4.4** Must support proposals with cost plus time components.
- 3.1.2.4.5** Must have the ability to have alternate sections and alternate items, lump sum and fixed-price items.
- 3.1.2.4.6** Must provide for the distribution of amendments in electronic format.
- 3.1.2.4.7** Must have the ability to convert a flat file of proposal item information into an electronic proposal or amendment file for distribution to prospective bidders.
- 3.1.2.4.8** Must include an electronic bid manager which allows item bids to be entered interactively, as on a spreadsheet, with item extensions and section and proposal totals calculated and displayed immediately.
- 3.1.2.4.9** Must facilitate the submittal of DBE commitment information and an electronic bid bond identifier or manually delivered check or payment indication.
- 3.1.2.4.10** Must have the ability to check the electronic bid and determine required data has been entered in the correct format.
- 3.1.2.4.11** Must allow the transportation agency to enter bid data from proposals submitted manually in a PC-based program for loading into LAS , or equal

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3.1.2.4.12 Must allow the transportation agency to electronically verify the bidder's bid bond.

3.1.2.4.13 License must include the ability to distribute the electronic bid manager component and associated documentation for use by all prospective bidders.

3.1.2.5 PROJECT Bids – Module License – or equal.

3.1.2.5.1 WVDOT is migrating from Expedite to PROJECT Bids, or equal. During the migration period, WVDOT must be responsible for paying for only one licensed product.

3.1.2.5.2 This system must provide the ability to control and facilitate the electronic bidding process for contractors.

3.1.2.5.3 Must include all features of Expedite system, or equal listed in sections **3.2.2.1 through 3.2.2.14**

3.1.2.5.4 Must be compatible with current 32-bit and 64-bit client Windows operating systems (Windows 7 and Windows 10).

3.1.2.5.5 Must provide security within the electronic environment using encrypted digital certifications for all agency approved bidders/contractors.

3.1.2.5.6 Bidders/contractors must be able to receive proposal item schedules.

3.1.2.5.7 Bidders/contractors must be able to submit/withdraw items bids.

3.1.2.6 SiteManager – Module License – or equal.

3.1.2.6.1 WVDOT is migrating from SiteManager to PROJECT Construction, or equal. During the migration period, WVDOT must be responsible for paying for only one licensed product.

3.1.2.6.2 Must provide license for construction management software that provides for data entry, tracking, reporting and analysis of contract data from contract award through finalization.

3.1.2.6.3 Software must allow use for different levels of access depending on the user's business role. This shall include but not limited to the following roles:

- Field Inspectors
- Administrators
- Technicians

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- Project Managers
- Clerks
- Auditors
- Lab Personnel
- Management,
- Producer/Suppliers
- FHWA.

3.1.2.6.4 Contract Administration functions must include the ability to:

3.1.2.6.4.1 Monitor the contractor progress schedule.

3.1.2.6.4.2 Receive payrolls.

3.1.2.6.4.3 Monitor and report on status.

3.1.2.6.4.4 Provide reference data for vendors, subcontractor and bid items.

3.1.2.6.4.5 Include the ability to load contract data from the preconstruction system.

3.1.2.6.4.6 Include a direct interface from the PES and LAS modules – or equal.

3.1.2.6.4.7 Include an interface with the PROJECT BAMS/DSS module or equal.

3.1.2.6.5 Contract Records functions must include the ability to:

3.1.2.6.5.1 Allow recording/auditing of various project data including:

- Permits
- Correspondence
- Contractor evaluations
- Disputes and claims
- Conference meetings
- Stockpiled materials,
- Key dates, checklists,
- Funding
- Design evaluations and
- Change order (which includes extra work orders, time extensions, over/underruns, etc.) creation, tracking and approval.

3.1.2.6.6 Daily Work Reports module must provide a tool for inspectors to capture work performed on the job site.

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- 3.1.2.6.6.1** This module must be capable of working offline.
- 3.1.2.6.6.2** Information captured must include but not be limited:
 - Personnel
 - Equipment
 - Work Items
 - Quantities
 - Descriptions
 - Force Account Information which includes labor, equipment, and materials.
- 3.1.2.6.7** Contractor Payments module must generate all detail necessary to review and approve work for payments.
 - 3.1.2.6.7.1** It must provide the following functions:
 - Generate estimates
 - Process contract and line item adjustments (including liquidated damages, fuel adjustments, price adjustments and licensee-specific adjustments)
 - Manage retainage.
 - Provide tracking
 - Approval
 - Finalization
 - And discrepancy notification/ resolution for items such as certified payrolls and tested materials.
- 3.1.2.6.8** Materials Management must be provided for recordings, tracking and reporting of material samples and test results from job sites, plants and test labs.
 - 3.1.2.6.8.1** It must include comprehensive lists for reference and validation of data, including:
 - Materials
 - Lab qualifications
 - Testing personnel
 - Approved material lists
 - Approved producer/suppliers

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- Calibrated equipment
- Welders
- Inspectors

3.1.2.6.8.2 It must support aggregate, concrete and bituminous concrete mix designs.

3.1.2.6.8.3 It must provide for sampling and testing requirements for contracts.

3.1.2.6.8.4 It must provide reporting of the status of tested materials for a contract.

3.1.2.6.9 Laboratory Information Management System (LIMS) – or equal, must provide sampling and testing workflow management.

3.1.2.6.9.1 It must include the ability to establish a material sample “chain of custody.” This must include User and date/time of sample process.

3.1.2.6.9.2 It must manage access to samples and test based on user qualifications that are identified through system security roles.

3.1.2.6.9.3 It must have the capability to define standard and alternative sample testing workflows.

3.1.2.6.9.4 It must have the ability to maintain sample test queues.

3.1.2.6.9.5 It must have the ability to schedule tests.

3.1.2.6.9.6 It must have the ability to audit and track samples.

3.1.2.7 PROJECT Construction and Materials – Module license or equal.

This web-based system replaces the client/server SiteManager construction, materials, and laboratory information management functionality.

3.1.2.7.1 WVDOT is migrating from SiteManager to PROJECT Construction, or equal. During the migration period, WVDOT must be responsible for paying for only one licensed product.

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3.1.2.7.2 Must be a web-based system that includes all of the functionality of the client/server modules in section 3.1.2.7. It is understood that web-based technology differs from that used for client/server. It is acceptable that different/additional products may be required to achieve the requested functionality. If additional products are needed, these should be listed in the response and a cost provided.

3.1.3 AASHTOWare Bride Rating – Bridge Load Rating system - Unlimited Option – or equal.

3.1.3.1 This software must use graphical tools to provide a visual representation of the data and application of the results.

3.1.3.2 Must be analytical software that allow users to perform load and resistance factor rating (LRFR), load factor rating (LFR) and allowable stress rating (ASR).

3.1.3.3 Must provide an integrated database where ratings inputs and outputs can be stored, reviewed and re-used.

3.1.3.4 Must allow a user to provide a 3-dimensional description of a bridge superstructure.

3.1.3.5 Bridge data must be usable by a variety of line-girder, 2-D or 3-D analysis packages, permit/routing systems and other third-party produced applications.

3.1.3.6 Bridge configurations and capabilities must include:

- Simple spans, continuous spans, hinges (steel and reinforced concrete)
- U. S. Customary and International System of Units (S.I.) units
- Line-Girder analysis and 3D Finite Element Analysis
- Parallel and flared girder configurations
- Reinforced concrete tee beams, slabs, I-beams and multi-cell box beams
- Reinforced concrete box culverts
- Pre-stressed concrete box, I, tee and U-beams (precast, pre-tensioned continuity for live load)
- Post-tensioned multi-cell box beams
- Harped strands and de-bonded strands
- Steel rolled beams (including cover plates)
- Steel built-up plate I-girders
- Steel welded plate I-girders (including hybrid)
- Parallel, tapered, parabolic and circular webs
- Transverse and longitudinal stiffened
- Frame structure simplified definition

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- Steel trusses and floor systems
- Timber beams and decks
- Corrugated metal decks;3-D analysis of steel and concrete multi-girder superstructures
- 3-D analysis of curved steel multi-girder superstructures

3.1.3.7 Bridge Load Rating Features must include but not be limited to:

- Load rate various structure units within a bridge
- Load rate various members within a structural unit
- Rate a user-defined group of bridges
- Input definition and rating of deteriorated sections
- Review of rating history for groups of bridges and routing applications
- Perform load ratings in accordance with AASHTO methods Load and Resistance Factor Rating (LRFR), Load Factor Rating (LFR), and Allowable Stress Rating (ASR)
- Load rate timber and corrugated metal decks
- Load rate girder-floorbeam-stringer configurations
- Load rate truss-floorbeam-stringer and floor-truss configurations
- Permit rating with routine traffic in adjacent lane
- Permit rating with routine traffic in adjacent lane axles
- Rating of non-standard gage vehicles by loading a 3-D influence surface

3.1.3.8 System must have a Bridge Load Rating and Permit Vehicle Analysis database.

3.1.3.8.1 Must include the ability for an entire route to be treated for a permit vehicle in a single step.

3.1.3.8.2 Permit analysis must include 3-D analysis to consider load effects due to a specific vehicle traveling along a user-defined path on a structure.

3.1.3.8.3 Must comply with corporate database standards by supporting Oracle and Microsoft SQL server database managers, data sharing and security features.

3.1.3.9 Graphical Features and Customizable Libraries

3.1.3.9.1 Must include libraries of standard and user-defined vehicles, loads, steel and pre-stressed shapes, load and resistance factors, materials, parapets, etc. to allow bridge models to be built quickly in a drag and drop manner.

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- 3.1.3.9.2 The ability to copy a part of a bridge to another bridge
- 3.1.3.9.3 Must include the following features as a bridge model is constructed:
 - A graphical schematic framing plan
 - Elevation view
 - Cross-section view
- 3.1.3.10 Import and Rating Features
 - 3.1.3.10.1 Must be able to import BARS (Bridge Analysis and Rating System), BRASS (Bridge Rating and Analysis of Structural Systems) and BAR7 (Bridge Analysis and Rating) data files.
 - 3.1.3.10.2 Must provide flexure and shear ratings.
 - 3.1.3.10.3 Must compute dead loads and distribution factors if they are not manually input and analyze deteriorated sections.
 - 3.1.3.10.4 Must accept data in either cross-section or schedule-base forms.
- 3.1.3.11 Architectural Support for Third-Party Customizations and Add-ons
 - 3.1.3.11.1 Must use an industry standard COM (Component Object Model) interface that makes it possible to access the system's data and functionality from other software systems.
 - 3.1.3.11.2 These Must include but not be limited to:
 - Visual Basic
 - Excel
 - Microsoft Word
 - 3.1.3.12 Must include user support via telephone, email and online via the internet.
- 3.1.4 **AASHTOWARE Project Service Units or equal.** Service Units consist of fixed fee increments or units of contractor-provided service for consultation and support to assist an agency in implementing the AASHTOWARE products. For an "or Equal" product, vendor should bid an equivalent to the service unit as described below:
 - 3.1.4.1 Vendor must specify a unit cost for AASTHO service units in each category or list hourly cost for services if an "or equal" is bid.
 - 3.1.4.2 It must be the option of WVDOT to procure service units on an as needed basis. To utilize the service units, WVDOT will receive an estimate of the

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number of units required and establish work plans, schedule for delivery, conditions of service prior to submitting a commitment.

Service Units may be used, but is not limited to, the following:

- Planning and conducting training events
- Implementation planning
- Technical assessment/technical planning
- Application installation and configuration
- Data mapping of current agency systems data to Trns*port (e.g. financial, pre-construction, materials management)
- Configuring of generic field windows
- Configuring of custom templates (e.g. agency specific material test methods)
- Interface development
- Conversion development
- Updating prior releases of the AASHTOWARE Bridge Design/AASHTOWARE Bridge Rating database;
- Adding an analytical or specification engine to the AASHTOWARE Bridge Design system;
- Adding new agency-specific features to the system;
- Specialized training in the use of AASHTOWARE Bridge Design or AASHTOWARE Bridge Rating during a two-day workshop for up to 15 individuals.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Exhibit A Pricing Pages.

4.1.1 Section 3.1.2 has two options for Purchase.

Option 1: Is for purchase of individual modules.

Option 2: Is for purchase of a Site License that includes all the modules in Option 1. (Note: Option 2 does not include 3.1.3 the Bridge Rating system - or equal)

Vendor is required to bid both individual and Site Licensing options. Both options will become part of the Open-End Contract which will allow WVDOT to use the most cost effective method for

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licensing. Currently the Infrastructure for these systems is a mixture of Client/Server and Web Based architecture so initially we will need to utilize Option 1 for our mixed environment. As additional modules are added and we move others to their web based counterparts the cost of the site license becomes more cost effective.

- 4.2 Pricing Pages:** Vendor should complete the **Exhibit A - Pricing Pages**. Vendor must provide pricing for both Option 1 Project Individual Licenses, and **Option 2** Project Site License, see 3.1.2. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.
- 4.2.1 Option 1:** as noted in the requirements above, WVDOT is transitioning from older to updated modules of the AASHTOWARE system. During the migration, only one license will be utilized (i.e. WVDOT will not be required to license both the web based and client/server licenses during the transition year even though both modules may be used). Pricing is need for both as we are still in the planning phases of this progression.
- 4.2.1.1** If a Reinstatement fee is needed for a lapsed license, it should be included under the appropriate column.
- 4.2.1.1.1** This fee WILL be included in the Cost Evaluation.
- 4.2.1.1.2** This fee shall NOT become part of the Open End Contract.
- 4.2.1.2** If an "or equal" product is bid, vendor shall include the total fixed cost for ALL items needed to meet the requirements in in section 3.1 in the Reinstatement Fee column.
- 4.2.2 Option 2:** Vendor shall include a Site License cost for ALL Products included in the Cost Evaluation for Option 1.
- 4.2.2.1** Site License shall include:
- 3.1.2.1 BAMS/DSS – or equal
- 3.1.2.3 Project Preconstruction – or equal
- 3.1.2.4 CRLMS – or equal
- 3.1.2.6 Project Bids – or equal
- 3.1.2.8 Project Construction – or equal
- 4.2.2.2** A reinstatement fee or migration cost for alternate and "or equal" products is not included in this option as it will be evaluated in Option 1.
- 4.2.3** AASHTOWARE Bridge Rating – or equal. Shall include price for unlimited licenses for this module
- 4.2.4** AASHTOWARE Service Units – or equal. If "or equal" is bid, please fill in price for hourly service fee.

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The Exhibit A Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

5. ORDERING AND PAYMENT:

- 5.1 Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.
- 5.2 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6. DELIVERY AND RETURN:

- 6.1 Delivery Time:** Vendor shall deliver standard orders within 5 working days after orders are received. Vendor shall deliver emergency orders within 5 working day(s) after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.
- 6.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

- 6.3 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.
- 6.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be

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unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

- 6.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7. VENDOR DEFAULT:

7.1 The following shall be considered a vendor default under this Contract.

- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance upon request.

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7.2 The following remedies shall be available to Agency upon default.

7.2.1 Immediate cancellation of the Contract.

7.2.2 Immediate cancellation of one or more release orders issued under this Contract.

7.2.3 Any other remedies available in law or equity.

8. MISCELLANEOUS:

8.1 No Substitutions: Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

8.2 Vendor Supply: Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

8.3 Reports: Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

8.4 Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____

EXHIBIT A - PRICING PAGE

OPTION 1: AASHTOWare Project Software Individual Licenses (section 3.1.2)							
	If bidding or equal product, list brand and product info. below	Reinstatement Fee from 07/01/2015	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Reinstatement fee + Y1+Y2+Y3+Y4)
3.1.2.1	Bid Analysis Management System/Decision Support System	\$71,000	\$73,000	\$75,000	\$77,000	\$80,850	\$376,850
3.1.2.2	Project Preconstruction	\$43,750	\$45,000	\$46,000	\$47,000	\$49,350	\$231,100
3.1.2.3	Project Civil Rights Labor Management System (CRLMS)	This product currently not licensed	\$45,000	\$46,000	\$47,000	\$49,350	\$187,350
3.1.2.4	Expedite ²	\$18,000	\$18,500	\$19,000	\$19,500	\$20,475	\$95,475
3.1.2.5	Project Bids ²	\$18,000	\$18,500	\$19,000	\$19,500	\$20,475	\$95,475
3.1.2.6	SiteManager ³	\$212,500	\$218,000	\$224,000	\$230,000	\$241,500	\$1,126,000
3.1.2.7	Project Construction and Materials ³	\$190,500	\$196,000	\$201,000	\$211,050	\$221,603	\$1,020,153
TOTAL Option 1:							\$3,132,403
¹ Deliverables for Years 2-4 will be done by Change Order upon mutual agreement between the Vendor and Agency ² Project Bids is the upgrade to Expedite (3.1.2.5.1 and 3.1.2.4.1). ³ Project Construction is the upgrade to SiteManager (3.1.2.7.1 and 3.1.2.6.1). Paired products may both be used during the contract year as systems are transferred. WVDOT will only incur the cost for one product per contract year.							

OPTION 2: AASHTOWare Project Site License (section 3.1.2)							
	If bidding or equal product, list brand and product info. below	Reinstatement Fee from 07/01/2015	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Reinstatement fee +Y1+Y2+Y3+Y4)
3.1.2 AASHTOWare Project Site License to include all PROJECT licenses listed.		\$436,500	\$449,000	\$462,000	\$475,000	\$498,750	\$2,321,250
TOTAL Option 2:							\$2,321,250

AASHTOWare Bridge Rating - Bridge Load Rating System							
	If bidding or equal product, list brand and product informaton below		Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹	TOTAL (Y1+Y2+Y3+Y4)
3.1.3 AASHTOWare Bridge Rating - Bridge Load Rating system			\$37,500	\$37,500	\$37,500	\$39,375	\$151,875
TOTAL Bridge Rating System:							\$151,875

AASHTOWare Service Units (specify price per unit)							
	If bidding or equal product, list brand and product informaton below	Year 1	Year 2 ¹	Year 3 ¹	Year 4 ¹		TOTAL (Y1+Y2+Y3+Y4)
3.1.4 3.1.4 AASHTOWare PROJECT Service Units		125@\$13,500 each	same as Year 1	same as Year 1	same as Year 1		\$6,750,000
3.1.4 AASHTOWare Bridge Design/Rating Service Units		75@\$11,600	same as Year 1	same as Year 1	same as Year 1		\$3,480,000
TOTAL Service Units:							\$10,230,000

TOTALS WITH OPTION 1 INDIVIDUAL LICENSING FOR PROJECT	
TOTAL-Option 1:	\$3,132,403
TOTAL-Bridge Rating System:	\$151,875
TOTAL-Service Units:	\$10,230,000
GRAND TOTAL with Option 1:	\$13,514,278

TOTALS WITH OPTION 2 SITE LICENSE FOR PROJECT SOFTWARE	
TOTAL-Option 2:	\$2,321,250
TOTAL-Bridge Rating System:	\$151,875
TOTAL-Service Units:	\$10,230,000
GRAND TOTAL with Option 2:	\$12,703,125

¹Deliverables for Years 2-4 will be done by Change Order upon mutual agreement between the Vendor and Agency

ATTACHMENT 1: HARDWARE ENVIRONMENT

Workstation Client Computers

Hardware

Standard Desktop PC

- Chassis: Mid Tower
- Operating System: Windows 10 Professional
- Processor: Intel Core i5 3.5GHz
- RAM: 4GB DDR3 single DIMM
- Hard Drive: 500GB minimum 7200 RPM SATA
- Keyboard: USB Keyboard
- Mouse: Optical USB 2 button Mouse with scroll
- Optical Drive: Multi DVD/RW
- Ports: USB 3.0 4 back 2 front, one with USB 3.0 charging
- Expansion Slots: PCI Express
- Video: Dual monitor capability with one VGA port and one DVI port
- Ethernet port: 10/100/1000 NIC Integrated
- Trusted Platform Module: TPM Chip

Power Desktop PC

- Chassis: Mid Tower
- Operating System: Windows 10 professional
- Processor: Intel Core i7 3.5GHz
- RAM: 8GB DDR3
- Hard Drive: 256GB SSD Drive
- Keyboard: Standard USB
- Mouse: Optical USB 2 button with scroll
- Optical Drive: Multi DVD/RW
- USB Ports: USB 3.0, 4 back 2 front, with one USB 3.0 charging
- Expansion Slots: PCI Express
- Video: Dual Display capable (1 VGA, 1 DVI) with a minimum of 2GB dedicated video RAM
- Ethernet Port: 10/100/1000 NIC Integrated
- Trusted Platform Module: TPM Chip

GIS/Engineering Desktop PC

- Chassis: Mid Tower
- Operating System: Windows 10 professional
- Processor: Intel Core i7 6700 4.0GHz
- RAM: 16GB DDR3
- Hard Drive: 256GB SSD Drive
- Keyboard: Standard USB
- Mouse: Optical USB 2 button with scroll
- Optical Drive: Multi DVD/RW
- USB Ports: USB 3.0, 4 back 2 front, with one USB 3.0 charging
- Expansion Slots: PCI Express
- Video: Dual Display capable (1 VGA, 1 DVI) with a minimum of 2GB dedicated video RAM
- Ethernet Port: 10/100/1000 NIC Integrated
- Trusted Platform Module: TPM Chip

Note: It is understood and acceptable that workstations performing 3D FEM analysis or analyzing large and complex bridge models may have additional requirements.

Application Servers

Hardware

- Xeon 5640 4 x 2.67-GHz processors
- 6 to 32-GB RAM
- 720-GB available hard disk space
- CD-ROM optical drive
- 1024x768 pixel resolution monitor
- 101-key standard keyboard
- Mouse or other pointing device

Web Servers

Hardware

- Xeon 5640 4 x 2.67-GHz processors
- 32-GB RAM
- 720-GB available hard disk space
- CD-ROM optical drive
- 1024x768 pixel resolution monitor
- 101-key standard keyboard
- Mouse or another pointing device

Database Servers

Hardware

- Xeon 5640 4 x 2.67-GHz processors
- 6-32GB RAM
- 810-GB available hard disk space
- CD-ROM optical drive
- 1024x768 pixel resolution monitor
- 101-key standard keyboard
- Mouse or other pointing device
- Network adapter

ATTACHEMENT 2: SOFTWARE ENVIRONMENT

Workstation Client Computers

Software

- Microsoft® Windows 7 Professional 32-bit On Citrix XenApp, Microsoft® Windows 7 Professional 64-bit operating system, Windows 10
- Microsoft® .NET Framework 4.0 or higher

- Base SAS® 9.4 32-bit software
- SAS/CONNECT® 9.4 32-bit software
- SAS/ASSIST® 32-bit software (optional)
- SAS/FSP® 32-bit software (optional)
- SAS/GRAPH® 9.4 32-bit software
- SAS/STAT® 9.4 32-bit software

Application Servers

Software

- Microsoft® Windows Server™ 2008 R2 64-bit Standard Edition operating system
- or -
Microsoft® Windows Server™ 2012 R2 64-bit Standard Edition operating system

- Microsoft® .NET Framework 4.0
- SAS® 9.6 32-bit software
- SAS/ACC-ODBC 9.6 32-bit software
- SAS/CONNECT® 9.6 32-bit software
- SAS/GRAPH® 9.6 32-bit software
- SAS/STAT® 9.6 32-bit software
- IBM DB2 ODBC Driver 10.05.400.191
- DB2 Run Time Client
- MySQL Connector/ODBC 5.1.11
- Oracle Administrative Client 11.2.0.1 32-bit (this includes ODBC 11.2.0.1 driver and required support files for use with 32-bit and 64-bit operating systems)
- Oracle Administrative Client 12.1.0.1 (this includes ODBC 12.1.0.1, required support files, SQL Plus, Net Services)
- Sybase PowerBuilder 12.5 (Build 2511) per PowerBuilder programmer's client computer

Web Servers

Software

- Microsoft® Windows® Server™ 2008 R2 64-bit Standard Edition operating system
- Microsoft® Windows Server™ 2012 R2 64-bit Standard Edition operating system
- Apache Web Server 2.4 (with or without SSL; only on Windows Server 2008 and Windows 7)

Database Servers

Software

- Microsoft® Windows Server™ 2012 R2 64-bit Standard Edition operating system
- IBM DB2 ODBC Driver 10.05.400.191
- IBM DB2 10.5 DBMS software
- Microsoft® Windows Server™ 2008 R2 64-bit Standard Edition (SP2) operating system
- Oracle11g Server RDBMS 11.2.0.4
- Oracle12.1c RDBMS
- SAP SQL Anywhere 11.0.0.1264 (32-bit) DBMS

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL OTHER CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: American Association of State Highway and Transportation Officials (AASHTO)

Authorized Signature: [Signature] Date: 10/26/17

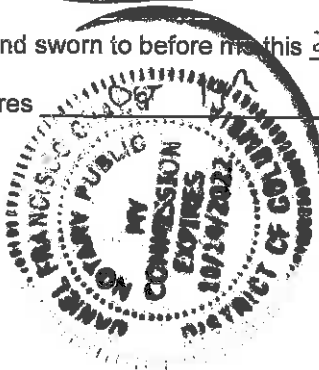
State of DISTRICT OF COLUMBIA

County of _____ to-wit: _____

Taken, subscribed, and sworn to before me this 26 day of October, 2017.

My Commission expires _____, 2022.

AFFIX SEAL HERE



NOTARY PUBLIC [Signature]

State of West Virginia

VENDOR PREFERENCE CERTIFICATE

Certification and application is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Vendor Preference, if applicable.

1. **Application is made for 2.5% vendor preference for the reason checked:**
 Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,
 Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification;
 Bidder is a resident vendor partnership, association, or corporation with at least eighty percent of ownership interest of bidder held by another entity that meets the applicable four year residency requirement; **or**,
 Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or**,
2. **Application is made for 2.5% vendor preference for the reason checked:**
 Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,
3. **Application is made for 2.5% vendor preference for the reason checked:**
 Bidder is a nonresident vendor that employs a minimum of one hundred state residents, or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and employs a minimum of one hundred state residents, and for purposes of producing or distributing the commodities or completing the project which is the subject of the bidder's bid and continuously over the entire term of the project, on average at least seventy-five percent of the bidder's employees or the bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid; **or**,
4. **Application is made for 5% vendor preference for the reason checked:**
 Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or**,
5. **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**
 Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or**,
6. **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**
 Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.
7. **Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with *West Virginia Code* §5A-3-59 and *West Virginia Code of State Rules*.**
 Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) rescind the contract or purchase order; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: American Association of State Highway and Transportation Officials (AASHTO)

Signed: 

Date: 10/26/17

Title: Jim Tymon, Chief Operating Officer/Director of Policy and Management

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

West Virginia Ethics Commission



Disclosure of Interested Parties to Contracts

Pursuant to *W. Va. Code* § 6D-1-2, a state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of \$100,000 or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

"Interested party" or *"Interested parties"* means:

- (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
- (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
- (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

"State agency" means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of *W. Va. Code* § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the contracting state agency prior to contract award and to complete another form within 30 days of contract completion or termination.

This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: ethics@wv.gov; website: www.ethics.wv.gov.

West Virginia Ethics Commission
Disclosure of Interested Parties to Contracts

(Required by W. Va. Code § 6D-1-2)

Contracting Business Entity: American Association of State Highway and Transportation Officials (AASHTO) Address: 444 N Capitol Street, NW
Suite 249

Authorized Agent: Angelique Williams Address: Washington, DC 20001

Contract Number: _____ Contract Description: Software

Governmental agency awarding contract: West Virginia Department of Transportation

Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (attach additional pages if necessary):

1. Subcontractors or other entities performing work or service under the Contract

Check here if none, otherwise list entity/individual names below.

Info Tech, Inc.
Michael Baker International

2. Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)

Check here if none, otherwise list entity/individual names below.

3. Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)

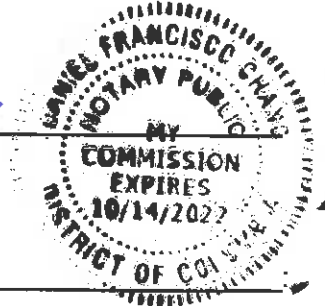
Check here if none, otherwise list entity/individual names below.

Signature: Angelique Williams

Date Signed: 10/26/17

Notary Verification

State of District of Columbia SS, County of _____



I, Angelique Williams, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this 26 day of October, 2017

[Signature]
Notary Public's Signature

To be completed by State Agency:
Date Received by State Agency: _____
Date submitted to Ethics Commission: _____
Governmental agency submitting Disclosure: _____

AGREEMENT ADDENDUM FOR SOFTWARE

In the event of conflict between this Addendum and the Agreement, this Addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Fees for software licenses, subscriptions, *service units* or maintenance are payable annually in advance. Payment for *other services* will be in arrears.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted. *This paragraph has no applicability to paragraphs 23 (warranty) and 15 (defects) of the AASHTO License Software Supplemental Agreement.*
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - *Intentionally omitted.*
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, ~~any provision in the agreement limiting the Vendor's liability for direct damages is hereby deleted.~~ Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property caused by *AASHTO's negligence when performing on-site services at the Agency's facilities.*
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. In such event, Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.

15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA

Spending Unit: _____

Signed: _____

Title: _____

Date: _____

VENDOR

Company Name: _____

Signed: _____

Title: _____

Date: _____

AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS

MASTER MEMBER DEPARTMENT SOFTWARE AGREEMENT

MMD Agreement Number 10051

This Master Agreement is made this 8th day of AUGUST,
198 6, by and between the American Association of State Highway and
Transportation Officials, Inc., a corporation of the District of Columbia,
with offices at 444 N. Capitol Street, N.W., Suite 225, Washington, D. C.
20001, (hereinafter AASHTO), and the Member Department named below
(hereinafter the AGENCY), for the license and use of software products
described herein.

MEMBER DEPARTMENT Name West Virginia Department of Highways

Address 1900 Washington Street, East

City/State/Zip Code Charleston, West Virginia 25305

1. Supplemental Agreements: The AGENCY and AASHTO shall have the right to enter into Supplemental Agreements pursuant to this Master Agreement, which shall contain the specific terms and conditions relating to the licensing and use of any of the Software Products covered by this Master Agreement, which Supplemental Agreements shall be considered to be incorporated into this Master Agreement and subject to all the terms and conditions thereof. This Master Agreement in and of itself does not license any specific Software Product, execution of a Supplemental Agreement under this Master Agreement being required to initiate such a license.

2. Software Products: The Software Products covered by this Master Agreement are all owned by AASHTO, and a list and brief description of those Software Products available from AASHTO and/or under development by AASHTO at the time this Master Agreement was executed is attached hereto as Exhibit A. This list of Exhibit A may be added to from time to time by AASHTO, and AASHTO reserves the right to withdraw Software Products from the list, but in so doing shall honor the terms of any Supplemental Agreements then outstanding covering such withdrawn Software Products. Supplemental Agreements executed pursuant to this Master Agreement shall specifically identify the AASHTO Software Product(s) being licensed, and any such Software Product(s) identified in such Supplemental Agreements shall be deemed to be included within this definition of Software Products and this Master Agreement.

3. Grant of License: AASHTO hereby grants, and the AGENCY accepts, on the following terms and conditions, a limited, nontransferable and nonexclusive license to use AASHTO's Software Product(s) as identified and described in any Supplemental Agreements executed pursuant to this Master Agreement, which Supplemental Agreements are incorporated by reference herein. The AGENCY's rights under this Master Agreement are those of a licensed user only, and the Software Product(s) shall at all times remain the property of AASHTO.

4. Term: This Master Agreement is effective from the date hereof and shall remain in force until terminated. The AGENCY may terminate this Master Agreement at any time by notifying AASHTO in writing of its intent, which notification shall specify a termination date. All Supplemental Agreements to this Master Agreement would also be considered terminated on the termination date specified in such notification. The AGENCY may terminate any Supplemental Agreement by similarly notifying AASHTO of its intent. Termination of Supplemental Agreements do not terminate this Master Agreement. Termination of Supplemental Agreements either through termination of this Master Agreement or through termination of a specific Supplemental Agreement will require destroying the original and all copies, in whole or in part, in any form, including partial copies and modifications of the Software Product(s) received from AASHTO or made in connection with this Master Agreement. AASHTO may require the AGENCY to terminate this Master Agreement in the manner described above if the AGENCY fails to comply with any of the terms and conditions of this Master Agreement.

5. Use: This Master Agreement and the Software Products may not be assigned, sublicensed, or otherwise transferred by the AGENCY without prior written consent from AASHTO.

6. Permission to Copy and Modify: Any Software Product materials provided by AASHTO under this Master Agreement in machine readable form may be copied, in whole or in part, in printed or machine readable form, for use by the AGENCY, for archives or emergency restart purposes, to replace a worm copy, to understand the contents of such machine readable materials, or to modify the material as provided. The original and any partial or complete copies of materials named hereunder shall be the property of AASHTO.

7. Protection and Security: The AGENCY agrees not to provide or otherwise make available the Software Product(s) provided under this Master Agreement in any form to any person other than the AGENCY's designated personnel. The AGENCY agrees to notify AASHTO immediately of the unauthorized possession, use, or knowledge of the Software Product(s) supplied under this Master Agreement, by any person or organization not authorized by this Master Agreement to have such possession, use, or knowledge. The AGENCY will promptly furnish full details of such possession, use, or knowledge to AASHTO, will assist in preventing the recurrence of such possession, use or knowledge, and will cooperate with AASHTO in any litigation against third parties deemed necessary by AASHTO

to protect its proprietary rights. The AGENCY's compliance with this paragraph shall not be construed in any way as a waiver of AASHTO's rights to recover damages or obtain other relief against the AGENCY for its negligent or intentional harm to AASHTO's proprietary rights, or for breach of contractual rights.

8. Responsibilities of the AGENCY: The AGENCY shall be exclusively responsible for the supervision, management, and control of its use of the Software Product(s) provided under this Master Agreement, including but not limited to: (1) assuring proper machine configuration, (2) establishing adequate backup plans for the software, and (3) implementing sufficient procedures to satisfy its requirements for security and accuracy of input, security of the output, proper execution of software, and accurate reproduction of output as well as restart, and recovery in the event of a malfunction.

Any AGENCY modifications to the Software Product(s) are the responsibility of the AGENCY to maintain.

9. Warranty: AASHTO makes no warranty regarding the performance or results that may be obtained by using the Software Product(s) provided under this Master Agreement, or that it is appropriate for the AGENCY's purposes, or that it is error free.

The sole obligation of AASHTO shall be: (1) to make available to the AGENCY all published modifications or updates made by AASHTO to the Software Product(s) provided to it for a period of 90 days after the effective date of this Master Agreement, or any Supplemental Agreement executed pursuant to this Master Agreement, and (2) to make available to the AGENCY all such modifications or updates after the initial 90 days, only in the event the AGENCY has a current Software Support Agreement with AASHTO.

10. Limitation of Liability: The foregoing warranty is in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

11. Patent, Copyright and Trade Secret Indemnification: AASHTO will defend at its expense any action brought against the AGENCY to the extent that it is based on a claim that the Software Product(s) provided under this Master Agreement and used within the scope of the license hereunder infringes a United States copyright or United States letters patent, or a trade secret. AASHTO shall have no liability for any claim of copyright, patent or trade secret infringement made on: (1) use of other than the latest unmodified release of the materials from AASHTO if such infringement would have been avoided by use of the latest materials, or (2) use or combination of the licensed materials with non-AASHTO programs or data if such infringement would have been avoided by use or combination

of the licensed materials with other programs or data. The foregoing states the entire liability of AASHTO with respect to infringement of any copyright, patent or trade secret by the Software Product(s) or any part thereof, and AASHTO shall have no liability with respect to any other proprietary rights.

12. Right of Source Program: The AGENCY shall have the right to receive a single copy of the current version of the source programs for all Software Products supplied under this Master Agreement for its own and sole use only, and a single copy of the documentation associated therewith, upon request made to AASHTO. Each source program supplied to the AGENCY under this paragraph shall be subject to each and every restriction on use set forth in this Master Agreement, and the AGENCY acknowledges that the source programs and their associated documentation are extraordinarily valuable proprietary property of AASHTO and will guard against unauthorized use or disclosure with great care.

13. Charges: The license fees shall be set forth in Supplemental Agreements, and are incorporated by reference herein.

14. General: The term "Master Agreement" as used herein includes any future written amendments, modifications, supplements, or attachments made in accordance herewith. The AGENCY agrees that its acceptance of the Software Product(s) from AASHTO under this Master Agreement is conclusive evidence that the license for such software is governed by the terms of this Master Agreement.

If any provision of this Master Agreement is determined to be unenforceable or invalid under any applicable statute or rule of law, the remaining provisions of this Master Agreement shall not be affected and shall remain in full force and effect.


The AGENCY's remedies in this Master Agreement are exclusive.

AASHTO and the AGENCY acknowledge that they have read this Master Agreement, understand it, and agree to be bound by its terms, and further agree that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Master Agreement.

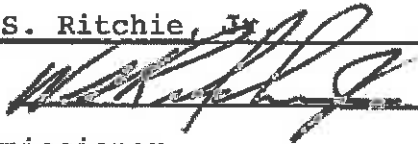
This Master Agreement shall be governed by the laws of the District of Columbia.

In the event of any conflict between the terms and conditions of this Master Agreement and the terms and conditions of any subsequent purchase order, the terms and conditions of the Master Agreement shall control.

For AASHTO:

Name Francis B. Francois
Signature 
Title Executive Director
Date Sept 2, 1986

For the AGENCY:

Name W. S. Ritchie, Jr
Signature 
Title Commissioner
Date 8/11/86

APPROVED AS TO FORM THIS
5th DAY OF August, 1986
H. H. Stead
ATTORNEY LEGAL DIVISION,
WEST VIRGINIA DEPARTMENT
OF HIGHWAYS

**AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS**

**LICENSE SOFTWARE
SUPPLEMENTAL AGREEMENT**

LSA Agreement Number _____

This License Software Supplemental Agreement (hereinafter, "Supplemental Agreement") is made this _____, day of _____, 201_, by and between the American Association of State Highway and Transportation Officials, Inc., a corporation of the District of Columbia, with offices at 444 N. Capitol Street, N.W., Suite 249, Washington, D. C. 20001, (hereinafter AASHTO), and the organization named below (hereinafter the LICENSEE), for the purpose of licensing and providing specific Software Products and providing development support, maintenance and enhancements to the licensed Software Products, as described herein. This Supplemental Agreement is made pursuant to and is supplemental to the Master Member Department Software Agreement, MMD Agreement Number _____, or if the organization is not an AASHTO Member Department, the Master License Software Agreement, MLA Agreement Number _____ (in either case hereinafter, "Master Agreement"), also entered into by AASHTO and the LICENSEE, which is incorporated by reference.

Organization/LICENSEE Name: _____
 Address: _____
 City/State/Zip Code: _____

Table 1: Software Products and License Periods covered under this Supplemental Agreement:

Software Product	License Period

Definitions:

"Software Product" and "Software Products" shall mean the product(s) listed in Table 1 as described in the current AASHTOWare® Catalog (hereinafter, the "Catalog"), including Pre-Production Software Products designated by AASHTO, related materials and documentation,

"Work Plan" shall mean the planned maintenance, support and enhancement activities for specified Software Products published by AASHTO.

"License Period" shall mean the effective dates of the license(s) for the Software Product(s) stated in Table 1.

"Super Site License" shall mean a site license, available to AASHTO member agencies only, for unlimited use of a Software Product within the LICENSEE/member agency and for use by contractors of the LICENSEE (hereinafter, "Contractors") on work performed for the LICENSEE.

"Extended Super Site License" shall mean a Super Site License that includes use by county or city governmental jurisdictions of the LICENSEE (hereinafter, "Local Governments").

"Contractor" shall include any county, city, local unit of government, university, private sector employer, organization or entity, including consultants, authorized to perform work for the LICENSEE under the terms of this Agreement.

"Pre-Production Software Products" shall mean Software Products under development that are designated as Pre-Production by AASHTO, at its discretion.

"Production Software" shall mean Software Products that have been approved by AASHTO for general release and distribution. All Software Products listed in the Catalog and Table 1 shall be Production Software unless designated as Pre-Production Software Products by AASHTO.

TERMS

1. Master Agreement. This Supplemental Agreement is available only to an organization, agency or entity that is also signatory to a Master Agreement with AASHTO. In the event of any conflict between the terms and conditions of this Supplemental Agreement and the terms and conditions of the Master Agreement, the terms and conditions of this Supplemental Agreement shall control with respect to the Software Products licensed hereunder. Termination of the Master Agreement automatically terminates this Supplemental Agreement.
2. Grant of License. AASHTO hereby grants, and the LICENSEE accepts, a limited, nontransferable and nonexclusive license to use the Software Products under the terms and conditions described herein and under the Master Agreement.
3. Support. AASHTO shall provide support, maintenance, and enhancements for Production Software based on the Work Plan for the applicable Software Product(s). A copy of the applicable Work Plan shall be made available to the LICENSEE upon request. In addition, AASHTO shall make available to the LICENSEE all published modifications or updates to the Production Software made by AASHTO, or caused to be made by AASHTO, during the term of this Supplemental Agreement. AASHTO shall have no obligation to support or maintain Pre-Production Software Products and will provide only limited telephone support for such products.
4. License Fees. The LICENSEE shall submit to AASHTO a completed AASHTOWare® Products and Services Request Form ("Request Form") specifying the Software Products and licensing options requested by the LICENSEE. The LICENSEE shall pay a license fee for each Software Product licensed hereunder based on the fee schedules in the Catalog for the applicable Software Products and licensing options. If the term of the license is greater or less than one (1) year, the LICENSEE shall pay a pro-rated license fee based on the term set forth in paragraph 8. License fees are not refundable or otherwise pro-ratable. AASHTO shall invoice the LICENSEE for the applicable fees, and the LICENSEE shall make payment of such fees within 60 calendar days of receipt of the invoice.
5. Licensing Options. AASHTO offers a variety of licensing options which may vary depending upon the Software Product under license. Options may include site licenses permitting use of Software Products on single or multiple workstations and use by cities/counties and contractors/consultants performing work for member agencies. Software Product licensing options, including terms of use, are set forth in the Catalog and incorporated by reference and made a part of this Agreement.

6. Internal Use and Non-Disclosure. The LICENSE granted hereunder is for LICENSEE's internal use only. Licensed Software Product(s) may be used by LICENSEE's employees and authorized Contractors performing work for LICENSEE under this Agreement, to the extent specified under the applicable Software Product licensing option described in the Catalog and selected by LICENSEE. LICENSEE acknowledges and agrees that the Software Products licensed hereunder constitute proprietary and confidential materials of AASHTO. The license granted hereunder is for the LICENSEE's internal use of the Software Products, and the LICENSEE shall not provide or otherwise make available the Software Products in any form to any person other than the LICENSEE's designated employees and authorized Contractors under this Agreement. The LICENSEE shall take all reasonable steps to ensure that the content of the Software Products is not disclosed to any unauthorized person or third party.
7. Primary Contacts. LICENSEE shall submit to AASHTO a completed Primary Designee Form designating the employee or representative of LICENSEE who shall serve as the primary contact for matters relating to the support of each Software Product, and the employee or representative of LICENSEE who shall serve as the primary contact for matters relating to invoices and related financial communications. All communications regarding these matters should be directed through the designated contact person.
8. Term. The term of this Supplemental Agreement for each Software Product shall be the applicable License Period.
9. Termination. The rights granted to the LICENSEE under this license shall immediately terminate for each Software Product at the end of the applicable License Period. Unless the LICENSEE executes another Supplemental Agreement to license the Software Product(s) for an additional term, the LICENSEE shall immediately remove and destroy all copies of the Software Product(s) on LICENSEE's computer(s), return all CD ROMs, diskettes and all other forms of the Software Product(s) to AASHTO, and certify to AASHTO that all of the Software Products(s) have been destroyed or returned. All returns must be to the location from which they were originally shipped unless otherwise instructed by AASHTO. The obligation to remove/destroy or return the Software Products shall include the obligation to ensure that LICENSEE's authorized Contractors and Local Governments using the Software Product(s) also comply with the requirements of this paragraph.
10. Permission to Copy and Modify. Any Software Product materials provided by AASHTO under this Agreement in machine readable form may be copied, in whole or in part, in printed or machine readable form, for use by LICENSEE, for archives or emergency restart purposes, to replace a worn copy, to understand the contents of such machine readable materials, or to modify the material as provided. The original and any partial or complete copies of materials named hereunder shall be the property of AASHTO.
11. Responsibilities of the LICENSEE. The LICENSEE shall be exclusively responsible for the supervision, management, and control of its use of the Software Product(s) provided under this Agreement, including but not limited to: (1) assuring proper machine configuration, (2) establishing adequate backup plans for the software, and (3) implementing sufficient procedures to satisfy its requirements for security and accuracy of input, security of the output, proper execution of software, and accurate reproduction of output as well as restart, and recovery in the event of a malfunction. Any LICENSEE modifications to the Software Product(s) are the responsibility of the LICENSEE to maintain.
12. Pre-Production Software Products. AASHTO may, at its sole discretion, designate Software Products as Pre-Production Software Products, and such designation shall appear in Table 1. LICENSEE understands and acknowledges that Pre-Production Software Products have the following characteristics: (i) they have not been fully tested, (ii) they contain incomplete design

and functionality that is subject to change on a frequent basis and without prior notice, and (iii) there is a greater likelihood of errors, defects, bugs and operational instability in Pre-Production Software Products compared with Production Software. AASHTO makes no representation, warranty or guarantee that any particular functionality will be included in any version released as Production Software.

13. Non-Commercial Use. Pre-Production Software Products may not be used in commercial or business applications by LICENSEE.
14. Release of Production Software. AASHTO shall notify LICENSEE when Pre-Production Software Products licensed under this Agreement have been released as Production Software, and shall provide LICENSEE access to the Production Software via the web, CD ROM or diskette, as applicable. In such a case, LICENSEE shall be entitled to use the Production Software for the remainder of the License Period with payment of the applicable license fee. There is no guarantee that a Pre-Production Software Product will be released as Production Software during the term of this Agreement.
15. Removal of Pre-Production Software Products. Upon notification that the Production Software version of a Pre-Production Software Product has been released and is available under paragraph 12, LICENSEE shall promptly remove and destroy all copies of the Pre-Production Software Product(s) on LICENSEE's computer(s) and certify to AASHTO that all of the Pre-Production Software Product(s) have been removed and destroyed.
16. Defects. In the event there are defects in a Software Product, excluding Pre-Production Software Products, the LICENSEE shall provide written notice to AASHTO or its designated contractor with a detailed description of the defects. Defects will be addressed by the contractor based on the priorities and procedures in the applicable Work Plan. Defects in Pre-Production Software Products reported to AASHTO may be tracked as part of the development process, but AASHTO shall have no obligation to correct any defects, bugs or errors in Pre-Production Software Products.
17. Reverse Engineering and Derivative Works. The LICENSEE shall not reverse engineer, decompile, or disassemble the Software Products. The LICENSEE shall not make any derivative works based on the Software Products except under the terms of a duly executed AASHTO Source Code Agreement.
18. Contractors. Subject to paragraphs 5 and 6, LICENSEE may employ Contractors to perform work for LICENSEE under this Agreement to the extent permitted under the licensing option selected by LICENSEE. Authorized Contractors may access or use the Software Product(s) only while performing work for LICENSEE. Prior to permitting any such Contractors access to or use of the Software Product(s), LICENSEE shall require such Contractor to execute a Software License-Contractor Agreement in the form specified in Appendix A. LICENSEE shall provide a copy of the executed Contractor Agreement to AASHTO. Copies of the applicable Master and Supplemental Agreements shall be made available to the Contractor, upon request. In the event that the Contractor violates any of the terms of the license, this Supplemental Agreement or the Master Agreement, LICENSEE shall take all steps necessary to remedy the violation including, but not limited to, terminating the Contractor's access to and use of the Software Product(s) and taking appropriate action to recover the Software Product(s) including all copies.
19. Super Site License. Super Site licenses are not available for Pre-Production Software Products.
20. Extended Super Site License. Extended Super Site licenses are not available for Pre-Production Software Products.

21. Estimator, Field Manager and Field Net Software. The terms and conditions of this paragraph are applicable to LICENSEES of AASHTOWare Project Estimator, Project Fieldmanager and Project FieldNet software. Project Estimator and Project FieldNet are proprietary software products of Info Tech, Inc. The Project FieldManager suite (including Project FieldManager, Project FieldBook and Project FieldBuilder) is a proprietary software product jointly owned by Info Tech, Inc. and the State of Michigan. AASHTO and its sublicensees have been granted a license to use these software products under an agreement with Info Tech, Inc. ("Info Tech Agreement"). LICENSEE agrees to abide by the terms and conditions of the Info Tech Agreement and the terms of use for the applicable software product as set forth in the AASHTO Catalog, which are incorporated by reference and made a part of this Agreement. LICENSEE further acknowledges that the Info Tech Agreement is a confidential agreement between AASHTO and Info Tech, and LICENSEE agrees not to disclose the contents of said agreement, or any portions thereof, to any other person without prior written authorization from AASHTO and Info Tech. A copy of the Info Tech Agreement will be provided to any requesting AASHTO member or associate member.
22. Catalog. AASHTO may modify or change the Catalog from time to time at its sole discretion.
23. Transfer. This Supplemental Agreement and the Software Products may not be assigned, sublicensed, rented, leased, loaned or otherwise transferred by the LICENSEE without prior written consent from AASHTO. Any attempt to transfer any of the rights, duties, or obligations hereunder is null and void.
24. Patent, Copyright, and Trademark. AASHTO retains all rights, title, and interest, including patents, copyrights, and trademarks in and to the Software Products (including, but not limited to, any images, photographs, animations, video, audio, music, and text incorporated into the Software Products) and any copies of the Software Products. AASHTO trademarks may be used only in the manner and form authorized by AASHTO. All rights not expressly granted under this Supplemental Agreement are reserved to AASHTO.
25. WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SUPPLEMENTAL AGREEMENT AND THE MASTER AGREEMENT, THE SOFTWARE PRODUCTS HEREUNDER ARE LICENSED "AS IS" AND NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE SOFTWARE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND AASHTO EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED HEREIN. THE LICENSEE ASSUMES THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE PRODUCTS.

AASHTO DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE PRODUCTS WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATIONS OF THE SOFTWARE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. THE LICENSEE ALSO ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE PRODUCTS TO ACHIEVE THE LICENSEE'S INTENDED RESULTS, AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE PRODUCTS.

26. LIMITATION OF LIABILITY. AASHTO SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES FOR PERSONAL INJURY, PROPERTY LOSS, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF, RELATING TO, OR BASED ON THE USE OF THE SOFTWARE PRODUCTS, EVEN IF AASHTO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, AASHTO'S ENTIRE LIABILITY SHALL BE LIMITED TO

THE AMOUNT ACTUALLY PAID BY THE LICENSEE FOR THE APPLICABLE SOFTWARE PRODUCT(S).

27. Hold Harmless. Unless otherwise prohibited under applicable law, the LICENSEE shall hold harmless, indemnify, and defend AASHTO, and its officers, directors, employees and members, from and against any and all claims, losses, liabilities, judgments, interest and settlements, including reasonable attorneys' fees and expenses, arising out of, or relating to the installation and use of the Software Products.
28. Purchase Orders. In the event of any conflict between the terms and conditions of this Supplemental Agreement and terms and conditions of any subsequent purchase order, the terms and conditions of this Supplemental Agreement and the Master Agreement referenced herein shall control.
29. Headings. The captions and headings are included for ease of reference only and will be disregarded in interpreting or construing this Supplemental Agreement.
30. Force Majeure. If the performance of any part of this Supplemental Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, fire, riot, judicial or governmental action, labor dispute, act of God or other causes beyond the control of either party, the party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.
31. Enforceability. If any provision of this Supplemental Agreement is determined to be unenforceable or invalid under any applicable statute or rule of law, the remaining provisions of the Supplemental Agreement shall not be affected and shall remain in force and effect.
32. Exclusive Remedies. The remedies set forth herein shall be the LICENSEE's exclusive remedies under this Supplemental Agreement.
33. Waiver. A waiver of any term, provision or condition of this Supplemental Agreement shall not be deemed a continuing waiver of any such term, provision or condition. No waiver shall be valid or binding unless agreed to in writing and signed by authorized representatives of AASHTO and the LICENSEE.
34. Drafting. Each party agrees and acknowledges that no presumption or inference shall be made or drawn against the drafter or drafter(s) of this Supplemental Agreement.
35. Successors and Assigns. This Supplemental Agreement shall be binding upon and shall inure to the benefit of the parties and each of their respective successors assigns.
36. Authorized Persons. The persons executing this Supplemental Agreement do hereby declare, represent, acknowledge, warrant and agree that they are duly and fully authorized to execute this Agreement so as to legally bind LICENSEE and AASHTO.
37. Embedded Third Party Software. Software programs or modules under license from third parties may be embedded in the Software Products. LICENSEE shall comply with the terms and conditions of use of such third party licenses, if any.
38. Taxes. LICENSEE shall be responsible for payment of any applicable state and local sales, use, general excise or similar tax arising out of or relating to the licensing and use of the Software Products under this Agreement.
39. Amendments. This Supplemental Agreement and the Master Agreement referenced herein constitute the entire agreement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this

Supplemental Agreement. This Supplemental Agreement may not be amended or modified except in writing signed by both parties.

40. Governing Law. This Supplemental Agreement shall be governed by the laws of the District of Columbia.

For AASHTO:

Name: Frederick G. Wright

Signature: _____

Title: Executive Director

Date: _____

For the LICENSEE:

Name: _____

Signature: _____

Title: _____

Date: _____