

**PROFESSIONAL SERVICES CONTRACT**

**between**

**WAYNE COUNTY**

**And**

**CADILLAC ASPHALT L.L.C.**

**for**

**HOT MIX ASPHALT DELIVERY**

**Control No. 37-19-012**

## Table of Contents

1. PURPOSE.....	2
2. ENGAGEMENT OF CONTRACTOR.....	2
3. SCOPE OF SERVICE.....	2
4. TERM OF CONTRACT.....	2
5. DATA TO BE FURNISHED TO CONTRACTOR.....	2
6. PERSONNEL.....	3
7. ADMINISTRATION.....	3
8. COMPENSATION.....	3
9. METHOD OF PAYMENT.....	3
10. RECORDS - ACCESS.....	4
11. RELATIONSHIP OF PARTIES.....	4
12. INSURANCE.....	4
13. INDEMNIFICATION.....	6
14. BANKRUPTCY OR INSOLVENCY.....	7
15. NOTICE OF MATERIAL CHANGES.....	7
16. TERMINATION.....	7
17. ETHICS IN CONTRACTING.....	9
18. NON-DISCRIMINATION PRACTICES.....	9
19. NOTICES.....	11
20. JURISDICTION AND LAW.....	12
21. CONFIDENTIAL INFORMATION.....	12
22. COMPLIANCE WITH LAWS.....	12
23. CHANGES IN SCOPE/SERVICE.....	12
24. DEBARMENT AND SUSPENSION.....	13
25. PROMPT PAYMENT.....	14
26. SUBCONTRACTING AND ASSIGNMENT.....	14
27. LIQUIDATED DAMAGES.....	14
28. MISCELLANEOUS.....	14
29. AUTHORIZATION AND CAPABILITY.....	15
30. SIGNATURE.....	16
APPENDIX A: SCOPE OF SERVICES.....	17
APPENDIX B: COMPENSATION.....	36
APPENDIX C: LIST OF SUBCONTRACTORS.....	38

**THIS CONTRACT** is between the County of Wayne, Michigan, a body corporate and Charter county, acting through its Department of Public Services, (the "County") and Cadillac Asphalt L.L.C., a Michigan limited liability company (the "Contractor").

**1. PURPOSE**

**1.01** The County requires a contractor to provide and deliver hot mixed asphalt (HMA) material for the Wayne County Roads Division.

**1.02** The Contractor desires to provide these services for the County in accordance with the terms and conditions described herein.

**2. ENGAGEMENT OF CONTRACTOR**

**2.01** The County engages the Contractor and the Contractor agrees to faithfully and diligently perform the services according to the terms and conditions contained in this Contract and consistent with the applicable industry and professional standards.

**3. SCOPE OF SERVICE**

**3.01** The Contractor must perform the services described in **Appendix A** in a satisfactory manner, as determined within the discretion of the County. The Contractor warrants that the Contractor is authorized to do business under the laws of the State of Michigan and is qualified to perform the Services in this Contract.

**3.02** If there is any dispute between the parties regarding the extent and character of the services to be performed, the interpretation and determination of the County governs.

**3.03** The services include all conferences and consultation deemed necessary by the County to properly and fully perform the services.

**3.04** All services are subject to review and approval of the County for completeness and fulfillment of the requirements of this Contract. Neither the County's review, approval, or payment for any of the services shall be construed to operate as a waiver of any rights under the Contract, and the Contractor shall be and remain liable in accordance with the applicable law for all damages to the County caused by the Contractor's negligent performance or nonperformance of any of the Services furnished under this Contract.

**3.05** The Contractor shall comply with section 120-50 of the Wayne County Procurement Ordinance. As required by section 120-50, the Contractor shall not commence performance under this Contract or accept payment for services provided under this Contract until:

A. If this is a contract that requires approval of the Wayne County Commission, this Contract is approved by the Wayne County Board of Commissioners and executed by the Chief Executive Officer; or

B. If this is a contract that does not require approval of the Wayne County Commission, this Contract is executed by the Chief Executive Officer or a purchase order is issued.

The Contractor shall not rely on representations of any person who purports to authorize performance or payment contrary to section 120-50. If the Contractor provides performance or accepts payment prior to approval and execution as required by section 120-50, it does so at its own risk, and, to the extent provided by law, the Contractor shall indemnify, defend, and hold harmless the County against any and all expenses and liability of any kind the County may sustain, incur or be required to pay arising out of the Contractor's provision of Services or acceptance of payment in violation of section 120-50. In the event the Contractor provides Services in violation of section 120-50, the County may retain the funds that would have been owed to the Contractor as compensation for those Services but for the provision of those Services in violation of section 120-50. In the event the Contractor violates section 120-50, it shall be responsible for a municipal civil infraction punishable by a fine of up to \$500.00 and shall be liable for any and all expenses and liability of any kind, which the County may sustain, incur or be required to pay arising out of the Contractor's violation of section 120-50, and may be debarred from further County contracts.

**4. TERM OF CONTRACT**

**4.01** This Contract begins upon approval by the Wayne County Commission and ends one (1) year after, with an option for a one (1) year extension, which may be exercised at the discretion of the County upon Commission approval. The Contractor must expediently perform the services to achieve the objectives of this Contract. Any work done prior to the beginning of this Contract shall be at the Contractor's own risk.

**5. DATA TO BE FURNISHED TO CONTRACTOR**

**5.01** Upon the request of the Contractor, without charge, the County must furnish copies of all

information, data, reports, records, etc., that the County thinks is necessary to do the services. The Contractor is entitled to visit County offices and key facilities as approved by the County, during regular business hours to obtain the necessary data. The Contractor will schedule conferences at convenient times with key administrative personnel of the County to gather the information.

**6. PERSONNEL**

**6.01** To induce the County to enter into the Contract, the Contractor represents and warrants that the Contractor is authorized to do business under the laws of the State of Michigan and is duly qualified to perform the services as set forth in the Contract. The execution of this Contract is within the Contractor's authorized powers, and is not in contravention of federal, state, or local law.

**6.02** The Contractor warrants that all employees of the Contractor assigned to the performance of the services are qualified and authorized to perform the services under the state and local laws and governing professional association rules where the employee is employed.

**6.03** Each employee must devote the time and professional ability as is necessary to most effectively and efficiently perform the services according to professional standards.

**6.04** Whenever an employee assigned to this Contract must be replaced for any reason, the Contractor must supply an acceptable replacement as soon as possible and agrees not to substitute a lower classified employee to perform the services without obtaining prior County approval in writing.

**6.05** Employees' daily working hours may be determined by the Contractor. When the employees are working in or about a County facility, Contractor agrees to adjust its employees' daily working hours to be the same as those worked by County employees working at the facility.

**7. ADMINISTRATION**

**7.01** The Contractor must inform the County as soon as the following types of conditions become known:

- A. Probable delays or adverse conditions which do or may materially prevent the meeting of the objectives of the Contract. The Contractor must accompany this disclosure with a statement of any remedial action taken or contemplated by it; and
- B. Favorable developments or events which enable meeting time schedules or goals sooner than anticipated.

**7.02** The Contractor must regularly inform the County of its activities in connection with its duties and must keep the County informed of the status of any program. The Contractor is not required to perform in a manner materially in conflict with requirements imposed by any applicable law including any statute, county charter, ordinance, resolution or executive order.

**7.03** The Contractor shall have no authority in the name of the County to borrow money, commence or defend litigation, spend money, or enter into contracts except as otherwise provided in this Contract.

**8. COMPENSATION**

**8.01** The County agrees to pay the Contractor at the rates in **Appendix B**, attached. The compensation includes all remuneration to which the Contractor may be entitled. The County will not pay the Contractor for overtime, holiday or other premium charges or other benefits in addition to those stated in **Appendix B**. Maximum compensation shall not exceed **Three Million Five Hundred Thousand Dollars (\$3,500,000.00)**.

**8.02** The Contractor must, upon reasonable notice, be available to participate in any proceeding, whether legal, administrative or otherwise, or in any internal County preparatory meetings for the proceeding, in order to assist the County in any matter relating to the purpose or outcome of this Contract. The County will compensate the Contractor under a separately negotiated agreement for any services rendered pursuant to this section.

**9. METHOD OF PAYMENT**

**9.01** The County will pay for the proper performance of the services, commensurate with the progress of the work as evidenced by the timely performance of the services, and after it receives an invoice for payment. The invoice must certify the total cost of the services rendered to the project to date and the cost of all services for that billing period; and must describe the services rendered. If the invoice also requests reimbursement or payment for reimbursable expenses, the appropriate receipts must be attached. The Contractor must sign the invoice and send it to the County for each calendar month. This section is limited by

the provisions of Article 8 with regard to the amounts payable for performance.

**9.02** The Contractor must first direct invoices to the attention of the County's Accounts Payable Department located on the 14<sup>th</sup> Floor of 500 Griswold, Detroit, Michigan 48226 by mail or by e-mail at [wcinvoices@waynecounty.com](mailto:wcinvoices@waynecounty.com), with a copy to the attention of the individual specified in the Notice provisions, Article 19.

**9.03** The Contractor must submit as part of the invoices, monthly progress reports indicating the Contractor's activities during the month and being signed by an authorized officer of the Contractor.

## **10. RECORDS - ACCESS**

**10.01** The Contractor must maintain complete books, ledgers, journals, accounts, or records in which it keeps all entries reflecting its operation pursuant to this Contract. The Contractor must keep the records according to generally accepted accounting practices and for a minimum of seven (7) years after the Contract's termination and completion. The Contractor must also maintain copies of all records, correspondence and documents, including electronically stored information, prepared in anticipation of this Contract, and for this Contract, for a period of seven (7) years after the Contract's termination and completion.

**10.02** The County and the Legislator Auditor General have the right to examine and audit all books, records, documents and other supporting data as they deem necessary of the Contractor, or any subcontractors, or agents rendering services under this Contract, whether direct or indirect, which will permit adequate evaluation of the services or the cost or pricing data submitted by the Contractor. The Contractor must include a similar covenant allowing for audit by the County and the Legislative Auditor General in any contract it has with any subcontractor, a consultant or agent whose services will be charged directly or indirectly to the County. The County may delay payment to the Contractor pending the results of any such audit without penalty or interest.

**10.03** The Contractor agrees that representatives of the County are entitled to make periodic inspections to ascertain that the Contractor is properly performing the services. The inspections may be made at any time during normal business hours of the Contractor. If, in the course of the inspections, the representatives of the County should note any deficiencies in the performance of the services of the Contractor, or any other mutually agreed upon performance deficiencies, the alleged deficiencies must be reported promptly to the Contractor, in writing. The Contractor agrees to promptly remedy and correct any reported deficiencies within ten (10) days of notification by the County, or within such other time frame as agreed upon by a duly authorized representatives of the County and the Contractor.

**10.04** If, as a result of any audit conducted by or for a County, State of Michigan or Federal, agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of compensation due the Contractor, the County may retain the amount of compensation in question from any funds allocated to the Contractor but not yet disbursed under the Contract. Should a deficiency still exist, the County may offset such a deficiency against the compensation to be paid the Contractor in any successive or future Contracts between the parties.

## **11. RELATIONSHIP OF PARTIES**

**11.01** The relationship of the Contractor to the County is and will continue to be that of an independent contractor. No liability or benefits, such as workers' compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship, accrues to either party or either party's agent, subcontractor or employee as a result of this Contract. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent, employee, or subcontractor. The Contractor agrees to indemnify, defend, and hold the County harmless against any claim based in whole or in part on an allegation that the Contractor or any of its agents, employees or subcontractors qualify as employees of the County, and against any related costs or expenses, including but not limited to legal fees and defense costs.

**11.02** For all purposes, County employees will remain employees of the County and the Contractor's employees will remain employees of the Contractor. The Contractor is being retained by the County as an independent contractor to provide services to the County, and is not being retained in any capacity as a joint enterprise or venturer with the County. The Contractor also covenants that none of its employees are or will be, during the period of this Contract, employees of the County.

## **12. INSURANCE**

**12.01** Contractor shall procure and maintain for the duration of the Contract insurance against

claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services by the Contractor, its agents, representatives, or employees.

**12.02** Contractor shall maintain at least the following minimum coverage:

- A. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Contract or the general aggregate limit shall be twice the required occurrence limit.
- B. Umbrella or Excess Liability Policy in an amount not less than \$3,000,000. Umbrella or Excess policy wording shall be at least as broad as the primary or underlying policy(ies) and shall apply both to the Contractor's general liability and to its automobile liability insurance and shall be written on an occurrence basis. The County, officials, employees and others as may be specified in any "Special Conditions" shall be named as an additional insured under this policy.
- C. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- D. Workers' Compensation insurance as required by the State of Michigan, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

If the Contractor maintains higher limits than the minimum insurance coverage required in Section 12.02, the Contractor shall maintain the coverage for the higher insurance limits for the duration of the Contract.

**12.03 Additional Insured Status.** The County, its officers, officials, employees, volunteers, and others as may be specified in any "Special Conditions" shall be additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

**12.04 Primary Coverage.** For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**12.05 Notice of Cancellation.** Each insurance policy shall state that coverage shall not be canceled, except with notice to the County.

**12.06 Waiver of Subrogation.** Contractor grants to the County a waiver of any right to subrogation which any insurer of the Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

**12.07 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**12.08** All insurance must be effected under valid and enforceable policies, issued by recognized, responsible insurers qualified to conduct business in Michigan which are well-rated by national rating organizations. All companies providing the coverage required shall be licensed or approved by the Insurance Bureau of the State of Michigan and shall have a policyholder's service rating no lower than A:VII as listed in A.M. Best's Key Rating guide, current edition or interim report.

**12.09 Claims-made Policies.** If any of the required policies provide coverage on a claims-made basis:

- A. The Retroactive Date must be shown and must be before the date of the Contract or the date the Contractor starts to perform the services.
- B. Insurance must be maintained and evidence of insurance must be provided for at least five (5)

years after completion of the Contract.

- C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Contract work.

**12.10 Verification of Coverage.** Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Article. The County shall receive and approve all certificates and endorsements before the Contractor begins providing services. Failure to obtain the required documents prior to commencement of services shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by the Article, at any time.

**12.11 Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance satisfying all the stated requirements, and Contractor shall ensure that the County is an additional insured on insurance required from subcontractors.

**12.12 Special Risks or Circumstances.** The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**12.13** The Contractor must submit certificates evidencing the insurance to the Risk Management Division at the time the Contractor executes the Contract, and at least fifteen (15) days prior to the expiration dates of expiring policies.

### **13. INDEMNIFICATION**

**13.01** Except for claims arising from the County's gross negligence, the Contractor agrees to indemnify, defend and save harmless the County against, and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the County because of any of the following occurring during the term of this Contract:

- A. Any negligent or tortious act, error, or omission held in a court of competent jurisdiction to be attributable, in whole or in part to the Contractor, or any of its personnel, employees, consultants, agents, or any entities associated, affiliated, (directly or indirectly) or subsidiary to the Contractor now existing, or to be created, their agents and employees for whose acts any of them might be liable.
- B. Any failure by the Contractor, or any of its employees to perform its obligations either implied or expressed under this Contract.

**13.02** The Contractor agrees that it is its responsibility and not the responsibility of the County to safeguard the property and materials that the employees of the Contractor use in performing this Contract. The Contractor must hold the County harmless for costs and expenses resulting from any loss of the property and materials used by its employees pursuant to the performance of the Contractor under this Contract.

**13.03** The Contractor may not hold the County liable for any personal injury incurred by the employees, agents or consultants of the Contractor while working on this Contract which is not held in a court of competent jurisdiction to be directly attributable to the gross negligence of the County or any employee of the County acting within the scope of their employment. The Contractor agrees to indemnify, defend, and hold the County harmless from and against any such claim by the Contractor's employees.

**13.04** Nothing in this article shall be deemed to relieve the Contractor of its duty to defend the County, as specified, pending a determination of the respective liabilities of the Contractor and the County, by legal proceeding or agreement. The County shall cooperate with the Contractor in the defense against the suit. In no event shall the Contractor make any admission of guilt or liability on behalf of the County without the County's prior, written consent.

**13.05** For purposes of these provisions, the term "County" includes the County of Wayne and all other associated, affiliated, or subsidiary departments or divisions now existing or to be created, their agents and employees.

**13.06** This indemnity applies without regards to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity survives delivery and acceptance of services.

**13.07** This indemnity must not be construed as a waiver of any governmental immunity the County, its agencies, or employees, has as provided by statute or modified by court decisions.

**14. BANKRUPTCY OR INSOLVENCY**

**14.01** If the Contractor is adjudicated bankrupt or insolvent, or if a trustee is appointed over the Contractor or any of its property, whether it is a third party or Contractor as debtor-in-possession (referred to as "Contractor" in this Article unless the context clearly requires otherwise) the following rights, obligations and limitations control:

- A. Contractor or any trustee must not assign any or all of its rights, title or interest, in or to this Contract, as this Contract is for the delivery of professional services and related services, as to which the County is entitled to insist upon performance solely by the Contractor.
- B. Contractor or any trustee may only assume this Contract if it provides adequate assurance of future performance. Adequate assurance of future performance means proof reasonably satisfactory to the County
  - (i) adequate financial capacity to employ or contract with sufficient personnel to perform the services assigned to the Contractor as provided in this Contract, and to pay for all services contracted for by the Contractor;
  - (ii) adequate financial capacity to own, operate, lease or obtain sufficient facilities and supplies to perform the services assigned to the Contractor as provided for in this Contract; and
  - (iii) adequate financial and professional capacity to maintain the professional standard provided in this Contract. The reasonable determination of the County as to the adequate professional capacity of the Contractor is determinative.
- C. Because of the unique nature of the services this Contract requires the Contractor to provide, the Contractor agrees that any requests by the County that the trustee or it as debtor-in-possession assume or reject this Contract in a shorter time than provided for in 11 U.S.C. §365 is reasonable so long as the trustee or Contractor receives no less than 5 business days' notice.
- D. If this Contract is terminated during bankruptcy proceedings or if the trustee or debtor-in-possession successfully and properly obtains a court order rejecting this Contract, the Contractor as debtor-in-possession or its trustee must cooperate with the County in arranging for the orderly transfer of responsibilities to persons or entities as the County may designate. The rejection is not effective until the orderly transfer of responsibilities, consistent with sound professional practice, has been completed.

**14.02** Although neither party has the right to terminate the Contract merely because the other is adjudicated bankrupt or insolvent or a trustee or a debtor-in-possession is appointed over any parties' property, each party retains all of the other termination rights set forth elsewhere in this Contract during the period of any proceedings under the Bankruptcy Code.

**15. NOTICE OF MATERIAL CHANGES**

**15.01** The Contractor must immediately inform the County of material changes in its operation, ownership or financial condition. Material changes include, but are not limited to:

- A. Reduction or change in staffing assigned to the Contract.
- B. Decrease in, or cancellation of, insurance coverage.
- C. Delinquent payment, or nonpayment, of tax obligations.
- D. Delinquent payment, or nonpayment, of payroll obligations.
- E. Delinquent funding, or nonfunding, of pension or profit sharing plans.
- F. Delinquent payment, or nonpayment, of subcontractors.
- G. Termination of, or changes in, subcontracts.
- H. Transfer, sell, assignment or delegation to an entity other than the Contractor, of ownership or administrative services.

**16. TERMINATION**

**16.01** The County may terminate this Contract without cause at any time, without incurring any further liability, other than as stated in this Article by giving written notice to the Contractor of the termination. The notice must specify the effective date, at least thirty (30) days prior to the effective date of the termination, and this Contract will terminate as if the date were the date originally given for the expiration of this Contract.



If the Contract is terminated, the County will pay the Contractor for the services rendered prior to termination, as soon as can be authorized. The County will compute the amount of the payment on the basis of the services rendered, and other means which, in the judgment of the County represents a fair value of the services provided, less the amount of any previous payments made. The final payment constitutes full payment. If the Contractor accepts the payment, the Contract is satisfied. The parties agree that no payments under this section will exceed the amount payable under Article 8.

**16.02** Upon terminating the Contract, County shall not incur any further liability to Contractor, except as provided in this Article, which sets forth Contractor's exclusive remedies. The County may procure, upon such terms and in such manner as the County may deem appropriate, Services similar to those terminated, and the Contractor shall be liable to the County for any costs to obtain and transition similar services, provided the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Article. In addition to any legal remedies otherwise available to the County by law or equity, the Contractor shall be responsible for all additional costs, charges, and damages incurred by the County in connection with the completion of the Contract. Such expenses shall be deducted from any monies due or which may become due the Contractor under the Contract. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor shall pay, on demand, such excess amount to the County. Should a deficiency exist, the County may offset such a deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties. All excess procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise. The rights and remedies of the County are not exclusive and are in addition to any other rights and remedies provided by law, including the collection of liquidated damages. The Contractor shall be liable to the County for any damages the County sustains by virtue of the Contractor's breach or any reasonable costs the County might incur in enforcing or attempting to enforce this Contract. Such costs shall include costs to secure the deliverables from another contractor, reasonable fees and expenses for attorneys, expert witnesses and other consultants.

**16.03** After receipt of a Notice of Termination and except as otherwise directed by the County, the Contractor must:

- A. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
- B. Obligate no additional contract funds for payroll costs and other costs beyond the date as the County specifies.
- C. As of the date the termination is effective, present all Contract records and submit to the County the records, data, notes, reports, discs, and documents ("Records") as the County specifies, all pertinent keys to files, and carry out such directives as the County may issue concerning the safeguarding or disposition of files and property.
- D. Submit within thirty (30) days a final report of receipts and expenditures of funds relating to this Contract.
- E. Place no further orders on subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Contract as is not terminated;
- F. Terminate all orders and subcontracts to the extent that they relate to the portion of work so terminated;
- G. Submit within thirty (30) days a listing of all creditors, subcontractors, lessors, and other parties with which the Contractor has incurred financial obligations pursuant to the Contract.

**16.04** Upon termination of this Contract, all Records prepared by the Contractor under this Contract or in anticipation of this Contract shall, at the option of the County, become the County's exclusive property, whether or not said Records are in the possession of the Contractor. The Records shall be free from any claim or retention of rights on the part of the Contractor except as specifically provided in this Contract. The County shall return all property of the Contractor to the Contractor.

**16.05** Any intentional failure or delay by the Contractor to deliver the Records to the County promptly upon termination of this Contract will cause irreparable injury to the County not adequately compensable in damages and for which the County has no adequate remedy at law. The Contractor shall pay the County five hundred dollars (\$500.00) per day as liquidated damages, and not as a penalty, until it delivers the Records to the County. The County may seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Records to which the Contractor hereby consents as well as all applicable damages and costs.

The County shall have unrestricted use of the Records for the purpose of completing the services.

**16.06** Access to the records prior to delivery must be restricted to authorized representatives of the County and the Contractor. The Contractor has no right to disclose or use any information gathered in the course of its work without obtaining the written concurrence of the County. All the information must be confidential and handled in such a manner at all times as to preserve confidentiality. The Records as well as any related products and materials are proprietary to the County, having been developed for the County for its own and sole use.

**16.07** In addition, each party will assist the other party in the orderly termination of this Contract and the transfer of all aspects, tangible or intangible, as may be necessary for the orderly, non-disrupted business continuance of each party.

**17. ETHICS IN CONTRACTING**

**17.01** The Contractor must comply with Article 12 of Chapter 120 of the Wayne County code governing "Ethics in Public Contracting."

**17.02** Contractor's material misrepresentation or delinquency in the disclosures required by section 120-225 of the Wayne County Code constitutes a material breach of this Contract, sufficient to warrant immediate termination and the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the consideration made or due under the Contract as of the date of termination.

**17.03** If the County determines that the Contractor has made a material misrepresentation or is willfully delinquent or knowingly evasive in the disclosures required by section 120-225, the Contractor and any other business which has substantially the same principal beneficiaries (as defined in section 120-238 of the Wayne County Code), may be debarred by the Purchasing Director, pursuant to Article 6 of Chapter 120 of the Wayne County Code, from competing for any further County contracts for up to three (3) years.

**17.04** If the contract price is in excess of twenty thousand dollars (\$20,000), or the terms thereof require the approval of the Wayne County Commission, and the Contractor knowingly collaborate in or induces a violation of any of the ethical standards that are set forth in sections 120-225, 120-228, 120-229, 120-230 or 120-233 of the Wayne County Code, the County has the right to impose any one or more of the following sanctions:

- A. Immediately terminate the Contract and require the Contractor to pay the County liquidated damages, and not a penalty of fifteen percent (15%) of the total Contract compensation;
- B. Debar or suspend the Contractor from consideration from competing for further County contracts; or
- C. Recover the value transferred or received in breach of the ethical standards by a County employee or other person.

**17.05** Upon a showing that a subcontractor has paid a surcharge to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount of the surcharge was included in the price of the subcontract or order and ultimately borne by the County and that the County shall have the right to recover the amount of the surcharge from the Contractor. The County may also recover the amount of the surcharge from the subcontractor that paid or is paying the surcharge. Recovery by the County of the surcharge from one offending party shall not preclude recovery from other offending parties. The Wayne County Prosecuting Attorney may initiate and prosecute any civil action needed to enforce this article, if the Wayne County Corporation Counsel declines to do so.

**18. NON-DISCRIMINATION PRACTICES**

**18.01** The Contractor and its subcontractors must comply with:

- A. Titles VI and VII of the Civil Rights Act (42 U.S.C. §2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- B. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).
- C. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).
- D. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and its associated regulations.
- E. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).
- F. Article XI of Chapter 120 of the Wayne County Code governing Equal Contracting Opportunity.
- G. Any other appropriate affirmative action provisions as may be required from time to time by

the Director of Human Relations of the County. Contractor shall promptly give notice of any such provisions to County during the term of the Contract.

**18.02**

The Contractor and its subcontractors must not:

- A. Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight.
- B. Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight.
- C. Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Contractor indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age, marital status, handicap, religion, familial status, height or weight.
- D. Except as permitted by rules and regulations promulgated pursuant to Article 11 of the Wayne County Code, headed "Equal Contracting Opportunity," or applicable state or federal law.
  - (i) Make or use a written or oral inquiry or form of application that solicits or attempts to elicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height, or weight of prospective employees;
  - (ii) Make or keep a record of that information or disclose that information;
  - (iii) Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight; or
  - (iv) Make, before or during the initial application process, background checks or oral or written inquiries as to prior criminal conviction or convictions.
- E. Absolutely bar or otherwise preclude possible employment based on prior criminal conviction or convictions, provided that the prior criminal conviction or convictions is or are not directly related to the position being sought.

**18.03**

The Contractor and its subcontractors must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Contract, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of religion, race, color, national origin, age, sex, height, weight, familial status, marital status, creed, prior criminal conviction(s) or handicap. This Section does not apply if it is determined by the Wayne County Division of Human Relations that the requirements are bona fide occupational qualifications reasonably necessary to perform the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon the Contractor.

**18.04**

The Contractor agrees that its subcontractors shall be subject to and shall not violate the nondiscrimination provisions of section 120-192(a) of the Wayne County Procurement Ordinance in performing work on County contracts. The Contractor shall notify its subcontractors that they shall be subject to said nondiscrimination provisions, and shall include said nondiscrimination provisions in its subcontracts. The Contractor shall provide the County with a complete copy of any subcontractor agreement when requested.

**18.05**

If the Contract price is in excess of twenty thousand dollars (\$20,000), the Contractor shall comply with the slavery era disclosure requirements of section 120-192(f) of the Wayne County Procurement Ordinance, as implemented by the Wayne County Slavery Era Disclosure Affidavit the Contractor will complete as part of the contract approval process. If it is subsequently determined by the Wayne County Division of Human Relations that the Contractor has not made a full disclosure in its affidavit of the information required by section 120-192, that failure shall constitute a substantial breach of the terms of this Contract, sufficient to warrant rescission of the Contract, the institution of liquidated damages as set forth in section 18.07, and debarment from any further business with the County.

**18.06**

Breach of any section 120-192 of the Wayne County Procurement Ordinance or of the covenants in this Article may be regarded as a material breach of this Contract.

**18.07** If the Contractor does not comply with the non-discrimination and affirmative action provisions of this Contract, the County may impose sanctions, as it determines to be appropriate, including but not limited to:

- A. Withholding of payments to the Contractor under this Contract until the Contractor attains compliance;
- B. Cancellation, termination or suspension of this Contract, in whole or in part;
- C. Disqualification from bidding on future contractors for a period of no more than three (3) years;
- D. Referral to Corporation Counsel for consideration of injunction, liquidated damages or other remedies; and/or
- E. Because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the County would sustain, the imposition of liquidated damages (not a penalty) in the amount of five hundred dollars (\$500.00) per day, for each day that the Contractor shall fail to comply with said requirements, as determined by the Wayne County Purchasing Director, in consultation with the Wayne County Director of Human Relations and Corporation Counsel. The liquidated damages shall first be setoff against the unpaid portion of the Contract price, and the balance shall be paid by the Contractor.

**18.08** If the Contract is funded, in whole or in part, by federal funds and if the County has been authorized by the funding source to require an affirmative action commitment from contractors who are to be paid from those funds, Contractor must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by the Division of Human Relations to be appropriate for that purpose.

**18.09** In the event that this Contract is or becomes subject to federal or state law which conflicts with the requirements of section Article XI of the Wayne County Code, the provisions of the federal or state law shall apply and the Contract shall be interpreted and enforced accordingly.

**19. NOTICES**

**19.01** All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract must be given in writing and mailed by first-class mail and addressed as follows:

If to the Contractor:

Cadillac Asphalt  
Attn: Jason Teper  
39255 Country Club Dr. - Suite B20  
Farmington Hills, MI 48331

Phone: 248-228-6281  
Fax: 248-942-2133  
E-mail: Jason.teper@mipmc.com

If to the County:

WCDPS – Roads Maintenance Division  
29900 Goddard Road  
Detroit, Michigan 48242  
Attn: Richard Hodges

Phone: 734-955-2351  
E-mail: rhodges@waynecounty.com

And

Director of Administration  
WCDPS

400 Monroe, 3rd Floor  
Detroit, MI 48226

**19.02** All notices are deemed given on the day of mailing. Either party to this Contract may change its address for the receipt of notices at any time by giving notice to the other as provided. Any notice given by a party must be signed by an authorized representative of such party.

**19.03** Termination notices, change of address notices, and other notices of a legal nature, are an exception and must be sent by registered or certified mail, postage prepaid, return receipt requested.

**20. JURISDICTION AND LAW**

**20.01** This Contract, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor consents to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this Contract. Service of process at the address and in the manner specified in this Contract will be sufficient to put the Contractor on notice. The Contractor will not commence any action against the County because of any matter arising out of or relating to the validity, construction, interpretation and enforcement of this Contract, in any courts other than those in the County of Wayne, State of Michigan unless original jurisdiction is in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court or the Michigan Court of Appeals.

**21. CONFIDENTIAL INFORMATION**

**21.01** If the County discloses confidential information to the Contractor's employees pertaining to the County's past, present and future activities, the Contractor must instruct its employees to regard all information gained by each person as a result of the services to be performed as information which is confidential and not to be disclosed to any organization or individual without the prior written consent of the County.

**21.02** The Contractor agrees to take appropriate action with respect to its employees to insure that the obligations of nonuse and non-disclosure of confidential information concerning this Contract can be fully satisfied.

**22. COMPLIANCE WITH LAWS**

**22.01** The Contractor must comply with and must require its employees to comply with all applicable laws and regulations.

**22.02** The Contractor must hold the County harmless with respect to any damages arising from any violations of this Article by it or its employees.

**23. CHANGES IN SCOPE/SERVICE**

**23.01** County may request changes to the scope of Services to be furnished or performed by the Contractor under the Contract, as well as changes in the time of performance of the Contract. All such changes shall be authorized by either Change Order or Contract Modification.

**23.02** If any such change request increases or decreases the Contractor's cost of, or the time required for, performance of any part of the Services under this Contract, an adjustment may be made and the Contract modified in writing accordingly.

**23.03** Contractor shall provide County with a written proposal to County's change request within five (5) business days of receipt of any such request. Contractor's proposal shall describe in reasonable detail the basis for any proposed price or time adjustment. All cost estimates shall include all completed Services, and cover all costs, expenses, overhead and profit of subcontractors, if any.

**23.04** Contractor acknowledges that any change in the Contract price represents full compensation for all costs associated with the change request, including delay costs, impacts, acceleration, disruption, consequential damages and any other cost of any nature.

**23.05** If the County does not accept the Contractor's proposal, the County may:

- A. withdraw its change request;
- B. modify its change request, in which case the procedures set forth above will apply to the modified change request; or
- C. issue a Change Order.

**23.06** Any adjustment in the Contract price shall be computed in the manner as the parties may agree. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided the County promptly and duly makes provisional adjustments in payment or

time for performance as may be reasonable. By proceeding with the required Services under protest, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

**23.07** No action, conduct, omission, prior failure or course of dealing by the County shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by the County and the Contractor. Contractor further acknowledges that Change Orders and Contract Modifications are the exclusive method for effecting any change to the Contract.

**23.08** No change to this Contract is effective unless it is in writing and references this Contract. If the change is a Contract Modification, it must be signed and acknowledged by duly authorized representatives of both parties. If the change is a Change Order, it must be signed by an authorized representative of the County.

**24. DEBARMENT AND SUSPENSION**

**24.01** The Contractor certifies to the best of its knowledge and belief, that:

- A. The Contractor and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal agency;
- B. The Contractor and its principals have not, within a three (3) year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connections with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. The Contractor and its principals are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in 24.01 b above; and;
- D. The Contractor and its principals have not, within a three (3) year period preceding this contract, had one or more public transactions (Federal, State or local) terminated for cause or default.

**24.02** The certification in this clause is a material representation of fact upon which reliance was placed. When the County determines that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the County, the County may terminate this Contract for cause or default.

**24.03** The Contractor shall provide immediate written notice to the County if, at any time, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

**24.04** The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "Grantee", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76.

**24.05** The Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the County.

**24.06** The Contractor further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction", provided by the County, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**24.07** A Contractor may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Contractor may decide the method and frequency by which it determines the eligibility of its principals. Each Contractor may, but is not required to, check the Non-procurement List (of excluded parties).

**24.08** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in

the ordinary course of business dealings.

**24.09** If a Contractor is in a covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the County, the County may terminate this transaction for cause or default.

**25. PROMPT PAYMENT**

**25.01** If the Contractor should subcontract a part of the obligations under this Contract to a business which has been certified by the County's Division of Human Relations as a small or disadvantaged business enterprise, the Contractor shall make prompt payments to each such subcontractor as the subcontract is performed which are at least equal to the prompt payments which are due to the Contractor under the provisions of this Contract. Unless alternate terms which have a similar purpose and effect are otherwise agreed upon in writing, the Contractor shall make payment within forty five (45) days after satisfaction of the subcontract and receipt of a complete invoice therefore. If an invoice is filled out incorrectly or contains a defect or impropriety, the Contractor shall notify the subcontractor of that fact within ten (10) days after receipt of the invoice. The forty five (45) day period shall be extended by each day over five (5) days which the subcontractor takes to make a correction. If a payment is past due, the Contractor shall pay to the subcontractor an additional amount to be calculated on a daily basis which is equal to an annual rate of interest of nine percent (9%) (amount overdue X number of days overdue X .000246575). Interest shall not be due if payment is delayed because of a good faith disagreement between the Contractor and the subcontractor regarding contract performance and the dispute is resolved in favor of the Contractor. This provision is expressly intended to create a third-party right which is legally enforceable by a subcontractor. This provision does not, however, create a duty on the part of the County to seek enforcement of a default of this provision or to make payment to the subcontractor on behalf of the Contractor.

**26. SUBCONTRACTING AND ASSIGNMENT**

**26.01** The Contractor may subcontract with the companies listed in Appendix C, List of Subcontractors. Appendix C shall identify each such subcontract by stating the name and address of the subcontractor, describing in a general manner the services that will be subcontracted, and stating the percentage of this Contract, by dollar value, that will be subcontracted. The Contractor shall not terminate any subcontractor, without the County's prior written approval. Such approval shall not in any way relieve the Contractor of full responsibility for the performance of the Contract. The Contractor shall provide the County with immediate notice when a Wayne County-based subcontractor is terminated or substantially displaced by a subcontractor who is not so qualified. The Contractor must also direct notices to the attention of the individual specified in the Notice provisions, Article 19. The Contractor must not assign this Contract, nor any part, or subcontract any of the work or services to be performed without the County's prior written approval. Any unauthorized assignment or transfer will be considered a breach of this Contract and result in the termination of the Contract at the County's discretion. If the Contract is not terminated, the assignment shall be deemed null and void.

**27. LIQUIDATED DAMAGES**

**27.01** The Contractor shall perform the services according to the schedule contained in **Appendix A**. The Contractor shall be responsible for any loss or damage which results from failure to timely perform the services. Because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the County would sustain, the Contractor shall pay liquidated damages as indicated. If Contractor does not have the services completed according to the scheduled date, then Contractor shall provide a revised Delivery Date. Contractor shall pay to the County as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified Delivery Date and the date that Contractor actually completes the services, an amount of one thousand dollars (\$1,000.00) per day. The liquidated damages shall first be set off against the unpaid portion of the Contract price.

**28. MISCELLANEOUS**

**28.01** The Contractor covenants that it is not, and will not become, in arrears to the County upon any contract, debt, or any other obligation to the County, including real property and personal property taxes.

**28.02** Articles 12, 13, 19, and 21 survive termination of the Contract.

**28.03** All the provisions of this Contract are "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions are used in each provision.

**28.04** If any Affiliate of the Contractor takes any action which, if done by the Contractor, would

constitute a breach of this Contract, the action is deemed a breach by the Contractor. "Affiliate" is a "parent", subsidiary or other company controlling, controlled by or in common control with the Contractor.

**28.05** Neither party is responsible for force majeure events. If there is a dispute between the parties with regard to what constitutes a force majeure event, the County's reasonable determination is controlling.

**28.06** Unless the context otherwise requires, the words, "herein", "hereof" and "hereunder", and other words of similar import, refer to this Contract as a whole and not to any particular article, section, or other subdivision.

**28.07** The headings of the articles in this Contract are for convenience only and must not be used to construe or interpret the scope or intent of this Contract or in any way affect the Contract.

**28.08** As used, the singular includes the plural, the plural includes the singular, and the use of any gender is applicable to all genders.

**28.09** The Contractor warrants that any products sold or processes used in the performance of this Contract do not infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary rights of any third party. If a third party makes a claim against the County, the County must promptly notify the Contractor. The Contractor must defend the claim in the name of the County, at the Contractor's expense. The Contractor must indemnify the County against any loss, cost, expense or liability arising out of the claim, whether or not the claim is successful.

**28.10** No failure by a party to insist upon the strict performance of any term of this Contract or to exercise any term after a breach, constitutes a waiver of any breach of term. No waiver of any breach affects or alters this Contract, but every term of this Contract remains effective with respect to any other then existing or subsequent breach.

**28.11** The Contractor shall secure all permits necessary to perform the services and shall comply with all statutes, ordinance, and laws.

**28.12** If any provision of this Contract or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Contract, or the application of the provision to persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable.

**28.13** The County or the Contractor may contract with other firms providing the same or similar services so long as the Contractor's obligations to the County contained in this Contract will not be affected in any manner.

**28.14** If the division of Human Relations determines that the Contractor has not made a full disclosure in its affidavit regarding its investments in, support or profit in some manner from the institution of slavery, that failure shall constitute a substantial breach of this Contract, sufficient to warrant rescission of the Contract, the institution of liquidated damages, and debarment from any further business with the County.

**28.15** This document, including the Appendices, contains the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Neither party has made any representations except those expressly set forth. No rights or remedies are, or will be acquired by either party by implication or otherwise unless set forth.

**29. AUTHORIZATION AND CAPABILITY**

**29.01** The Contractor warrants to the County that it has taken all corporate actions necessary for the authorization, execution, delivery and performance of this Contract. It is ready to perform its obligations. The Contractor further warrants that the person signing this Contract is authorized to do so on behalf of the Contractor and is empowered to bind the Contractor to this Contract.

**29.02** This Contract is effective only upon review and approval by the Wayne County Commission.



**30. SIGNATURE**

**30.01** The County and the Contractor, by their authorized officers and representatives have executed this Contract.

CONTRACTOR

By: Jason Teper  
Jason Teper  
Its: Sales Representative

COUNTY OF WAYNE

DocuSigned by:  
By: Darnella Williams for  
WARREN C. EVANS  
Its: COUNTY EXECUTIVE

#320355

## **APPENDIX A: SCOPE OF SERVICES**

**[Excerpted from 37-19-012 Invitation for Bid]**

### **SECTION 3.0 – SPECIFICATIONS AND SCOPE OF WORK**

**3.1 Objectives and Purpose:** To furnish and deliver Hot Mix Asphalt (HMA) to various projects sites within Wayne County Roads right of way per Wayne County, Roads requests.

- For furnishing only Hot Mix Asphalt (HMA) per Wayne County, Roads requests.
- All HMA provided shall conform to MDOT 2012 Standard Specifications for Construction.
- The type of HMA required will be determined by Wayne County Roads at the time of each order.
- The number of HMA delivery trucks to be provided by the contractor shall be consistent with the ordered quantities to minimize Wayne County downtime to no greater than forty five (45) minutes.
- The delivery trucks shall be insulated; otherwise, materials will be rejected at the cost of the supplier.
- The plant shall accept, approve, and deliver the order of the HMA Mondays through Saturdays and intermittent Sundays in accordance with the specifications.

**3.2 Specifications:**

This special provision applies to all Hot Mix Asphalt (HMA) acceptances testing for all Wayne County Department of Public Services (WCDPS) roads. The HMA mixture shall be provided to meet the requirements of the current Michigan Department of Transportation (MDOT) Standard Specifications for Construction except where modified herein.

It is understood and agreed that all material furnished hereunder must and shall conform to the requirements and specifications of the County. The supplier shall furnish the following types of mixtures:

HMA, 5E30  
HMA, 5E10  
HMA, 5E3  
HMA, 5E1  
HMA, 4E30  
HMA, 4E10  
HMA, 4E3  
HMA, 4E1  
HMA, 3E10  
HMA, 3E3  
HMA, 2E10  
HMA, 5E10, High Stress  
HMA, 4E10, High Stress  
HMA, 5E10, Pick-up  
HMA, 5E3, Pick-up  
HMA, 5E1, Pick-up

HMA, 4E10, Pick-up  
HMA, 4E3, Pick-up  
HMA, 4E1, Pick-up  
Commercial Wearing Course, Pick-up  
HMA, SS-1H Emulsion

## **MATERIALS**

**Aggregates:** The virgin aggregates used for HMA Mixtures shall consist of gravel, stone, or slag in combination with natural sand, stone sand, or slag sand and shall conform to the grading and physical requirements specified in Table No. 1 through No. 6 and Table No. 10.

The Blended Aggregate Wear Index (AWI) value for all Top Course Hot Mix Asphalt (HMA) mix designs shall be a minimum of 260 as determined by *Michigan Test Method (MTM) 112-04*.

Aggregates produced from steel furnace slag, reverberatory furnace slag, or crushed concrete shall not be permitted in any HMA mixture except where specified.

**Recycled Asphalt Pavement:** The Contractor may substitute Reclaimed Asphalt Pavement (RAP) for a portion of the new materials required to produce HMA mixture. The mixture will be designed and produced to meet all of the criteria herein.

The RAP shall be placed in a stockpile in accordance with the Engineer's approval, and its use shall be governed by the conditions as specified herein. The stockpile of RAP must be uniform in gradation and asphalt content and be free of contamination such as topsoil, roofing shingles, debris, and foreign material. See Section titled "Superpave HMA Mixtures".

**Asphalt Binder:** The asphalt binder utilized shall be as indicated in Table 11.

*Certification shall be prepared by the supplier and shall consist of a notarized copy of a report covering tests conducted by an approved laboratory. Such tests shall have been conducted on samples obtained from the storage tank or tanks utilized during the term of the project. This certification shall also include a statement that the material represented by the report meets the 2012 MDOT Standard Specifications for Construction requirements as shown in Section 904.*

**Polymer Modified Asphalt Binder:** Asphalt Binder shall consist of an asphalt cement to which a Styrene Butadiene Styrene (SBS) triblock copolymer without oil extension is added. The asphalt binder, after the addition of the copolymer, shall meet the requirements of a PG 70-22 (P) Binder. The "Misc. HMA \_\_\_\_\_ High Stress" shall utilize an asphalt binder, which after the addition of the tri block copolymer, meets the requirements of PG 70-22(P) or PG 76-22(P) as directed in Table 11.

The Polymer Modified Asphalt Cement shall be smooth, homogenous, and comply with the requirements of Table A (Requirements for Styrene Butadiene Styrene (SBS) Modified Binders).

Certification for the asphalt cement shall be prepared by the supplier and shall consist of a certified report covering tests conducted by a laboratory with AASHTO accreditation for the required testing. Such tests shall have been conducted on samples obtained from the storage tank(s) utilized during the term of this project. This certification shall also include a statement that the material represented by the report meets the

MDOT 2012 Standard Specifications for Construction requirements as shown in Section 904 and any additional requirements specified herein. Copies of this report will be provided to the Testing Office and Project Engineer.

Asphalt modification at a HMA mixture plant will not be allowed. Air blown asphalts and other modifiers will not be allowed.

**The Mix Design submitted by the Contractor shall include the HMA supplier's recommended compaction temperature for laboratory density specimens.**

If the Contractor has specific questions on handling, storage, production, application, or rolling of the polymer modified asphalts; they should contact the asphalt supplier directly for information.

**TABLE A**

Requirements for **Styrene-Butadiene-Styrene (SBS)** Modified Binders

Test	Asphalt Grade PG 70-22 (P)	Asphalt Grade PG 76-22(P)
Test on Original Binder, <sup>(1)</sup>		
Separation of Polymer ASTM D5892-96A 163° C, 48 hours (R & B difference between top and bottom), Maximum	2	2
Force Ratio AASHTO T300-95 4° C, 50 mm/min.; 300 mm elongation Minimum	0.3	0.35
Tests on Residue From Rolling Thin Film Oven, <sup>(1)</sup>		
Elastic Recovery AASHTO T301-95, 25° C 10 mm elongation, and cut Immediately, % minimum	60	70
(1) Report DSR values for $G^*/\sin$ , and the phase angle at the high-grade temperature on the original and on the RTFO residue for information purposes.		

**Bond Coat:** The Bond Coat shall be Anionic Emulsified Asphalt SS-1h, as specified in the 2012 MDOT Standard Specifications for Construction. The Contractor may dilute and thoroughly mix the emulsion with water. The volume of water added shall be approved by the Engineer and shall not exceed the original volume of the emulsion.

Test samples of the Bond Coat will be obtained to measure the percentage and penetration of asphalt residue in the asphalt emulsion, when used by a third party other than the supplier. These samples will be taken at the discretion of the Engineer not less than one each week or as indicated in the MDOT Materials Sampling Guide during the placing of the HMA mixtures. Emulsion samples failing to meet the percent

minimum bituminous residue and/or the required penetration of the bituminous residue will be subject to the "HMA Contract Unit Price Adjustments" portion of this Special Provision. When Bond Coat is used by a supplier, acceptance will be by certification.

### **SUPERPAVE HMA MIXTURES**

**General:** In cases of non-conformance of any of the requirements as specified herein and if, in the Engineer's judgment, the non-conforming mixture warrants, the Contractor shall remove the nonconforming mixture and replace it with a mixture conforming to the Specification requirements at his own expense, or proceed in accordance with the section titled "HMA Paving Mixtures Subject to Rejection or Penalty" in this Special Provision.

**Reclaimed Asphalt Pavement (RAP) Percentages.** Superpave mixture types EI, EI High Stress, E3 and E3 High Stress, E10 and E10 High Stress used as Leveling or Top Course shall be limited to a maximum of 17% RAP binder by weight of the total binder in the mixture.

**Mixtures Analysis Data:** The Contractor, at least two (2) days prior to production, shall submit to the Testing Laboratory, for the Engineer's approval, a test report containing the following data:

1. The extracted aggregate gradation and asphalt content of the RAP stockpile (minimum one [1] test per 1000 Tons of RAP).
2. Average crushed content and aggregate type (gravel, slag, limestone, etc.) in the RAP stockpile (minimum one [1] test per 1000 Tons of RAP).
3. Desired proportions of RAP and virgin aggregates.
4. The "Proposed Grading" of the final blend of RAP and virgin aggregates shall also include the mixture gradation plotted on a 0.45 power chart. This chart must clearly show control points and the restricted zone as defined in this Special Provision.
5. The Blended Aggregate Wear Index (AWI) value for all Top Course Hot Mix Asphalt (HMA) mix designs.
6. The "Proposed Asphalt Binder Content" of the mixture.
7. The type of asphalt binder to be added to the mixture.
8. The individual and combined bulk specific gravities of all aggregates, including those within the RAP mixture.
9. The Gmm (Maximum Specific Gravity) of the HMA mixture at the proposed binder content.
10. Crushed content, fine aggregate angularity, sand equivalent, L.A. abrasion, soft particles, flat and elongated particles.
11. The Superpave mix criteria as indicated in Tables 7 to 9.

12. HMA suppliers recommended compaction temperature for laboratory density specimens.
13. The specified temperature of the HMA when applied at the project site.
14. Air voids and VMA correction factors for reheated samples. Obtain a minimum of three samples which will then be split with one portion tested for air voids and V.M.A. immediately (without reheating) per Wayne County methods. The other portion shall be allowed to reach ambient temperature then reheated and tested for VMA and air voids. The average difference of these results will be submitted as the correction factors.

The Voids in Mineral Aggregate (VMA) will be based on the Bulk Specific Gravity of the total mix in accordance with the *Asphalt Institute's Superpave Mix Design Manual (SP2)*.

**Trial Run:** At the direction of the Testing Engineer, the Contractor will be required to produce and test the mixture prior to placing the HMA on the project. All costs associated with the trial run, including materials and testing will be borne by the Contractor. All test results will be forwarded to the WCDPS Testing Office prior to commencement of the project.

The Contractor will be required to produce the mixture within the tolerances listed for Range 1 in this Special Provision in the section titled "HMA Paving Mixtures Subject to Rejection or Penalty".

The mixture shall not contain clay balls, unmixed lumps, or uncoated particles.

**HMA Base Course Mixtures:** The "Proposed Grading" must meet the aggregate gradation as specified in Table 10 Mixture Number 2 or 3 or as specified by the Engineer.

**HMA Binder Course Mixtures:** The "Proposed Grading" must meet the aggregate gradation as specified in Table 10 Mixture Number 2.

**HMA Leveling Course Mixtures:** The "Proposed Grading" must meet the aggregate gradation as specified in Table 10 Mixture Number 4.

**HMA Wedge Course Mixtures:** The "Proposed Grading" shall meet the aggregate gradation as specified in Table 10 Mixture Number 5.

**HMA Top Course Mixtures:** The "Proposed Grading" shall meet the aggregate gradation as specified in Table 10 Mixture Number 5.

## **EQUIPMENT**

**Hot-Mix Storage Bins:** The use of hot-mix storage bins will be limited to six (6) hours of storage or, when insulated, storage may be extended up to thirty (30) hours with specific approval of the Engineer.

**HMA Plant:** All HMA plants supplying material to the project will be inspected and approved by the Wayne County Testing Office prior to production.

## **CONSTRUCTION METHODS**

## PLACING HMA MIXTURES

**General:** All paving lanes shall be completed to approximately the same station at the end of each day. If the longitudinal edge of a paved lane of Top Course is distorted during the day's work by traffic or other means, it shall be trimmed, by the use of a self-propelled concrete saw, to a true line and vertical face prior to placing the abutting lane. Transverse joints shall be carefully constructed and maintained with a vertical face until the placing of additional material against the joint has begun. Corrections to the longitudinal and transverse edges by a method approved by the Engineer will not be paid for separately.

When used in conjunction with pavement surface milling, the placement of HMA Wedge Courses shall take place within two (2) days of the milling operation, or as directed by the Engineer. The Contractor shall schedule the milling operation in such a way that the HMA Wedge Course placement will not be required on Sundays or holidays.

Resurfacing shall not begin in any section of pavement until base repair and curb construction in that section is complete.

Areas of completed HMA Top Course requiring correction for paving irregularities (e.g., "birdbaths") shall be removed by surface milling and replaced with HMA Top Course as directed by the Engineer. Skin patching of irregularities will not be allowed. The removal and replacement of material required to correct irregularities shall not be paid for separately and will be included in the original payment of the HMA Top course material.

For HMA Binder Course, delivery is required to be made by rear end discharge trailers with a live mechanical conveyor feed bottom, such as those manufactured by Flow-Boy, Fruehauf or Red River. In transporting HMA mixtures, all loads shall be covered.

Subsection 501.03.F.1 paragraph 2 and Subsections a through d of the *2012 MDOT Standard Specifications for Construction*, shall be revised to read: "Pavers will be required to place all HMA mixtures, unless specifically approved by the Engineer."

Table 501-4 of Subsection 501.03 of the *2012 MDOT Standard Specifications for Construction* is deleted.

**Bond Coat:** The following rates of Bond Coat shall be used unless otherwise called for on the plans or directed by the Engineer.

1. For all existing pavements and pavement surfaces, and over new concrete base courses, the application rate for the bond coat diluted at a 1:1 ratio shall be **within a range of 0.06 – 0.14 gallons per square yard (gsy). The target rate shall be 0.10 gsy.**
2. Between subsequent HMA Mixture courses the application rate for the bond coat diluted at a 1:1 ratio shall be **within a range of 0.03 – 0.07 gallons per square yard. The target rate shall be 0.05 gsy.**

## COMPACTION OF HMA MIXTURES

**General:** The compaction of HMA Base courses, Binder courses, Leveling courses, and Top courses placed directly on an aggregate base shall be as described in Section 501.03 of the *2012 MDOT Standard Specifications for Construction*.

Compaction of HMA Top Courses, excluding any mixture placed directly on an aggregate base, shall be as specified herein. These requirements take precedence over any conflicts with the requirements of the 2012 MDOT Standard Specifications for Construction.

### **CONSTRUCTION OF HMA MIXTURES**

The current Wayne County specifications for HMA Pavements and MDOT Standard Specifications for Construction will be amended to include the following:

1. The temperature range of the HMA when applied at the project site will be specified by the HMA supplier prior to placement and is provided to the Engineer for approval. The temperature range for placement at the project site shall be within  $\pm 20^{\circ}$  F of the specified temperature. HMA mixes not meeting the minimum temperature of  $250^{\circ}$  F or exceeding the maximum temperature requirement of  $350^{\circ}$  F will be rejected.
2. The temperature of the surface, which the HMA mix will be applied, shall not be less than  $40^{\circ}$  F.

### **QUALITY ASSURANCE SAMPLING AND TESTING**

After the job-mix-formula (JMF) is established and approved by the Engineer, the aggregate gradation and binder content of the HMA mixture furnished for the work shall be maintained within Range 1 uniformity tolerance limits permitted for the job-mix-formula specified in Table 12. Aggregate gradation will be determined from a sample obtained by using an ignition furnace as in *MTM 319-01*. The binder content will be determined by calculated value using the Maximum Specific Gravity (Gmm) as tested in *MTM 314*. When mixtures are tested for Air Voids, Voids in Mineral Aggregate (VMA), Maximum Specific Gravity (Gmm), and Binder Content based on calculated value using Maximum Specific Gravity (Gmm) the mixtures shall also meet specifications listed in Table 13.

Acceptance sampling and testing will be performed by WCDPS using the sampling method and testing options selected by the Engineer. All sampling will be done in accordance with *MTM 313 (Sampling HMA Paving Mixtures)* or *MTM 324 (Sampling HMA Mixtures Behind the Paver)*. Each day of production, WCDPS will determine the number of samples to be taken for each mix type. Acceptance testing will be performed at minimum frequency of once per 1000 tons. Quality Control measures to insure job control are the responsibility of the Contractor. All persons performing QC and QA HMA field sampling must be Local Agency HMA Sampling Qualified.

All persons performing HMA testing must be at a minimum Hot Mix Asphalt Level One certified and maintain certification through an approved program. The MDOT HMA certification program is an approved program.

All labs performing Acceptance testing or Quality Control testing shall be qualified labs per the MDOT HMA Production Manual and participate in the MDOT Round Robin Program, or as a minimum be AASHTO Materials Reference Laboratory (AMRL) accredited for AASHTO T30 or T27, and AASHTO T164 or T308.

The minimum required in-place density shall be 92.0 percent. The Contractor shall be responsible for establishing a rolling pattern that will achieve the required in-place density. Any time minimum in-place density is not being achieved, the Contractor shall immediately notify the Engineer. The Engineer may suspend placement operations until the Contractor can establish a rolling pattern that will achieve the



required in-place density. Contract time will continue and the Contractor will not be compensated for down time.

All persons performing Density Control shall be at a minimum a Michigan Certified Density Control technician.

#### **IN-PLACE DENSITY QUALITY CONTROL SAMPLING DURING PRODUCTION**

Two cores approximately 6 inches in diameter, taken at random locations, will be allowed per subplot of material for QC of In-Place Density.

At the time any QC or QA cores are taken, remove free standing water from the core hole, apply tack coat to the interior of the core hole, fill with hot mixture, and compact. Obtain approval for the type of mix to be used for filling holes and for obtaining compaction at the pre-production meeting.

#### **IN-PLACE DENSITY QUALITY ASSURANCE SAMPLING**

**Random Sampling.** Prior to the pre-production meeting, the Engineer will generate two columns of random numbers using a computer spreadsheet program or a calculator. The random numbers will be used for the longitudinal and the transverse measurement for determining the core location. The first column will be the longitudinal measurement and the second column will be the transverse measurement.

**Sublot Size.** Sublot size will not exceed 600 tons. If a days production is less than 600 tons, the days tonnage will be considered a subplot. If a days production exceeds 600 tons, the tonnage will be divided into approximately equal subplot sizes, up to 600 tons each.

The Engineer will locate and mark all QA core locations. All QA coring operations will be completed by the Contractor including dispute resolution and subplot retest coring. The Engineer will test all QA cores. If, for any reason, a core is damaged or determined not to be representative at the time of coring, the Engineer will evaluate and document the problem and determine if re-coring is necessary.

Core sample locations will be marked after final rolling. Core sample locations will be marked at the completion of a subplot and cores will be taken, prior to traffic staging changes, or at another time that is independent of paving operations. Any exceptions must be approved by the Engineer. The Engineer will identify four core sample locations for each subplot based on random longitudinal and transverse measurements. The Contractor will provide and pay for traffic control as required in the special provision for maintaining traffic, for all coring procedures including dispute resolution and subplot retest coring.

The Engineer will mark each core location with a 2-inch diameter paint dot, paint marker, or keel crayon, which represents the center of the core. If the center of the core is less than 5 inches from either edge of pavement, another transverse random number will be selected and the core sample site moved to the new location.

Notify the Engineer in advance of coring to ensure that WCDPS has a representative to witness the coring operation and take immediate possession of the cores. Drill a core sample approximately 6 inches in diameter at each core location. Do not damage cores during removal from the roadway. Measure cores at the time they are extracted from the pavement. Any core disqualified based on the minimum thickness criteria or damaged during removal will be discarded and a new core location will be selected by the

Engineer using the random number chart. If more than 50 percent of the cores in a lot are disqualified based on minimum thickness criteria, production must stop. Production will not be allowed to continue until the Engineer has confirmed that the paving operation is meeting the contract application rate. All previous pavement, base aggregate, or bond coat material will be sawed off the bottom of the core samples by the Engineer.

The minimum core thickness for each mixture type is:

Hot Mix Asphalt Mixture No.	Minimum Core Thickness
2E	3 inch
3E	2-1/4 inch
4E	1-1/2 inch
5E	1-1/8 inch

#### **ALTERNATE ACCEPTANCE IN-PLACE METHOD**

Density acceptance for Hand Patching, Joint Repairs, Driveways, and Widening/Tapers/ Gores of less than or equal to 5 feet will be as follows. Density acceptance for these processes will be by density gauge. Establish the compaction effort for each pavement layer to achieve the required in-place density values. After the final rolling, the Engineer will use a density gauge using the Gmm from the JMF for acceptance. A minimum of six random locations per subplot will be tested for density. If the average of the density values is equal to or greater than 92.00 percent of the Gmm, the pavement density will be accepted. If the average of the subplot density tests are less than 92.00 percent of the Gmm, the Contractor must take corrective action to achieve a minimum average of 92.00 percent of the Gmm.

#### **IN-PLACE DENSITY QUALITY ASSURANCE TESTING**

Pavement In-Place Density acceptance testing will be completed by the Engineer within 4 calendar days after the Engineer has taken possession of the cores at the project site. Testing will be in accordance with *MTM 315*. The Engineer and Contractor will mutually agree to use either vacuum dry or oven dry method as outlined in *MTM 315*. This agreement will be documented at the pre-production meeting. The Engineer's test results on the compacted HMA will be used as a basis of acceptance and payment.

#### **REJECTED MIXTURES**

The Contract Unit Price for HMA Mixtures, per subplot, that fall below the required 92.0 percent In-Place Density, based on the Maximum Theoretical Specific Gravity (Gmm) from the JMF, will be decreased as follows:

Adjusted Contract Unit Price = Contract Unit Price - Contract Base Price Adjustment

- A. A negative adjustment in the HMA Mixture Contract Base Price, when the average In-Place Density of the subplot is less than 92.0 percent, but equal to or greater than 91.0 percent will occur according to the following formula:

$$\text{Contract Base Price Adjustment} = \text{Contract Base Price} \times 0.10$$

- B. A negative adjustment in the HMA Mixture Contract Base Price, when the average In-Place Density of the subplot is less than 91.0 percent, but equal to or greater than 90.0 percent will occur according to the following formula:

$$\text{Contract Base Price Adjustment} = \text{Contract Base Price} \times 0.25$$

If the average In-Place Density of the subplot is below 90.0 percent, the material placed shall be removed and replaced at the sole expense of the Contractor.

### **DISPUTE RESOLUTION PROCESS FOR IN-PLACE DENSITY**

If the Contractor disputes the WCDPS in-place density testing results, the Contractor can request to take cores to verify the original failing density results within two days after they are notified that the material did not meet specifications. If the Engineer approves, the Engineer will establish the limits of the area, or separate discrete areas, to be represented by the cores and the core locations. Not more than one core for every 1300 linear feet of any discrete area in question will be taken. Dispute resolution cores will be located using random numbers as per the original procedure. The Contractor shall notify the Engineer 24 hours in advance of coring to ensure that WCDPS has a representative to witness the coring operation and to take immediate possession of the cores. After the Engineer takes possession of the cores, WCDPS will complete the density testing of the cores. The density of the cores will supersede the density of the original cores. The resulting core density for any areas, discrete, or total, established by the Engineer, shall be applied to the above Contract Base Price Adjustments or if required, the HMA shall be removed and replaced. After completion of the core testing the Engineer will notify the Contractor of the results.

All costs associated with this additional testing will be borne by the Contractor. Delays for this additional testing shall not be considered grounds for any extension of time to the contract.

### **HMA CONTRACT UNIT PRICE ADJUSTMENTS**

**Bond Coat:** In accordance with the formula and the tables below, price adjustments will be made if the penetration of the distillation residue fails to meet the specified range of 40 to 90 dmm and/or the percent of bituminous residue fails to meet the specified minimum. These price adjustments shall be cumulative.

$$P = F \times \frac{2000 \text{ rc}}{A}$$

Where:

- P = Price adjustment per ton of HMA cover material.
- F = Price reduction factor from table below.
- r = Specified Bond Coat application rate (gallons per square yard).
- c = (0.75) Constant representing applied rate of Bond Coat.
- A = Application rate of the HMA mixture in the layer placed on the Bond Coat, in pounds per square yard.

**Penetration of  
Distillation Residue, dmm**

**Price Reduction Factors (F)  
(Dollars/Gallon)**

35 to 39 .....	0.30
91 to 100 .....	0.30
30 to 34 .....	0.45
101 to 109 .....	0.45
Less than 30 .....	0.90
Greater than 110 .....	0.90

**Percent of  
Bituminous Residue**

**Price Reduction Factor (F)  
(Dollars/Gallon)**

27% - 30% .....	0.30
20 % - 26.9 % .....	0.45
Less than 20% .....	0.90

From September 15 to May 15, the Price Reduction Factor (F) will be as follows:

**Percent of  
Bituminous Residue**

**Price Reduction Factor (F)  
(Dollars/Gallon)**

46% - 48% .....	0.30
44 % - 46% .....	0.45
Less than 44 .....	0.90

For price adjustment purposes, the tests sample will represent the entire area of bond coat placed on the day the sample was taken plus any preceding coverage since the last sample was taken or since the beginning of the work, whichever is less.

**HMA MIXTURES**

**Table 1: Crush Minimum Criteria**

Estimated Traffic (million ESAL)	Mix Type	Top & Leveling Courses	Base Course
≥0.3 to <1.0	E1	65/--	--
≥1.0 to <3	E3	75/--	50/--
≥3.0 to <10	E10	85/80	60/--
<b>Note:</b> 85/80 denotes that 85 percent of the coarse aggregate has one fractured face and 80 percent has two fractured faces.			

**Table 2: Fine Aggregate Angularity Minimum Criteria**

Estimated Traffic (million ESAL)	Mix Type	Top & Leveling Courses	Base Course
≥0.3 to <1.0	E1	40	-
≥1.0 to <3	E3	43	40

≥3.0 to <10	E10	45	40
-------------	-----	----	----

**Table 3: Sand Equivalent Minimum Criteria**

Estimated Traffic (million ESAL)	Mix Type	Top & Leveling Courses	Base Course
≥0.3 to <1.0	E1	40	40
≥1.0 to <3	E3	40	40
≥3.0 to <10	E10	45	45

**Table 4: L.A. Abrasion Maximum Criteria**

Estimated Traffic (million ESAL)	Mix Type	Top & Leveling Courses	Base Course
≥0.3 to <1.0	E1	40	45
≥1.0 to <3	E3	35	40
≥3.0 to <10	E10	35	40

**Table 5: Soft Particles Maximum Criteria**

Estimated Traffic (million ESAL)	Mix Type	Top & Leveling Courses	Base Course
≥0.3 to <1.0	E1	10	10
≥1.0 to <3	E3	5	5
≥3.0 to <10	E10	5	5
<b>Note:</b> A Soft Particles Maximum is the sum of the shale, siltstone, ochre, coal, clay-ironstone and particles which are structurally weak or are found to be non-durable in service.			

**Table 6: Flat and Elongated Particles Maximum Criteria**

Estimated Traffic (million ESAL)	Mix Type	Top & Leveling Courses	Base Course
≥0.3 to <1.0	E1	--	--
≥1.0 to <3	E3	10	10
≥3.0 to <10	E10	10	10
<b>Note:</b> Maximum 10% by weight with a 1 to 5 aspect ratio.			

**Table 7: Superpave Mix Design Criteria**

Design Parameter	Mixture Number			
	5	4	3	2
Percent of Maximum Specific Gravity (% $G_{mm}$ ) at the design Number of gyrations, ( $N_d$ ) (See Note)	96.0% <sup>(1)</sup>			
% $G_{mm}$ at the initial number of gyrations, ( $N_i$ )	See Table 9			

%G <sub>mm</sub> at the maximum number of gyrations, (N <sub>m</sub> )	≤98.0%			
VMA min % at N <sub>d</sub> (based on aggregate bulk specific gravity, G <sub>sb</sub> )	15.0	14.0	13.0	12.0
VFA at N <sub>d</sub>	See Table 8 <sup>(3)</sup>			
Fines to effective asphalt binder ratio (P <sub>N0200</sub> /P <sub>be</sub> )	0.6 - 1.2			
Tensile strength ratio (TSR)	80 % min.			
(1) For mixtures meeting the definition for top, leveling, and base course, or a separate shoulder paving operation, unless otherwise noted on the plans, mixtures must be designed to 96.0% of Maximum Specific Gravity (% G <sub>mm</sub> ) at the design number of gyrations (N <sub>d</sub> ). During field production Percent of Maximum Specific Gravity (% G <sub>mm</sub> ) at the design number of gyrations, (N <sub>d</sub> ) shall be increased to 97.0 %.				
(2) The Binder Content used as the target will be the value on the Wayne County Bituminous Field Communication.				
(3) For Mixtures #2 and #3, the maximum criteria limits do not apply.				

**Table 8: VFA Minimum and Maximum Criteria**

Estimated Traffic (million ESAL)	Mix Type	Top Course	Base Course
>0.3 to ≤1.0	E1	65-78	65-78
>1.0 to ≤3.0	E3	65-78	65-78
>3.0 to ≤10	E10	65-78 <sup>(1)</sup>	65-75
(1) For mixture Number 5, the specific VFA range shall be 73% - 76%.			

**Table 9: Superpave Gyrotory Compactor (SGC) Compaction Criteria**

Estimated Traffic (million ESAL)	Mix Type	%G <sub>mm</sub> at N <sub>i</sub>	Number of Gyrations		
			N <sub>i</sub>	N <sub>d</sub>	N <sub>m</sub>
≥0.3 to >1.0	E1	90.5%	7	76	117
≥1.0 to <3	E3	90.5%	7	86	134
≥3.0 to <10	E10	89.0%	8	96	152
<b>Note:</b> Compact all mixture specimens fabricated in the SGC to N <sub>d</sub> .					

**Table 10: Aggregate Gradation Requirements**

Standard Sieve	Percent Passing Criteria (control points)			
	Mixture Number			
	5 Top	4 Leveling	3 Base	2 Binder
1½ inch				100
1 inch			100	90 - 100
¾ inch		100	90 - 100	90 max
½ inch	100	90 - 100	90 max	
⅜ inch	90 - 100	90 max		
No. 4	90 max			
No. 8	47 - 67	39 - 58	23 - 49	19 - 45
No. 16				

No. 30				
No. 50				
No. 100				
No. 200	2.0 - 10.0	2.0 - 10.0	2.0 - 8.0	1.0 - 7.0

**Table 11: Performance Graded Binder Utilization**

Mixture Type	HMA Mainline	High Stress HMA
EI	PG 64-22 Top & Leveling, Wedge Base Course and Drives	--
E3	PG 64-22 Top & Leveling, Wedge	--
E10	PG 70-22P Top & Leveling Course PG 64-22 Base Course, Wedge Course and Drives	PG 76-22P Top & Leveling Course PG 70-22P Base Course

**Table 12: Uniformity Tolerance Limits for HMA Mixtures**

PARAMETERS	TOP & LEVELING COURSE		BASE COURSE	
	Range # 1	Range #2	Range # 1	Range #2
Sieve Size				
% Passing No. 8 and Larger	±5.0	±8.0	±7.0	±9.0
% Passing No. 30	±4.0	±6.0	±6.0	±9.0
% Passing No. 200	±1.0	±2.0	± 2.0	±3.0
PG Binder Content	-0.30 to +0.40	±0.50	-0.30 to +0.40	±0.50
Crushed Particle Content	- 10%	- 15%	- 10%	- 15%

**Table 13: Uniformity Tolerance Limits for HMA Mixtures**

	Superpave Mixtures
Binder Content	± 0.5%
Air Voids	± 1.0% (% @ Ndes)
Voids in Mineral Aggregate (VMA)	± 1.0%
Maximum Specific Gravity (Gmm)	± 0.019

WCDPS will test for Uniformity Tolerances in Table 13 at least once per Job Mix Formula. WCDPS reserves the right to vary the testing frequency for volumetric specifications at the Engineer's discretion depending on the daily production. The Contractor will still be required to meet stated tolerances in Table 13.

## **HMA PAVING MIXTURES SUBJECT TO REJECTION OR PENALTY**

**Confirmed Test** - The initial test result fails to meet Range #1 or Range #2 and the laboratory retest result of the sample also fails to meet the Range #1 or Range #2.

**Consecutive Tests** - Two or more tests run on the same asphalt mix (e.g., HMA Base Course) but representing separate samples (e.g., first sample test a.m., second sample test p.m., and the third sample tested a.m. the following day of production) from the same plant for the same project.

**Initial Test** - The first test run on a sample of asphalt mix.

**Non-Conforming Mixture** - Asphalt mixture which fails to meet the Range #1, Range #2, or any other property (e.g.: VMA, air voids, etc.) as defined in this special provision.

**Non-Confirming Test** - The initial test fails to meet Range #1 or Range #2 and the laboratory retest of the same sample is found within Range #1 on the same sample.

**Range #1** - If, on two consecutive tests of the same mixture, the binder content or the aggregate gradation on the same sieve exceeds the uniformity tolerance of Range #1 but meets the uniformity tolerance of Range #2, the mixture shall be rejected. If, in the Engineer's judgment, the non-conforming mixture warrants removal, the Contractor shall remove and replace the non-conforming mixture with a mixture meeting specification requirements at his/her expense. If, in the Engineer's judgment, the non-conforming mixture can remain in place, the contract unit price for the non-conforming mixture shall be reduced in accordance with the following schedule:

<b><u>Non-conforming Item</u></b>	<b><u>Reduction</u></b>
Binder (minus) .....	10%
Binder (Plus) .....	5%
Each Sieve .....	5%

The total accumulated reduction shall not exceed 20 percent for material outside Range #1 and within Range #2.

**Range #2** - If any one item in a confirmed test as previously defined fails to conform to the Range #2 tolerance (includes the minimum crushed content requirement, maximum soft particles requirement, maximum flat and elongated particles requirement, or fines to effective binder ratio); and if, in the Engineer's judgment, the non-conforming mixture warrants removal, the Contractor shall remove the non-conforming mixture and replace it with a mixture conforming to specification requirements at his/her expense. If, in the judgment of the Engineer, the non-conforming mixture can remain in place, the contract unit price for these mixtures shall be decreased by 10% for each item up to a maximum of 30% when there is more than one non-conforming item.

If a second consecutive test still indicates the item to be outside Range #2 tolerance, shipping to the project shall be stopped until corrections have been demonstrated to have been made. Payment for the accepted mixture, including the material represented by the first test, will be decreased by 30% of the contract unit price for those mixtures outside Range #2.



**Superpave HMA Requirements** - If any one test does not exhibit characteristics conducive to a non-yielding, stable and serviceable pavement (low VMA, high or low air voids) the pavement shall be removed and replaced with the material conforming to specification requirements at the Contractor's expense.

If, in the Engineer's judgment, the non-conforming mixture can remain in place, the contract unit price for the non-conforming mixture shall be reduced in accordance with the following schedule:

**HMA Contract Unit Price Adjustments**

Mixture Property	Deviation (d) BELOW the Field production requirement (Table 7)	Deviation (d) ABOVE the Field production requirement (Table 7)	Negative Unit Price Adjustment %
Air Voids (deviation from JMF)		$1.0 < d \leq 1.3$	15
	$1.0 < d \leq 1.2$	$1.3 < d \leq 1.6$	25
	$1.2 < d \leq 1.4$	$1.6 < d \leq 1.9$	50
	$d > 1.4$	$d > 1.9$	** Removal
Voids in Mineral Aggregate (VMA) (deviation below minimum value in Special Provision for Superpave HMA Mixtures)		Deviation (d)	
		$d > 1.0$	**Removal

The contract unit price reductions indicated above will be in addition to any contract unit price adjustments resulting from the confirmed test results on the nonconforming mixture. The above reductions shall be cumulative.

If a second consecutive test on the same item as mentioned above indicates the item to fail specifications; shipping to the project shall be stopped until either corrections have been demonstrated to have been made or a new mix design has been submitted to the Testing Laboratory as required by the Engineer. The Contractor will have to furnish test results for the new mix design showing the mix will meet specifications prior to recommencing production on the project.

Testing procedures shall be in accordance with Michigan Test Methods.

\*\*The Split Sample will be tested by Wayne County. Test results on reheated Split Sample will be adjusted by the Correction Factors supplied by the contractor with the Mixtures Analysis Data. The results of the testing performed by Wayne County on the reheated split sample shall become the results of record.

**Commercial Wearing Course:** The successful bidder shall furnish a wearing course mixture which is produced for his commercial use customers. The aggregate gradation selected shall be reasonably uniform from coarse to fine sizes and shall have 100% passing the 5/8" sieve. The bitumen content shall be compatible with the aggregate gradation but shall not be less than 5%. A mix design for this mix shall be furnished to the Testing Laboratory for its use in checking conformance of material furnished when so desired.

The asphalt mixture can be made with a maximum of 25% "RAP" (Reclaimed Asphalt Pavement).

## **INFORMATION FOR MATERIAL DELIVERY OR PICKUP**

**Equipment Requirements:** Equipment used to deliver bituminous paving mixtures must be compatible with a Barber-Green 260 paver with a Layton hitch and a Blaw Knox Widener 195. The Contractor's equipment must have asphalt plates (chutes) of sufficient length to deposit material into the paver hopper without spillage in front of the paver.

For regular delivery service and for Standby delivery service, delivery of truckload quantities of 45 tons are required to be made by rear end discharge trailers with a live mechanical conveyor feed bottom, such as those manufactured by Flow-Boy, Fruehauf or Red River, and of not less than 45 tons capacity.

**Delivery of Material:** The delivery of materials shall be based upon approximate daily orders and requirements in tons per hour, delivered to the paver. The contractor will be required to deliver up to a maximum of 350 tons per hour and 2800 tons per day when pre-ordered by 12:00 p.m., the prior day, and not foreseeing any major plant breakdown or paving material mixture problems. Contractor's confirmation on the ability to supply material must be received in the County Construction Office before 1:00 p.m., one (1) working day prior to delivery.

If Contractor makes delivery by any other method, without prior approval by the County, the County reserves the right to reject the delivery and charge the vendor for downtime as specified herein. With prior County approval, the Contractor shall be allowed to regulate the number of truckload quantities per round as long as the County order is completed no later than 4:00 p.m., and within the rate of delivery variance.

The delivery rate of material shall be determined by the County Engineer in tons/hour based upon an 8-hour delivery period from 8 a.m. to 4 p.m., or as may be modified on certain days, in which case the County will notify the Contractor. The tons will be called in the prior day as noted above. A variance of this rate will result in the following actions.

1. A variance of 10% or more above the specified delivery rate shall result in the waiver of all demurrage charges.
2. A variance of 25% or more below the specified delivery rate shall result in payment by the Contractor for downtime.

The downtime (DT) shall be based upon the following:

Actual tonnage delivered (At) in any given hour and the specified delivery rate (Ad) in tons/hour. For example:

$$1 - \left[ \frac{\text{At tons}}{\text{Ad tons/hour} \times 0.75} \right] = \text{DT hours}$$

Therefore, the total cost of the downtime per each hour will be determined by the following:  
 $\$750.00/\text{hour} \times \text{DT (hours)} = \text{Total Downtime Cost per Each Hour in which the County was prepared to pave.}$

**Demurrage:** Estimated demurrage to be included in the bid on a price per ton of material delivered as follows: Demurrage price/ton for unloading time to self-propelled paver, for over 2 minutes/ton, shall be \$0.03/ton/minute. It shall be the responsibility of the Contractor to verify the demurrage charges. Note: Demurrage will not apply to Standby Delivery service, see below.

**Standby Delivery Service:** This service is for projects such as intersection paving with extended unloading time and therefore, demurrage charges do not apply. The hourly rate will begin based upon the loaded scale ticket time and will end no more than one-half hour after the truck is signed off the job by the County representative. This final sign-off shall be noted on Contractor's copy of the scale ticket by the County representative.

**Materials to Be Ordered:** The County shall order materials as it may require to properly carrying on its operation and the undersigned agrees to furnish such materials within a reasonable period of time and in such quantities as the County may require for the contract period. The quantities appearing in the bid schedule are approximate only, and are prepared for the comparison of bids. Payment to the Contractor shall be made only for the actual quantities of work performed and accepted or materials furnished in accordance with specifications. The scheduled quantities of work to be done or materials to be furnished may each be increased, decreased or omitted, however, no increase in materials or additional work are to be provided by Contractor without prior receipt of a Purchase Order Amendment signed by the County Purchasing Division.

Contractor agrees to notify the County of any changes in "Source of Supply" at least ten (10) days before such a change is to become effective. The County reserves the right to test materials at the proposed source, and, if found unsatisfactory, to reject the same.

Material Returned to Contractor: All material returned to Contractor, regardless of whether it was delivered to or picked up by the County, shall be credited at a rate of \$3.50/ton.

**Failure of To Deliver Materials:** If at any time the Contractor shall fail, neglect or refuse to furnish any of the materials herein provided to be furnished by it on demand by the County, or its duly authorized agents, then the county shall have the right to go into the open market and purchase such material of equal or better type, as it may require or desire in the performance of its work, and the further right to charge the Contractor any excess in price paid for such material over the price herein provided to be paid; provided, however, that such excess of the amount awarded, and that Contractor shall not be responsible for delays or failure to ship material caused by fire, strike, lockouts, accidents to its plants, inability to secure materials, or other contingencies beyond the Contractor's control.

### **3.3 Contract Term**

The term of the resultant contract shall be for a period of one(1) year from the date of Wayne County Commission approval, with an additional one (1) year extension option, which may be exercised at the discretion of Wayne County.

### **3.4 Additional Specifications:**

#### **3.4.1 Service Work Schedules:**

When the Contractor is onsite at County facilities the Contractor will observe the general operating hours of the facility, each facility may have different operating hours. If the Contractor and the County contact at a facility agree to access outside of general operating hours those agreements are between the Contractor and the County contact and not with the County.

#### **3.4.2 Service Security of Building and Property Requirements:**

County facilities are secured and Contractor will provide notification of its need to access County facilities timely so as to allow the County to notify security and to provide timely access to the Contractor.

#### **3.4.3 Service Equipment Requirements:**

The Contractor is responsible for providing its own computer equipment and information technology systems, unless specified otherwise under this IFB.

#### **3.4.4 Service Consumable Supplies Requirements:**

As outlined in the Scope of Work/Specifications section of this IFB.

#### **3.4.5 Service Inspection and Correction of Deficiencies Requirements:**

The County may inspect the part of the plant, place of business, or work site of a Contractor or Sub-Contractor at any tier, which is pertinent to the performance of any contract awarded or to be awarded by the County.

#### **3.4.6 Service Capabilities**

The Contractor will provide professionals who are current with professional development and will provide such documentation as necessary to show compliance.

#### **3.4.7 Ordering of Services**

As outlined in the Scope of Work/Specifications section of this IFB.

#### **3.4.8 Customer Service**

Contractor provided professionals assigned to the engagement will reply to email or phone calls timely.

#### **3.4.9 Roles and Responsibilities**

The Contractor will not subcontract the responsibilities outlined in this IFB without prior written approval (excluding subcontractor(s) disclosed in the response to this IFB).

#### **3.4.10 Delivery Acceptance Criteria**

The designated Wayne County representative shall provide the final review and approval of the required services/productions outlined in this IFB.

#### **3.4.11 Service Level Agreements**

Not applicable.

#### **3.4.12 Milestones**

The Contractor, as part of the response to this IFB, shall provide a timeline with milestones identified for timely implementation of services/delivery of products.

#### **3.4.13 Training**

Not applicable.

#### **3.4.14 Success Criteria**

As outlined in the Scope of Work/Specifications section of this IFB.

**APPENDIX B: COMPENSATION**

<b>LINE</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>2019 UNIT PRICE</b>
1	HMA, 5E30	TN	\$95.75
2	Misc HMA, 5E10	TN	\$91.25
3	Misc HMA, 5E3	TN	\$89.84
4	Misc HMA, 5E1	TN	\$86.25
5	HMA, 4E30	TN	\$89.50
6	Misc HMA, 4E10	TN	\$89.50
7	Misc HMA, 4E3	TN	\$88.82
8	Misc HMA, 4E1	TN	\$88.75
9	Misc HMA, 3E10	TN	\$85.00
10	Misc HMA, 3E3	TN	\$85.46
11	Misc HMA, 2E10	TN	\$85.39
12	Misc HMA, 5E10, High Stress,	TN	\$96.00
13	Misc HMA, 4E10, High Stress,	TN	\$94.81
14	Misc HMA, 5E10 Pick Up	TN	\$85.26
15	Misc HMA, 5E3 Pick Up	TN	\$83.84
16	Misc HMA, 5E1 Pick Up	TN	\$80.02
17	Misc HMA, 4E10 Pick Up	TN	\$84.30
18	Misc HMA, 4E3 Pick Up	TN	\$83.25
19	Misc HMA, 4E1 Pick Up	TN	\$83.00
20	HMA, Standby Delivery, Regular Time	HR	\$165.00
21	HMA, Standby Delivery, Overtime	HR	\$185.00
22	Commercial Hot Mix Asphalt Pick-Up	TN	\$68.15
23	Misc HMA, SS-1H Emulsion	GL	\$5.00

TN: Ton HR: Hour GL: Gallon

**CONTRACT NOT TO EXCEED****\$3,500,000.00**

**APPENDIX C: LIST OF SUBCONTRACTORS**

# WAYNE COUNTY HUMAN RELATIONS DIVISION FIRST TIER SUBCONTRACTOR DESIGNATION FORM

**\*To be completed by Prime Contractors for "First Tier" Subcontractors Only\***

*This form Must be completed by all prime contractors receiving a contract of more than \$50,000 (supplies/services) or more that \$100,000 (construction) from Wayne County regardless of the dollar amount at which the subcontractor participates.*

**\*\*THIS PAGE MUST BE COMPLETED EVEN IF NO SUBCONTRACTORS WILL BE USED\*\***

1. CONTRACT NUMBER: 37 - 19 - 012 (Number on Bid Announcement)  
TCM Number: 2018 - 33 - 018 (Internal use only)

**2. CHECK ONE:**

This is a: ☒ SUPPLY/SERVICE contract (over \$50,000? ☒ YES ☐ NO)  
OR  
☐ CONSTRUCTION contract (over \$100,000? ☐ YES ☐ NO)

**3. WILL SUBCONTRACTORS BE USED FOR THIS CONTRACT? (Check One)**

☐ YES \* ☒ NO

\* If you answered "YES" complete the next page.

Prime Company Name: <u>Cadillac Asphalt, LLC</u>		Fed Tax ID: <u>65-1194742</u>	
Address: <u>39255 Country Club Drive</u>			
City: <u>Farmington Hills</u>	County: <u>Wayne</u>	State: <u>MI</u>	Zip: <u>48331</u>
Phone: <u>(248) 228-6281</u>		Fax: _____	
Authorized Contact Person: <u>Jason Teper</u>		Email: <u>jason.teper@mipmc.com</u>	

**I declare that all of the information contained in this form is complete and accurate to the best of my knowledge.**

Print Name Jason Teper Title Sales Representative  
Signature Jason Teper Digitally signed by Jason Teper Date: 2018.12.27 10:23:55 -05'00' Date 12/27/18



**BUSINESS INFORMATION QUESTIONNAIRE**

Please complete the following:

1. Company's official registered name

Cadillac Asphalt, LLC

2. Brief history of your company, including the year it was established

Established in 2003. Hot Mix Asphalt and Cold Patch producer and heavy highway contractor.

3. Company's Dun & Bradstreet (D&B) number (Required for federally funded contracts, optional otherwise)

NA

4. Company Type (Corporation, LLC, Joint Venture, Partnership, Individual). If Corporation, include State of Incorporation and Date of Incorporation.

LLC

5. Company's organizational chart of those individuals that would be involved in the contract. Include Partners, Principals, Corporate Officers or Owners, Corporate Directors.

Jason Teper, sales representative

6. Corporate office location

a. List the addresses of sales and service offices/locations in Michigan

b. List the names of key contacts at each with title, address, phone and e-mail address

2575 S. Haggerty Rd., Suite 100 Canton MI. 48188

7. List of principal stockholders (i.e., those holding 5% or more of the outstanding stock)

Michigan Paving & Materials Co, and Edw C. Levy Company

8. Financial Disclosure/Conflicts of Interest (Identify any contract(s), including any contract involving an employment or consulting relationship, which the firm, or its partners, principals, corporate officers or owners currently has with Wayne County, or with any of its Commissioners or officers.

None

9. Has your company been debarred by the Federal, any State or Local Governments? Yes ☒ No

If yes, has it been lifted and if so, when?

10. Has your company had contracts terminated for breach or failure to perform within the past five years? Yes ☒ No

If yes, by whom and why?

11. Has your company had any violations, or are there any investigations pending for any Federal, any State or Local Governmental contracts? Yes ☒ No

If yes, has it been lifted and if so, when?