



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

His Excellency, Governor Christopher T. Sununu
and The Honorable Executive Council
State House
Concord, New Hampshire 03301

Bureau of Materials & Research
March 26, 2020

REQUESTED ACTION

Authorize the New Hampshire Department of Transportation (Department) to enter into a contract with Pathway Services, Inc. (Vendor 172330) of Tulsa, Oklahoma, in the amount of \$3,091,131.00. The initial contract period, effective upon Governor and Executive Council approval, will extend six (6) years to December 31, 2025 with the option to renew for up to four (4) additional years to December 31, 2029. Pathway Services, Inc. will provide road condition data collection, data storage, and web hosting services in support of Federal and State reporting requirements. Pathway Services, Inc. will also assemble a replacement road condition data collection vehicle using a new Ford Transit 350 crew van purchased under separate contract, and provide associated ongoing warranty, technical support, and software licensing. 100% Federal Funds.

Funds to support this request are available in the following account(s) for State FY 2021 and anticipated to be available in State FY 2022-2026 upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between State Fiscal Years within the price limitation through the Budget Office, if needed and justified.

	SFY 2021	SFY 2022	SFY 2023	SFY 2024	SFY 2025	SFY 2026	Total
04-96-96-962515- 29440000-SPR Planning Funds- 038-500177- Technology Software	\$35,000	\$36,080	\$37,131	\$38,245	\$39,392	\$40,574	\$226,422
04-96-96-962515- 29440000-SPR Planning Funds- 046-500463-Eng Consultants	\$820,250	\$442,112	\$308,595	\$468,945	\$327,607	\$497,200	\$2,864,709

EXPLANATION

The NHDOT Bureau of Materials and Research, through its Pavement Management Section, has collected and processed road condition data in-house for many years. This data is stored on DoIT servers and made available to other parts of the State through its computer network, using customized computer software. The data supports the Pavement Management System and satisfies the Federal Highway Administration (FHWA) Highway Performance Monitoring System (HPMS) reporting requirements. The State owns and operates two data collection vehicles that are both at end-of-life for their intended purposes. Moving forward, the State will replace both existing vehicles with one new data collection vehicle. Additionally, the State will engage Pathway Services, Inc. to complete its network data collection activities including data storage and web hosting. The replacement data collection vehicle will be used to: maintain a current and accurate inventory of the road network by collecting roughness, rutting, and cracking distress data immediately following paving projects; perform special data collections for asset extractions and inventory initiatives; and continue QC/QA testing on newly constructed pavements in-house using a Department-owned vehicle and State personnel.

The vendor selection process for this contract was initiated by a solicitation for road condition data collection service vendors and data collection vehicle manufacturers through a Request for Proposals (RFP #2019-060), which was posted on the State's Department of Administrative Services (DAS) website from September 13, 2019 to October 24, 2019. Answers to vendor's questions regarding clarification of the solicitation were posted to the DAS website on September 27, 2019, October 4, 2019, and October 17, 2019.

As a result of the solicitation, three firms submitted proposals: Mandli Communications, Inc., Fugro, and Pathway Services, Inc. Prior to the required oral interview and product demonstration component, Mandli Communications, Inc. dropped out of the selection process.

The selection process for this contract consisted of review and ranking of solicited written technical proposals, cost proposals, and oral interviews/presentations and product demonstrations by the selection panel comprised of five members representing the Department of Transportation and the Department of Information Technology. The selection panel included five members: Pavement Management Section Chief (Bureau of Materials and Research), Pavement Data Management Engineer (Bureau of Materials and Research), Data Collection Supervisor (Bureau of Materials and Research), Pavement Management Engineer (Bureau of Materials and Research), and IT Project Manager (Department of Information Technology).

The selection panel members reviewed the proposals individually between October 24, 2019 and November 8, 2019. The selection panel met subsequently on two occasions and came to consensus scoring for the respondents. In person interviews and product demonstrations were conducted in December, 2019, and consisted of two full days for each of the two competing firms. The panel, by consensus, rated each of the firms based on the following factors: 1) Response Scoring, 2) Cost, and 3) Oral Interviews/Presentations and Product Demonstrations. Having assessed all of the aforementioned factors, the selection panel scored and ranked Pathway Services, Inc. the highest of the two firms. The Scoring Summary is as follows:

Firm	Score Max 100%	Overall Rank
Pathway Services, Inc.	86.5%	1
Fugro	84.4%	2

Pathway Services, Inc. is highly regarded in the United States in the field of road condition data collection and has been providing data collection services nationwide since 1996. Additionally, their proprietary data collection vehicle, the "PathRunner," has been their sole product since 1996. The NH Department of Transportation purchased a PathRunner from Pathway Services in 2009 and just completed the 11th data collection season with the same vehicle. The Bureau of Materials and Research has been very pleased with the performance of that vehicle and with the customer service offered by Pathway Services. The selection panel's ranking was submitted to the DOT Oversight Committee: Dennis Herrick, Administrator of the Bureau of Materials and Research; and Peter Stamnas, Director of Project Development for consideration and approval.

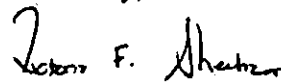
Pathway Services, Inc. has agreed to provide the required services and associated maintenance and warranty services in a six (6) year agreement for a total amount not to exceed \$3,091,131.00. The contract has a completion date of December 31, 2025, with a State option to extend for two (2) two (2) year extensions, up to but not beyond December 31, 2029.

The SPR funds proposed for this purchase are specified by FHWA for use in support of planning activities, including pavement and asset management. The project funding is 80% Federal with 20% State match. Turnpike Toll Credits are being used for match requirements, effectively using 100% Federal funds.

The contract has been approved by the Attorney General as to form and execution. The Department of Information Technology (DoIT) has reviewed and approved the agreement. The Department has verified that the necessary funds are available. Copies of the fully executed agreement are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to your approval, will be on file at the Department.

We respectfully request your approval of this resolution.

Sincerely,



Victoria Sheehan
Commissioner

Attachments



STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY

27 Hazen Dr., Concord, NH 03301
Fax: 603-271-1516 TDD Access: 1-800-735-2964
www.nh.gov/doit

Denis Goulet
Commissioner

April 8, 2020

Victoria F. Sheehan
Commissioner
State of New Hampshire
Department of Transportation
John O. Morton Bldg., 7 Hazen Drive
Concord, NH 03302-0483

Dear Commissioner Sheehan:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract with Pathway Services, Inc, of Tulsa, Oklahoma, **as described below and** referenced as DoIT No. 2019-060.

The purpose of this contract is for Pathway Services, Inc., to provide for road condition data collection, data storage, and web hosting services in support of Federal and State reporting requirements. Pathway Services, Inc. will also assemble a replacement road condition data collection vehicle using a new Ford Transit 350 crew van purchased under separate contract, and provide associated ongoing warranty, technical support, and software licensing.

The cost of the contract is \$3,091,131.00. The initial contract period will be effective upon Governor and Executive Council approval through December 31, 2025 with the option to renew for up to four (4) additional years to December 31, 2029.

A copy of this letter should accompany the Department of Transportation's submission to the Governor and Executive Council for approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis Goulet", with a stylized flourish at the end.

Denis Goulet

DG/ik
DOT 2019-060

cc: Charles Burns, DoIT IT Lead

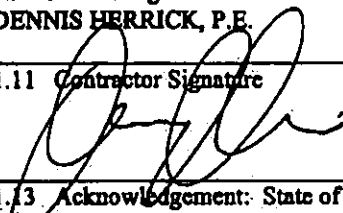


Responses	Contract	Vendors	Amount/Score
2	NHDOT 2019-060 Road Condition Data Collection Services and Vehicle Procurement	Fugro Pathway Services, Inc.	84.4/100 86.5/100

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS**1. IDENTIFICATION.**

1.1 State Agency Name DEPARTMENT OF TRANSPORTATION		1.2 State Agency Address 7 HAZEN DRIVE, CONCORD, NH 03302	
1.3 Contractor Name PATHWAY SERVICES, INC.		1.4 Contractor Address PO BOX 472105, TULSA, OKLAHOMA 74147	
1.5 Contractor Phone Number 918-259-9883	1.6 Account Number 04-96-96-962515-29440000 SPR Planning Funds 038-500177 Tech. Software 046-500463 Eng. Consultants	1.7 Completion Date DECEMBER 31, 2025	1.8 Price Limitation \$ 3,091,131.00
1.9 Contracting Officer for State Agency DENNIS HERRICK, P.E.		1.10 State Agency Telephone Number 603-271-3151	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory RUDY BLANCO, PRESIDENT	
1.13 Acknowledgement: State of <u>Oklahoma</u> , County of <u>Tulsa</u> On <u>04/17/2020</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.13.1			
1.13.1 Notary Public, State of <u>Oklahoma</u> , the Peace <u>Tulsa County</u> Commission # <u>18001707</u> My Commission Expires <u>February 20, 2022</u> 			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Sandra J Constable</u> <u>Financial Manager</u>			
1.14 State Agency Signature  Date: <u>4/22/20</u>		1.15 Name and Title of State Agency Signatory <u>Peter E. Stammas</u> Director of Project Development	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>Takmina Rakhmatova</u> On: <u>04/23/2020</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or ¹, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default

!! never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. **SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
ROAD CONDITION DATA COLLECTION SERVICE AND
DATA COLLECTION VEHICLE PROCUREMENT
CONTRACT 2019-060
PART 2 - INFORMATION TECHNOLOGY PROVISIONS**

**New Hampshire Department of Information Technology
Contract Cover Sheet**

Name of Agency/Division: NH DEPARTMENT OF TRANSPORTATION/DIVISION OF PROJECT DEVELOPMENT	
Contract Number/Name: CONTRACT 2019-060 ROAD CONDITION DATA COLLECTION SERVICES AND DATA COLLECTION VEHICLE PROCUREMENT	
<p>Contract Purpose: To engage Pathway Services, Inc. (Pathways) to collect, process, verify, and deliver to the State a complete data set from the NH roadway network that includes roughness (IRI), rutting, and cracking distress data and measurements, as well as other related information and right-of-way imagery. Pathways will accomplish data collection using automated data collection vehicles operated by Pathways' staff. Pathways will store NH roadway network data in its secure data center and provide compatible computer software to the State that staff can utilize to manage the data and view images from any access point in the State and online.</p> <p>Pathways will also assemble a new data collection vehicle (Pathrunner), using a Ford Transit 350 purchased under separate contract, to replace the State's existing data collection vehicles. Vehicle procurement includes an associated all-inclusive warranty on the data collection subsystems, as well as ongoing technical support and software maintenance provisions for the life of the contract. Pathways will provide a standalone computer workstation and 200 TB storage appliance customized and optimized for data download and processing as part of the Pathrunner assembly.</p>	
Name of Vendor: Pathway Services, Inc.	Who Negotiated the Contract: Patrick Colburn, Eric Thibodeau, and William Oldenburg
Amount of Contract: \$3,091,131.00	Funding Source: SPR PART 1
Term of Contract: 6 YEARS (extendable to 10 years with optional 2 year extensions)	Is this an amendment? NO
Competitive Bid Process: (Explain if "No") YES	
<p>Background Information: The State solicited proposals from qualified vendors specializing in automated pavement condition data collection, right-of-way imagery, and data collection vehicle assembly. Three proposals were received on October 24, 2019 and scored based on the provisions outlined in the RFP. Pathway Services, Inc. was the highest scoring vendor and was selected by committee as the overall best value for the State.</p>	
Special Concerns: None	
Amendment History (if applicable):	
Submitted By: PATRICK COLBURN	Current Date:
Phone: 603-271-3151	Email: Patrick.Colburn@dot.nh.gov

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
ROAD CONDITION DATA COLLECTION SERVICE AND
DATA COLLECTION VEHICLE PROCUREMENT
CONTRACT 2019-060
PART 2 - INFORMATION TECHNOLOGY PROVISIONS**

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**STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
ROAD CONDITION DATA COLLECTION SERVICE AND
DATA COLLECTION VEHICLE PROCUREMENT
CONTRACT 2019-060
PART 2 - INFORMATION TECHNOLOGY PROVISIONS**

TERMS AND DEFINITIONS

The following general contracting terms and definitions apply except as specifically noted elsewhere in this document.

Acceptance	Notice from the State that a Deliverable has satisfied Acceptance Test or Review.
Acceptance Letter	An Acceptance Letter provides notice from the State that a Deliverable has satisfied Acceptance Tests or Review.
Acceptance Period	The timeframe during which the Acceptance Test is performed
Acceptance Test Plan	The Acceptance Test Plan provided by the Vendor and agreed to by the State that describes at a minimum, the specific Acceptance process, criteria, and Schedule for Deliverables.
Acceptance Test and Review	Tests performed to determine that no Defects exist in the application Software or the System
Access Control	Supports the management of permissions for logging onto a computer or network
Agreement	A contract duly executed and legally binding.
Appendix	Supplementary material that is collected and appended at the back of a document
Audit Trail Capture and Analysis	Supports the identification and monitoring of activities within an application or system
Authorized Persons	Pathways' employees, Pathways, subcontractors or other agents who need to access the State's personal data to enable Pathways to perform the services required.
Certification	The Vendor's written declaration with full supporting and written Documentation (including without limitation test results as applicable) that the Vendor has completed development of the Deliverable and certified its readiness for applicable Acceptance Testing or Review.
Change Order	Formal documentation prepared for a proposed change in the Specifications.
Completion Date	End date for the Contract
Confidential Information	Information required to be kept Confidential from unauthorized disclosure <i>under the Contract</i>
Contract	This Agreement between the State of New Hampshire and a Vendor, which creates binding obligations for each party to perform as specified in the Contract Documents.
Contract Agreement	Part 1, 2, and 3.. The documentation consisting of both the General Provisions and the Exhibits which represents the understanding and acceptance of the reciprocal legal rights and duties of the parties with respect to the Scope of Work

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
ROAD CONDITION DATA COLLECTION SERVICE AND
DATA COLLECTION VEHICLE PROCUREMENT
CONTRACT 2019-060
PART 2 - INFORMATION TECHNOLOGY PROVISIONS**

Contract Conclusion	Refers to the conclusion of the Contract, for any reason, including but not limited to, the successful Contract completion, termination for convenience, or termination for default.
Contract Documents	Documents that comprise this Contract (See Contract Agreement; Section 1.1)
Contract Managers	The persons identified by the State and the Vendor who shall be responsible for all contractual authorization and administration of the Contract. These responsibilities shall include but not be limited to processing Contract Documentation, obtaining executive approvals, tracking costs and payments, and representing the parties in all Contract administrative activities. (See Section 4: <i>Contract Management</i>)
Contract Price	The total, not to exceed amount to be paid by the State to Pathways for product and services described in the Contract Agreement. This amount is listed in the General Provisions Section 1.8 (P-37).
Pathways	The Vendor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
Contracted Vendor/Vendor	The Vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.
Conversion Test	A test to ensure that a Data conversion process correctly takes Data from a legacy system and successfully converts it to a form that can be used by the new System.
Cure Period	The thirty (30) day period following written notification of a default within which a contracted vendor must cure the default identified.
Custom Code	Code developed by the Vendor specifically for this project for the State of New Hampshire
Custom Software	Software developed by the Vendor specifically for this Project for the State of New Hampshire
Data	State's records, files, forms, Data and other documents or information, in either electronic or paper form, that will be used /converted by the Vendor during the Contract Term
Data Breach	The unauthorized access by a non-authorized person/s that results in the use, disclosure or theft of a the State's unencrypted non-public data.
DBA	Database Administrator
Deficiencies/Defects	<p>A failure, deficiency or defect in a Deliverable resulting in a Deliverable, the Software, or the System, not conforming to its Specifications.</p> <p>Class A Deficiency – Software - Critical, does not allow System to operate, no work around, demands immediate action; <i>Written</i></p>

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	<p><i>Documentation</i> - missing significant portions of information or unintelligible to State; <i>Non Software</i> - Services were inadequate and require re-performance of the Service.</p> <p>Class B Deficiency – <i>Software</i> - important, does not stop operation and/or there is a work around and user can perform tasks; <i>Written Documentation</i> - portions of information are missing but not enough to make the document unintelligible; <i>Non Software</i> - Services were deficient, require reworking, but do not require re-performance of the Service.</p> <p>Class C Deficiency – <i>Software</i> - minimal, cosmetic in nature, minimal effect on System, low priority and/or user can use System; <i>Written Documentation</i> - minimal changes required and of minor editing nature; <i>Non Software</i> - Services require only minor reworking and do not require re-performance of the Service.</p>
Deliverable	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, other), provided by the Vendor to the State or under the terms of a Contract requirement.
Department of Information Technology (DoIT)	The Department of Information Technology established under RSA 21-R by the Legislature effective September 5, 2008.
Documentation	All information that describes the installation, operation, and use of the Software, either in printed or electronic format.
Digital Signature	Certification that guarantees the unaltered state of a file, also known as "code signing."
Effective Date	The Contract and all obligations of the parties hereunder shall become effective on the date the Governor and the Executive Council of the State of New Hampshire approves the Contract
Encryption	Supports the transformation of data for security purposes
Enhancements	Updates, additions, modifications to, and new releases for the Software, and all changes to the Documentation as a result of Enhancements, including, but not limited to, Enhancements produced by Change Orders
Firm Fixed Price Contract	A Firm-Fixed-Price Contract provides a price that is not subject to increase, i.e., adjustment on the basis of the Vendor's cost experience in performing the Contract
Fully Loaded	Rates are inclusive of all allowable expenses, including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of pocket expenses
Governor and Executive Council	The New Hampshire Governor and Executive Council.

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Identification and Authentication	Supports obtaining information about those parties attempting to log on to a system or application for security purposes and the validation of those users
Implementation	The process for making the System fully operational for processing the Data.
Implementation Plan	Sets forth the transition from development of the System to full operation, and includes without limitation, training, business and technical procedures.
Information Technology (IT)	Refers to the tools and processes used for the gathering, storing, manipulating, transmitting, sharing, and sensing of information including, but not limited to, Data processing, computing, information systems, telecommunications, and various audio and video technologies.
Input Validation	Ensure that the values entered by users or provided by other applications meets the size, type and format expected. Protecting the application from cross site scripting, SQL injection, buffer overflow, etc.
Intrusion Detection	Supports the detection of illegal entrance into a computer system
Invoking Party	In a dispute, the party believing itself aggrieved.
Key Project Staff	Personnel identified by the State and by Pathways as essential to work on the Project.
Licensee	The State of New Hampshire
Non Exclusive Contract	A contract executed by the State that does not restrict the State from seeking alternative sources for the Deliverables or Services provided under the Contract.
Non-Public Information	Data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.
Non-Software Deliverables	Deliverables that are not Software Deliverables or Written Deliverables, e.g., meetings, help support, services, other
Normal Business Hours	Normal Business Hours – 8:00 a.m. to 5:00 p.m. EST, Monday through Friday excluding State of New Hampshire holidays. State holidays are: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, July 4 th , Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day. Specific dates will be provided
Notice to Proceed (NTP)	The State Contract Manager's written direction to the Vendor to begin work on the Contract on a given date and time
Open Data Formats	A data format based on an underlying Open Standard.
Open Source Software	Software that guarantees the user unrestricted use of the Software as defined in RSA 21-R:10 and RSA 21-R:11.

2019-060 IT Provisions – Part 2
Pathways Initials: VB
Date: 4/17/2020

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Open Standards	Specifications for the encoding and transfer of computer data that is defined in RSA 21-R:10 and RSA 21-R:13.
Operating System	The software that supports a computer's basic functions.
Operational	Operational means that the system is ready for use and fully functional, all data has been loaded, the system is available for use by the State in its daily operations, and the State has issued an Acceptance Letter.
Order of Precedence	The order in which Contract/Documents control in the event of a conflict or ambiguity. A term or condition in a document controls over a conflicting or ambiguous term or condition in a document that is lower in the Order of Precedence
Personal Data	Data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (c.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
Project	The planned undertaking regarding the entire subject matter of an RFP and Contract and the activities of the parties related hereto.
Project Team	The group of State employees and contracted Vendor's personnel responsible for managing the processes and mechanisms required such that the Services are procured in accordance with the Work Plan on time, on budget and to the required specifications and quality
Project Management Plan	A document that describes the processes and methodology to be employed by the Vendor to ensure a successful Project.
Project Managers	The persons identified who shall function as the State's and the Vendor's representative with regard to Review and Acceptance of Contract Deliverables, invoice sign off, and review and approval of Change Requests (CR) utilizing the Change Control Procedures (CCP)
Project Staff	State personnel assigned to work with the Vendor on the Project
Proposal	The submission from a Vendor in response to the Request for a Proposal or Statement of Work
Protected Health Information (PHI)	Individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
Regression Test Plan	A plan integrated into the Work Plan used to ascertain whether fixes to Defects have caused errors elsewhere in the application/process.
Review	The process of reviewing Deliverables for Acceptance

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Review Period	The period set for review of a Deliverable. If none is specified then the Review Period is five (5) business days.
RFP (Request for Proposal)	A Request For Proposal solicits Proposals to satisfy State functional requirements by supplying data processing product and/or Service resources according to specific terms and conditions
Role/Privilege Management	Supports the granting of abilities to users or groups of users of a computer, application or network
Schedule	The dates described in the Work Plan for deadlines for performance of Services and other Project events and activities under the Contract
Security Incident	The potentially unauthorized access by non-authorized persons to personal data or non-public data Pathways believes could reasonably result in the use, disclosure or theft of a State's unencrypted personal data or non-public data within the possession or control of Pathways. A security incident may or may not turn into a data breach.
Service Level Agreement (SLA)	A signed agreement between both the State and Pathways that is subject to the terms and conditions in this document that unless otherwise agreed to includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.
Service	The work or labor to be performed by the Vendor on the Project as described in the Contract.
Pathways	The vendor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
Software	All custom Software and COTS Software provided by the Vendor under the Contract
Software-as-a-Service (SaaS)	The capability provided to the State to use Pathways' applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The State does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
Software Deliverables	Software and Enhancements
Software License	Licenses provided to the State under this Contract
Solution	The Solution consists of the total Solution, which includes, without limitation, Software and Services, addressing the requirements and terms of the Contract Specifications. The off-the-shelf Software and

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	configured Software customized for the State provided by the Vendor in response to this RFP.
Specifications	The written provisions that set forth the requirements which include, without limitation, this RFP, the Proposal, the Contract, any performance standards, Documentation, applicable State and federal policies, laws and regulations, State technical standards, subsequent State-approved Deliverables, and other Specifications and requirements described in the Contract Documents. The Specifications are, by this reference, made a part of the Contract as though completely set forth herein.
State	STATE is defined as: State of New Hampshire Department of Transportation 5 Hazen Drive Concord, NH 03302 Reference to the term "State" shall include applicable agencies
Statement of Work (SOW)	A Statement of Work clearly defines the basic requirements and objectives of a Project. The Statement of Work also defines a high level view of the architecture, performance and design requirements, the roles and responsibilities of the State and the Vendor. The Contract Agreement SOW defines the results that the Vendor remains responsible and accountable for achieving.
State's Confidential Records	State's information regardless of its form that is not subject to public disclosure under applicable state and federal laws and regulations, including but not limited to <u>RSA Chapter 91-A</u>
State Data	For SaaS applications means all data created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State's hardware, Pathways' hardware or exists in any system owned, maintained or otherwise controlled by the State or by Pathways.
State Fiscal Year (SFY)	The New Hampshire State Fiscal Year extends from July 1 st through June 30 th of the following calendar year
State Identified Contact	The person or persons designated in writing by the State to receive security incident or breach notification.
State's Project Manager (PM)	State's representative with regard to Project management and technical matters. Agency Project Managers are responsible for review and Acceptance of specific Contract Deliverables, invoice sign off, and Review and approval of a Change Proposal (CP).
Subcontractors	A person, partnership, or company not in the employment of, or owned by, the Vendor, which is performing Services under this Contract under a separate Contract with or on behalf of the Vendor

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System	All Software, specified hardware, and interfaces and extensions, integrated and functioning together in accordance with the Specifications.
TBD	To Be Determined
Technical Authorization	Direction to a Vendor, which fills in details, clarifies, interprets, or specifics technical requirements. It must be: (1) consistent with Statement of Work within statement of Services; (2) not constitute a new assignment; and (3) not change the terms, documents of specifications of the Contract Agreement
Test Plan	A plan, integrated in the Work Plan, to verify the code (new or changed) works to fulfill the requirements of the Project. It may consist of a timeline, a series of tests and test data, test scripts and reports for the test results as well as a tracking mechanism.
Term	Period of the Contract from the Effective Date through termination.
Transition Services	Services and support provided when Pathways is supporting System changes.
UAT	User Acceptance Test
Unit Test	Developers create their own test data and test scenarios to verify the code they have created or changed functions properly as defined.
User Acceptance Testing	Tests done by knowledgeable business users who are familiar with the scope of the Project. They create/develop test cases to confirm the System was developed according to specific user requirements. The test cases and scripts/scenarios should be mapped to business requirements outlined in the user requirements documents.
User Management	Supports the administration of computer, application and network accounts within an organization
Vendor/ Contracted Vendor	The Vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.
Verification	Supports the confirmation of authority to enter a computer system, application or network
Walk Through	A step-by-step review of a Specification, usability features or design before it is handed off to the technical team for development
Work Hours	Vendor personnel shall work normal business hours between 8:00 am and 5:00 pm EST, eight (8) hour days, forty (40) hour weeks, excluding State of New Hampshire holidays. Changes to this schedule may be made upon agreement with the State Project Manager.
Work Plan	The overall plan of activities for the Project created in accordance with the Contract. The plan and delineation of tasks, activities and events to be performed and Deliverables to be produced under the

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	Project as specified in Appendix C. The Work Plan shall include a detailed description of the Schedule, tasks/activities, Deliverables, critical events, task dependencies, and the resources that would lead and/or participate on each task.
Written Deliverables	Non-Software written deliverable Documentation (letter, report, manual, book, other) provided by the Vendor either in paper or electronic format.

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INTRODUCTION

This Contract is by and between the State of New Hampshire, acting through New Hampshire Department Transportation ("State"), and Pathway Services, Inc., an Oklahoma Corporation, ("Pathways"), having its principal place of business at 2701 N. Hemlock Court, Broken Arrow, Oklahoma.

Pathways will collect, process, verify, and deliver to the State a complete set of road condition data from the NH roadway network. Road condition data includes roughness (IRI), rutting, and cracking distress data and measurements, as well as other related information such as grade, cross slope, heading, and GPS location. Data collection includes capturing right-of-way imagery, both forward facing and rear facing, as well as downward facing pavement level images. Pathways will accomplish road condition data collection using automated data collection vehicles operated by Pathways. The NHDOT RFP 2019-060 Appendix C: System Requirements and Deliverables, including Table C-2, along with Pathways' RFP response dated October 22, 2019 Sections 3 and 4, and the List of Negotiated Items, all attached hereto and incorporated into this Contract in Part 3 Exhibits 'M', 'N', and 'H' respectively, provide more specific State requirements and fully detail the scope of data collection services to be performed by Pathways.

Pathways will store NH roadway network data in their secure data center. Pathways will provide compatible computer software to the State that State staff can utilize to manage the data and view images from any access point in the State and online. Pathways shall host the online software application, Pathweb, which shall provide access to all current road condition data as well as all historic road condition data collected by the State between 2009 and 2019. The NHDOT RFP 2019-060 Appendix C: System Requirements and Deliverables, including Table C-2, along with Pathways' RFP response dated October 22, 2019 Sections 3 and 4, and the List of Negotiated Items, all attached hereto and incorporated into this Contract in Part 3 Exhibits 'M', 'N', and 'H' respectively, provide more specific State requirements and fully detail the scope of data storage, web hosting, and software licensing to be performed and provided by Pathways.

Pathways will assemble a new data collection vehicle (Pathrunner) using a 2020 Ford Transit 350 purchased by the State under separate contract, to replace the State's existing data collection vehicles, owned and operated by the State. The replacement Pathrunner will be equipped with mostly the same data collection subsystems found on Pathways' own fleet vehicles used for data collection as described in the paragraph above. Together with the Pathrunner, Pathways will assemble and deliver a standalone computer work station and a standalone 200 TB storage appliance that have been customized and optimized for maximum efficiency when downloading and processing data collected with the Pathrunner. The Pathrunner subsystems and the computer equipment are specifically listed and described in the NHDOT RFP 2019-060 Appendix C: System Requirements and Deliverables, including Table C-2, along with Pathways' RFP response dated October 22, 2019 Sections 3 and 4, and the List of Negotiated Items, all attached hereto and incorporated into this Contract in Part 3 Exhibits 'M', 'N', and 'H' respectively.

Data collection services will commence in June of 2020. Delivery of the data collection vehicle is required by September 1, 2020.

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Pathways will train State staff on the latest version of the data processing software, Pathview II. Further, Pathways will train State staff on the use of the vehicle and its data collection subsystems. Lastly, Pathways will train the State in the use of Pathview II software for asset extraction purposes.

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RECITALS

Whereas the State desires to have Pathways: 1. Provide network road condition data collection services including data storage, web hosting, and related work; 2. Assemble a new data collection vehicle and computer equipment and provide associated warranty services; and 3. Provide compatible computer software, both on-premise and online, all as more fully described herein and within the attached documents.

Whereas Pathways wishes to provide those services listed above and as more fully described herein and within the attached documents.

The parties therefore agree as follows:

1 CONTRACT DOCUMENTS

1.1 CONTRACT DOCUMENTS

This Contract Agreement (2019-060) is comprised of the following documents:

Part 1 - Form P-37 General Provision

Part 2 - Information Technology Provisions

Part 3 - Exhibits

Exhibit A- Contract Deliverables

Exhibit B- Price and Payment Schedule

Exhibit C- Special Provisions

Exhibit D- Administrative Services

Exhibit E- Implementation Services

Exhibit F- Testing Services

Exhibit G- Maintenance and Support Services

Exhibit H- Negotiated Items

Exhibit I- Work Plan

Exhibit J- Software Agreement

Exhibit K- Warranty and Warranty Services

Exhibit L- Training Services

Exhibit M- Agency RFP with Addendums, by reference

Exhibit N- Vendor Proposal, by reference

Exhibit O- Certificates and Attachments

1.2 ORDER OF PRECEDENCE

In the event of conflict or ambiguity among any of the text of the Contract Documents, the following Order of Precedence shall govern:

- a. State of New Hampshire, Department of Transportation Contract Agreement 2019-060, Part 1, P-37 as modified in Exhibit C.

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- b. State of New Hampshire, Department of Transportation Contract Agreement 2019-060, Part 2, Information Technology Provisions.
- c. State of New Hampshire, Department of Transportation Contract Agreement 2019-060, Part 3, Exhibits.
- d. State of New Hampshire, Department of Transportation RFP 2019-060.
- e. Pathways' Proposal Response to RFP 2019-060 dated October 22, 2019 and recording of the onsite oral interviews and product demonstrations conducted December 10 and 11, 2019 in Concord, NH.

2 CONTRACT TERM

The Contract and all obligations of the parties hereunder shall become effective after full execution by the parties, and the receipt of required governmental approvals, including, but not limited to, Governor and Executive Council of the State of New Hampshire approval ("Effective Date").

The Contract shall begin on the Effective Date and extend through December 31, 2025. The Term may be extended through December 31, 2029 in two 2-year contract extensions, ("Extended Term") at the sole option of the State, subject to the parties' prior written agreement on applicable fees for each extended term.

Pathways shall commence work upon issuance of a Notice to Proceed by the State.

3 COMPENSATION

3.1 CONTRACT PRICE

The Contract Price, Part 1, P37, block 1.8 price limitation, method of payment, and terms of payment are identified and more particularly described in section 5 of P-37 Agreement and Part 3 Contract Exhibit B: *Price and Payment Schedule*.

3.2 NON-EXCLUSIVE CONTRACT

The State reserves the right, at its discretion, to retain other vendors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal. Pathways shall not be responsible for any delay, act, or omission of such other vendors, except that Pathways shall be responsible for any delay, act, or omission of the other vendors if such delay, act, or omission is caused by or due to the fault of Pathways.

4 CONTRACT MANAGEMENT

The Project will require the coordinated efforts of a Project Team consisting of both Pathways and State personnel. Pathways shall provide all necessary resources to perform its obligations under the Contract. Pathways shall be responsible for managing the Project to its successful completion.

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4.1 PATHWAYS' CONTRACT MANAGER

Pathways shall assign a Contract Manager who shall be responsible for all Contract authorization and administration. Pathways' Contract Manager is:

Rudy Blanco, President
Pathway Services, Inc.
PO Box 472105
Tulsa, Oklahoma 74147
Tel: (918) 259-9883
Email: rblanco@pathwayservices.com

4.2 PATHWAYS' PROJECT MANAGER

- 4.2.1** Pathways shall assign a Project Manager who meets the requirements of the Contract. Pathways' selection of the Project Manager shall be subject to the prior written approval of the State. The State's approval process may include, without limitation, at the State's discretion, review of the proposed Pathways' Project Manager's resume, qualifications, references, and background checks, and an interview. The State may require removal or reassignment of Pathways' Project Manager who, in the sole judgment of the State, is found unacceptable or is not performing to the State's satisfaction.
- 4.2.2** Pathways' Project Manager must be qualified to perform the obligations required of the position under the Contract, shall have full authority to make binding decisions under the Contract, and shall function as Pathways' representative for all administrative and management matters. Pathways' Project Manager shall perform the duties required under the Contract, including, but not limited to, those set forth in Exhibit I, Section 2. Pathways' Project Manager must be available to promptly respond during Normal Business Hours within two (2) hours to inquiries from the State, and be at the site as needed. Pathways' Project Manager must work diligently and use his/ her best efforts on the Project.
- 4.2.3** Pathways shall not change its assignment of Pathways' Project Manager without providing the State written justification and obtaining the prior written approval of the State. State approvals for replacement of Pathways' Project Manager shall not be unreasonably withheld. The replacement Project Manager shall have comparable or greater skills than of Pathways' Project Manager being replaced; meet the requirements of the Contract; and be subject to reference and background checks described above in Information Technology Provisions, Section 4.2.1: *Contract Project Manager*, and in Contract Agreement Information Technology Provisions, Section 4.6: *Reference and Background Checks*, below. Pathways shall assign a replacement of Pathways' Project Manager within ten (10) business days of the departure of the prior Pathways' Project Manager, and Pathways shall continue during the ten (10) business day period to provide competent Project

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Management Services through the assignment of a qualified interim Project Manager.

4.2.4 Notwithstanding any other provision of the Contract, the State shall have the option, at its discretion, to terminate the Contract, declare Pathways in default and pursue its remedies at law and in equity, if Pathways fails to assign a Pathways Project Manager meeting the requirements and terms of the Contract.

4.2.5 Pathways' Project Manager is:
Scott Mathison, Vice-President of Operations
Pathway Services, Inc.
PO Box 472105
Tulsa, Oklahoma 74147
Tel: (918) 259-9883
Email: smathison@pathwayservices.com

4.3 PATHWAYS KEY PROJECT STAFF

4.3.1 Pathways shall assign Key Project Staff who meet the requirements of the Contract, and can implement the Solution meeting the requirements set forth in RFP Appendix C: *System Requirements and Deliverables*, Table C.2: *System Requirements and Deliverables-Vendor Response Checklist*. The State may conduct reference and background checks on Pathways' Key Project Staff. The State reserves the right to require removal or reassignment of Pathways' Key Project Staff who are found unacceptable to the State. Any background checks shall be performed in accordance with Information Technology Provisions Section 4.6: *Background Checks*.

4.3.2 Pathways shall not change any of Pathways' Key Project Staff commitments without providing the State written justification and obtaining the prior written approval of the State. State approvals for replacement of Pathways' Key Project Staff will not be unreasonably withheld. The replacement of Pathways' Key Project Staff shall have comparable or greater skills than of Pathways' Key Project Staff being replaced; meet the requirements of the Contract, including but not limited to the requirements set forth in RFP Appendix C: *System Requirements and Deliverables* and be subject to reference and background checks described in Contract Agreement- Information Technology Provisions, Section 4.6: *Reference and Background Checks*,

4.3.3 Notwithstanding any other provision of the Contract to the contrary, the State shall have the option to terminate the Contract, declare Pathways in default and to pursue its remedies at law and in equity, if Pathways fails to assign Key Project Staff meeting the requirements and terms of the Contract or if it is dissatisfied with Pathways' replacement Project staff.

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4.3.3.1 Pathways' Key Project Staff shall consist of the following individuals in the roles identified below:

Pathways' Key Project Staff:

Key Member(s)	Title
Rudy Blanco	Contract Manager
Scott Mathison	Project Manager
Everett Schmitz	Van Assembly Manager
Lauren Tran	Data Collection QC Manager

4.4 STATE CONTRACT MANAGER

The State shall assign a Contract Manager who shall function as the State's representative with regard to Contract administration. The State Contract Manager is:

Dennis Herrick, P.E.; Administrator
Bureau of Materials and Research
5 Hazen Drive
Concord, NH 03302
Tel: 603-271-3151
Email: Dennis.Herrick@dot.nh.gov

4.5 STATE PROJECT MANAGER

The State shall assign a Project Manager. The State Project Manager's duties shall include the following:

- a. Leading the Project;
- b. Engaging and managing all Pathways;
- c. Managing significant issues and risks.
- d. Reviewing and accepting Contract Deliverables;
- e. Invoice sign-offs;
- f. Review and approval of change proposals; and
- g. Managing stakeholders' concerns.

The State Project Manager is:

Patrick Colburn, P.E.
Pavement Data Management Engineer
Bureau of Materials and Research
5 Hazen Drive
Concord, NH 03302

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Tel: 603-271-1662

Email: Patrick.Colburn@dot.nh.gov

4.6 REFERENCE AND BACKGROUND CHECKS

Pathways shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. Pathways shall promote and maintain an awareness of the importance of securing the State's information among Pathways' employees and agents.

The State may, at its sole expense, conduct reference and background screening of the Pathways Project Manager and Pathways Key Project Staff. The State shall maintain the confidentiality of background screening results in accordance with the Contract Agreement – Information Technology Provisions-Section 11: Use of State's Information, Confidentiality.

5 DELIVERABLES

5.1 PATHWAYS RESPONSIBILITIES

Pathways shall be solely responsible for meeting all requirements, and terms and conditions specified in this Contract, regardless of whether or not a subcontractor is used.

Pathways may subcontract Services subject to the provisions of the Contract, including but not limited to, the terms and conditions in the Contract Agreement. Pathways must submit all information and documentation relating to the Subcontractors, including terms and conditions consistent with this Contract. The State will consider Pathways to be wholly responsible for the performance of the Contract and the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

5.2 DELIVERABLES AND SERVICES

Pathways shall provide the State with the Deliverables and Services in accordance with the time frames in the Work Plan for this Contract, and as more particularly described in Contract Exhibit A: *Contract Deliverables*.

5.3 NON-SOFTWARE AND WRITTEN DELIVERABLES REVIEW AND ACCEPTANCE

After receiving written Certification from Pathways that a Non-Software or Written Deliverable is final, complete, and ready for Review, the State will Review the Deliverable to determine whether it meets the Requirements outlined in Contract Exhibit A: *Contract Deliverables*. The State will notify Pathways in writing of its Acceptance or rejection of the Deliverable within ten (10) business days of the State's receipt of Pathways' written Certification. If the State rejects the Deliverable, the State shall notify Pathways of the nature and class of the Deficiency and Pathways shall correct

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the Deficiency within the period identified in the Work Plan. If no period for Pathways' correction of the Deliverable is identified, Pathways shall correct the Deficiency in the Deliverable within five (5) business days. Upon receipt of the corrected Deliverable, the State shall have five (5) business days to review the Deliverable and notify Pathways of its Acceptance or rejection thereof, with the option to extend the Review Period up to five (5) additional business days. If Pathways fails to correct the Deficiency within the allotted period of time, the State may, at its option, continue reviewing the Deliverable and require Pathways to continue until the Deficiency is corrected, or immediately terminate the Contract, declare Pathways in default, and pursue its remedies at law and in equity.

5.4 SOFTWARE REVIEW AND ACCEPTANCE

System/Software Testing and Acceptance shall be performed as set forth in the Test Plan and more particularly described in Exhibit F: *Testing Services*.

6 SOFTWARE

Pathways shall provide the State with NHDOT configured Pathview II Software Suite Licenses and Documentation set forth in the Contract, and particularly described in Exhibit J: *Software Agreement*.

7 SERVICES

Pathways shall provide the Services required under the Contract Documents. All Services shall meet, and be performed, in accordance with the Specifications.

7.1 ADMINISTRATIVE SERVICES

Pathways shall provide the State with the Administrative Services set forth in the Contract, and particularly described in Exhibit D: *Administrative Services*.

7.2 IMPLEMENTATION SERVICES

Pathways shall provide the State with the Implementation Services set forth in the Contract, and particularly described in Exhibit E: *Implementation Services*.

7.3 TESTING SERVICES

Pathways shall perform Testing Services for the State set forth in the Contract, and particularly described in Exhibit F: *Testing Services*.

7.4 TRAINING SERVICES

Pathways shall provide the State with Training Services set forth in the Contract, and particularly described in Exhibit L: *Training Services*.

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7.5 MAINTENANCE AND SUPPORT SERVICES

Pathways shall provide the State with Maintenance and Support Services for the Software set forth in the Contract, and particularly described in Exhibit G: Maintenance and Support Services.

7.6 WARRANTY SERVICES

Pathways shall provide the State with Warranty Services set forth in the Contract, and particularly described in Exhibit K: Warranty & Warranty Services.

8 WORK PLAN DELIVERABLE

Pathways shall provide the State with two Work Plans (one covering the data collection services and one covering the data collection vehicle assembly and delivery) that shall include, without limitation, detailed descriptions of the Schedules, tasks, Deliverables, major milestones, task dependencies, and payment Schedules.

The initial Work Plans shall be separate Deliverables and are set forth in Contract Exhibit I: *Work Plan*. Pathways shall update the Work Plans as necessary, but no less than every two weeks, to accurately reflect the status of the Project, including without limitation, the Schedules, tasks, Deliverables, major milestones, task dependencies, and payment Schedules. Any such updates to the Work Plans must be approved by the State, in writing, prior to final incorporation into Contract Exhibit I: *Work Plan*. The updated Contract Exhibit I: *Work Plan*, as approved by the State, is incorporated herein by reference.

Unless otherwise agreed in writing by the State, changes to the Contract Exhibit I: *Work Plan* shall not relieve Pathways from liability to the State for damages resulting from Pathways' failure to perform its obligations under the Contract, including, without limitation, performance in accordance with the Schedule.

In the event of any delay in the Schedule, Pathways must immediately notify the State in writing, identifying the nature of the delay, i.e., specific actions or inactions of Pathways or the State causing the problem; its estimated duration period to reconciliation; specific actions that need to be taken to correct the problem; and the expected Schedule impact on the Project.

In the event additional time is required by Pathways to correct Deficiencies, the Schedule shall not change unless previously agreed in writing by the State, except that the Schedule shall automatically extend on a day-to-day basis to the extent that the delay does not result from Pathways' failure to fulfill its obligations under the Contract. To the extent that the State's execution of its major tasks takes longer than described in the Work Plan, the Schedule shall automatically extend on a day-to-day basis.

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Notwithstanding anything to the contrary, the State shall have the option to terminate the Contract for default, at its discretion, if it is dissatisfied with the Vendor's Work Plan or elements within the Work Plan.

9 CHANGE ORDERS

The State may make changes or revisions at any time by written Change Order. The State originated changes or revisions shall be approved by the Department of Information Technology. Within five (5) business days of Pathways' receipt of a Change Order, Pathways shall advise the State, in detail, of any impact on cost (e.g., increase or decrease), the Schedule, or the Work Plan.

Pathways may request a change within the scope of the Contract by written Change Order, identifying any impact on cost, the Schedule, or the Work Plan. The State shall attempt to respond to Pathways' requested Change Order within five (5) business days. The State Agency, as well as the Department of Information Technology, must approve all Change Orders in writing. The State shall be deemed to have rejected the Change Order if the parties are unable to reach an agreement in writing.

All Change Order requests from Pathways to the State, and the State acceptance of Pathways' estimate for a State requested change, will be acknowledged and responded to, either acceptance or rejection, in writing. If accepted, the Change Order(s) shall be subject to the Contract amendment process, as determined to apply by the State.

10 INTELLECTUAL PROPERTY

10.1 SOFTWARE TITLE

Title, right, and interest (including all ownership and intellectual property rights) in the Software, and its associated Documentation, shall remain with Pathways.

Upon successful completion and/or termination of the Implementation of the Project, Pathways shall own and hold all, title, and rights in any Software modifications developed in connection with performance of obligations under the Contract, or modifications to Pathways provided Software, and their associated Documentation including any and all performance enhancing operational plans and Pathways' special utilities. Pathways shall license back to the State the right to produce, publish, or otherwise use such software, source code, object code, modifications, reports, and Documentation developed under the Contract.

In no event shall Pathways be precluded from developing for itself, or for others, materials that are competitive with, or similar to Custom Software, modifications developed in connection with performance of obligations under the Contract. In addition, Pathways shall be free to use its general knowledge, skills, experience, and any other ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under this agreement.

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10.2 STATE'S DATA AND PROPERTY

All rights, title and interest in State Data shall remain with the State. All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason. Pathways shall not access State user accounts or State data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract or (4) at the State's written request.

10.3 PATHWAYS' MATERIALS

Subject to the provisions of this Contract, Pathways may develop for itself, or for others, materials that are competitive with, or similar to, the Deliverables. In accordance with the provision of this Contract, Pathways shall not distribute any products containing or disclose any State Confidential Information. Pathways shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under this Contract, provided that such is not obtained as the result of the deliberate memorization of the State Confidential Information by Pathways employees or third party consultants engaged by Pathways.

Without limiting the foregoing, the parties agree that the general knowledge referred to herein cannot include information or records not subject to public disclosure under New Hampshire RSA Chapter 91-A, which includes but is not limited to the following: records of grand juries and petit juries; records of parole and pardon boards; personal school records of pupils; records pertaining to internal personnel practices, financial information, test questions, scoring keys and other examination data use to administer a licensing examination, examination for employment, or academic examination and personnel, medical, welfare, library use, video tape sale or rental, and other files containing personally identifiable information that is private in nature.

10.4 STATE WEBSITE COPYRIGHT

WWW Copyright and Intellectual Property Rights

All right, title and interest in the State WWW site <NH.GOV, etc.>, including copyright to all Data and information, shall remain with the State. The State shall also retain all right, title and interest in any user interfaces and computer instructions embedded within the WWW pages. All WWW pages and any other Data or information shall, where applicable, display the State's copyright.

10.5 CUSTOM SOFTWARE SOURCE CODE

In the event that the State purchases software development services, which results in Custom Software, Pathways shall provide the State with a copy of the source code for the Custom Software, which shall be subject to the License rights. The State shall receive a worldwide, perpetual, irrevocable, non-exclusive paid -up right and license to use, copy, modify and prepare derivative works of any custom developed software. This section does not apply to Pathways' proprietary software code.

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10.6 SURVIVAL

This Contract Agreement Section 10: *Intellectual Property* shall survive the termination of the Contract.

11 USE OF STATE'S INFORMATION, CONFIDENTIALITY

11.1 USE OF STATE'S INFORMATION

In performing its obligations under the Contract, Pathways may gain access to information of the State, including State Confidential Information. "State Confidential Information" shall include, but not be limited to, information exempted from public disclosure under New Hampshire RSA Chapter 91-A: *Access to Public Records and Meetings* (see e.g. RSA Chapter 91-A: 5 *Exemptions*). Pathways shall not use the State Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Contract, except as directly connected to and necessary for Pathways' performance under the Contract.

11.2 STATE CONFIDENTIAL INFORMATION

Pathways shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all State Confidential Information that becomes available to Pathways in connection with its performance under the Contract, regardless of its form.

Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which: (i) shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach hereof; (ii) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party; (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; or (iv) is disclosed with the written consent of the disclosing party. A receiving party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction.

Any disclosure of the State Confidential Information shall require the prior written approval of the State. Pathways shall immediately notify the State if any request, subpoena or other legal process is served upon Pathways regarding the State Confidential Information, and Pathways shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process, at no additional cost to the State.

In the event of the unauthorized release of State Confidential Information, Pathways shall immediately notify the State, and the State may immediately be entitled to pursue any remedy at law and in equity, including, but not limited to, injunctive relief.

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11.3 PATHWAYS CONFIDENTIAL INFORMATION

Insofar as Pathways seeks to maintain the confidentiality of its confidential or proprietary information, Pathways must clearly identify in writing all information it claims to be confidential or proprietary. Notwithstanding the foregoing, the State acknowledges that Pathways considers the Software and Documentation to be Confidential Information. Pathways acknowledges that the State is subject to State and federal laws governing disclosure of information including, but not limited to, RSA Chapter 91-A. The State shall maintain the confidentiality of the identified Confidential Information insofar as it is consistent with applicable State and federal laws or regulations, including but not limited to, RSA Chapter 91-A. In the event the State receives a request for the information identified by Pathways as confidential, the State shall notify Pathways and specify the date the State will be releasing the requested information. At the request of the State, Pathways shall cooperate and assist the State with the collection and review of Pathways' information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be Pathways' sole responsibility and at Pathways' sole expense. If Pathways fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to Pathways, without any liability to Pathways.

11.4 SURVIVAL

This Contract Agreement Section 11, *Use of State's Information, Confidentiality*, shall survive termination or conclusion of the Contract.

12 LIMITATION OF LIABILITY

12.1 STATE

Subject to applicable laws and regulations, in no event shall the State be liable for any consequential, special, indirect, incidental, punitive, or exemplary damages. Subject to applicable laws and regulations, the State's liability to Pathways shall not exceed the total Contract price set forth in Contract Agreement – General Provisions, Block 1.8.

12.2 PATHWAYS

The Vendor shall be liable for any consequential, special, indirect, incidental, punitive or exemplary damages caused by the Vendor's actions.

Notwithstanding the foregoing, this limitation of liability shall not apply to Pathways' indemnification obligations set forth in the Contract Agreement-Information Technology Provisions Section 13: *Indemnification* and confidentiality obligations in Contract Agreement-Information Technology Provisions Section 11: *Use of State's Information, Confidentiality*, which shall be unlimited.

12.3 STATE'S IMMUNITY

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive termination or Contract conclusion.

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12.4 SURVIVAL

This Section 12: *Limitation of Liability* shall survive termination or Contract conclusion.

13 TERMINATION

This Section 13 shall survive the termination or Contract Conclusion.

13.1 TERMINATION FOR DEFAULT

Any one or more of the following acts or omissions of Pathways shall constitute an event of default hereunder ("Event of Default")

- a. Failure to perform the Services satisfactorily or on schedule;
- b. Failure to submit any report required; and/or
- c. Failure to perform any other covenant, term or condition of the Contract

13.1.1 Upon the occurrence of any Event of Default, the State may take any one or more, or all, of the following actions:

- a. Unless otherwise provided in the Contract, the State shall provide Pathways written notice of default and require it to be remedied within, in the absence of a greater or lesser specification of time, within thirty (30) days from the date of notice, unless otherwise indicated within by the State ("Cure Period"). If Pathways fails to cure the default within the Cure Period, the State may terminate the Contract effective two (2) days after giving Pathways notice of termination, at its sole discretion, treat the Contract as breached and pursue its remedies at law or in equity or both.
- b. Give Pathways a written notice specifying the Event of Default and suspending all payments to be made under the Contract and ordering that the portion of the Contract price which would otherwise accrue to Pathways during the period from the date of such notice until such time as the State determines that Pathways has cured the Event of Default shall never be paid to Pathways.
- c. Set off against any other obligations the State may owe to the Vendor any damages the State suffers by reason of any Event of Default;
- d. Treat the Contract as breached and pursue any of its remedies at law or in equity, or both.
- e. Procure Services that are the subject of the Contract from another source and Pathways shall be liable for reimbursing the State for the replacement Services, and all administrative costs directly related to the replacement of the Contract and procuring the Services from another source, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time

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costs; all of which shall be subject to the limitations of liability set forth in the Contract.

- 13.1.2** Pathways shall provide the State with written notice of default, and the State shall cure the default within thirty (30) days.

13.2 TERMINATION FOR CONVENIENCE

- 13.2.1** The State may, at its sole discretion, terminate the Contract for convenience, in whole or in part, by thirty (30) days written notice to Pathways. In the event of a termination for convenience, the State shall pay Pathways the agreed upon price, if separately stated in this Contract, for Deliverables for which Acceptance has been given by the State. Amounts for Services or Deliverables provided prior to the date of termination for which no separate price is stated under the Contract shall be paid, in whole or in part, generally in accordance with Contract Exhibit B, *Price and Payment Schedule*, of the Contract.

- 13.2.2** During the thirty (30) day period, Pathways shall wind down and cease Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the State from such winding down and cessation of Services.

13.3 TERMINATION FOR CONFLICT OF INTEREST

- 13.3.1** The State may terminate the Contract by written notice if it determines that a conflict of interest exists, including but not limited to, a violation by any of the parties hereto of applicable laws regarding ethics in public acquisitions and procurement and performance of Contracts.

- 13.3.2** In such case, the State shall be entitled to a pro-rated refund of any current development, support, and maintenance costs. The State shall pay all other contracted payments that would have become due and payable if Pathways did not know, or reasonably did not know, of the conflict of interest.

- 13.3.3** In the event the Contract is terminated as provided above pursuant to a violation by Pathways, the State shall be entitled to pursue the same remedies against Pathways as it could pursue in the event of a default of the Contract by Pathways.

13.4 TERMINATION PROCEDURE

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13.4.1 Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require Pathways to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated.

13.4.2 After receipt of a notice of termination, and except as otherwise directed by the State, Pathways shall:

- a. The State shall be entitled to any post-termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of the SLA.
 - b. Stop work under the Contract on the date, and to the extent specified, in the notice;
 - c. Promptly, but in no event longer than thirty (30) days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
 - d. Take such action as the State directs, or as necessary to preserve and protect the property related to the Contract which is in the possession of Pathways and in which the State has an interest;
 - e. During any period of service suspension, Pathways shall not take any action to intentionally erase any State data.
1. In the event of termination of any services or agreement in entirety, Pathways shall not take any action to intentionally erase any State data for a period of:
 - 10 days after the effective date of termination, if the termination is in accordance with the contract period
 - 30 days after the effective date of termination, if the termination is for convenience
 - 60 days after the effective date of termination, if the termination is for cause
 2. After such period, Pathways shall have no obligation to maintain or provide any State data and shall thereafter, unless legally prohibited, delete all State data in its systems or otherwise in its possession or under its control.

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- f. Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to the State and which has been accepted or requested by the State; and
- g. Pathways shall implement an orderly return of State data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of State data;
- h. Pathways shall securely dispose of all requested data in all of its forms, such as disk, CD/ DVD, backup tape and paper, when requested by the State. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the State.
- i. Provide written Certification to the State that Pathways has surrendered to the State all said property.

14 CHANGE OF OWNERSHIP

In the event that Pathways should change ownership for any reason whatsoever, the State shall have the option of continuing under the Contract with Pathways, its successors or assigns for the full remaining term of the Contract; continuing under the Contract with Pathways, its successors or assigns for such period of time as determined necessary by the State; or immediately terminate the Contract without liability to Pathways, its successors or assigns.

15 ASSIGNMENT, DELEGATION AND SUBCONTRACTS

15.1

Pathways shall not assign, delegate, subcontract, or otherwise transfer any of its interest, rights, or duties under the Contract without the prior written consent of the State. Such consent shall not be unreasonably withheld. Any attempted transfer, assignment, delegation, or other transfer made without the State's prior written consent shall be null and void, and may constitute an event of default at the sole discretion of the State.

15.2

Pathways shall remain wholly responsible for performance of the entire Contract even if assignees, delegates, Subcontractors, or other transferees ("Assigns") are used, unless otherwise agreed to in writing by the State, and the Assigns fully assumes in writing any and all obligations and liabilities under the Contract from the Effective Date. In the absence of a written assumption of full obligations and liabilities of the Contract, any permitted assignment, delegation, subcontract, or other transfer shall neither relieve Pathways of any of its obligations under the Contract nor affect any remedies available to the State against Pathways that may arise from any event of default of the provisions of the contract. The State shall consider Pathways to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

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15.3

Notwithstanding the foregoing, nothing herein shall prohibit Pathways from assigning the Contract to the successor of all or substantially all of the assets or business of Pathways provided that the successor fully assumes in writing all obligations and responsibilities under the Contract. In the event that Pathways should change ownership, as permitted under Section 14: *Change of Ownership*, the State shall have the option to continue under the Contract with Pathways, its successors or assigns for the full remaining term of the Contract; continue under the Contract with Pathways, its successors or assigns for such period of time as determined necessary by the State; or immediately terminating the Contract without liability to Pathways, its successors or assigns.

16 DISPUTE RESOLUTION

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights or Confidential Information), the party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted under the Contract.

The parties shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

Dispute Resolution Responsibility and Schedule Table

LEVEL	PATHWAY SERVICES, INC.	STATE	<u>CUMULATIVE ALLOTTED TIME</u>
Primary	Scott Mathison VP Operations	Patrick Colburn State Project Manager (PM)	5 Business Days
First	Scott Mathison VP Operations	Dennis Herrick Administrator, M&R	10 Business Days
Second	Rudy Blanco President	Peter Stamnas Director of Project Development	15 Business Days

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The allotted time for the first level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is days from the date that the original Invoking Party's notice is received by the other party.

17 GENERAL TERMS AND CONDITIONS

17.1 COMPUTER USE

In consideration for receiving access to and use of the computer facilities, network, licensed or developed software, software maintained or operated by any of the State entities, systems, equipment, Documentation, information, reports, or data of any kind (hereinafter "Information"), Pathways understands and agrees to the following rules:

- a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
- b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall Pathways access or attempt to access any information without having the express authority to do so.
- c. That at no time shall Pathways access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and /or agreements relating to system entry/access.
- d. That all software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed, sub-licensed, modified, reverse engineered, rented, or sold, and that at all times Pathways must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other Agreement executed by the State. Only equipment or software owned, licensed, or being evaluated by the State, can be used by Pathways. Personal software (including but not limited to palmtop sync software) shall not be installed on any equipment.
- e. That if Pathways is found to be in violation of any of the above-stated rules, the User may face removal from the State Contract, and/or criminal or civil prosecution, if the act constitutes a violation of law.

17.2 EMAIL USE

Email and other electronic communication messaging systems are State of New Hampshire property and are to be used for business purposes only. Email is defined as "internal Email systems" or "State-funded Email systems." Pathways understands and agrees that use of email shall follow State standard policy (available upon request).

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17.3 INTERNET/INTRANET USE

The Internet/Intranet is to be used for access to and distribution of information in direct support of the business of the State of New Hampshire according to State standard policy (available upon request).

17.4 REGULATORY GOVERNMENT APPROVALS

Pathways shall obtain all necessary and applicable regulatory or other governmental approvals necessary to perform its obligations under the Contract.

17.5 INSURANCE CERTIFICATE

The Insurance Certificate should note the Certificate Holder in the lower left hand block including State of New Hampshire, Department Name, name of the individual responsible for the funding of the contracts and his/her address.

17.6 EXHIBITS

The Exhibits referred to, in and attached to the Contract are incorporated by reference as if fully included in the text.

17.7 VENUE AND JURISDICTION

Any action on the Contract may only be brought in the State of New Hampshire, Merrimack County Superior Court.

17.8 SURVIVAL

The terms, conditions and warranties contained in the Contract that by their context are intended to survive the completion of the performance, cancellation or termination of the Contract shall so survive, including, but not limited to, the terms of the Exhibit D Section 5: Records Retention and Access Requirements, Exhibit D Section 6: Accounting Requirements, and Information Technology Provisions-Section 11: Use of State's Information, Confidentiality and Information Technology Provisions- Section 13: Termination which shall all survive the termination of the Contract.

17.9 FORCE MAJEURE

Neither Pathways nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lock outs, riots, and acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

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Except in the event of the foregoing, Force Majeure events shall not include Pathways' inability to hire or provide personnel needed for Pathways' performance under the Contract.

17.10 NOTICES

Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the following addresses.

TO PATHWAYS:
PATHWAY SERVICES, INC.
PO BOX 472105
TULSA, OK 74147
TEL: (918) 259-9883

TO STATE:
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
MATERIALS AND RESEARCH
5 HAZEN DRIVE
CONCORD, NH 03302
TEL: (603) 271-3151

17.11 DATA PROTECTION

Protection of personal privacy and data shall be an integral part of the business activities of Pathways to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, Pathways shall safeguard the confidentiality, integrity and availability of State information and comply with the following conditions:

- a. Pathways shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures Pathways applies to its own personal data and non-public data of similar kind.
- b. All data obtained by Pathways in the performance of this contract and all personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, Pathways is responsible for encryption of the personal data.
- c. Unless otherwise stipulated, Pathways shall encrypt all non-public data at rest and in transit. The State shall identify data it deems as non-public data to Pathways. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
- d. At no time shall any data or processes — that either belong to or are intended for the use of the State or its officers, agents or employees — be copied, disclosed or retained by the Pathways or any party related to Pathways for subsequent use in any transaction that does not include the State.
- e. Pathways shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

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17.12 DATA LOCATION

Pathways shall provide its Services to the State and its end users solely from data centers within the Continental United States. All storage, processing and transmission of State data shall be restricted to information technology systems within the Continental United States. Pathways shall not allow its personnel or sub-contractors to store State data on portable devices, including personal computers, except as specified and allowed by the contract, and then only on devices that are used and kept at its data centers within the Continental United States. Pathways shall permit its personnel and contractors to access State data remotely only to provide technical support and as specified or required by the contract.

17.13 SECURITY INCIDENT OR DATA BREACH NOTIFICATION

Pathways shall inform the State of any security incident or data breach in accordance with NH RSA 359-C.

- a. Incident Response: Pathways may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Pathways communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
- b. Security Incident Reporting Requirements: Pathways shall report a security incident to the appropriate State identified contact immediately if it reasonably believes there has been a security incident.
- c. Breach Reporting Requirements: If Pathways has actual knowledge of a confirmed data breach that affects the security of any State content that is subject to applicable data breach notification law, Pathways shall (1) promptly notify the appropriate State identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

17.14 BREACH RESPONSIBILITIES

This section only applies when a data breach occurs with respect to personal data within the possession or control of Pathways.

- a. Pathways, unless stipulated otherwise, shall immediately notify the appropriate State identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- b. Pathways, unless stipulated otherwise, shall promptly notify the appropriate State identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. Pathways shall (1) cooperate with the State as reasonably requested by the

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State to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

- c. Unless otherwise stipulated, if a data breach is a direct result of Pathways' breach of its contract obligation to encrypt personal data or otherwise prevent its release, Pathways shall bear the costs associated with:
- (1) the investigation and resolution of the data breach;
 - (2) notifications to individuals, regulators or others required by State law;
 - (3) a credit monitoring service required by State (or federal) law;
 - (4) a website or a toll-free number and call center for affected individuals required by State law NH RSA 359-C:19-C:20, all not to exceed the average per record per person cost calculated for Data Breaches in the United States (currently \$148 per record/person) in the most recent "Cost of a Data Breach Study: Global Overview" published by the Ponemon Institute at the time of the Data Breach; and
 - (5) complete all corrective actions as reasonably determined by Pathways based on root cause; all [(1) through (5)] subject to this Contract's limitation of liability.

17.15 NOTIFICATION OF LEGAL REQUESTS

Pathways shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the State's data under this contract, or which in any way might reasonably require access to the data of the State. Pathways shall not respond to subpoenas, service of process and other legal requests related to the State without first notifying the State, unless prohibited by law from providing such notice.

17.16 ACCESS TO SECURITY LOGS AND REPORTS

Pathways shall provide reports to the State in a format as agreed to by both Pathways and the State. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to this contract.

17.17 CONTRACT AUDIT

Pathways shall allow the State to audit conformance to the contract terms. The State may perform this audit or contract with a third party at its discretion and at the State's expense.

17.18 DATA CENTER AUDIT

Pathways shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. Pathways may remove its proprietary

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information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

17.19 ADVANCE NOTICE

Pathways shall give 30 days (minimum) advance notice to the State of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

17.20 SECURITY

Pathways shall disclose its non-proprietary security processes and technical limitations to the State such that adequate protection and flexibility can be attained between the State and Pathways. For example: virus checking and port sniffing — the State and Pathways shall understand each other's roles and responsibilities.

17.21 NON-DISCLOSURE AND SEPARATION OF DUTIES

Pathways shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of State data to that which is absolutely necessary to perform job duties.

17.22 IMPORT AND EXPORT OF DATA

The State shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from Pathways. This includes the ability for the State to import or export data to/from other service providers.

17.23 RESPONSIBILITIES AND UPTIME GUARANTEE

Pathways shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of Pathways. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in this agreement.

17.24 RIGHT TO REMOVE INDIVIDUALS

The State shall have the right at any time to require that Pathways remove from interaction with State any Pathways representative who the State believes is detrimental to its working relationship with Pathways. The State shall provide Pathways with notice of its determination, and the reasons

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it requests the removal. If the State signifies that a potential security violation exists with respect to the request, Pathways shall immediately remove such individual. Pathways shall not assign the person to any aspect of the contract or future work orders without the State's consent.

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INTRODUCTION

Problem Statement - The NHDOT Bureau of Materials and Research, through its Pavement Management Section, has collected and processed road condition data in-house for many years. This data is stored on DoIT servers and made available to other parts of the State through its computer network, using customized computer software. The State owns and operates two data collection vehicles that are both at end-of-life for their intended purposes. Moving forward, the State will replace both existing vehicles with one new data collection vehicle. Additionally, the State will engage Pathway Services, Inc. to complete its network data collection activities. The replacement data collection vehicle will be used to: maintain a current and accurate inventory of the road network by collecting roughness, rutting, and cracking distress data immediately following paving projects; perform special data collections for asset extractions and inventory initiatives; and continue QC/QA testing on newly constructed pavements in-house using a Department-owned vehicle and State personnel.

Goals and Objectives for Road Condition Data Collection Services and Vehicle Procurement include:

- Efficiency and effectiveness
- Quality, consistency, and accessibility of information available to State stakeholders
- Automation for areas where there is currently little automation
- Modern technologies that can migrate to the technologies of tomorrow
- Smooth transition to new systems through effective change management

Project Overview

The general scope of the project is to provide: 1) road condition data collection services; 2) data storage services; 3) compatible computer software that State staff can utilize to manage the data and view images from on premise and online; and 4) data collection vehicle assembly services. The data collection vehicle shall be assembled using a 2020 Ford Transit 350 passenger van, purchased under separate contract. The NHDOT RFP 2019-060 Appendix C: System Requirements and Deliverables, including Table C-2, along with Pathways' RFP response dated October 22, 2019 Sections 3 and 4, and the List of Negotiated Items, all attached hereto and incorporated into this Contract in Part 3 Exhibits 'M', 'N'; and 'H' respectively, provide more specific State requirements and fully detail the scope of services Pathways shall perform.

Statement of Work

Pursuant to the attached NHDOT RFP 2019-060, Pathways' response to the RFP dated October 22, 2019, and the List of Negotiated Items, which all more fully describe the scope of services to be provided, Pathway Services, Inc. (Pathways) shall collect, process, verify, and deliver to the State a complete data set consisting of road condition data from the NH roadway network that includes road roughness, rutting, and cracking distress data and measurements, as well as other related information including right-of-way imagery and pavement level imagery, using automated data collection vehicles operated by Pathways. Pathways shall store NH roadway network data in their secure data center. Pathways shall provide compatible computer software to the State that

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staff can utilize to: manage the data and view images from any computer in the State that has the software locally installed; perform quality assurance reviews on the vendor collected data sets; perform its' own automated distress rating on data collected by the State using the new NHDOT data collection vehicle for special collections, ramps, etc.; and perform asset extractions from collected right-of-way imagery. Pathways shall customize and host an online software application so the State data can be viewed from anywhere with an internet connection. Pathways shall migrate the historic data collected by the State from 2009 to 2019 into the online application, providing direct access to over 10 years of road condition data.

Separately, Pathways shall assemble a new data collection vehicle (the "Pathrunner") to replace the State's existing data collection vehicles. The State shall purchase a 2020 Ford Transit 350 under separate contract that matches the build specifications provided by Pathways. The new Pathrunner, Pathways' proprietary road condition data collection vehicle, will be equipped with many of the same data collection subsystems found on the network data collection vehicles to be used in NH. These systems include, but are not limited to, an inertial profiler for measuring ride smoothness, a 3D imaging system capable of measuring rut depth and also capable of detecting and rating cracking distresses using a supplied software application, and an all-in-one navigational position and orientation system that will aide in positioning the collected data on NH's linear referencing system. Vehicle procurement shall include delivery of a mass storage appliance and a stand-alone workstation, specially built and optimized to download, process, and deliver road condition data collected with the Pathrunner data collection vehicle.

General Project Assumptions

1. Pathways shall implement and maintain appropriate levels of security in order to protect the integrity and reliability of the State's Information Technology resources, information, and services. Security requirements are defined in Appendix C-2 of the Request for Proposal. Pathways shall provide the State resources, information, and Services on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and to safeguard the confidentiality and integrity of State networks, Systems and Data.
2. Pathways acknowledges the mandatory compliance necessary for the data storage, access, and hosting requirements by the NH DoIT applicable IT policies, standards, and best practices.
3. The Deliverables are set forth in the Schedule described below in the Deliverables, Milestones, and Activities Schedule. By unconditionally accepting a Deliverable, the State reserves the right to reject any and all Deliverables in the event the State detects any Deficiency in the System, in whole or in part, through completion of all Acceptance Testing, including but not limited to, Software/System Acceptance Testing, and any extensions thereof.
4. Within five (5) days of receipt of the Notice to Proceed, Pathways shall prepare and submit two work plans for this project. The first work plan shall specifically cover the data collection services portion of the contract. The second work plan shall be tailored toward the data collection vehicle assembly and delivery. Both work plans are subject to review and approval by the State.

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5. Pathways shall be available to commence data collection services in June, 2020.
6. The State shall provide an annual list of routes to be collected in the form of a GIS shapefile. The State shall also provide a draft SEC (collection) file for use by Pathways.
7. Pathways shall adhere to all applicable AASHTO, ASTM, and OSHA standards.
8. Pathways shall host weekly meetings, either onsite or online, throughout the data collection effort. Further, Pathways shall build a Confluence website for all project related documents.
9. Pathways shall dispatch at least one data collection vehicle and a team of two data collection technicians to NH. In addition, Pathways shall maintain a vehicle and team on stand-by throughout the duration of data collection, should they be required to achieve on-time data delivery.
10. Data collection shall only occur during daylight hours and during fair weather.
11. Pathways shall abide by the NHDOT Road Condition Data Quality Management Program, as amended from time to time. The NH data quality plan incorporates Pathways QA/QC Planning Guide as an Appendix, which shall be customized for New Hampshire.
12. Pathways shall provide data storage service to the State from their secure data storage facility. Pathways shall ensure continuous uptime and access by the State 24/7/365, except during agreed upon maintenance windows.
13. Upon acceptance of the yearly condition data, the post-processed sensor and image data shall be delivered to the State on removable hard disk drives for permanent storage at the NHDOT.
14. Pathways shall provide web hosting services to the State and maintain the hosted environment 24/7/365 for the life of the contract, except during agreed upon maintenance windows. As an initial step, the State shall provide sensor and image data from 2009 to 2019 to Pathways on supplied hard disk drives. Pathways, upon receipt of historic data, shall migrate the data to the hosted environment, providing the State with direct access to 11 seasons of data collected by the NHDOT Pavement Management Section.
15. Pathways shall ensure regular data deliveries throughout the collection season. The first data delivery is expected two weeks following completion of the first week of data collection. Subsequent data deliveries are expected weekly thereafter, until all of the data has been received. The final, first-round data delivery for review by the State shall be received no later than September 1st each year. The State shall review the data deliveries for quality assurance (QA) within two weeks of receipt. The data shall either be accepted or returned with comments and requests for revision. Pathways shall revise and reprocess accordingly, within two weeks of receipt.

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16. Pathways shall provide onsite training as outlined in the RFP Response. This shall include three, five-day trainings at NHDOT in Concord, NH.
17. The State shall be able to conduct its own asset extractions using the collected right-of-way imagery.
18. The network data collection vehicles shall come to NH with a current profiler certification from a nationally recognized certification facility. Further, Pathways agrees to participate in the local certification exercises required by the State, as more specifically described in the RFP.
19. The State shall purchase a 2020 Ford Transit 350 under separate contract. The Ford chassis shall be delivered to Pathways for their use in assembling the State's Pathrunner. The Ford Transit shall comply with the build specifications provided by Pathways. Pathways shall conduct a thorough inspection of the vehicle upon delivery to ensure compliance and notify the State immediately of any discrepancies or deficiencies.
20. Pathways shall assemble a Pathrunner data collection vehicle addressing the specific requirements listed in the NHDOT RFP 2019-060, in Pathways response to the RFP, and in the list of negotiated items provided herein.
21. The replacement Pathrunner for the State shall be delivered with a current profiler certification (AASHTO R56-14) from a nationally recognized certification facility.
22. Pathways shall provide warranty coverage on the Pathrunner for any installed subsystems, hardware, and software. Any Pathways installed hardware issue confronted during Department ownership of the data collection vehicle, whether minor or major in scope, shall be addressed by Pathways within the agreed upon timeframes, at no additional cost to the State.
23. Pathways shall maintain a stock, or have readily available, the subsystem parts required in order to ensure timely correction of any warranty issues without delay.
24. Unlimited licenses of Pathview II full version software are included in this contract. Additionally, a single license of the automated crack detection and rating software (AutoCrack and AutoClass) are included in the contract. Further, any updates and revisions of the Pathview software suite, including add-ons, shall be delivered to State for the life of the contract.
25. Pathways shall further configure the Pathview software suite as reasonably requested by the State and free of charge. The State has already requested a configuration to allow for the trimming of data, including bridge joints and the like, during ride quality assessments.

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26. Pathways shall ensure timely response to requests for information from the State either via email or via phone conversation. Further, Pathways shall make staff available as necessary to fulfill warranty requirements as specified in the RFP and RFP Response.
27. The RFP requirements, Pathways' response to the RFP, and the list of negotiated items are all incorporated herein by reference.

Pricing for Deliverables set forth in Exhibit B: *Price and Payment Schedule*. Pricing will be effective for the Term of this Contract, and any extensions thereof.

DELIVERABLES, MILESTONES, AND ACTIVITIES SCHEDULE

	Activity, Deliverable, or Milestone	Deliverable Type	Projected Delivery Date
DATA COLLECTION SERVICES			
1	Work Plan	Written	Within 3 Weeks of NTP and April Yearly Thereafter
2	Data Quality Plan	Written	Within 3 Weeks of NTP and April Yearly Thereafter
3	Conduct Project Kickoff Meeting	Non-Software	Within 3 Weeks of NTP and April Yearly Thereafter
4	Develop Confluence Website	Software	Within 3 Weeks of NTP and April Yearly Thereafter
5	Develop NH Pathweb Site	Software	June 2020
6	Migrate Historic Data Collected by NHDOT (2009 to 2019)	Non-Software	June 2020
7	Onsite Training	Non-Software	June 2020
8	Onsite with Walking Profiler (SurPRO)	Non-Software	May Yearly
9	Field Data Collection Using Automated Data Collection Vehicles According to the 2-Year Collection Cycle outlined in the RFP	Non-Software	June and July Yearly

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10	Profiler Certification From Nationally Recognized Certification Facility	Written	May Yearly
11	Successfully Complete NHDOT Data Collection Vehicle Certification Exercises (DMI, IRI, Rutting, Cracking)	Non-Software	June 2020 and May Yearly Thereafter
12	Conduct 500 Mile Pilot Data Collection	Non-Software	June 2020
13	Pilot Data Delivery	Non-Software	June 2020
14	Data Deliveries Weekly Following Two-Week Initial Processing Period	Non-Software	Final Delivery No Later Than 9/1 Yearly
15	Conduct Progress Meetings Onsite or Online	Non-Software	Throughout Yearly Collection
16	Maintain Database to Catalogue Lane Deviations and Construction Zones, No-Collection Roads, etc.	Written	Throughout Yearly Collection
17	Load Processed Data to Pathweb	Software	Weekly Throughout Collection
18	Process Fill-In Data Collected by NHDOT and Replace Superseded Records	Non-Software	Upon Receipt Through October Yearly
19	Prepare Year Over Year Comparison for Data Quality	Non-Software	Yearly
20	Achieve Final Data Acceptance by NHDOT	Non-Software	By December 31 st Yearly
21	Ongoing Hosting Support	Software	Throughout Contract Period
22	Ongoing Technical Support	Non-Software	Throughout Contract Period
23	Ongoing Software Support & Maintenance	Software	Throughout Contract Period
24	Ongoing Configuration Support	Software	Throughout Contract Period
25	Ongoing Data Storage & Management	Non-Software	Throughout Contract Period
DATA COLLECTION VEHICLE			
26	Work Plan	Written	Within 3 weeks of NTP

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27	Data Collection Vehicle Assembly With Options and Subsystems as Listed in the RFP, RFP Response, and the List of Negotiated Items	Non-Software	August 2020
28	Onsite Training	Non-Software	August 2020
29	Ongoing Software Support & Maintenance	Non-Software	Throughout Contract Period
30	Ongoing Configuration Support	Non-Software	Throughout Contract Period
31	Ongoing Vehicle Subsystem Warranty Coverage	Non-Software	Throughout Contract Period
32	Ongoing Technical Support	Non-Software	Throughout Contract Period
INSTALLATION			
33	Standalone Work Station	Non-Software	June 2020
34	200 TB Storage Appliance	Non-Software	June 2020
35	Software On-Premise and Hosted	Software	June 2020
36	Provide Required Licenses	Software	June 2020
37	Provide Access to All Software and Tools	Software	June 2020
License Deliverables			
38	Unlimited Licenses of NHDOT Configured Pathview II Software Suite, including the Video Image Asset Extraction/Inventory Module, as Upgraded from Time to Time (Full Version)	Software	June 2020
39	Data Collection Vehicle Related Software Required for Full Functionality of the Data Collection Vehicle and its Subsystems, as upgraded from time to time	Software	With Vehicle Delivery
40	Single License AutoCrack Application including the AutoClass Application, installed on the Stand-Alone Workstation, and upgraded as necessary from time to time	Software	June 2020
41	Unlimited Licenses of the NHDOT Configured Pathweb application with associated credentialing, as upgraded from time to time	Software	June 2020

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PRICE AND PAYMENT SCHEDULE**

1. PAYMENT SCHEDULE

1.1 Firm Fixed Price For Data Collection Services, Data Storage, and Web Hosting

This is a Firm Fixed Price (FFP) Contract for the period between the Effective Date through the year 2025. Pathways shall be responsible for performing its obligations in accordance with the Contract. This Contract will allow Pathways to invoice the State Yearly following final data acceptance by the State at fixed pricing/rates appearing in the price and payment tables below:

		Initial Data Collection Contract Term (extendable to 10 years with updated pricing)					
		Year 1 2020 2,500 mi. (est.)	Year 2 2021 3,900 mi. (est.)	Year 3 2022 2,500 mi. (est.)	Year 4 2023 3,900 mi. (est.)	Year 5 2024 2,500 mi. (est.)	Year 6 2025 3,900 mi. (est.)
<u>Data Collection Services</u>							
Pavement Data Collection, processing, and delivery		\$223,750	\$359,502	\$237,375	\$381,420	\$251,825	\$404,625
Raw and finished data storage in Pathways data center (must include delivery of archived data on removable hard drives for permanent storage)		\$25,000	\$39,000	\$25,750	\$40,170	\$26,522	\$41,375
Software and web hosting, licensing, and technical support		\$35,000	\$36,080	\$37,131	\$38,245	\$39,392	\$40,574

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1.2 Firm Fixed Price for Data Collection Vehicle Procurement and Ongoing Support

This is a Firm Fixed Price (FFP) Contract for the vehicle assembly and for ongoing support of the data collection subsystems for the period between the Effective Date through the year 2025. Pathways shall be responsible for performing its obligations in accordance with the Contract. This Contract will allow Pathways to invoice the State for 90% of the vehicle assembly upon delivery, and the remaining 10% of the vehicle assembly upon completion of a 60-day acceptance period, unless the State determines that the vehicle does not meet specifications, in which case the vehicle will be returned for a full refund. Pathways will also be allowed to invoice the State Yearly for ongoing vehicle warranty and support at fixed pricing/rates appearing in the price and payment table below for select support items:

Lump Sum Purchase Price = \$571,500

Services	Initial Cost					
	(at purchase)	Year 2	Year 3	Year 4	Year 5	Year 6
Vehicle Warranty	INCLUDED	\$31,610	\$33,470	\$35,355	\$37,260	\$39,200
Technical Support	INCLUDED	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500
Software Maintenance	INCLUDED	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
SurPRO Collection	INCLUDED	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500

Notes:

1. Vehicle shall meet the minimum requirements specified in Appendix C and in Table C2.
2. Lump Sum Cost includes all training, software, licensing, etc. required for full functionality of the vehicle and subsystems. Vehicle Warranty, Technical Support, Subscription Services, and Software Maintenance are separate as listed in the Table above.
3. Lump Sum Cost includes software configurations as reasonably requested by the State.
4. There shall be no additional costs to the State other than those listed.

2. CONTRACT PRICE

Notwithstanding any provision in the Contract to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments made by the State exceed the amount indicated in the P-37 General Provisions Block 1.8 ("Price Limitation"). The payment by the State of the total Contract price shall be the only, and the complete reimbursement to Pathways for all fees and expenses, of whatever nature, incurred by Pathways in the performance hereof.

The State will not be responsible for any travel or out of pocket expenses incurred in the performance of the Services performed under this Contract.

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3. INVOICING

Pathways shall submit correct invoices to the State for all amounts to be paid by the State. All invoices submitted shall be subject to the State's prior written approval, which shall not be unreasonably withheld. Pathways shall only submit invoices for Services or Deliverables as permitted by the Contract. Invoices must be in a format as determined by the State and contain detailed information, including without limitation: itemization of each Deliverable and identification of the Deliverable for which payment is sought, and the Acceptance date triggering such payment; date of delivery and/or installation; monthly maintenance charges; any other Project costs or retention amounts if applicable.

Upon Acceptance of a Deliverable, and a properly documented and undisputed invoice, the State will pay the correct and undisputed invoice within thirty (30) days of invoice receipt. Invoices will not be backdated and shall be promptly dispatched.

Invoices shall be sent to:

Patrick Colburn, P.E.
Pavement Data Management Engineer
Bureau of Materials and Research
NH Department of Transportation
PO Box 483; 5 Hazen Drive
Concord, NH 03302

4. PAYMENT ADDRESS

Payments shall be made via ACH. Use the following link to enroll with the State Treasury for ACH payments: <https://www.nh.gov/treasury/state-vendors/index.htm>

5. OVERPAYMENTS TO PATHWAYS

Pathways shall promptly, but no later than fifteen (15) business days, return to the State the full amount of any overpayment or erroneous payment upon discovery or notice from the State.

6. CREDITS

The State may apply credits due to the State arising out of this Contract, against Pathways' invoices with appropriate information attached.

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SPECIAL PROVISIONS**

Use the special provision section to show appropriate changes to the terms outlined in the General Provisions.

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EXHIBIT D
ADMINISTRATIVE SERVICES**

1. TRAVEL EXPENSES

Pathways must assume all reasonable travel and related expenses. All labor rates will be “fully loaded”, including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of pocket expenses.

2. SHIPPING AND DELIVERY FEE EXEMPTION

The State will not pay for any shipping or delivery fees unless specifically itemized in the Contract.

3. ACCESS/COOPERATION

As applicable, and subject to the applicable laws and regulations, the State will provide Pathways with access to all program files, libraries, personal computer-based systems, software packages, network systems, security systems, and hardware as required to complete the contracted Services.

The State will use reasonable efforts to provide approvals, authorizations, and decisions reasonably necessary to allow Pathways to perform its obligations under the Contract.

4. STATE-OWNED DOCUMENTS AND COPYRIGHT PRIVILEGES

Pathways shall provide the State access to all State-owned documents, materials, reports, and other work in progress relating to this RFP. Upon expiration or termination of the Contract with the State, Pathways shall turn over all State-owned documents, material, reports, and work in progress relating to this RFP to the State at no additional cost to the State. Documents must be provided in both printed and electronic format.

5. RECORDS RETENTION AND ACCESS REQUIREMENTS

Pathways shall agree to the conditions of all applicable State and federal laws and regulations, which are incorporated herein by reference, regarding retention and access requirements, including without limitation, retention policies consistent with the Federal Acquisition Regulations (FAR) Subpart 4.7 *Contractor Records Retention*.

Pathways and its Subcontractors shall maintain books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. Pathways and its Subcontractors shall retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so

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authorized by law, rule, regulation or Contract, as applicable. Access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at no cost to the State during the three (3) year period following termination of the Contract and one (1) year term following litigation relating to the Contract, including all appeals or the expiration of the appeal period. Pathways shall include the record retention and review requirements of this section in any of its subcontracts.

The State agrees that books, records, documents, and other evidence of accounting procedures and practices related to Pathways' cost structure and profit factors shall be excluded from the State's review unless the cost of any other Services or Deliverables provided under the Contract is calculated or derived from the cost structure or profit factors.

6. ACCOUNTING REQUIREMENTS

Pathways shall maintain an accounting system in accordance with Generally Accepted Accounting Principles. The costs applicable to the Contract shall be ascertainable from the accounting system and Pathways shall maintain records pertaining to the Services and all other costs and expenditures.

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EXHIBIT E
IMPLEMENTATION SERVICES

1. PROJECT MANAGEMENT

The State believes that effective communication and reporting are essential to Project success.

Pathways' Key Project Staff shall participate in meetings as requested by the State, in accordance with the requirements and terms of this Contract.

- a. **Kickoff Meeting:** Participants will include the State and Pathways' Project Team and major stakeholders. This meeting is to establish a sound foundation for activities that will follow.
- b. **Status Meetings:** Participants will include, at the minimum, Pathways' Project Manager and the State Project Manager. These meetings will be conducted at least weekly and address overall Project status and any additional topics needed to remain on schedule and within budget. A status and error report from Pathways shall serve as the basis for discussion.
- c. **The Work Plan:** Must be reviewed at each Status Meeting and updated by Pathways, at minimum, on a weekly basis, in accordance with the Contract.
- d. **Special Meetings:** Need may arise for a special meeting with State leaders or Project stakeholders to address specific issues.
- e. **Exit Meeting:** This will occur yearly. Participants will include Project leaders from Pathways and the State. Discussion will focus on lessons learned that year from the Project and on follow up options that the State may wish to consider in future years.

The State expects Pathways to prepare agendas and background for and minutes of meetings. Background for each status meeting must include an updated Work Plan. Drafting of formal presentations, such as a presentation for the kickoff meeting, will also be Pathways' responsibility.

Pathways' Project Manager or Pathways' Key Project Staff shall submit status reports in accordance with the Schedule and terms of this Contract, upon request by the State. All status reports shall be prepared in formats approved by the State. Pathways' Project Manager shall assist the State's Project Manager, or itself produce reports related to Project Management as reasonably requested by the State, all at no additional cost to the State. Pathways shall produce Project status reports, which shall contain, at a minimum, the following:

1. Project status related to the Work Plan;
2. Deliverable status;
3. Accomplishments during weeks being reported;
4. Planned activities for the upcoming two (2) week period;
5. Future activities; and
6. Issues and concerns requiring resolution.
7. Report and remedies in case of falling behind Schedule

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As reasonably requested by the State, Pathways shall provide the State with information or reports regarding the Project. Pathways shall prepare special reports and presentations relating to Project Management, and shall assist the State in preparing reports and presentations, as reasonably requested by the State, all at no additional cost to the State.

2. IMPLEMENTATION STRATEGY

2.1 Key Components

Pathways shall employ an industry-standard Implementation strategy with a timeline set forth in accordance with the Work Plan;

Pathways and the State shall adopt a change management approach to identify and plan key strategies and communication initiatives.

Pathways' team shall provide training templates as defined in the Training Plan, which shall be customized to address the State's specific requirements. Decisions regarding format, content, style, and presentation shall be made early on in the process, by the State, providing sufficient time for development of material as functionality is defined and configured.

Pathways shall manage Project execution and provide the tools needed to create and manage the Project's Work Plan and tasks, manage and schedule Project staff, track and manage issues, manage changing requirements, maintain communication within the Project Team, and report status.

2.2 Timeline

The timeline is set forth in the Work Plan. During the initial planning period Project task and resource plans will be established for: the preliminary training plan, the change management plan, communication approaches, Project standards and procedures finalized, and team training initiated. Timing will be structured to recognize interdependencies between applications and structure a cost effective and timely execution. Processes will be documented, training established, and the application will be ready for Implementation in accordance with the Work Plan.

2.3 Change Management and Training

Pathways' change management and training services shall be focused on developing change management and training strategies and plans. Its approach relies on State resources for the execution of the change management and end user training.

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EXHIBIT F
TESTING SERVICES**

Pathways shall provide the following Products and Services described in this Exhibit F, including but not limited to:

1. TESTING AND ACCEPTANCE

Pathways shall bear all responsibilities for the full suite of Test Planning and preparation throughout the Project. Pathways shall also provide training as necessary to the State staff responsible for test activities. Pathways shall be responsible for all aspects of testing contained in the Acceptance Test Plan including support, at no additional cost, during User Acceptance Test conducted by the State and the testing of the training materials.

The Test Plan methodology shall reflect the needs of the Project and be included in the finalized Work Plan. A separate Test Plan and set of test materials will be prepared for each Software function or module.

All Testing and Acceptance (both business and technically oriented testing) shall apply to testing the System as a whole, (e.g., software modules or functions, and Implementation(s)). This shall include, as applicable, planning, test scenario and script development, Data and System preparation for testing, and execution of Unit Tests, System Integration Tests, Conversion Tests, Installation tests, Regression tests, Performance Tuning and Stress tests, Security Review and tests, and support of the State during User Acceptance Test and Implementation.

In addition, Pathways shall provide a mechanism for reporting actual test results vs. expected results and for the resolution and tracking of all errors and problems identified during test execution. Pathways shall also correct Deficiencies and support required re-testing.

1.1 Test Planning and Preparation

Pathways shall provide the State with an overall Test Plan that shall guide all testing. Pathways provided, State approved, Test Plan will include, as applicable, identification, preparation, and Documentation of planned testing, a requirements traceability matrix, test variants, test scenarios, test cases, test scripts, test Data, test phases, unit tests, expected results, and a tracking method for reporting actual versus expected results as well as all errors and problems identified during test execution.

As identified in the Acceptance Test Plan, and documented in accordance with the Work Plan and the Contract, State testing will commence upon Pathways' Project Manager Certification, in writing, that Pathways' own staff has successfully executed all prerequisite Contractor's testing, along with reporting the actual testing results, prior to the start of any testing executed by State staff. The State will be presented with a State approved Acceptance Test Plan, test scenarios, test cases, test scripts, test data, and expected results.

The State will commence its testing within five (5) business days of receiving Certification from Pathways that the State's personnel have been trained and the System is installed, configured, complete, and ready for State testing. The testing will be conducted by the State in an environment independent

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from Pathways' development environment. Pathways must assist the State with testing in accordance with the Test Plan and the Work Plan, utilizing test and live Data to validate reports, and conduct stress and performance testing, at no additional cost.

Testing begins upon completion of the Software configuration as required and user training according to the Work Plan. Testing ends upon issuance of a letter of UAT Acceptance by the State.

Pathways must demonstrate that their testing methodology can be integrated with the State standard methodology.

1.2 Installation Testing (where applicable)

In Installation Testing the application components are installed in the System Test environment to test the installation routines and are refined for the eventual production environment. This activity serves as a dry run of the installation steps in preparation for configuring the production system.

1.3 User Acceptance Testing (UAT)

UAT begins upon completion of the Software configuration as required and user training according to the Work Plan. Testing ends upon issuance of a letter of UAT Acceptance by the State.

The User Acceptance Test verifies System functionality against predefined Acceptance criteria that support the successful execution of approved business processes.

UAT will also serve as a performance test of the System. It may cover any aspect of the new System, including administrative procedures such as backup and recovery. The results of the UAT provide evidence that the new System meets the User Acceptance criteria as defined in the Work Plan.

Upon successful conclusion of UAT and successful System deployment, the State will issue a letter of UAT Acceptance and the respective Warranty Period shall commence

Activity Description	The System User Acceptance Tests verify System functionality against predefined Acceptance criteria that support the successful execution of approved processes.
Contractor Team Responsibilities	<ul style="list-style-type: none">• Provide the State Acceptance Test Criteria.• Work jointly with the State in determining the required actions for problem resolution.
State Responsibilities	<ul style="list-style-type: none">• Approve the development of the User Acceptance Test Plan and the set of data for use during the User Acceptance Test.• Conduct User Acceptance Test activities.• Document and summarize Acceptance Test results.• Work jointly with Pathways in determining the required actions for problem resolution.• Provide Acceptance of the validated Systems.

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Work Product Description	The Deliverable for User Acceptance Tests is the User Acceptance Test Results. These results provide evidence that the new System meets the User Acceptance criteria defined in the Work Plan.
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1.8 Regression Testing

As a result of the user testing activities, problems will be identified that require correction. The State will notify Pathways of the nature of the testing failures in writing. Pathways will be required to perform additional testing activities in response to State and/or user problems identified from the testing results. Regression testing means selective re-testing to detect faults introduced during the modification effort, both to verify that the modifications have not caused unintended adverse effects, and to verify that the modified and related (possibly affected) System components still meet their specified requirements.

In designing and conducting such regression testing, Pathways will be required to assess the risks inherent to the modification being implemented and weigh those risks against the time and effort required for conducting the regression tests. In other words, Pathways will be expected to design and conduct regression tests that will identify any unintended consequences of the modification while taking into account Schedule and economic considerations.

1.9 Security Review and Testing

IT Security involves all functions pertaining to the securing of State Data and Systems through the creation and definition of security policies, procedures and controls covering such areas as identification, authentication and non-repudiation.

All components of the Software shall be reviewed and tested to ensure they protect the State's hardware and software and its related Data assets. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability. Tests shall, at a minimum, cover each of the service components. Test procedures shall include application vulnerability scanning.

Service Component	Defines the set of capabilities that:
Identification and Authentication	Supports obtaining information about those parties attempting to log onto a system or application for security purposes and the validation of users
Access Control	Supports the management of permissions for logging onto a computer or network
Encryption	Supports the encoding of log in credentials for security purposes
Verification	Supports the confirmation of authority to enter a computer system, application or network
User Management	Supports the administration of computer, application and network accounts within an organization.

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Audit Trail Capture and Analysis	Supports the identification and monitoring of activities within an application or system
Input Validation	Ensures the application is protected from buffer overflow, cross-site scripting, SQL injection, and unauthorized access of files and/or directories on the server.

Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability. Tests shall, at a minimum, cover each of the service components. Test procedures shall include 3rd party application vulnerability scanning.

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EXHIBIT G
MAINTENANCE AND SUPPORT SERVICES**

1. SYSTEM MAINTENANCE

Pathways shall maintain and support the System in all material respects through the contract end date.

1.1 Contractor's Responsibility

Pathways shall maintain the System in accordance with the Contract.

1.1.1 Maintenance Releases

Pathways shall make available to the State the latest program updates, general maintenance releases, selected functionality releases, patches, and Documentation that are generally offered to its customers, at no additional cost.

1.1.2 Standard Agreement

The State will adopt Pathways' standard maintenance agreement modified to address terms and conditions inconsistent with State Statutes and general State information technology practices.

2. SUPPORT OBLIGATIONS AND TERM

2.1 Pathways shall repair, configure, or replace Software, and provide maintenance of the Software in accordance with the Specifications and terms and requirements of the Contract.

2.2 If Pathways fails to correct a Deficiency within the allotted period of time stated above, Pathways shall be deemed to have committed an Event of Default, and the State shall have the right, at its option, to pursue the remedies in Part 2, as well as to return Pathways' product and receive a refund for all amounts paid to Pathways, including but not limited to, applicable license fees, within ninety (90) days of notification to Pathways of the State's refund request

2.3 If Pathways fails to correct a Deficiency within the allotted period of time stated above, Pathways shall be deemed to have committed an Event of Default, and the State shall have the right, at its option, to pursue the remedies in Part 2.

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EXHIBIT H
NEGOTIATED ITEMS**

Below is a list of the items that were discussed and negotiated following the State's selection of the top scoring vendor. This list provides project specific requirements in addition to those listed in this contract, the RFP and Addendums, and Pathways' Response to the referenced RFP.

1. Pathways is advised that winter in New Hampshire and the associated frost penetration under paved roads prevents accurate data collection prior to the middle of May. Pathways agrees to wait until at least the middle of May before dispatching a vehicle and crew to commence data collection in NH during each year of the contract.
2. Pathways agrees to provide two work plans within five days of the State issuing a Notice to Proceed. One work plan shall be written specifically for the data collection, while a second work plan shall be written to cover the data collection vehicle assembly and delivery.
 - a. Data collection shall commence in May or June. Processed data deliveries shall occur weekly following an initial two-week processing period, which commences at the end of the first week's data collection. Once weekly processed data deliveries commence, deliveries shall continue until all of the network road condition data has been assessed for quality assurance (QA) and approved by the State. The State shall return comments and corrections resulting from the QA process within two weeks of receiving the processed data. The final data delivery to the State shall occur no later than September 1st each year. Final comments regarding the data delivery and any requests for recollections shall be issued by the State by September 15th each year. This affords Pathways the opportunity for recollections prior to October 31st each year. Data collection shall not be permitted after October 31st each year, unless specifically agreed to by the State, weather permitting and on a case by case basis. The State and Pathways agree that final acceptance of the data, following both Pathways' and the State's data quality checks and quality assurance efforts, shall be completed no later than December 31st each year.
 - b. Delivery of the data collection vehicle shall occur between July 1, 2020 and September 1, 2020.
3. In 2020, the first year of network road condition data collection under contract, Pathways agrees to complete a pilot data collection, data processing, and data delivery. The State and Pathways shall agree on 500 miles of roadway in the State that represent a cross section of the various road types in New Hampshire, including all Tiers and a variety of interstate/turnpike, numbered State/US routes, and non-numbered state routes. The pilot data delivery will be the first provided to the State by Pathways. The State shall review the pilot delivery within one week of receipt and work with Pathways to ensure that the data deliverable is meeting the State's expectations. Pathways agrees to modify the data deliverable as requested in order to fully meet the State's requirements and expectations for all data types.
4. Pathways provided pricing for additional pavement distress data collections. Specifically, Macro texture data collection is available at a cost of \$4.25/mile. 360-degree right-of-way imagery is available at a cost of \$7.50/mile. Pothole and delamination distress data collection and identification

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Exhibit H – Negotiated Items – Part 3
Date: 4/17/2021
Contractor's Initials B

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is available at a cost of \$2.00/mile. These additional distresses are available but the State is electing not to purchase these add-ons at this time.

5. Pathways agrees to migrate all road condition data collected by the State since 2009 into the Pathweb hosted environment so that the data is viewable through the web application. This includes all right-of-way imagery, 360-degree camera imagery (if available), line scan imagery (downward facing images), IRI data, rut depth data, and cracking data. The State shall provide the data to Pathways on hard disk drives, to be provided by Pathways.
 6. Pathways agrees to pay \$7,500 in salvage value for the State's end-of-life data collection vehicle (H99). The State shall retain the stand alone work station and drive reader that currently supports that vehicle. Pathways and the NHDOT will work with the NH Department of Administrative Services in order to complete this sale of State-owned property, which does not affect Contract 2019-060. Proceeds from the vehicle sale will be refunded to the SPR Part 1 budget.
 7. Pathways agrees to invoice the State once per year for data collection services, following data acceptance at the end of the collection and post-processing periods. The Team anticipates receiving a Pathways invoice in October or November each year for these services.
 8. Pathways agrees to invoice 90% of the vehicle purchase price upon delivery of the data collection vehicle. The remaining 10% shall be invoiced following a 60-day acceptance period.
 9. The first year of vehicle warranty (Pathways subsystem warranty), technical support, and software maintenance is included with the vehicle purchase. Since vehicle delivery is expected July and September 2020, the first year of ownership shall extend to June 30, 2021. Invoicing for the second year warranty, technical support, and software maintenance and every year thereafter shall occur in October or November each year to coincide with the invoicing for data collection services. Pathways agrees that the first year warranty coverage includes the annual calibration and maintenance visit by Pathways' technicians in April 2021.
 10. Pathways agrees to add the following features to the Pathview software application:
 - a. The ability to log static calibrations automatically. Static calibrations include bounce and block tests. The idea is to create a calibration tool to be used daily by the data collection technicians. The tool will walk users through the steps of static calibrations. At the end of the exercise, the tool will identify a "pass" or "fail" result and the result will be automatically catalogued with the date, time, and result. The log will be accessible for printing; and
 - b. The ability to remove bridge joints, pavement joints, and the like from Ride Number calculations on ride quality projects. Pursuant to NHDOT Standard Specifications, anomalies such as these, along with a distance 20-feet before and after, must be removed before the Ride Number is calculated for the section. Currently, Pathview does not have a convenient way of accurately removing these areas, which is critical to the use of the vehicle for pavement acceptance testing.
- Both software enhancements will be tested upon receipt. Pathways agrees to work with State staff to ensure complete satisfaction of the State.
11. Pathways agrees to replace missing road segments throughout the network collection with segments collected separately by NHDOT data collection technicians. Pathways estimates the network collection will commence in May or June and extend approximately four weeks into July.

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Correspondingly, much of the State's paving for the given year will not yet be complete. The goal for each year is to report condition data that is representative of the paving completed during that year. Since the State is buying a data collection vehicle very similar to that used by Pathways for the network collection, the State will endeavor to collect post-pave condition data for any project completed following network collection. Data will include IRI, rutting, and cracking. Pathways agrees to receive the raw data on hard disk drives from the State and further agrees to process the data the same way that they plan to process the balance of the network data. If data was collected on a road segment where the State collected post-pave, the previously collected data will be deleted and replaced with the State data. This practice will ensure that the HPMS and internal reporting every spring represents the post-pave condition of New Hampshire's roads from the previous fall, to the extent practicable.

12. Pathways agrees to provide a single license of the AutoCrack software application at no additional cost to the State. This includes the AutoClass application, specifically configured to New Hampshire's historic crack rating methodology. With these applications, the State will be capable of performing their own road condition data collections and data processing exactly as will be done by Pathways.
13. Pathways agrees to ship a SurPRO walking profiler to New Hampshire in May 2020, in advance of the yearly calibration and maintenance visit by Pathways' technicians. Further, the Pathways technician shall assist the State in the layout and measurement of two IRI certification sites pursuant to AASHTO R56-14. Both sites will be local to the Concord, NH area. Pathways further agrees to extend this service in subsequent years, for a yearly cost of \$2,500.
14. Pathways agrees to replace the previously proposed onboard GPS device within the new data collection vehicle with an IXBLUE Atlans C high performance all-in-one position and orientation solution for an added cost of \$81,000.
15. Pathways agrees that with the purchase of the IXBLUE Atlans C described above, the previously quoted subscription service cost of \$1,500/year is no longer applicable. This subscription would have provided real-time GPS correction; however real time corrections are not required with the Atlans.
16. Pathways agrees to add an additional forward facing right-of-way camera (Prosilica GT2750C by Allied Vision Technology) and a rear facing right-of-way camera (same model) to the replacement data collection vehicle for an added cost of \$34,000 per camera.
17. Pathways agrees that the contract will include language stipulating that at the end of life for the data collection vehicle, the vehicle will be salvaged to Pathways. The salvage value of the vehicle will depend on the age, mileage, and condition of the vehicle at the time a replacement is being considered. The State does not want a vehicle complete with dangerous laser systems to be salvaged to the White Farm like other State owned property. Further, Pathways does not want their proprietary data collection vehicle subsystems to fall into the hands of a competitor. Therefore, the parties agree that the vehicle will be salvaged to Pathways at end of life, for a sum of money that is both on par with fair market value at the time, and agreeable to the State and to Pathways.

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EXHIBIT I
WORK PLAN**

Pathways' Project Manager and the State Project Manager shall finalize the Work Plans for Implementation within three weeks of the Effective Date and further refine the tasks required to implement the Project. The elements of the Work Plans are documented in accordance with Pathways' plan to implement the System. Continued development and management of the Work Plan is a joint effort on the part of Pathways and State Project Manager.

The preliminary Work Plan for Implementation created by Pathways is set forth in Pathways RFP Response, within Section IV Narrative Responses.

In conjunction with Pathways' Project Management methodology, which shall be used to manage the Project's life cycle, Pathways team and the State shall finalize the Work Plan at the onset of the Project. This plan shall identify the **tasks, Deliverables, major milestones, task dependencies, and a payment Schedule** required to implement the Project on a yearly basis. It shall also address intra-task dependencies, resource allocations (both State and Pathways' team members), refine the Project's scope, and establish the Project's Schedule.

ASSUMPTIONS

A. General

- The State shall provide team members with decision-making authority to support the Implementation efforts.
- All State tasks must be performed in accordance with the revised Work Plan.
- All key decisions will be resolved within five (5) business days. Issues not resolved within this initial period will be escalated to the State Project Manager for resolution.
- Any activities, decisions or issues taken on by the State that affect the mutually agreed upon Work Plan timeline, scope, resources, and costs shall be subject to the identified Change Control process.

B. Project Management

- The State shall approve the Project Management Methodology used for the Project.
- The State shall provide the Project Team with reasonable access to the State personnel as needed to complete Project tasks.
- A Confluence Website created by Pathways shall be used for centralized storage and retrieval of Project documents, work products, and other material and information relevant to the success of the Project and required by Project Team members. This central repository is secured by determining which team members have access to the site and granting either view or read/write privileges. Pathways' Project Manager will establish and maintain this site. The State Project Manager shall approve access for the State team.
- Pathways assumes that an Alternate Project Manager may be appointed from time to time to handle reasonable and ordinary absences of the Project Manager.

C. Project Schedule

- Notice to Proceed is expected in May 2020. Pathways should plan to dispatch field personnel to New Hampshire in order to achieve the submittal deadlines detailed in the Request for Proposals. Specifically, finished data is expected by September 1st, allowing for recollections if necessary in order to fulfill the Department's reporting obligations.

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WORK PLAN**

- Delivery of the replacement data collection vehicle is required by September 1, 2020, but can occur any time after July 1, 2020.

D. Reporting

- Pathways shall conduct weekly status meetings via web conference, and provide reports that include, but are not limited to, minutes, action items, test results, and Documentation.

E. User Training

- Pathways' Team shall lead the development of the end-user training plan.
- A train the trainer approach shall be used for the delivery of end-user training.

F. Performance Testing

- Pathways' Team shall provide a performance test workshop to identify the key scenarios to be tested, the approach and tools required, and best practices information on performance testing.
- The State shall work with Pathways on all testing as set forth in Contract Exhibit F – *Testing Services*.

1. ROLES AND RESPONSIBILITIES

A. Contractor Responsibilities

1) Contractor Team Project Manager

Pathways' Team Project Manager shall have overall responsibility for the day-to-day management of the Project and shall plan, track, and manage the activities of Pathways Implementation Team. Pathways' Team Project Manager will have the following responsibilities:

- Maintain communications with the State's Project Manager;
- Work with the State in planning and conducting a kick-off meeting;
- Create and maintain the Work Plan;
- Define roles and responsibilities of all Pathways Team members;
- Provide weekly and monthly update progress reports to the State Project Manager;
- Notify the State Project Manager of requirements for State resources in order to provide sufficient lead time for resources to be made available;
- Review task progress for time, quality, and accuracy in order to achieve progress;
- Ensure software issues and software configurations are completed to the satisfaction of the State;
- Review requirements and scheduling changes and identify the impact on the Project in order to identify whether the changes may require a change of scope;
- Implement scope and schedule changes as authorized by the State Project Manager and with appropriate Change Control approvals as identified in the Implementation Plan;
- Ensure vehicle and computer hardware warranty issues are resolved in a timely manner and to the satisfaction of the State;
- Inform the State Project Manager and staff of any urgent issues if and when they arise;

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- Provide the State completed Project Deliverables and obtain sign-off from the State's Project Manager; and
- Develop, review, and submit invoices to the State Project Manager for payment.

B. State Roles and Responsibilities

The following State resources have been identified for the Project. The time demands on the individual State team members will vary depending on the phase and specific tasks of the Implementation. The demands on the Subject Matter Experts' time will vary based on the need determined by the State Leads and the phase of the Implementation.

1) State Project Manager

The State Project Manager shall work side-by-side with Pathways Project Manager. The role of the State Project Manager is to manage State resources (IF ANY), facilitate completion of all tasks assigned to State staff, and communicate Project status on a regular basis. The State Project Manager represents the State in all decisions on Implementation Project matters, provides all necessary support in the conduct of the Implementation Project, and provides necessary State resources, as defined by the Work Plan and as otherwise identified throughout the course of the Project. The State Project Manager has the following responsibilities:

- Attend the kick-off meeting with assistance from Pathways team;
- Assist Pathways Project Manager in the development of a detailed Work Plan;
- Identify and secure the State Project Team members in accordance with the Work Plan;
- Define roles and responsibilities of all State Project Team members assigned to the Project;
- Identify and secure access to additional State end-user staff as needed to support specific areas of knowledge if and when required to perform certain Implementation tasks;
- Communicate issues to State management as necessary to secure resolution of any matter that cannot be addressed at the Project level;
- Inform Pathways Project Manager of any urgent issues if and when they arise; and
- Assist Pathways team staff to obtain requested information if and when required to perform certain Project tasks.
- Manage handoff to State operational staff; and
- Review invoices to ensure accuracy and submit for payment by the State.

2) State Subject Matter Expert(s) (SME)

The role of the State SME is to assist application teams with an understanding of the State's current business practices and processes, provide agency knowledge, and participate in the Implementation. Responsibilities of the SME include the following:

- Be the key user and contact for their Agency or Department;
- Attend Project Team training and acquire in-depth functional knowledge of the relevant applications;
- Assist in validating and documenting user requirements, as needed;
- Assist in mapping business requirements;
- Assist in Acceptance Testing;

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- Assist in performing Data verification;
- Attend Project meetings when requested; and
- Assist in training end users in the use of Pathways Software Solution and the business processes the application supports.

3) State Technical Lead

The State's Technical Lead reports to the State's Project Manager and is responsible for leading and managing the State's technical tasks. Responsibilities include:

- Attend technical training as necessary to support the Project;
- Assist the State and Pathways Team Project Managers to establish the detailed Work Plan;
- Manage the day-to-day activities of the State's technical resources assigned to the Project;
- Work with State IT management to obtain State technical resources in accordance with the Work Plan;
- Work in partnership with Pathways and lead the State technical staff's efforts in documenting the technical operational procedures and processes for the Project. This is a Contractor Deliverable and it will be expected that Pathways will lead the overall effort with support and assistance from the State; and
- Represent the technical efforts of the State at Project meetings.

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EXHIBIT J
SOFTWARE AGREEMENTS**

1. License Grant. Subject to the payment of applicable license fees, Pathways hereby grants to the State a non-transferable, non-sub licensable, non-exclusive license to use Software and its associated documentation during the applicable subscription term, subject to the terms of the Contract. The State may allow its agents and Pathways to access and use the Software, and in such event, the State shall first obtain written agreement from such agents and Pathways that each shall abide by the terms and conditions set forth herein.
2. Software Title. Title, right, and interest (including all ownership and intellectual property rights) in the Software provided under this agreement, and its associated documentation, shall remain with Pathways.
3. Software and Documentation Copies. Pathways shall provide the State with a sufficient number of hard copy versions of the Software's associated Documentation and one (1) electronic version in Microsoft Word and PDF format. The State shall have the right to copy the Software and its associated Documentation within its possession for its internal business needs. To the extent that the State does not have possession of the Software, Pathways shall provide a reasonable number of copies of the Software and associated Documentation upon request. The State agrees to include copyright and proprietary notices provided to the State by Pathways on such copies.
4. Restrictions. Except as otherwise permitted under the Contract, the State agrees not to:
 - Remove or modify any program markings or any notice of Pathways' proprietary rights;
 - Make the programs or materials available in any manner to any third party for use in the third party's business operations, except as permitted herein; or
 - Cause or permit reverse engineering, disassembly or recompilation of the programs.
5. Viruses. Pathways shall provide Software that is free of viruses, destructive programming, and mechanisms designed to disrupt the performance of the Software in accordance with the Specifications. As a part of its internal development process, Pathways will use reasonable efforts to test the Software for viruses.
6. Audit. Upon forty-five (45) days written notice, Pathways may audit the State's use of the programs at Pathways' sole expense. The State agrees to cooperate with Pathways' audit and provide reasonable assistance and access to information. The State agrees that Pathways shall not be responsible for any of the State's reasonable costs incurred in cooperating with the audit. Notwithstanding the foregoing, Pathways' audit rights are subject to applicable State and federal laws and regulations.
7. Software Non-Infringement. Pathways warrants that it has good title to, or the right to allow the State to use all Services, equipment, and Software, including any all component parts thereof such as third-party

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software or programs that may be embedded in the Software ("Contracted Resources") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

The warranty of non-infringement shall be an on-going and perpetual obligation that shall survive termination of the Contract. In the event that someone makes a claim against the State that any Contracted Resources infringe their intellectual property rights, Pathways shall defend and indemnify the State against the claim provided that the State:

- Promptly notifies Pathways in writing, not later than 30 days after the State receives actual written notice of such claim;
- Gives Pathways control of the defense and any settlement negotiations; and
- Gives Pathways the information, authority, and assistance reasonably needed to defend against or settle the claim.

Notwithstanding the foregoing, the State's counsel may participate in any claim to the extent the State seeks to assert any immunities or defenses applicable to the State.

If Pathways believes or it is determined that any of the Contracted Resources may have violated someone else's intellectual property rights, Pathways may choose to either modify the Contracted Resources to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Pathways may end the license, and require return of the applicable Contracted Resources and refund all fees the State has paid Pathways under the Contract. Pathways will not indemnify the State if the State alters the Contracted Resources without Pathways' consent or uses it outside the scope of use identified in Pathways' user Documentation or if the State uses a version of the Contracted Resources which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Contracted Resources which was provided to the State at no additional cost. Pathways will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, data, or material not furnished by Pathways. Pathways will not indemnify the State to the extent that an infringement claim is based upon the combination of any Contracted Resources with any products or services not provided by Pathways without Pathways' consent.

8. Control of All Component Elements. Pathways acknowledges and agrees that it is responsible for maintaining all licenses or permissions to use any third-party software, equipment, or services that are component parts of any deliverable provided under this agreement for the entire term of the contract. Nothing within this provision shall be construed to require Pathways to maintain licenses and

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permissions for Software acquired by the State directly or through third-parties which may be integrated with Pathways' deliverables.

9. Custom Software. Should any custom source code be developed, Pathways shall provide the State with a copy of the source code, which shall be subject to the License rights. The State shall receive a worldwide, perpetual, irrevocable, non-exclusive paid -up right and license to use, copy, modify and prepare derivative works of any custom developed software.
10. Software Escrow. Pathways agrees to provide to the State the currently existing source code and any other tools and requirements necessary to create executable or interpretive programs. This information may be provided to the State either directly, with any such protections as required by Pathways or through a mutually agreed upon Escrow Agreement. Pathways shall be responsible for all costs associated with the Escrow Agreement and the State shall not assume any liability to the Company or Escrow Agent as a result of the Agreement.

Pathways agrees that the State shall be entitled to utilize the source code in its possession and/or demand a release of the source code from the Escrow Agent upon the occurrence of any of the following events ("Release Events"):

- Pathways has made an assignment for the benefit of creditors;
- Pathways institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind;
- A receiver or similar officer has been appointed to take charge of all or part of Pathways' assets;
- Pathways terminates its maintenance and operations support services for the State for the Software or has ceased supporting and maintaining the Software for the State whether due to its ceasing to conduct business generally or otherwise, except in cases where the termination or cessation is a result of the non-payment or other fault of the State;
- Pathways defaults under the Contract; or
- Pathways ceases its on-going business operations or that portion of its business operations relating to the licensing and maintenance of the Software.

Upon the occurrence of a Release Event, Pathways hereby grants the State the right to use, copy, modify, display, distribute, and prepare derivative works of the source code, and to authorize others to do the same on behalf of the State (Pathways, agents, etc.), solely for the purpose of completing the performance of Pathways' obligations under the Contract, including, but not limited to, providing maintenance and support for the Software and subject to the rights granted in this Contract.

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EXHIBIT K
WARRANTY & WARRANTY SERVICE**

1. WARRANTIES

1.1 System

Pathways warrants that the System will operate to conform to the Specifications, terms, and requirements of the Contract.

1.2 Software

Pathways warrants that the Software, including but not limited to the individual modules or functions furnished under the Contract, is properly functioning within the System, compliant with the requirements of the Contract, and will operate in accordance with the Specifications and Terms of the Contract.

For any breach of the above Software warranty, the State's remedy, and Pathways entire liability, shall be:

- (a) the correction of program errors that cause breach of the warranty, or if Pathways cannot substantially correct such breach in a commercially reasonable manner, the State may end its program license if any and recover the fees paid to Pathways for the program license and any unused, prepaid technical support fees the State has paid for the program license; or
- (b) the re-performance of the deficient Services, or
- (c) if Pathways cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Pathways for the deficient Services.

1.3 Equipment

Pathways shall provide a service contract to cover 100% of the parts, labor, and other associated service costs for all installed onboard computer systems and data collection subsystems installed on the data collection vehicle for a period of six (6) years. This unlimited warranty shall also cover the stand alone computer work station and 200 TB storage appliance along with the associated monitors and accessories. Warranty includes parts, labor, and any shipping costs. Said coverage may be extended beyond six years with contract amendment.

Parts and workmanship shall be the same or better quality as the original Pathways installed equipment. Work performed by Pathways shall not diminish the manufacturer's warranty coverage. Warranty-related costs incurred by the State as a result of Pathways shall be charged to Pathways. Costs incurred by the State to restore any component or system back to full and proper function shall be charged to Pathways.

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EXHIBIT K
WARRANTY & WARRANTY SERVICE**

1.4 Non-Infringement

Pathways warrants that it has good title to, or the right to allow the State to use, all Services, equipment, and Software ("Material") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

1.5 Viruses; Destructive Programming

Pathways warrants that the Software shall not contain any viruses, destructive programming, or mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

1.6 Compatibility

Pathways warrants that all System components, including but not limited to the components provided, including any replacement or upgraded System Software components provided by Pathways to correct Deficiencies or as an Enhancement, shall operate with the rest of the System without loss of any functionality.

1.7 Services

Pathways warrants that all Services to be provided under the Contract will be provided expediently, in a professional manner, in accordance with industry standards and that Services will comply with performance standards, Specifications, and terms of the Contract.

1.8 Personnel

Pathways warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

2. WARRANTY SERVICES

Pathways agrees to maintain, repair, and correct deficiencies in the stand alone work station and 200 TB storage appliance, including accessories, in the vehicle and installed onboard computer systems and data collection subsystems, all at no additional cost to the State including, without limitation, correcting all errors, defects, and deficiencies; eliminating viruses or destructive programming; and replacing incorrect, defective, or deficient software or hardware.

Warranty services shall include, without limitation, the following:

- b. Maintain the software in accordance with the specification and terms of the contract;
- c. Repair or replace the software, hardware, or any portion thereof so that the system operates in accordance with the terms of the contract;

State of NH Contract 2019-060

Exhibit K – Warranty and Warranty Services – Part 3

Date: 4/17/2020

Contractor's Initials *JS*

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WARRANTY & WARRANTY SERVICE**

- d. Pathways shall provide on-call telephone assistance during the work week between the hours of 8am and 5pm EST, with an email/phone response within two hours of request, with assistance response dependent upon issue severity;
 - e. Pathways shall provide support with remote diagnostic services within four hours of a request;
 - f. Pathways shall provide support onsite within 72 hours of a request;
 - g. All deficiencies found during the warranty period shall be corrected by Pathways within 30 days unless specifically extended in writing by the State and at no additional cost to the State.
1. In the event Pathways fails to correct a deficiency within the allotted period of time, the State may, at its option: 1) immediately declare Pathways in default, terminate the contract in whole or in part, without penalty or liability to the State; 2) return Pathways software and receive a full refund within 90 days for all amounts paid to Pathways under the contract, including but not limited to any applicable license fees; 3) pursue its remedies available at law and in equity.
 2. Notwithstanding any provision of the contract, the State's option to declare Pathways in default, terminate the Contract and pursue its remedies shall remain in effect until satisfactory completion of the full warranty period.

3. WARRANTY PERIOD

The Warranty Period shall remain in effect until the conclusion or termination of this Contract and any extensions, except for the warranty for non-infringement, which shall remain in effect indefinitely. During the warranty period, the maintenance and support services will coexist.

If within the last ninety (90) days of the warranty period, the software or hardware fails to operate in accordance with its specification, the warranty period will cease, Pathways will correct the deficiency, and a new ninety (90) day warranty period will begin. Any further deficiencies with the software must be corrected and run fault free for ninety (90) consecutive calendar days.

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EXHIBIT L
TRAINING SERVICES**

Pathways shall provide three, five-day trainings onsite at the NHDOT in Concord, NH, as specifically described in Section IV Narrative Responses of Pathways' RFP Response (attached). The first five-day training shall cover in-depth software training. The second and third trainings will occur upon data collection vehicle delivery and will cover primary hardware training and equipment operation, acceptance testing, and certification/verification as it relates to the Data Quality Management Program.

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EXHIBIT M
AGENCY RFP WITH ADDENDUMS, BY REFERENCE**

The State of New Hampshire Department of Transportation RFP 2019-060 Road Condition Data Collection Services and Vehicle Procurement dated September 10, 2019 along with Addendum #1 dated September 27, 2019, Addendum #2 dated October 4, 2019, and Addendum #3 dated October 17, 2019 are all hereby incorporated by reference as fully set forth herein.

State of NH Contract 2019-060

Exhibit M – Agency RFP with Addendums, by Reference – Part 3

Date: 4/17/2020

Contractor's Initials: JS

**STATE OF NEW HAMPSHIRE
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EXHIBIT N
VENDOR PROPOSAL, BY REFERENCE**

Pathway Services, Inc. Proposal to the New Hampshire Department of Transportation RFP 2019-060 Road Condition Data Collection Services and Vehicle Procurement dated October 22, 2019 is hereby incorporated by reference as fully set forth herein.

State of NH Contract 2019-060

Exhibit N – Vendor Proposal, by Reference – Part 3

Date: 4/17/2020

Contractor's Initials 

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EXHIBIT O
CERTIFICATES AND ATTACHMENTS**

Attached are:

- A. Pathways' Certificate of Good Standing
- B. Pathways' Certificate of Vote/Authority
- C. Pathways' Certificate of Insurance

State of NH Contract 2019-060

Exhibit O – Certificates and Attachments – Part 3

Date: 4/17/2020

Contractor's Initials JP

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State of New Hampshire

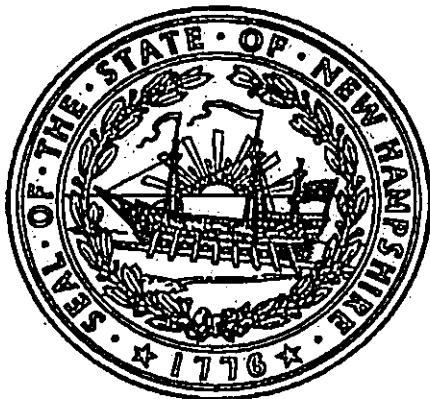
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that PATHWAY SERVICES INC. is a Oklahoma Profit Corporation registered to do business in New Hampshire as PATHWAY SERVICES OF OKLAHOMA on March 31, 2009. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 611227

Certificate Number: 0004876829



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 1st day of April A.D. 2020.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State

Certificate of Vote

I, Lavonne Blanco, Clerk/Secretary of Pathway Services Inc., do hereby certify that:

- (1) I am the duly elected and acting Clerk/Secretary of Pathway Services Inc., a Oklahoma corporation (State of incorporation);
- (2) I maintain and have custody and am familiar with the minute books of the Corporation;
- (3) I am duly authorized to issue certificates with respect to the contents of such books;
- (4) The following are true, accurate and complete copies of the resolutions adopted by the Board of Directors of the Corporation at a meeting of the said Board of Directors held on the 17 day of April, 2020, which meeting was duly held in accordance with Oklahoma (State of incorporation) law and the by-laws of the Corporation:

RESOLVED: That this Corporation enter into a contract with the State of New Hampshire, acting by and through the DoIT of the Transportation Department, providing for the performance of certain IT Consulting Services, and that the President be and hereby is authorized and directed for and on behalf of this Corporation to enter into the said contract with the State and to take any and all such actions and to execute, acknowledge and deliver for and on behalf of this Corporation any and all documents, agreements and other instruments (and any amendments, revisions or modifications thereto) and he may deem necessary, desirable or appropriate to accomplish the same;

RESOLVED: That the signature of any officer of this Corporation affixed to any instrument or document in or contemplated by these resolutions shall be conclusive evidence of the authority of said officer to bind this Corporation thereby;

- (5) The foregoing resolutions have not been revoked, annulled, or amended in any manner whatsoever and remain in full force and effect as of the date hereof;
- (6) The following person(s) (has) (have) been duly elected to and now occupy the office(s) indicated below:

Rudy Blanco President

- (7) The corporation has no seal.

IN WITNESS WHEREOF, I have hereunto set my hand as the Clerk/Secretary of the Corporation
this 17 day of April, 2020

Lavonne Blanco
Clerk/Secretary

STATE OF Oklahoma

COUNTY OF Tulsa

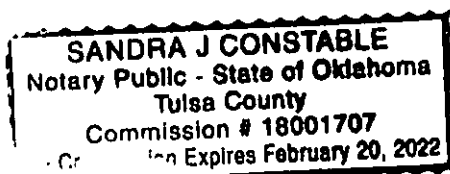
On this the 17 day of April, 2020, before me, Sandra J Constable, the
undersigned Officer, personally appeared Rudy Blanco, who acknowledged
her/himself to be the President, of Pathway Services,
a corporation, and that she/he, as such President being authorized to do
so, executed the foregoing instrument for the purposes therein contained, by signing the name of
the corporation by her/himself as Rudy Blanco.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Sandra J Constable
Notary Public/Justice of the Peace

My Commission Expires: 2/20/2022

Official Seal:





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BEL. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REP. ENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Amanda Applegate
The Arrow Group	PHONE (A/C No. Ext): (918) 258-6681
2720 North Hemlock Ct. Ste. A	FAX (A/C No.): (918) 251-7893
	E-MAIL: amanda@arrow-group.com
	ADDRESS:
Broken Arrow OK 74012	INSURER(S) AFFORDING COVERAGE
	INSURER A: Travelers Property Casualty Co of Ameri
INSURED	INSURER B: Travelers Indemnity Co
Pathway Services, Inc., DBA: Pathway Data Collection Serv	INSURER C:
PO Box 472105	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES	CERTIFICATE NUMBER: CL2022809492	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS		

SR	TR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						
		<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			63080773518	3/1/2020	3/1/2021	EACH OCCURRENCE \$ 1,000,000
								DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
								MED EXP (Any one person) \$ 10,000
								PERSONAL & ADV INJURY \$ 1,000,000
								GENERAL AGGREGATE \$ 2,000,000
								PRODUCTS - COMPIOP AGG \$ 2,000,000
								Technology Extend \$
		<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
		<input checked="" type="checkbox"/> ANY AUTO			8108L294027	3/1/2020	3/1/2021	BODILY INJURY (Per person) \$
		<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
		<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
								Uninsured motorist combined single \$ 1,000,000
		<input checked="" type="checkbox"/> UMBRELLA LIAB						EACH OCCURRENCE \$ 1,000,000
		<input type="checkbox"/> EXCESS LIAB						AGGREGATE \$
		<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP2J404662	3/1/2020	3/1/2021	\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)			UB8M793611	3/1/2020	3/1/2021	E.I. EACH ACCIDENT \$ 1,000,000
		If yes, describe under DESCRIPTION OF OPERATIONS below						E.I. DISEASE - EA EMPLOYEE \$ 1,000,000
					89L91M76157	3/1/2020	3/1/2021	E.I. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RECEIVED
MAR 3 2020
Bureau of Materials & Research
NH Dept. of Transportation

CERTIFICATE HOLDER	CANCELLATION
N Hampshire DOT Bureau of Materials & Research PO Box 483 5 Hazen Drive Concord, NH 03302-0483	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE
	Terry D. Cupp/AMA

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