

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION, AND FORESTRY  
Agreement to Purchase Services

THIS AGREEMENT, made this 4th day of September, 2014, is by and between the State of Maine, Department of Agriculture, Conservation, and Forestry, hereinafter called "Department," and James W. Sewall Company, located at 136 Center Street, PO Box 433, Old Town, Maine 04468 , telephone number 207-817-5426, hereinafter called "Provider", for the period of September 2,2014 to December 31, 2015.

The Employer Identification Number of the Provider is VC1000039205

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C – Exceptions to Rider B

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in 1 original and 3 copies.

**DEPARTMENT OF AGRICULTURE,  
CONSERVATION, AND FORESTRY**

By: \_\_\_\_\_  
Walter E. Whitcomb - Commissioner

and

By: \_\_\_\_\_  
Name and Title, Provider Representative

Total Agreement Amount: \$ 266,950

\_\_\_\_\_  
Approved:  
State Controller - Chair, State Purchases Review Committee



RIDER A  
SPECIFICATIONS OF WORK TO BE PERFORMED

A. BUREAU OBJECTIVES

The Bureau's current timber typing is dated and the system now in use should be made more informative. New typing based on recent aerial photography will provide a more accurate tool for field staff, and the landbase-wide re-typing offers the opportunity to switch to a more useful typing scheme for the entire managed area of approximately 605,000 acres. The revised timber type and other polygons must be in a format compatible with the Bureau's current MapInfo GIS system. An ESRI shape file would be compatible.

The Bureau is also considering changes to annual harvest volumes, in order to appropriately manage timber inventory levels such that the forest's vulnerability to spruce budworm and other hazards can be reduced while maintaining other forest values and increasing timber quality. This action must be carried out in such a manner as to stay within the Bureau's legislative mandates for conducting exemplary land management and providing for recreation opportunities and wildlife habitat, significant late successional forest, and without jeopardizing forest certification under both the Forest Stewardship Council[r] and Sustainable Forest Management[r] programs. The modeling project is intended to accomplish several objectives:

1. Produce updated yield curves employing the available model most appropriate to Maine's Acadian Forest.
2. Assist the Bureau in identifying the areas of Bureau-managed forest where harvesting is most appropriate over time, in the context of the Bureau's mandates and constraints, while achieving any proposed changes in sustainable harvest level (SHL.)
3. Provide for periodic checks, using updated inventory data, to evaluate how the modified harvests are impacting inventory levels, species composition, and Bureau non-timber values.
4. The model will be used to portray various harvest strategies for reducing, maintaining, or increasing the volume of timber on the Bureau's 407,000 acres (as of 2014) of regulated forest, that portion of Bureau-managed forest on which timber management is an important allocation.
5. The model must be capable of portraying harvest strategies that maintain current inventory levels with non-declining yield, or that allow increasing or decreasing inventory levels with varying yields. It must be capable of modeling these strategies at the landbase-wide, region, and individual sustainable harvest unit levels.

B. GENERAL REQUIREMENTS

1. TIMBER TYPING

- a. The new timber type files must be in a GIS format that is readily compatible with the Bureau MapInfo GIS; an ESRI shape file would be an acceptable product.
- b. The Lands Division landbase must be divided appropriately into timber type polygons, using the Bureau-supplied aerial photography and standard photointerpretation practices. Timber type designations must conform accurately to the typing system supplied by the Bureau.
- c. Photointerpretation must be regularly checked in the field, by overflights and ground-truthing.
- d. Timber type polygons should generally be no smaller than ten acres, but may be as small as five acres where very distinct type differences are found. Some examples are plantations and recent clearcuts. Non-forest polygons may be as small as one acre.

## 2. MODELING

- a. The Bureau requires that modeling be capable of working at the individual SHU level for the thirteen larger SHUs, and potentially for the smallest SHU should additional inventory data become available.
- b. The model must be able to apply differing constraints to selected SHUs. Some examples are noted:
  - i. Large portions of several units hold significant area in late successional forests within their regulated acres: W2 (Bigelow Preserve), N1 (Deboullie), and N4 (Scraggly Lake) are the prime examples. Harvesting objectives on these tracts will include maintaining current inventory levels and area of forests meeting late successional standards.
  - ii. Approximately one-third of the Seboomook Unit (which is nearly all of W6) will be managed to maintain/increase high quality hare habitat – dense 10 to 35 year old stands dominated by softwoods – as part of the Maine Department of Inland Fisheries and Wildlife’s Incidental Take Permit for the threatened Canada Lynx.
- c. The model must be capable of working at multiple spatial scales, including individual SHUs, regions, and on the Bureau’s entire landbase.
- d. Preferred model interval is a five-year period, and for a minimum of ten periods.
- e. The Bureau will request multiple runs be made testing different harvest volumes for inventory response and sensitivity.
- f. The model must be able to incorporate updated theme acreage, harvest, and inventory data as it becomes available, enabling the Bureau to evaluate the effect of modified harvest levels on inventory volume and character.
- g. Revised/updated yield curves will be developed using a product that is more appropriate than FVS Northeast Variant for modeling the Acadian Forest.
- h. The model must be capable of incorporating complex harvest themes, developed by the Bureau or through consensus by Bureau and Contractor.
- i. Modeling must employ Remsoft products functionally equivalent to and compatible with the Bureau products noted under AVAILABLE DATA, above)

C. DELIVERABLES Unless otherwise specified, all time intervals are figured from the date of a fully executed and signed contract.

## 1. TIMBER TYPING

- a. Within four months: Completion of the Northern Region (the only one of the three for which aerial photography is completed), with drafts of tracts submitted to the Bureau as they are completed. Some typing must also be completed on each of the other two regions, sufficient for regional field staff to evaluate. Regional managers would set priorities for which tracts are to be typed in those regions during this time.
- b. Within nine months: Completion of all tracts on which aerial photography was done in 2013.

c. Within four months of delivery to the contractor of aerial photography flown in autumn of 2014: Completion of all remaining tracts, and Bureau acceptance of all project typing. (Photography flown in 2013 was delivered to the Bureau in late November, 2013.)

## 2. MODELING

### a. Within three months of completion of Northern Region timber typing:

- i. Revised/updated yield curves developed for the Northern Region using a product that is appropriate for modeling the Acadian Forest.
- ii. Successful model runs on at least two SHUs from the Northern Region, the subject SHUs selected through consensus by Bureau and Contractor. At least one of the SHUs must be one of those noted above in General Requirement number 2.

### b. Within three months of completion of all timber typing:

- i. A new proposed annual allowable harvest for all of the thirteen larger SHUs.

### c. Beginning within twelve months of satisfactory delivery of the above modeling tasks:

incorporation into the model of new inventory data to be collected starting in 2015 or 2016, with subsequent modeling of each SHU. This service would be reimbursed at the hourly rate to be submitted as part of the cost proposal.

RIDER B  
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$266,950

2. **INVOICES AND PAYMENTS** The Department will pay the provider as follows:

Provider will bill the Department on a bi-weekly basis for work that has been satisfactorily completed, the amount pro-rated by the proportion of work that has been completed, upon which the Department will make timely payments to the Provider. For the purposes of this payment schedule, the timber typing portion of the contract represents 80 percent of the total amount, or \$213,560, and the forest modeling 20 percent, or \$53,390.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Thomas Charles  
Title: Chief of Silviculture  
Address: Bureau of Parks and Lands, SHS 22, Augusta, Maine 04333 tom.t.charles@maine.gov

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This

indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.