

MAINE DEPARTMENT OF TRANSPORTATION
(Department)



MaineDOT

CONSULTANT GENERAL CONDITIONS
January 1, 2009

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Agreement

The Consultant shall furnish or provide the services necessary to complete the Project in accordance with these terms and conditions and the Department's requirements, as outlined in the Department's GCA and Project Contract.

General Provisions

Representation by Department

By executing the GCA or a Project Contract, the Department's signatory represents that, to the best of their knowledge, the Consultant (or any of its representatives) has not been required, as a condition of obtaining or carrying out the GCA or Project Contracts to:

- a. employ or retain any firm or person, or
- b. pay or agree to pay any firm, person or organization any fee, contribution, donation, or consideration of any kind.

Representations by Consultant

By signing the GCA and/or a Project Contract(s), the signatory represents that they are a duly authorized representative of the Consultant firm and represents that neither he/she nor the Consultant firm has (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the Consultant) to solicit or secure the GCA and related contracts; (b) agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or; (c) paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for the Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the GCA, Project Contract and any related contracts.

By signing the GCA and/or a Project Contract, the Consultant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.
- b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
 - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract,
 - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

- iv. have not within a 3-year period preceding this application or proposal had one or more federal, state or local government transactions terminated for cause or default.

Priority of Conflicting Contract Documents

If the Consultant discovers any error, omissions, conflict, or discrepancy related to the Contract Documents that may significantly affect the cost, quality, conformity, or timeliness of the work, the consultant must notify the Department. The Parties agree that the following components of the contract documents shall control in the following descending order of priority:

- Modification to the Project Contract
- Project Contract and Appendices
- Modifications to the General Consultant Agreement
- General Consultant Agreement and Appendices
- Consultant General Conditions

General Scope of Work

The Project Contracts are to be considered federally funded, unless expressly stated otherwise in the Contract Documents. As a Federally funded Contract, it is governed by all Federal requirements set forth in these General Conditions and all related appendices.

Standards

All work, to the extent applicable, shall conform to the appropriate, related, current editions of the following publications, including, but not limited to:

Maine Department of Transportation

- a. Standard Details and Supplemental Standard Details
- b. Standard Specifications with Interim Specifications
- c. Outline of the Department's latest Project Development Process
- d. CADD Standards
- e. Bridge Design Manual
- f. Highway Design Guide
- g. Survey Manual
- h. MaineDOT Right-of-way Policies and Procedures
- i. MaineDOT Utilities Policies and Procedures
- j. MaineDOT Construction Manual
- k. MaineDOT Metric Conversion Plan
- l. MaineDOT Best Management Practices for Erosion and Sediment Control
- m. MaineDOT Format for Bridge Soils Reports
- n. MaineDOT Format for Highway Soils Reports

AASHTO

- a. A Policy on Geometric Design of Highways and Streets
- b. LRFD Bridge Design Standards with Interim Specifications
- c. Standard Specifications for Highway Bridges with Interim Specifications
- d. Other Applicable AASHTO Standards and Guide Specifications

Highway Research Board

- a. Highway Capacity Manual, SR 209

U.S. Department of Transportation

- a. Pertinent Federal-Aid Policy Guides
- b. Rules and Regulations, Federal Highway Administration
- c. Manual on Uniform Traffic Control Devices for Streets and Highways
- d. Roadside Design Guide
- e. American Railway Engineering and Maintenance Association (AREMA) Manual
- f. FHWA Right-of-Way Project Development Guide

Deviations from any of those referenced design standards must be made, in writing, by the Department.

Owner Responsibilities

No Personal Liability

The Department's employees and other representatives act solely as representatives of the Department when conducting and exercising authority granted to them under the GCA and/or Project Contract. Such persons have no liability either personally or as Department employees to consultant for the implementation of the project contract or GCA.

Notice to Proceed

Following the execution of the contract the Department will issue a contract number. This number should be referenced on all related invoicing and correspondence to the Department. The fully executed contract and a "Written Notice to Proceed" will be sent to the Consultant who may then commence work; the consultant will not be compensated for any work done before delivery of a Written Notice to Proceed.

Inform Consultant about Project Requirements

The Department shall provide all relevant criteria and information pertaining to Department's requirements for the Project which may include the following:

- a. Property descriptions.
- b. Zoning, deed and other land use restrictions.
- c. Property, boundary, easement, right-of-way and other special surveys or data.
- d. Planning Studies.
- e. Explorations of subsurface conditions, drawings of physical conditions, hydrographic surveys at or contiguous to the site.
- f. Environmental Assessments and other relevant environmental or cultural studies.
- g. Data or consultations as required for the Project.

Accuracy

The Consultant can rely on the information provided by the Department. The Consultant is responsible for reviewing all such, reports, data, and information and notifying the department of any error, omissions, conflict, or discrepancy.

Advise Consultant of Services of Other Consultants

The Department shall advise the Consultant of the identity and scope of services of any independent Consultants employed by Department providing services on the Project. The Project Manager will be responsible for coordinating the efforts of Consultants under contract with the Department.

Consultant Responsibilities

Project Records

All project records, whether printed or electronic, made by the Consultant and Sub-consultant(s), or furnished to the Consultant by the Department shall, upon completion of the work contemplated under the Project Contract, be filed with the Department. The Consultant and Sub-consultant(s), shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred under the Project Contract and shall make such materials available at their respective offices at all reasonable times during the Project Contract period and for three years from the date of final payment under the Project Contract. The Consultant and Sub-consultant(s), shall allow inspection and audit 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, at no cost to the Department.

The Consultant shall maintain a correspondence file which shall contain documentation of project progress as well as dates of all meetings, plan submissions, agreements, etc. with agencies or persons other than those of the Consultant.

The Consultant shall keep records in such form as may be easily audited and in accordance with 48 CFR, Part 31 - Contract Cost Principles and Procedures. The employee's salary record shall show time spent on the work.

Invoice Documentation - Records of Consultant's Costs

Records of Consultant's costs pertinent to Consultant's compensation under a Project Contract shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify Consultant's charges and upon Department's timely request, copies of such records shall be made available to the Department at its Augusta office. Records shall be available for review by the Department for a period of three (3) years following final payment.

Ownership of Documents

The Department acknowledges the Consultant's plans and specifications as instruments of professional service.

All original data furnished to the Consultant by the Department shall be returned to the Department in good order.

All plans, specifications and exhibits prepared or obtained under the terms of the Project Contract shall be delivered to and become the sole property of the Department upon completion of the work. Consultant shall be entitled to maintain a copy of all such documents for its business files for a period of three (3) years.

If the Department alters the Consultant's plans, specifications, and/or exhibits or uses said plans, specifications, and/or exhibits for purposes other than their original intended use, the Consultant shall not be held liable.

Endorsed and Sealed

All plans, specifications, estimates, and data prepared by the Consultant shall be signed and sealed with a State of Maine seal by the Consultant's Licensed Professional Engineer, Landscape Architect, Geologist, Site Evaluator, Surveyor, Soil Scientist, Master Plumber or other professional, as applicable under Maine State Law.

Utility Coordination

The Consultant shall make every reasonable effort to minimize the impact to existing utilities and also minimize lengths of relocated or proposed additional utilities.

Sub-consultants and Outside Associates and Consultants

A Consultant may not enter into a subcontract with a party unless that party is specifically identified in the Project Contract as a Sub-consultant. The Consultant must first notify the Department's Project Manager; or designee before retaining other Sub-consultants. The Department retains the right to reject the Sub-consultant, if the Department has concerns about the Sub-consultant's ability to perform the services described.

Consultant's Duties Regarding Sub-consultant(s)

The Consultant is responsible for:

- a. Assuring that its Sub-consultant(s) has sufficient skill and experience to perform the work properly, and
- b. Coordinating and managing its Sub-consultant(s) to achieve the intent of the Contract.

Claims

The Consultant agrees not to bring any claims for damages sought by its Sub-consultant(s) against the Department and hereby indemnifies and holds the Department harmless against any claims arising from its failure to coordinate and manage its Consultants and from any and all claims or liabilities arising from work performed by Sub-consultant. Subcontracting does not alter the Consultant's obligations under a GCA or Project Contract.

Flow Down

All subcontracts of the Consultant, and all lower tier subcontracts, shall contain or reference all applicable provisions of the Contract and these General Conditions, including but not limited to all safety, wage, prompt payment, labor, environmental, insurance, claims & disputes, audit and equal opportunity provisions.

No Third Party Beneficiaries

The Consultant and the Department agree that the GCA and/or Project Contract are not intended to create any third-party beneficiaries or to authorize anyone not a party to the GCA or Project Contract to maintain an action under said GCA or Project Contract provisions.

Accuracy

The Consultant shall be responsible for the services rendered, the professional quality, technical accuracy, and the coordination of all documents, designs, drawings, specifications, and other services furnished by the Consultant and Sub-consultant(s) under a Project Contract. The Department shall not be responsible for discovering deficiencies in the work product or professional services, but will notify the Consultant if a deficiency is discovered.

Standard of Care

Consultant represents that it has the requisite skills, expertise and licensing to perform all contract work using the accepted standards of care in the Consultant's profession or occupation.

Redesign Responsibility for Errors and Omissions

Upon request, the Consultant agrees to correct any errors, or omissions caused by the fault or negligence of Consultant and Sub-consultant(s) in work required under a Project Contract without undue delay and without cost to the Department.

Electronic Exchange of CADD Data

The Consultant must follow the most recent version of the Department's specifications for required electronic (computer) data, at the time of Project Contract execution, as it relates to engineering design project deliverables in effect. Consultants wishing to perform professional engineering services for MaineDOT are required to deliver electronic data as specified in said document. The specification also requires Consultants to accept and utilize pertinent electronic input data as provided by MaineDOT. It is the responsibility of the Consultant to translate this data into other formats required for use in their design software. A copy of this specification may be obtained from the Project Manager; or his/her designee.

Progress Reports

Prior to the start of work, the Consultant shall furnish the Department with a proposed progress schedule in the Department's standard format. The Consultant will outline the various phases of work that will need to be completed in order to meet the schedule set forth by the Department.

During the course of the project, the Consultant shall submit to the Department, a Monthly Project Status Report of accomplishments from the preceding month. The progress report shall be used to keep team members and the Contract Administrator informed about project status and issues. Information will include:

- a. A written statement describing the work accomplished during the period and to date.
- b. An estimate of the percentage of work completed within the specified services.
- c. An estimate of the effort needed to complete the specified services.
- d. The percentage of contract time elapsed and the percentage of contract amount expended (including contract modifications.).
- e. Contract Modifications to date and anticipated contract modifications.
- f. Any information needed from MaineDOT to complete the project and avoid delays.

- g. An explanation if the percent completion does not agree with the agreement time elapsed.
- h. The Consultant's action plan to remedy and address any non-conforming or unacceptable work submitted to MaineDOT.
- i. Document anticipated problems and possible solutions.
- j. The Consultant will keep the Department informed as to changes in rates and key personnel.

These progress reports shall be submitted to MaineDOT on a **monthly basis** regardless of whether or not payments are due. Failure to submit could result in non-payment of the invoice, or a determination for cause of default, and shall be recorded in the Consultant's Performance Evaluation. If work is temporarily delayed, the Consultant may suspend submittal of the monthly progress reports with written approval from MaineDOT. The Consultant shall be responsible for addressing any action that may be required to keep the project on schedule.

MaineDOT shall have a period of 15 business days after receipt of the submissions to complete the review and make any necessary comments. Following the review, the Consultant will make any revisions and corrections requested by MaineDOT.

Equal Opportunity & Civil Rights

Requirements Applicable to Federally Funded Contracts

Projects shall be considered federally funded, unless the Project Contract states otherwise. By signing the GCA and/or Project Contract, the Consultant certifies to all of the provisions contained in Appendix A – Federal Contract Provisions Supplement which is made a part of these General Conditions with the exception that the word “Consultant” should be substituted for the word “Contractor.” This Appendix contains provisions that are required in all federally funded contracts. Unless expressly otherwise provided, the Consultant must comply with all provisions contained in said Appendix A.

DBE Compliance

The Consultant shall ensure that Disadvantaged Business Enterprises (DBEs), as defined, have the maximum opportunity to participate in the performance of the Project Contract. In this regard, the Consultant shall analyze documented efforts to incorporate Disadvantaged MaineDOT certified firms into the Department’s federally funded programs. The Department has established an annual goal for DBE utilization. This annual goal shall be specified in the Project Contract.

If, upon analysis of documented efforts, the Department determines that the annual goal is not being met, then the Department may establish specific contractual goals which would be announced in the Request for Proposal.

The Consultant shall check with the Department’s Civil Rights Office DBE Coordinator to confirm that the business enterprise it plans to utilize as a DBE has valid, current DBE certification, or has certification pending and that the business enterprise shall be DBE certified by the time the Consultant receives the project written “Notice to Proceed”.

The Consultant shall not perform within its own organization, or assign to any other business, activity designated for the DBE’s without the written consent from the DBE and the Department. Any action taken by the Consultant in regards to this section shall be approved by the Department.

The Consultant shall verify and submit to the Department the following:

- a. A DBE Proposed Utilization Plan – this document will be furnished when the Consultant submits a successful proposal; it reflects the firm’s efforts to mainstream DBE firms into their project team, and must be approved by the Department’s Civil Rights Office prior to award of the contract.
- b. Final Goal Verification forms – this will be submitted with the Consultant’s final invoice. The Consultant will report on their efforts to utilize DBE firms, and the percentage of the project value paid to the DBE’s as compared with the commitments made in the DBE Proposed Utilization Plan. The Department reserves the right to withhold payment of the final invoice until this documentation is received.

Additional Services and Schedule

Additional Services

All requests for additional services must be submitted in writing to the Project Manager or Project Manager's Designee outlining both the scope and cost. The Department will issue a written modification after both Department and Consultant agree on the services to be performed and the cost of same. The Consultant shall not proceed with the work until a written modification has been executed by the Department.

Time

Schedule

The Consultant shall perform its work in accordance within the timeframes set forth in the GCA and the Project Contract.

Extensions

If during the process of the work it is necessary to change or extend a date because of circumstances beyond the Consultant's control, then a request in writing shall be made to the Department within 10 days of when the Consultant realized a change or extension was required. This request will include an estimate of any additional cost, if applicable. Any requests of this type will also be noted in the Monthly Project Status Report.

Late Delivery

If the Consultant fails to perform work within the timeframes indicated in the Project Contract, including any pre-approved time extensions by the Department, for reasons unrelated to performance by the Department, and the Department reasonably determines that such failure causes a financial impact on the Department, such failure shall be recorded in the consultant's performance evaluation and used as part of the Department's selection process for future projects.

Compensation and Payments

Invoicing

The Consultant will be paid in accordance with the payment method agreed upon in the Project Contract.

Submission of Invoices

Invoices will be generated using the Department Template, located at www.state.me.us/mdot-stage/aco/aco/home.php. Invoices shall be submitted monthly by the Consultant to the Department's Project Manager, or his/her designee. Invoices shall be submitted in duplicate in a form acceptable to the Department, accompanied by one copy of a progress work chart. The progress work chart must (1) correspond to the invoice, (2) outline the work completed during that invoice period; (3) include the monthly progress report. The Department will not be required to make any payments until these documents are received, reviewed and accepted.

Payment of Invoices

Payment for services shall be made in accordance with the terms negotiated in the Project Contract. Invoicing will be based upon the certified payroll for costs incurred during the previous period, plus reimbursement for out-of-pocket expenses. When applicable, these progressive or "progress" payments shall include a proportionate amount of the fixed fee.

The Department's review, approval, acceptance of, or payment for, services provided under a Project Contract shall not be construed to operate as a waiver of any rights, claim or damage, under the Contract, or of any cause of action arising out of the contractual performance.

Semifinal Estimate

When 80% to 90% of the total cost estimate (including modifications) has been expended under the Project Contract, the Consultant shall develop a detailed estimate of the dollar amount and work hours necessary to complete the work, including an explanation of where and why any overruns are anticipated to occur. If the Department is satisfied that sufficient justification exists, a contract modification with a revised maximum amount may be approved.

Final Invoice

The Consultant must make a notation on the final invoice stating it is the "Final Invoice".

Payment

Upon the Department's receipt and acceptance of all required deliverables and services, including but not limited to plans, reports, and documents, the Department will pay the total cost as defined in the Project Contract, less previous payments to the Consultant. This payment shall constitute payment in full for all work performed under the Project Contract.

In the event of any termination as outlined within these General Conditions, Consultant shall be entitled to invoice the Department and shall be paid, for all accepted work, in accordance with said section, through the effective date of termination.

In the event that a Project Contract is terminated for reasons other than indicated above, without completion of the services as specified in the Project Contract, the total cost of the work completed plus, when applicable, a percentage of the fixed fee proportional to the amount of work completed shall constitute payment in full for the Project Contract.

Maximum Amount Payable

The total estimated cost shall be stipulated in the Project Contract. The amount shall not be exceeded without a written contract modification between the Consultant and the Department. The work is to be completed as economically as possible and shall be subject to review by the Department.

Maximum Reimbursement

The Department has an established policy regarding salary and overhead limits, the Consultant and Sub-consultants are required to conform to these limits. Waiver of these limits must be made in writing using the Department's Wage Waiver Request Form.

No Inflation Adjustments / Interest

No payments due the Consultant shall be adjusted for inflation. No interest shall be due or payable on any payment due the Consultant, regardless of any statement on the billing invoice.

Direct Expenses

Direct expenses as defined by 48 CFR Chapter 1, Part 31; such as telephone, tolls, reproduction costs, per diem and approved Sub-consultant(s) costs shall be billed at actual cost. The reimbursable costs for per diem (lodging which requires overnight stay and meals) shall not exceed that allowed by the Department's Administrative Policy Memorandum No. 191. Mileage shall be paid at the current amount allowed by the State of Maine, Title 5, M.R.S.A. §1541. Reproduction of plans for submittal to the Department shall be charged at actual costs. Any reproduction costs incurred for the Consultant's internal use is considered overhead expenses and not chargeable as a direct expense.

Amounts Due the Department

The Department may deduct sums otherwise due the Consultant for unacceptable performance, work, or actions inconsistent with contract requirements. Where the sums to be deducted are more than the funds otherwise due the Consultant, the Consultant shall remit all amounts due the Department such time as the Department and Consultant agree. If payment is not received within 30 days of the agreed upon date the Department reserves the right to deduct the amount due from future payments owed the Consultant.

Non-Appropriation

Notwithstanding any other provision of this agreement, if the State does not receive sufficient funds to fund the GCA or Project Contract 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 the Agreement.

Indemnity, Insurance Waiver of Subrogation

This Section contains general requirements for indemnification and insurance by the Consultant.

Indemnification

Consultant promises to indemnify and hold harmless the Department and its officers, agents and employees from any and all claims, damages, debts, demands, suits, actions, reasonable attorney fees, court costs, arbitration or other dispute resolution costs, expenses and any liabilities of every kind or nature attributable to, resulting from, or arising out of any negligent or intentional act, error, omission or breach of contract by the Consultant or Sub-consultant(s) in the performance and furnishing of services under the GCA and/or Project Contract. The preceding sentence shall not constitute a waiver of any defense, immunity or limitation of liability that may be available to the Department, or its officers, agents or employees, under the Maine Tort Claims Act (Title 14 M.R.S.A. 8101 et. seq.), and shall not constitute a waiver of other privileges or immunities that may be available to the Department. This indemnification provision shall survive any termination or expiration of the GCA and/or Project Contract.

Insurance

Procured Insurance

All insurance coverage must be provided by an insurance company or companies licensed or approved to do business in the State of Maine by the Maine Bureau of Insurance. Consultant and Sub-consultant(s) shall pay all premiums and take all other actions necessary to keep required insurances in effect during such times as GCA and/or Project Contract obligations exist. Certificates of Insurance shall be provided to the CPO upon execution of a GCA or stand-a-lone Project Contract and on an annual basis thereafter. The maximum deductible for any type of insurance required shall not exceed \$10,000.00. However, the Department, at the request of the Consultant, may increase the maximum deductible upon a showing of sufficient assets as determined by the Department. A Consultant may request a waiver for insurances that may not be applicable for the work to be performed; these requests shall be submitted to the CPO using the Department's Request for Insurance Waiver Form.

Additional Insured

The Department shall be listed as an additional insured on Commercial General Liability and Railroad Protective Liability insurance policies carried by both the Consultant and Sub-consultant(s) that are applicable to the Project.

Certificates of Insurance to Department

Consultant shall deliver to CPO signed, valid, and enforceable certificates of insurance proving the coverage required by this agreement, the GCA and/or the Project Contract. Such certificates shall be furnished prior to commencement of Consultant services and whenever said policies are renewed thereafter during the period of the GCA and/or Project Contract.

Commercial General Liability Insurance

The Consultant and Sub-consultant(s) shall purchase and maintain a policy of Commercial General Liability or other coverage affording equal or greater protection as determined by the Department, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such policy shall include products and completed operations as well as contractual liability coverage.

When the work to be performed entails the use of barges, tug boats, work boats, supply boats, etc., Protection and Indemnity coverage shall be provided at the limits called for under Commercial General Liability insurance.

Professional Liability

The Consultant and Sub-consultant(s) shall purchase and maintain a Professional Liability insurance policy for errors and omissions that provides minimum liability coverage of \$1,000,000.00 per claim and annual aggregate. This policy shall cover negligent acts, errors or omissions by the Consultant and Sub-consultant(s) engaged by Consultant and other any person or entity for whom the Consultant is legally liable arising out of the rendition of services pursuant to the GCA and/or Project Contract. The Department reserves the right to adjust liability coverage on a project-by-project basis as it deems appropriate.

Automobile Liability

The Consultant and Sub-consultant(s) shall carry Automobile Liability insurance covering the operation of all motor vehicles including any which are rented, leased, borrowed or otherwise used in connection with the project. The limit of liability under this section shall be \$1,000,000 per occurrence.

Workers' Compensation Insurance

Consultant and Sub-consultant(s) shall carry Workers' Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers' Compensation Board, all in accordance with the requirements of the laws of the State of Maine. When maritime exposures exist, coverage should be arranged to include United States Long Shore and Harbor Workers coverage.

When Required:

Pollution Liability

In the event that any disruption, handling, abatement, remediation, encapsulation, removal, transport, or disposal of contaminated or hazardous material is required, the Consultant or its Sub-consultant shall secure a pollution liability policy in addition to any other coverages required. The insurance shall be provided on an occurrence based policy and shall remain in effect for the duration of the Project. Minimum acceptable limit is \$1,000,000 per occurrence.

Railroad Protective Liability

When working adjacent to a railroad, the Consultant and its Sub-consultants shall carry Railroad Protective Liability Insurance, as required by the Railroad.

Claims

Each insurance policy shall include a provision requiring the insurer to investigate and defend all named insured's against any and all claims for death, bodily injury or property damage, even if groundless.

Compliance

The Consultant shall be in compliance with this section provided they:

- a. Procures coverage under one policy of insurance covering all risks arising out of performance of the Project Contracts; or
- b. Procures separate insurance policies to cover all risks arising out of performance of the Project Contract. In either case, a Certificate of Insurance must be filed for each policy indicating that all required insurance has been obtained.
- c. Agree to provide, upon request, a copy of their insurance policy.

Default, Termination or Suspension

Grounds for Default

The Consultant is in default of the Project Contract if the Consultant:

- a. Fails to promptly begin the work under the Project Contract after being authorized to proceed;
- b. Fails to perform the work with sufficient labor, equipment, or materials to assure the timely completion of the work;
- c. Fails to meet standards of performance as outlined in this document;
- d. Discontinues the performance of the work without Departmental approval;
- e. Continues to perform work outside the contract period or after receipt of instructions from the Department directing that work be stopped;
- f. Fails to resume work that has been suspended as required by the Project Contract;
- g. Becomes insolvent or is declared bankrupt or files for bankruptcy ;
- h. Allows any final judgment to stand against the Consultant unsatisfied for a period of ten (10) days;
- i. Makes an assignment for the benefit of creditors without authorization by the Department; or
- j. In any other manner, fails to perform the work in Substantial Conformity with any material provision of the GCA and/or Project Contract.
- k. Fails to comply with these General Conditions and related Appendices.

Notice of Default / Cure

Except as otherwise provided in these Consultant General Conditions, upon the occurrence of a default, the Department will give a written Notice of Default to the Consultant and elect its remedies as set forth below. Any delay by the Department in providing a written Notice of Default shall in no way constitute a waiver by the Department of any provision of the GCA and/or Project Contract. If the Department determines the default is not curable, the Notice of Default shall also include the date of termination.

Termination

The Department may, by written order to the Consultant, terminate the GCA and/or Project Contract as provided in this section. Termination of the GCA and/or Project Contract or portion thereof shall not relieve the Consultant of its contractual responsibilities for the work completed prior to termination.

For Cause

The Department may terminate the GCA and/or the Project Contract for cause due to the occurrence of one or more of the events of default set out in this section if the Consultant fails to effect a timely cure of all defaults identified in the Notice of Default within the fourteen (14) days from the date of the Notice (the "Cure Period"). The Department, in its sole discretion, may extend the Cure Period if the Consultant has initiated good faith efforts to cure said default(s) and requires a reasonable amount of additional time to complete the cure. If the Consultant fails to cure the default(s) specified in the Notice of Default within the Cure Period or any extensions thereof, the Department may immediately terminate the GCA and/or Project Contract for cause by written Notice of Termination for Cause. In this event, any or all Consultant products are the sole property of the Department, and the Department may enter into an agreement with another entity for the completion of the Work, or use such other methods as in the opinion of the Department are required for the completion of the intent of the Project Contract in an acceptable and timely manner.

The Department shall pay for all accepted items of work performed prior to the date of termination at prices determined by the Department. The Consultant shall make all project records available to the Department upon request regarding payment under this section. All costs and charges incurred by the Department, together with the cost of completing the work specified in the Project Contract, shall be deducted from amounts otherwise due the Consultant. If such expenses exceed the sum that would have been payable under the GCA and/or Project Contract, then the Consultant is liable and shall pay to the Department the amount of such excess within 30 days of the delivery of a statement setting forth such expenses to the Consultant, as applicable.

If the Consultant files for bankruptcy at any time before expiration of the GCA and/or Project Contract, then the Consultant agrees, if requested by the Department and within 30 days of such request, to take all actions necessary or convenient to reject or accept the GCA and/or Project Contract under the executory contract provisions of the federal bankruptcy code. Upon termination for cause, the Department may, at its discretion, terminate the GCA and/or Project Contract.

For Convenience

The Department may terminate the GCA and/or Project Contract for convenience or for any reason that is in the best interest of the Department. Terminations for reasons beyond the control of the Consultant are terminations for convenience. The Department shall notify the Consultant of such terminations by sending a Notice of Termination for Convenience.

In case of a Termination for Convenience, the Department shall pay for all accepted items of work as of the date of termination at agreed upon prices. The Consultant shall make all project records available to the Department upon request regarding payment under this section. Acceptable materials, obtained by the Consultant for the work but which have not been incorporated therein, may at the option of the Department be purchased from the Consultant at actual cost and shall be delivered by the Consultant to a prescribed location or otherwise disposed of as mutually agreed.

After receipt of Notice of Termination for Convenience from the Department, the Consultant may also submit a claim for additional damages or costs not covered above or elsewhere in the Project Contract to the Project Manager within 60 sixty days of the effective termination date. Such claim may include such cost items as project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, Sub-consultant(s) costs not otherwise paid for, idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the Project Contract, and any other cost or damage item for which the Consultant reasonably believes reimbursement should be made. In no event, however, shall loss of anticipated profits be considered as part of any settlement.

The Department shall respond in writing to such claim within 60 days of receipt.

Right to Suspend Work

The Department has the right to suspend any or all work at any time for any reason as it deems necessary. Consultant may receive payment for the portion of services completed through the date of suspension.

Copyright and Licenses

Requirements for Registration of Designers

Design of services under a Project Contract regulated by Maine State Law shall be done or reviewed, approved and stamped by an employee of Consultant or Sub-consultant(s) who performed or supervised preparation of same and who has the appropriate registration or license governing the scope of services in the Project Contract.

Patents and Copyrights

Data, and publication rights to any documents, produced under the terms of a GCA and/or Project Contract are reserved by the Department. The Consultant shall not copyright the material produced under the terms of the GCA and/or Project Contract without written approval of the Department, except to the extent necessary to protect its rights pursuant to the following paragraph.

The parties to a GCA and/or Project Contract mutually agree that, if patentable discoveries, intellectual property and software, or inventions should result from work described therein, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. However, the Consultant agrees to and does hereby grant to the Department and the United States Government an irrevocable, nonexclusive, nontransferable, and royalty free license to use any such invention in the future on any project.

The Consultant shall indemnify and hold harmless the Department and any affected third party or political subdivision from all claims of infringement that arise from use of any patented or copyrighted items provided by the Consultant.

Claims and Disputes

General

To preserve any claim arising out of the GCA and/or the Project Contract, the parties shall comply with and exhaust all provisions of this Section. Unless otherwise agreed in writing, the Consultant shall continue to perform its services during any dispute resolution process. If the Consultant continues to perform, the Department shall continue to make payments in accordance with the GCA and/or Project Contract of amounts not in dispute.

Negotiation with Project Manager

The Consultant shall promptly notify the Project Manager, or his/her designee, of disputes that could significantly affect scope, schedule or compensation. After such notice, the Consultant and the Project Manager shall promptly negotiate in good faith to resolve the dispute. The Project Manager will promptly issue a decision.

Review by Director

If the Consultant desires a review of the Project Manager's decision, then the Consultant shall promptly request in writing that the Department's Director of the applicable Bureau or Office review the Project Manager's decision. The Director, or the Director's designee(s) shall promptly notify the Consultant in writing of the result of the review.

Dispute Resolution

If the dispute remains unresolved after negotiation and review as set forth above, the parties shall proceed to mediation by selecting a mediator acceptable to both. If the parties are unable to agree upon a mediator, they will follow the process set out in the current Construction Industry Mediation Rules of the American Arbitration Association.

If the parties are unable to resolve the dispute through mediation, the parties may agree to binding arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association or seek judicial review through a civil action commenced in the Superior Court of Maine, Kennebec County.

Miscellaneous Provisions

Environmental

Historic and Archeological Considerations

Unless otherwise expressly provided in the Contract, the Consultant may assume that the Project has no effect upon any site of historic or archaeological significance, as identified by the National Historic Preservation Act of 1966 and the Archaeological and Historic Preservation Act of 1974.

If the Consultant discovers any object of potential archaeological, paleontologic, or other historic interest, all work that could disturb said object shall immediately cease and shall not be resumed until an investigation of the object and related deposits have been completed and the removal of articles of interest has been accomplished. Should such a deposit be discovered, the Consultant shall immediately notify the Department Project Manager or the MaineDOT Environmental Department at 207-624-3100. The first indication of archaeological deposits may be the burial grounds or campsites of Native Americans that reveal the bones of the dead and people's implements. The first indications of paleontologic deposits may be the exposure of marine fossils or shells found mainly in clay deposits. Indications of deposits of more recent historic interest may be the exposure of dumps in landfill areas, abandoned campfire sites, and building foundations.

The Consultant is hereby notified of a Maine statute, 27 MRSA §371, which States that artifacts, specimens, and material which are public property by virtue of having been found on, in, or beneath State controlled lands, and places Ownership of the same in the State of Maine.

The Department shall give prompt written notice whenever the Department observes or otherwise becomes aware of a Hazardous Environmental Condition that affects the Project.

Hazardous Environmental Condition

The Department shall give prompt written notice whenever it observes or otherwise become aware of a hazardous environmental condition that affects the Project.

If a Consultant or Sub-consultant(s) suspects that a Hazardous Environmental Condition exists, Consultant or Sub-consultant(s) shall immediately notify the Project Manager or the MaineDOT's Environmental Department at 207-624-3100. This notice requirement does not create a duty or obligation for Consultant to discover any such condition unless that duty is established by the Project Contract.

Controlling Laws

The agreements and contracts referred to in these General Conditions are to be governed by the applicable laws of the Federal Government and the State of Maine. Listed below are some of the Federal and State controlling laws to be observed. This list is provided for reference only and should not be considered inclusive.

23 CFR Part 172, Administration of Engineering and Design Related Service Contracts
41 USC 253 and 259, Brooks Act, P.L. 92-582
5 M.R.S.A. §1743, Administrative Procedures and Services
23 M.R.S.A. §4206, Department of Transportation, Duties of Commissioner

Laws to Be Observed

The Consultant shall keep itself informed of and comply with all applicable federal and State laws, rules, regulations, orders, and decrees ("Law") affecting the work including all environmental, wage, labor, equal opportunity, safety, patent, copyright, or trademark laws. If required by Contract, the Consultant must also comply with applicable local law, ordinances, and regulations in any manner affecting the conduct of work as defined by the scope of work. The Consultant shall indemnify the Department and hold the Department harmless against any and all claims or liabilities arising from or based upon the violation or alleged violation of any such Law caused directly or indirectly by or through the Consultant.

Entire Agreement/Binding Effect/Modification/Assignment

Department and Consultant each is hereby bound and the partners, successors, executors, administrators and legal representatives of Department and Consultant (and to the extent permitted by the GCA, the assigns of Department and Consultant) are hereby bound to the other party to the GCA and/or Project Contract and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of the GCA and/or Project Contract.

Neither Department nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the GCA and/or Project Contract without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the GCA and/or Project Contract.

- a. Unless expressly provided otherwise in the GCA and/or Project Contract:
 - i. Nothing in the GCA and/or Project Contract shall be construed to create, impose, or give rise to any duty owed by Department or Consultant to any Contractor, Contractor's sub contractor/sub consultant(s), supplier, other individual or entity for or employee of any of them.
 - ii. All duties and responsibilities undertaken pursuant to the GCA and/or Project Contract shall be for the sole and exclusive benefit of Department and Consultant and not for the benefit of any other party.
- b. No changes are to be made in the General Consultant Agreement or Project Contract unless they in writing and agreed upon by both parties.

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.

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, sever 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.

No Waiver

If the Department fails or refuses to enforce any provision in the GCA and/or Project Contract that shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of the GCA and/or Project Contract.

Conflict of Interest

A person or entity entering into a GCA and/or Project Contract may not have any financial or other interest, other than the performance of the GCA and/or Project Contract, in the project or in its outcome. This prohibition includes, without limitation, (a) any agreement with, or other interest involving, third parties who have an interest in the outcome of the project that is the subject of the GCA and/or Project Contract; (b) any agreement providing incentives or guarantees of future work on the project or related matters; and (c) any interest in real property acquired for the project unless such real property interest is openly disclosed to the Department before the person or entity entered into the Project Contract.

- a. This section prohibits all conflicts of interest both at the time the contracting party enters into a GCA and/or Project Contract and during the life of a GCA and/or Project Contract.
- b. This section prohibits situations involving an actual conflict of interest and those creating an appearance of a conflict of interest. The Department may waive this prohibition or impose curative modifications on the scope of any GCA or Project Contract between the person or entity and MaineDOT to eliminate the conflict or the appearance of a conflict.
- c. A Consultant involved in the preparation of information that shall be used or considered in evaluations under the National Environmental Policy Act shall, by virtue of signing the GCA and/or Project Contract, attest that Consultant (a) has no financial or other interest in, or commitment for, any future contract related to the design or construction of the project or any of its alternatives, (b) has no financial or other interest in said project or its alternatives, or any part thereof, and (c) has no other interest which, under applicable law, would prohibit the selection

- of said Consultant to prepare an Environmental Assessment, Environmental Impact Statement, or other environmental documents for the project.
- d. All determinations made under this section shall be left at the sole discretion of the Department.

Definitions / Abbreviations

Abbreviations

Abbreviations are defined in the following list. Abbreviations not defined in this Section or otherwise in the Project Contract shall have the meaning that is commonly accepted in the engineering and construction industry.

AASHTO	American Association of State Highway and Transportation Officials
BAFO	Best and Final Offer
CFR	Code of Federal Regulations
CPO	Contract Procurement Office
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GCA	General Consultant Agreement
MaineDOT	Maine Department of Transportation
MRSA	Maine Revised Statutes Annotated
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
OSHA	Occupational Safety and Health Administration
PIN	Project Identification Number
P.L.	Public Law
QBS	Qualifications Based Selection
RFP	Request for Proposal
RFQ	Request for Qualifications
USC	United States Code

Definitions

As-Built Drawings. The drawings as issued for construction on which the construction contractor upon completion of the work has shown changes due to contract modifications (Change Orders and Supplemental Agreements), actual site conditions, and other information which Department considers to be significant.

Brooks Act. The law that establishes federally mandated procedures for the Qualifications Based Acquisition (QBA) of Consultant services. It outlines requirements and procedures for awarding Professional Architect & Engineering contracts.

Consultant. An individual or firm under contract to provide non-construction professional services for the Department.

Detailed Scope of Services or Work. A clear, accurate, and detailed description of; the technical requirements for the services to be rendered, how the work must be conducted, how achievements will be assessed, and the obligations of both the Consultant and MaineDOT.

Deliverables. A thing of value that a Consultant delivers to the Department in exchange for consideration from the Department pursuant to the terms of a General Consultant Agreement or a Project Contract.

Department. Maine Department of Transportation.

Direct Expenses. Direct expenses as defined by 48 CFR Chapter 1, Part 31; such as telephone, tolls, reproduction costs, per diem and approved Sub-consultant(s) costs shall be billed at actual cost. The reimbursable costs for mileage and per diem (lodging which requires overnight stay and meals) shall not exceed the current amount allowed by the State of Maine. This information can be found at <http://www.maine.gov/osc/>. Reproduction of plans for submittal to the Department shall be charged at actual costs. Any reproduction costs incurred for the Consultant's internal use is considered overhead expenses and not chargeable as a direct expense. MaineDOT does not allow any mark-up on direct expenses and Sub-consultant costs.

Effective Date of General Consultant Agreement or Project Contract. The date indicated in the Agreement or Contract on which it becomes effective, but if no such effective date is indicated, it means the date on which the Agreement or Contract is signed by the last of the two parties to sign.

Final Audit. The audit performed by the Department after the expiration of a contract. The main purpose of the audit is to review final invoicing and determine the project's actual indirect cost rate for final payment.

General Conditions. General terms, conditions, and procedures that govern how the work will be performed or furnished by Consultant with respect to any Project. General Conditions normally apply to all contracts of the issuing agency. These are differentiated from Special Provisions which would only apply to an individual contract for a specific to a type of work.

General Consultant Agreement (GCA). The GCA is an agreement that places the Consultant "on call" for a specific service, for a specified ordering period, up to a maximum dollar amount. The GCA does not obligate MaineDOT to acquire services from a selected firm, not does it specify overhead rates, unit price or amounts. These are specific to the individual Project Contract negotiated under the GCA.

Hourly Rate. The negotiated hourly rate accepted by the Department for performance of work for the duration of the Contract as outlined in said Contract.

Indirect Expense. An expense that is incurred for an entire business enterprise as a unit that cannot be traced directly to a project.

Lump Sum. A negotiated payment method. It provides for a price that is not subject to any adjustments because of cost changes the Consultant might encounter in the performance of the work.

Notice to Proceed. A written notice from the Department to the Consultant stating the date the Consultant can begin work subject to the conditions of the contract. The performance time of the contract starts from the Notice to Proceed date.

Overhead Costs. (or indirect expenses) are costs that may benefit or are associated with two or more business activities, but are not specifically allocated to a specific project. Overhead differs from general and administrative costs in that these costs can be associated with a unit based on benefit. Some examples of overhead costs are rent, depreciation, employee recruitment and training, and general or professional insurance policy costs.

Pre-execution Review. A financial review of a Consultant's accounting records which are conducted prior to contract execution. The review includes but is not limited to the verification of insurance, and the supportability of overhead rates, and payroll,.

Project. Any unit of work or study for which a Consultant selection is made and a Contract entered into.

Project Contract. A written binding agreement between the Department and the Consultant relating to a specific task or project with a defined scope of work and compensation negotiated pursuant to the Consultant General Conditions. Consultant Project Contracts can be "stand-alone" or negotiated under the umbrella of a general multi-year General Consultant Agreement (GCA).

Project Manager. An employee of the Department assigned the responsibility for managing project scope, budget, and schedule.

Proposal. An offer as part of a negotiation made by a Consultant to the Department in reply to a Request for Proposal (RFP) which forms the technical and price basis when entering into a mutually binding contract.

Provisional Overhead Rate. The amount of compensation due to a Consultant for an initial period of time following the execution of a contract. This rate is typically increased or decreased as a result of the Department's Final Audit.

Rates. The rate paid a Consultant for performance of work.

Request for Proposal (RFP). The Departmental initiates a request to a Consultant or group of Consultants for a proposal or offer to perform a specific Scope of Work.

Request for Qualifications (RFQ). The Departmental request to the Consultant community requesting an outline of the firm's ability to provide Consultant and professional services in a particular area of need, discipline or service.

Special Provision. A provision unique to an agreement or contract which supersedes any inconsistent or conflicting clause in the Consultant General Conditions. Special Provisions shall be identified in the General Consultant Agreement or Project Contract.

Specifications. That segment of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship to be applied to the work and administration of same.

Sub-consultant. Individual or entity having a contract with Consultant to furnish services with respect to this Project as Consultant's independent professional associate, Consultant, Sub-consultant, or vendor.

Substantial Completion. The time at which the work (or a specified portion thereof) has progressed to the point as determined by the Department is sufficiently complete to be utilized for the purpose for which it is intended.

GENERAL CONSULTANT CONDITIONS

Schedule of Exhibits (Appendices)

APPENDIX A

A1 – Notice of Consultants compliance with title VI of the Civil Rights Act of 1964 for federal aid contracts.

During the performance of a General Consultant Agreement and/or Project Contract, the Consultant, for itself its assignees and successors in interest (hereinafter referred to as the "Consultant") agree as follows:

- a. Compliance with Regulations: The Consultant shall comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23, Code of Federal Regulations 710.405 (b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination: The Consultant, with regard to the work performed by it after award and prior to the completion of the contract work, shall not discriminate on the ground of race, color or national origin in the selection and retention of Sub-consultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontract, Including Procurements of Material and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of services, material or equipment, each potential Sub-consultant or supplier shall be notified by the Consultant of the Consultants obligations under this contract and the regulations relative to nondiscrimination on the ground of race, color, or national origin.
- d. Information and Reports: The Consultant shall provide all information and reports required by the regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the state highway agency or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations, orders and instructions.

Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the state highway agency or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the state highway agency shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- i. withholding of payments to the Consultant until the Consultant complies and/or
- ii. cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The Consultant shall include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant shall take action with respect to any subcontract or procurement as the state highway agency or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Consultant becomes involved in or is threatened with, litigation with a Sub-consultant or supplier as a result of such direction, the Consultant may request the state to enter into such litigation to protect the interests of the state; and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

Maine Revised Statutes
Part 2: CIVIL SERVICE
Chapter 65: CODE OF FAIR PRACTICES AND AFFIRMATIVE ACTION
HEADING: PL 1975, C. 153, §1 (NEW)

784. State action and contracts

1. **State action.** No agency or individual employee of the State or state related agencies will discriminate because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap while providing any function or service to the public, in enforcing any regulation, or in any education, counseling, vocational guidance, apprenticeship and on-the-job training programs. Similarly, no state or state related agency contractor, subcontractor, or labor union or representative of the workers with which the contractor has an agreement, will discriminate unless based on a bona fide occupational qualification. State agencies or related agencies may withhold financial assistance to any recipient found to be in violation of the Maine Human Rights Act or the Federal Civil Rights Act. Any state agency or related agency shall decline any job order carrying a specification or limitation as to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap, unless it is related to a bonafide job requirement. [1985, c. 388, §2 (AMD).]
2. **Public contracts.** Every state or state related agency contract for public works or for services shall incorporate by reference the following provisions: "During the performance of this contract, the contractor agrees as follows.
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. [1985, c. 388, §2 (AMD).]
 - b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. [1985, c. 388, §2 (AMD).]
 - c. The contractor will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment. [1975, c. 153, §1 (NEW).]
 - d. The contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor. [1975, c. 153, §1 (NEW).]
 - e. Contractors and subcontractors with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs. [1991, c. 807, §1 (NEW).]
 - f. [1991, c. 807, §1 (AMD).]SECTION HISTORY 1975, c. 153, §1 (NEW). 1985, c. 388, §2 (AMD). 1991, c. 807, §1 (AMD).

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A2 – Federal EEO and Civil Rights Requirements

Unless expressly otherwise provided in the Contract Documents, the provisions contained in this Section 2 of this "Federal Contract Provisions Supplement" are hereby incorporated into the Contract Documents.

1. Nondiscrimination & Civil Rights - Title VI

The Consultant and its Sub-consultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate. The Consultant and Sub-consultants shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with all State of Maine and other Federal Civil Rights laws.

For related provisions, see Subsection B - "Nondiscrimination and Affirmative Action - Executive Order 11246" of this Section 2 and Section 3 - Other Federal Requirements of this "Federal Contract Provisions Supplement" including section II - "Nondiscrimination" of the "Required Contract Provisions, Federal Aid Construction Contracts", FHWA-1273.

2. Nondiscrimination and Affirmative Action - Executive Order 11246

Pursuant to Executive Order 11246, which was issued by President Johnson in 1965 and amended in 1967 and 1978, this Contract provides as follows.

The Consultant shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Consultant's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Consultant shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidations, and coercion at all sites, and in all facilities at which the Consultant's employees are assigned to work. The Consultant, where possible, shall assign two or more women to each construction project. The Consultant shall specifically ensure that all forepersons, superintendents, and other on-site supervisory personnel are aware of and carry out the Consultant's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Consultant or its union have employment opportunities available, and to maintain a record of the organization's responses.

- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Consultant by the union or, if referred, not employed by the Consultant, this shall be documented in the file with the reason therefore, along with whatever additional actions the Consultant may have taken.
- d. Provide immediate written notification to the Department's Civil Rights Office when the union or unions with which the Consultant has a collective bargaining agreement has not referred to the Consultant a minority person or woman sent by the Consultant, or when the Consultant has other information that the union referral process has impeded the Design-Builder's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Consultant's employment needs, especially those programs funded or approved by the Department of Labor. The Consultant shall provide notice of these programs to the sources compiled under B above.
- f. Disseminate the Consultant's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Consultant in meeting its EEO obligation; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Forepersons, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Consultant's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Consultant's EEO policy with other Consultant's and Sub-consultants with whom the Consultant does or anticipates doing business.
- i. Direct its recruitment efforts, both orally and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Consultant's recruitment area and employment needs. Not later than one month

prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Consultant shall send written notification to organizations such as the above describing the openings, screenings, procedures, and test to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of a Consultant's workforce.
- k. Validate all tests and other selection requirements.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Consultant's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Consultant's and suppliers, including circulation of solicitations to minority and female Consultant associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Consultant's EEO policies and affirmative action obligations.

3. **Disadvantaged Business Enterprise (DBE) Requirements**

The Department has established an annual Disadvantaged Business Enterprise goal to be achieved through race neutral means. This goal shall adjust periodically and shall be provided by Supplemental Provision. Unless otherwise specifically provided in the Contract, there are no specific percentage requirements for use of DBEs for individual construction contracts.

The Consultant shall comply with all provisions of this section regarding DBE participation and the Department's latest version of the Disadvantaged Business Enterprise Program Manual, said Manual being incorporated herein by reference. In the case of conflict between this Contract and said Manual, this Contract shall control. The Department reserves the right to adjust DBE goals on a project-by-project basis by addendum.

DBE Program Requirements

Policy: It is the Department's policy that DBEs as defined in 49 CFR Part 26 revised 2005, and referenced in the Transportation Equity Act for 21st Century of 1998, as amended from the Surface Transportation Uniform Relocation Assistance Act of 1987, and the Intermodal Surface Transportation Efficiency Act of 1991. The intent hereto remains to provide the maximum opportunity for DBEs to participate in the performance of contracts financed in whole or in part with federal funds.

The Department and its Consultant shall not discriminate on the basis of race, color, national origin, ancestry, sex, age, or disability in the award and performance of DOT assisted contracts.

Disadvantaged Business Enterprises are those so certified by the Maine Department of Transportation's Civil Rights Office prior to bid opening date.

The Department has determined that elements of a good faith effort to meet the contract goal include but are not limited to the following:

- a. Whether the Consultant advertised in general circulation, trade association, and minority/women's-focus media concerning the subcontracting opportunities;
- b. Whether the Consultant provided written notice to a reasonable number of specific DBEs that their interest in the contract is being solicited;
- c. Whether the Consultant followed up on initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- d. Whether the Consultant selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals;
- e. Whether the Consultant provided interested DBEs with adequate information about the plans, specification and requirements of the contract;
- f. Whether the Consultant negotiated in good faith with interested DBEs, not rejecting the DBE as unqualified without sound reasons based on a thorough investigation of their capabilities;
- g. Whether the Consultant made efforts to assist interested DBEs with other appropriate technical/financial assistance required by the Department or Consultant;
- h. Whether the Consultant effectively used the services of available minority/women's community organizations, minority/women's business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

Substitutions of DBEs: The following may be acceptable reasons for Civil Rights Office approval of such a change order:

- The DBE defaults, voluntarily removes itself or is over-extended;

- The Department deletes portions of the work to be performed by the DBE.

It is not intended that the ability to negotiate a more advantageous contract with another certified DBE be considered a valid basis for such a change in DBE utilization once the DBE Bid Submission review has been passed. Any requests to alter the DBE commitment must be in writing and included with the change order.

Failure to carry out terms of this Standard Specification shall be treated as a violation of this contract and shall result in contract sanctions which may include withholding of partial payments totaling the creditable dollars amount which would have been paid for said DBE participation, termination of this contract or other measures which may affect the ability of the Consultant to obtain Department contracts.

Copies of the Maine Department of Transportation's DBE Program may be obtained from:

Maine Department of Transportation
Civil Rights Office
#16 State House Station
Augusta, Maine 04333-0016
Tel. (207) 287-3519

or from their website at: <http://www.state.me.us/mdot/disadvantaged-business-enterprises/dbe-home.php>

APPENDIX B

FHWA-1273 REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONTRACTS

GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
 - a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
 - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
 - a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. **Training and Promotion:**
 - a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
 - a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
 - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
 - 1. The number of minority and non-minority group members and women employed in each work classification on the project;
 - 2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - 4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any

subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed there under.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method

and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

- i. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 2. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 4. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- ii. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary
Exclusion--Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR
LOBBYING**

(Applicable to all Federal-aid contracts and to all related subcontracts which exceed \$100,000 – 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure form to Report Lobbying", in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.