CRANE

EQUIPMENT
With Operator

19291.00
LEXINGTON TWP

REGION 3

2013

MAINTENANCE & OPERATIONS

STATE PROJECT

BIDDING INSTRUCTIONS

1. Complete the bid forms with pen and ink.

2. The following are to be completed and returned with the bid:

    a. A copy of the Notice to Contractors
    b. the completed Acknowledgement of Bid Amendments form
    c. two (2) copies of the completed and signed Contract, Offer & Award for State Funded Construction form
    d. The completed Contractor Information Sheet
    e. Any other certifications or Bid requirements listed in the Bid Documents as due by Bid opening

3. For security and other reasons, all Bid Packages which are mailed or delivered, shall be provided in double (one envelope inside the other) envelopes. The *Inner Envelope* shall have the following information provided on it:

    Bid Enclosed - Do Not Open
    Title:
    Town:
    Date of Bid Opening:
    Name of Contractor with mailing address and telephone number:

    In Addition to the usual address information, the *Outer Envelope* should have written or typed on it:

    Double Envelope: Bid Enclosed
    Title:
    Town:
    Date of Bid Opening:
    Name of Contractor:

    Hand-carried Bids may be in one envelope, and should be marked with the following information:

    Bid Enclosed: Do Not Open
    Title:
    Town:
    Name of Contractor:

4. If a paper Bid is to be hand carried, deliver directly to the Reception Desk using the "Public Entrance" which is located on the Capitol Street side of the DOT Headquarters Building in Augusta. If a paper Bid is to be sent express, "FedEx First Overnight" delivery is suggested as the package is delivered directly to the DOT Headquarters Building, Mailroom, in Augusta located at 24 Child Street in Augusta. Other means, such as U.S. Postal's Service Express Mail has proven not to be reliable. If a paper bid is to be mailed, the mailing address is Maine Department of Transportation, 16 State House Station, Augusta, ME 04333-0016.

5. If you need further information regarding Bid preparation, call the DOT Contracts Section at (207) 624-3410. For complete bidding requirements, refer to Section 102 of the Maine Department of Transportation, Standard Specification, Revision of December 2002.

January 19, 2012
Supersedes September 09, 2011

NOTICE

The Maine Department of Transportation is attempting to improve the way Bid Amendments/Addendums are handled, and allow for an electronic downloading of bid packages from our website, while continuing to maintain an optional planholders list.

Prospective bidders, subcontractors or suppliers who wish to download a copy of the bid package and receive a courtesy notification of project specific bid amendments, must provide an email address to Diane Barnes or David Venner at the MDOT Contracts mailbox at: MDOT.contracts@maine.gov. Each bid package will require a separate request.

Additionally, interested parties will be responsible for reviewing and retrieving the Bid Amendments from our web site, and acknowledging receipt and incorporating those Bid Amendments in their bids using the Acknowledgement of Bid Amendment Form.

NOTICE

Bidders:

Please use the attached “Request for Information” form when faxing questions and comments concerning specific Contracts that have been Advertised for Bid. Include additional numbered pages as required. Questions are to be faxed to the number listed in the Notice to Contractors. This is the only allowable mechanism for answering Project specific questions. Maine DOT will not be bound to any answers to Project specific questions received during the Bidding phase through other processes.

State of Maine
Department of Transportation

REQUEST FOR INFORMATION

Date _____ Time _____

Information Requested: **PIN:** _____ **Town(s):** _____

_____

_____

_____

_____

_____

_____

_____

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_____

_____

_____

Request by: _____ **Phone: (_____)**_____
Bid Date: _____ **Fax: (_____)**_____

Complete top portion of form and transmit to the number listed in the Notice to Contractors

RFI No: _____ **RFI received:** _____

Response:_____

_____

_____

_____

_____

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_____

_____

Response By:_____ Date: _____

Vendor Registration

Prospective Bidders must register as a vendor with the Department of Administrative & Financial Services if the vendor is awarded a contract. Vendors will not be able to receive payment without first being registered. Vendors/Contractors will find information and register through the following link –
http://www.maine.gov/purchases/venbid/index.shtml

CONTRACTOR INFORMATION

_____ _____

(Date) **(Signature)**

_____

(Name and Title Printed)

_____

(Contractor Name)

_____

Vendor Customer Number

Mailing Address:

_____

Street/PO Box **City** **State** **Zip**

_____ _____ _____

phone **fax** **email**

Sole Proprietorship - Partnership - (circle one)

Corporation – Company - Association - Estate - (circle one)

STATE OF MAINE DEPARTMENT OF TRANSPORTATION
NOTICE TO CONTRACTORS

Sealed Bids addressed to the Maine Department of Transportation, Augusta, Maine 04333 and endorsed on the wrapper **"Bids for Setting and Removal of Temporary Bridge in LEXINGTON TOWNSHIP"** will be received from contractors at the Reception Desk, Maine DOT Building, Capitol Street, Augusta, Maine, until 11:00 o'clock A.M. (prevailing time) on May 1, 2013 and at that time and place publicly opened and read. Bids will be accepted from all bidders. All responsive bidders may be required demonstrate successful completion of projects of similar size and scope to be considered for the award of this contract.

Description: 019291.00

Location: In Somerset County, project is Lower Sandy Stream bridge # 5128 in Lexington Twp which carries Long Falls Dam Road over Sandy Stream.

Outline of Work: Rigging, setting and removal of temporary bridge with a crane and operator and other incidental work.

For general information regarding Bidding and Contracting procedures, contact George Macdougall at (207)624-3410. Our webpage at http://www.maine.gov/mdot/contractors/ contains a copy of the schedule of items, Plan Holders List, written portions of bid amendments (not drawings), and bid results. For Project-specific information fax all questions to **Gail MacMunn** at (207)624-3431. Questions received after 12:00 noon of Friday prior to bid date will not be answered. Bidders shall not contact any other Departmental staff for clarification of Contract provisions, and the Department will not be responsible for any interpretations so obtained. TTY users call Maine Relay 711.

Bid proposal packages are available at http://www.maine.gov/mdot/contractors/. They may be seen at the Maine DOT Building in Augusta, Maine and at the Department of Transportation's Regional Offices. They can be obtained at no cost at the Department at 24 Child Street, Augusta, ME, between the hours of 8:00 a.m. to 4:30 p.m., may be requested by telephone at (207) 624-3536 between the hours of 8:00 a.m. to 4:30 p.m, or from Maine Department of Transportation, Attn.: Mailroom, 16 State House Station, Augusta, Maine 04333-0016.

There will be no bid bonds, performance bonds or payment bond required.

Each Bid must be made upon blank forms provided by the Department.

This Contract is subject to all applicable State Laws.

All work shall be governed by "State of Maine, Department of Transportation, Standard Specifications, Revision of December 2002", price $10 [$13 by mail], and Standard Details, Revision of December 2002, price $20 [$25 by mail]. They also may be purchased by telephone at (207) 624-3536 between the hours of 8:00 a.m. to 4:30 p.m. Standard Detail updates can be found at http://www.maine.gov/mdot/contractors/publications/ .

The right is hereby reserved to the Maine DOT to reject any or all bids.

Augusta, Maine
April 10, 2013

Brian Burne
Highway Maintenance Engineer
Bureau of Maintenance & Operations

Lexington Township
19291.00
Crane
April 14, 2011
Supersedes August 3, 2004

SPECIAL PROVISION 102.7.3
ACKNOWLEDGMENT OF BID AMENDMENTS

With this form, the Bidder acknowledges its responsibility to check for all Amendments to the Bid Package. For each Project under Advertisement, Amendments are located at http://www.maine.gov/mdot/contractors/ . It is the responsibility of the Bidder to determine if there are Amendments to the Project, to download them, to incorporate them into their Bid Package, and to reference the Amendment number and the date on the form below. The Maine DOT will not post Bid Amendments any later than noon the day before Bid opening without individually notifying all the planholders.

Amendment Number	Date

The Contractor, for itself, its successors and assigns, hereby acknowledges that it has received all of the above referenced Amendments to the Bid Package.

CONTRACTOR

_____
Date

_____
Signature of authorized representative

_____
(Name and Title Printed)

CONTRACT, OFFER & AWARD
for State Funded Construction

This CONTRACT is made on the date last signed below, by and between the State of Maine, acting through and by its Department of Transportation ("Department" or "MaineDOT"), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, with a mailing address at 16 State House Station, Augusta, Maine 04333-0016, and _____ **("Contractor")** a corporation or other legal entity organized under the laws of the State of _____, with its principal place of business located at _____, with a mailing address of _____, and a telephone number of _____ .

The Vendor Customer Number of the Contractor is _____.

The following attachments are hereby incorporated into this Contract by reference:

Appendix A – Special Provision - Specifications of Work to be Performed

Appendix B – Special Provisions for State Funded Construction

The Department and the Contractor, in consideration of the mutual promises set forth in this Contract (hereinafter "Contract") hereby agree as follows:

A. The Work.

The Contractor agrees to complete all Work as specified or indicated in the Contract including Extra Work in conformity with the Contract, PIN **19291.00** for the **Setting and Removal of a Temporary Bridge**, in **Lexington Township**, Maine (hereinafter "Work"). The Work includes construction, maintenance during construction, warranty as provided in the Contract, and other incidental work.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools supplies, permanent materials and temporary materials required to perform the Work including construction quality control including all required documentation at the conclusion of the project, warranting its work and performing all other work indicated in the Contract.

The Department shall have the right to alter the nature and extent of the Work as provided in the Contract; payment to be made as provided in the same.

B. Time.

The Contractor agrees to complete all Work, except warranty work, on or before the dates given in Appendix A.

C. Price.

The LUMP SUM Bid Price given in Appendix A will be used as the basis for determining the amounts of the contract, and that the amount of this offer is _____

$_____ .

D. Contract.

This Contract, which may be amended, modified, or supplemented in writing only, consists of the Contract documents as defined in the Plans, Standard Specifications, Revision of December 2002, Standard Details Revision of December 2002 as updated through advertisement Sections 101, 102, 103 and 111, 112 Supplemental Specifications, Special Provisions, Appendices and Contract. It is agreed and understood that this Contract will be governed by the documents listed above.

E. Certifications.

By signing below, the Contractor hereby certifies that to the best of the Contractor's knowledge and belief:

1. All of the statements, representations, covenants, and certifications required or set forth in the Bid, the Bid Documents and the Contract are still complete and accurate as of the date of this Bid.

2. The Contractor knows of no legal, contractual, or financial impediment to entering into this Contract.

3. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

F. Offer.

The undersigned has carefully examined the site of work, Bid Documents, Special Provisions and the other Contract Documents for the Project WIN **19291.00** for the **Setting and Removal of a Temporary Bridge**, in **Lexington Twp**, Maine and is familiar with the Work necessary to perform the Contract for which this bid is being submitted. The Bidder,

does hereby bid and offer to enter into this contract to supply all the materials, tools, equipment and labor to construct the whole of the Work in strict accordance with the terms and conditions of this Contract.

First: Bidder agrees to perform extra work, not described in Appendix A, which may be ordered by the Department, and to accept as full compensation the amount determined as provided in the contract documents or upon a Force Account basis as provided in the State of Maine Department of Transportation, Standard Specifications, Revision of December 2002, Section 109 and as addressed in the contract documents.

Second: Bidder understands that Work may commence upon Contract Execution, unless provided elsewhere in this contract and that Work must be completed within the time limits given in this Contract. Bidder further agrees to provide insurance as required by this Contract if this offer is accepted by MaineDOT in writing.

Third: This offer shall remain open for 30 calendar days after the date of opening of bids.

Fourth: The Bidder hereby certifies, to the best of its knowledge and belief that the Bidder has not, either directly or indirectly, entered into any Contract, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with its bid, and its subsequent contract with the Department.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby executes two duplicate originals of this Contract and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

CONTRACTOR

_____ _____

(Date) (Signature of Legally Authorized Representative of the Contractor)

_____

(Name and Title Printed)

G. Award.

Your offer is hereby accepted. This award consummates the Contract, and the documents referenced herein.

MAINE DEPARTMENT OF TRANSPORTATION

_____ _____

(Date) (Signature)

_____

(Name and Title Printed)

CONTRACT, OFFER & AWARD
for State Funded Construction

This CONTRACT is made on the date last signed below, by and between the State of Maine, acting through and by its Department of Transportation ("Department" or "MaineDOT"), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, with a mailing address at 16 State House Station, Augusta, Maine 04333-0016, and _____ **("Contractor")** a corporation or other legal entity organized under the laws of the State of _____, with its principal place of business located at _____, with a mailing address of _____, and a telephone number of _____ .

The Vendor Customer Number of the Contractor is _____.

The following attachments are hereby incorporated into this Contract by reference:

Appendix A – Special Provision - Specifications of Work to be Performed

Appendix B – Special Provisions for State Funded Construction

The Department and the Contractor, in consideration of the mutual promises set forth in this Contract (hereinafter "Contract") hereby agree as follows:

A. The Work.

The Contractor agrees to complete all Work as specified or indicated in the Contract including Extra Work in conformity with the Contract, PIN **19291.00** for the **Setting and Removal of a Temporary Bridge**, in **Lexington Township**, Maine (hereinafter "Work"). The Work includes construction, maintenance during construction, warranty as provided in the Contract, and other incidental work.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools supplies, permanent materials and temporary materials required to perform the Work including construction quality control including all required documentation at the conclusion of the project, warranting its work and performing all other work indicated in the Contract.

The Department shall have the right to alter the nature and extent of the Work as provided in the Contract; payment to be made as provided in the same.

B. Time.

The Contractor agrees to complete all Work, except warranty work, on or before the dates given in Appendix A.

C. Price.

The LUMP SUM Bid Price given in Appendix A will be used as the basis for determining the amounts of the contract, and that the amount of this offer is _____

$_____ .

D. Contract.

This Contract, which may be amended, modified, or supplemented in writing only, consists of the Contract documents as defined in the Plans, Standard Specifications, Revision of December 2002, Standard Details Revision of December 2002 as updated through advertisement Sections 101, 102, 103 and 111, 112 Supplemental Specifications, Special Provisions, Appendices and Contract. It is agreed and understood that this Contract will be governed by the documents listed above.

E. Certifications.

By signing below, the Contractor hereby certifies that to the best of the Contractor's knowledge and belief:

1. All of the statements, representations, covenants, and certifications required or set forth in the Bid, the Bid Documents and the Contract are still complete and accurate as of the date of this Bid.

2. The Contractor knows of no legal, contractual, or financial impediment to entering into this Contract.

3. The person signing below is legally authorized by the Contractor to sign this Contract on behalf of the Contractor and to legally bind the Contractor to the terms of the Contract.

F. Offer.

The undersigned has carefully examined the site of work, Bid Documents, Special Provisions and the other Contract Documents for the Project WIN **19291.00** for the **Setting and Removal of a Temporary Bridge**, in **Lexington Twp**, Maine and is familiar with the Work necessary to perform the Contract for which this bid is being submitted. The Bidder,

does hereby bid and offer to enter into this contract to supply all the materials, tools, equipment and labor to construct the whole of the Work in strict accordance with the terms and conditions of this Contract.

First: Bidder agrees to perform extra work, not described in Appendix A, which may be ordered by the Department, and to accept as full compensation the amount determined as provided in the contract documents or upon a Force Account basis as provided in the State of Maine Department of Transportation, Standard Specifications, Revision of December 2002, Section 109 and as addressed in the contract documents.

Second: Bidder understands that Work may commence upon Contract Execution, unless provided elsewhere in this contract and that Work must be completed within the time limits given in this Contract. Bidder further agrees to provide insurance as required by this Contract if this offer is accepted by MaineDOT in writing.

Third: This offer shall remain open for 30 calendar days after the date of opening of bids.

Fourth: The Bidder hereby certifies, to the best of its knowledge and belief that the Bidder has not, either directly or indirectly, entered into any Contract, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with its bid, and its subsequent contract with the Department.

IN WITNESS WHEREOF, the Contractor, for itself, its successors and assigns, hereby executes two duplicate originals of this Contract and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents.

CONTRACTOR

_____ _____

(Date) (Signature of Legally Authorized Representative of the Contractor)

_____

(Name and Title Printed)

G. Award.

Your offer is hereby accepted. This award consummates the Contract, and the documents referenced herein.

MAINE DEPARTMENT OF TRANSPORTATION

_____ _____

(Date) (Signature)

_____

(Name and Title Printed)

APPENDIX A
SPECIAL PROVISION
SPECIFICATIONS OF WORK TO BE PERFORMED

Contractor _____

SCHEDULE OF ITEMS

Item Description	Approx. Quantity and Units	Total Bid Amount
Set & Remove Temporary Bridge with Crane	1 Lump Sum	$

Bid prices must be quoted as specified on this worksheet. The Department will reject bids if any one of the following occurs: the Bid is not Delivered to the precise location and by the precise time set forth in the Notice to Contractors or any applicable Bid Amendment, the Bid is not signed by a duly authorized representative of the Bidder, the lump sum price is not provided or is illegible as determined by the Department, or the Bid contains any conditional or alternate Bidding language. The Bidder will have no opportunity to cure the above Non-curable Bid Defects. For clarification, questions, comments/recommendations use the Request for Information form.

_____ _____
(Print Respondent's Name and Title) *Signature*

DESCRIPTION OF WORK
MaineDOT Region 3 is accepting bids to rig, set and remove a temporary Maybey Bridge using a crane with operator. The Maybey Bridge will be set onto approaches that will be built by MaineDOT. The location is in Lexington TWP, on Long Falls Dam Road over Sandy Stream, MaineDOT work identification number (WIN) 19291.00

EQUIPMENT
Equipment will be a crane capable of lifting 25 Ton at a distance of 80 feet. The Contractor shall provide all rigging equipment as well as all other lifting related equipment.

Contractor shall be responsible for all fuel, grease, oil, maintenance, servicing, operation, protection required for their equipment, in addition to mobilization and all other incidentals.

SCHEDULE
The bridge will be set the first week of June 2013. The removal of the bridge is subject to the estimated project completion date which is the week of October 7, 2013. MaineDOT will notify the Contractor with as much time as possible, no less than 2 weeks, prior to the removal of the temporary bridge.

The Contractor shall set the temporary bridge only during the following times Monday through Thursday, 7:00AM through 4:30 PM except for they may not work on holidays as defined in Appendix. Mobilization and prep work may be done in or outside of this time period.

UTILITIES
The Contractor must exercise every reasonable precaution to prevent damage to Utility Facilities or interruption to utility services known to or discovered by the Contractor.

MEASURMENT & PAYMENT
The rigging, setting and removal will be paid for at the contract lump sum price which shall be full compensation for the crane, operator, rigging and rigging equipment and all other incidentals necessary to perform the Work. Mobilization will be incidental to the bid price. The Contractors shall submit two invoices for payment to the MaineDOT. MaineDOT will pay one half of the contract lump sum price after the bridge is set and one half the contract lump sum price after removal is complete.

AWARD & CONTRACTING
After Bid Opening and as a condition for Award of a Contract, the Department may require an Apparent Successful Bidder to demonstrate to the Department's satisfaction that the Bidder is responsible and qualified to perform the Work and that the equipment is acceptable to the MaineDOT.

Contractor hereby represents and warrants that the Contractor and its employees have the requisite skills, and expertise to perform all Contract Work using the accepted standards of care in the Contractor's profession or occupation. If MaineDOT finds either the equipment or the operator to be unsatisfactory, the Contractor shall provide an immediate replacement so as to avoid any impact on the project schedule. If Contractor is unable to provide a replacement in a timely manner, MaineDOT reserves the right to hire a new Contractor to complete the work.

SPECIAL PROVISION SECTION 102
BIDDING

102.7.1 Location and Time Add the following sentence "As a minimum, the Bidder will submit a Bid Package consisting of the Notice to Contractors, the completed Acknowledgement of Bid Amendments form, the completed Schedule of Items, 2 copies of the completed Contract, Offer, & Award form, the completed Appendix A and any other Certifications or Bid Requirements listed in the Bid Book."

102.11.1 Non-curable Bid Defects Replace E. with "E. The unit price and bid amount is not provided or a lump sum price is not provided or is illegible as determined by the Department."

SPECIAL PROVISION SECTION 103
AWARD AND CONTRACTING

A Bid Guaranty is not required.

Performance and Payment Bonds are not required.

103.4 Notice of Award Delete the section in its entirety and replace with the following:

"The Department has 30 Days following Bid Opening to Deliver a written Notice of Intent to Award and request insurance and other information from the Apparent Successful Bidders. All items must be delivered to the Department's Bureau of Maintenance and Operations. Once these pre-execution conditions are met, the Department will execute the Contract. The Notice of Intent to Award will set forth and/or reference the conditions that the Bidder must fulfill before Contract Execution. If the Department and an Apparent Successful Bidder agree, an extension of the Bid and Bid prices may occur and the Bid remains viable. "

103.5.1 Performance and Payment Bonds Delete the entire section 103.5.1.

103.5.4 Execution of Contract By Bidder Delete the section in its entirety and replace with the following:

"The properly completed and signed Contract, Offer, & Award form provided with the Bid constitutes the Bidder's offer. Once the Department has received the insurance, and any other pre-award items required, the Department will sign the Contract, Offer, & Award form and execute the Contract. The point of Contract execution is when the Department signs the contract."

APPENDIX B

May 19, 2010

SPECIAL PROVISIONS
FOR STATE FUNDED CONSTRUCTION

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

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

3. **DEPARTMENT'S REPRESENTATIVE** The Contract Administrator shall be the Department's representative during the period of this Contract. The Contract Administrator has authority to curtail services if necessary to ensure proper execution of the Contract, to take actions needed to assure that the Contractor's Work conforms with the Contract, to decide questions regarding quality and acceptability of Work, to suspend Work, to reject Unacceptable or Unauthorized Work and to refuse to approve Progress and Final Payments until Unacceptable or Unauthorized Work is corrected. The Contract Administrator shall certify to the Department when payments under the Contract are due and the amounts to be paid. He/she shall make decisions on all claims of the Contractor. Unless authorized by the Contract Administrator, other Departmental employees are not authorized to alter or waive the provisions of the Contract or to issue instructions contrary to the Contract.

The Department has the authority to inspect all Materials and every detail of the Work. The Contractor shall provide the Department with safe access to all portions of the Work in Conformity with all applicable OSHA requirements. The Contractor shall furnish the Department with all information and assistance required to make a detailed inspection.

4. **CONTRACT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Contractor shall be submitted to the Department's Project Manager who is designated as the Contract Administrator on behalf of the Department for this Contract, except where specified otherwise in this Contract.

5. **CHANGES IN THE WORK** The Department may order changes in the work, the Contract Amount being adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of its obligations under this Contract because of the inability of the

parties to agree on an adjustment or adjustments. Any changes to the Contract that affect compensation, time, quality, or other Contract requirements shall be by written Contract Modification, signed by both parties.

6. **SUBCONTRACTS** The Contractor shall at all times provide all Superintendents, forepersons, laborers, inspectors, Subcontractors, subconsultants, Equipment, Materials, and Incidentals needed to perform the Work in Conformance with the Contractor's Schedule of Work and within the Contract Time.

Any person employed by the Contractor or by any Subcontractor or any officer or representative or agent of the Subcontractor, who, in the opinion of the Contract Administrator, is intemperate or disorderly, shall be removed immediately by the Contractor or Subcontractor employing such person.

The Contractor is responsible for assuring that its subcontractors have sufficient skill and experience to perform the pursuant to the Contract. The Contractor is responsible for subcontractors that it employs and for coordinating and managing its subcontractors. The Contractor agrees to indemnify, defend, and hold harmless MaineDOT from and against all claims and causes of action arising out of any act or omission of Contractor's subcontractors, their agents, representatives, and employees. The Contractor agrees to indemnify the MaineDOT and hold it harmless from any claims asserted by, against or on behalf of Contractor's subcontractors. Included in this release is the Contractor's agreement to waive any claims against MaineDOT to recover losses allegedly suffered by a subcontrator. If Work under this Contract is performed pursuant to subcontracts, the Contractor's obligations are not diminished and the Contractor remains responsible for all Work under the Contract.

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

8. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Contract, the Contractor agrees as follows:

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

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and

selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

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

c. The Contractor shall send to each labor union or representative of the workers with which it has a collective bargaining Contract, or other Contract or understanding, whereby it is furnished with labor for the performance of this Contract a notice to be provided by the contracting 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 applicants for employment.

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

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

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

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

9. **EMPLOYMENT AND PERSONNEL** The Contractor shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis pursuant to this Contract any personnel who are or have been at any time during the period of this Contract in the employ of the State of Maine, except regularly retired employees, without the written consent. Further, the Contractor shall not engage on this project on a full-time, part-time or other basis during the period of this Contract any retired employee of MaineDOT who has not been retired for at least one year without the written consent. The Contractor shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions

shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

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

11. **WARRANTY OF NO COLLUSION** The Bidder hereby certifies that it has not, directly or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of competitive bidding in connection with this Contract. For breach or violation of this warranty, MaineDOT shall have the right to annul this Contract without liability. Further, MaineDOT shall have the right to recover the full amount of such fee, commission, gift, or the value of consideration that may have been transferred by the Contractor in violation of this clause.

12. **RECORDS; ACCESS** The Contractor and its subcontractors shall maintain all books, documents, payrolls, papers, accounting records and information of any type on any medium ("Project Records") that pertain to this Contract for such period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. Upon request by MaineDOT, the Contractor and its subcontractors shall make Project Records available for inspection and must provide MaineDOT with copies at all reasonable times without cost or liability to MaineDOT.

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

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

15. **GOVERNING LAW** This Contract shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Contract shall be brought in State of Maine

administrative or judicial forums. The Contractor consents to personal jurisdiction in the State of Maine.

If, in the performance of this Agreement, there arises a dispute between the Contractor and MaineDOT that cannot be resolved by the parties to the Contract, the parties may agree to submit the dispute to non-binding Alternate Dispute Resolution. All disputes shall be governed by Maine law, and all actions shall be filed in the Kennebec Superior Court, in Augusta Maine.

16. **STATE HELD HARMLESS** The Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Contract by the Contractor, its employees, agents or subcontractors. Claims to which this indemnification applies include, but are not limited to, the following: (i) claims suffered or incurred by any Contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity providing work, services, materials, equipment or supplies in connection with the performance of this Contract; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Contract; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Contract; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Contract; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Contractor taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Contract.

The Department's employees and other representatives act solely as representatives of the Department when conducting and exercising authority granted to them under the Contract. Such persons have no liability either personally or as Department employees.

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

18. **INSURANCE** The Contractor shall provide signed, valid, and enforceable certificate(s) of insurance complying with this Section. All insurance must be procured from insurance companies licensed or approved to do business in the State of Maine by the State of Maine, Bureau of Insurance. The Contractor shall pay all premiums and take all other actions necessary to keep required insurances in effect for the duration of the Contract obligations, excluding warranty obligations.

Workers' Compensation For all Work performed by the Contractor and any subcontractor, the Contractor and each subcontractor shall carry Workers' Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers' Compensation Board in accordance with the requirements of the laws of the State of Maine. If maritime exposures exist, coverage shall include United States Long Shore and Harbor Workers coverage.

Commercial General Liability With respect to all Work performed by the Contractor and any subcontractors, the Contractor and any subcontractors shall carry commercial general liability insurance in an amount not less than $400,000.00 per occurrence and $2,000,000.00 in the Aggregate. The coverage must include products, completed operations, and Contractual liability coverages. The Contractual liability insurance shall cover the Contractor's obligations to indemnify the Department as provided in this Contract. The coverage shall also include protection against damage claims due to use of explosives, collapse, and underground coverage if the Work involves such exposures. The Department shall be named as additional insured on the Commercial General Liability insurance policies carried by the Contractor that are applicable to the Work.

Automobile Liability The Contractor shall carry Automobile Liability Insurance covering the operation of all motor vehicles including any that are rented, leased, borrowed, or otherwise used in connection with the Project. The minimum limit of liability under this Section shall be $400,000.00 per occurrence.

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.

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

20. **INTEGRATION** All terms of this Contract are to be interpreted in such a way as to be consistent at all times. If the Contractor discovers any ambiguity, error, omission, conflict, or discrepancy related to the Contract, the Contractor must notify MaineDOT of the ambiguity or waive claims resulting from any such ambiguity. In the case of ambiguity the following components of the Contract shall control in the following descending order of priority:

Contract, Offer and Award
Bid Amendments (most recent to least recent)
Appendix A – Special Provision Specifications of Work to be Performed
Appendix B – Special Provisions for State Funded Construction
Any remaining appendices in alphabetical order.
Any remaining Special Provisions
The Department's Notice to Contractors and any amendments
Supplemental Specifications

Standard Specifications, Revision of December 2002 as updated through advertisement, Sections 101, 102, 103 and 111.

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

22. **FURNISHING OF OTHER PROPERTY RIGHTS, LICENSES AND PERMITS** The Contractor shall acquire, at its sole expense, all property rights outside the Project Limits needed for construction staging, yarding, construction, waste disposal, or other Project-related purpose. The Contractor shall also acquire, at its sole expense, all licenses, Permits and other permissions that are necessary or appropriate to perform the Work that are not furnished by the Department.

23. **ALLOWABLE WORK TIMES** Work can be performed at any time except Saturdays, Sundays and Holidays, unless expressly specified otherwise in this Contract, including any applicable Permit conditions. Holidays are defined as New Year's Day, Martin Luther King Day, President's Day, Patriot's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day. If a Holiday occurs on a Sunday, the following Monday shall be considered a Holiday. If a Holiday occurs on a Saturday, the preceding Friday shall be considered a Holiday. Saturday, Sunday or Holiday work must be approved by the Department. The Contractor is solely responsible for the planning and execution of Work in order to complete the Work within the Contract Time.

24. **SET-OFF RIGHTS** MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, MaineDOT's right to withhold and take possession of monies due to the Contractor under this Contract up to any amounts the Contractor owes to the State of Maine pursuant to this Contract or any other contract, including any contract for a term commencing prior to the term of this Contract, plus any amounts that Contractor owes the State of Maine for any reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

25. **WORKERS AND EQUIPMENT** The Contractor shall at all times provide all Superintendents, forepersons, laborers, inspectors, Subcontractors, subconsultants, Equipment, Materials, and Incidentals needed to perform the Work in Conformance within the Contract Time.

Any person employed by the Contractor or by any Subcontractor or any officer or representative or agent of the Subcontractor, who, in the opinion of the Department, is intemperate or disorderly, shall be removed immediately by the Contractor or Subcontractor employing such person. The employee shall not be employed again in any portion of the Work without prior approval from the Department. Should the Contractor fail to remove such person or persons as required above or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Department may suspend the Work by written notice until such orders are complied with.

All persons employed by or through the Contractor, except for registered trainees, shall have sufficient skill and experience to perform the Work properly. The Department may require that the Contractor discharge any such person who the Department determines jeopardizes safety of any person or the Project without cost or liability to the Department. If the Department determines that such person's performance jeopardizes the intent of the Contract otherwise, the Department may, but is not required, to notify the Contractor of such a determination. Such notice, or lack thereof, does not affect the Contractor's duties regarding Workers. Upon Receipt of such notice, the Contractor shall take any action it determines necessary to fulfill its obligations under the Contract.

26. **HEALTH AND SAFETY**

Contractor's Safety Program The Contractor shall comply with all applicable federal, State, and local laws including all applicable laws and regulations of governing safety, health, and sanitation. If a copy of the Contractor's Safety Plan is not on file with the Contracts Section of the Department, the Contractor must submit, prior to Contract award, an acceptable, project specific Safety Plan to the Department. The Contractor's Safety Plan shall identify and address job hazards of the expected contract work and shall comply with all applicable federal, State, and local laws governing safety including all applicable laws and regulations of OSHA

Project Specific Emergency Planning The Contractor shall ensure that essential police, fire, rescue, and ambulance services have reasonable and timely access to and through the Project Limits. The Contractor shall, as appropriate, contact all emergency service providers in the area, discuss potential impacts on emergency operations (including water supply for fire suppression), and minimize any negative impacts.

27. **ENVIRONMENTAL REQUIREMENTS**

Temporary Soil Erosion and Water Pollution Control The Contractor shall provide continuous and effective soil erosion and water pollution.

Hazardous Materials If the Contractor encounters any condition that indicates the presence of uncontrolled petroleum or hazardous Materials, the Contractor shall immediately stop Work, notify the Department, treat any such conditions with extreme caution, and secure the area of potential hazard to minimize health risks to Workers and the public, and to prevent additional releases of contaminants into the environment. Such conditions include the presence of barrels, tanks, unexpected odors, discoloration of soil or water, an oily sheen

on soil or water, excessively hot earth, smoke, or any other condition indicating uncontrolled petroleum or hazardous Materials. The Contractor shall continue Work in other areas of the Project unless otherwise directed by the Department. The Contractor shall comply with all federal, State, and local laws concerning the handling, storage, treatment, and disposal of uncontrolled petroleum or hazardous Material.

Waste Materials All waste materials shall be disposed of in accordance with all federal, State, and local laws.

Environmental Non-compliance - Remedies and Costs The Contractor shall be in non-compliance if it, or Subcontractors at any tier, fail to comply with the terms of this Contract or any applicable environmental or land use law or regulation including Project specific permit conditions.

If the Contractor is in non-compliance, the Department may, at its discretion:

A. Withhold all Progress Payments, or any portion thereof, during the period the Contractor is in non-compliance;

B. Remedy such non-compliance using State forces or another Contractor and deduct all costs incurred by the Department from Progress Payments. Such costs include direct costs, Project Engineering costs, and Contractor costs from amounts otherwise due the Contractor, and/or

C. Suspend the Work for cause and without cost or liability to the Department. Said suspension shall continue until the Contractor has addressed all non-compliance issues as directed by the Department.

The Contractor shall be responsible for any fines and penalties assessed by environmental or land use regulatory agencies due to such non-compliance. Such penalties may be withheld from amounts otherwise due the Contractor.

28. **QUALITY AND STANDARDS** Materials and manufactured products incorporated into the work shall be new unless otherwise specified, free from defect, and in conformity with the contract. When material is fabricated or treated with another material or where any combination of materials is assembled to form a finished product, any or all of which are covered by specifications, the Department may reject the finished product if any of the components do not comply with the specifications. Materials shall meet the requirements of the contract at the time they are incorporated into the work. The Department may reject materials not conforming to the Specifications at any time, and the Contractor shall remove them immediately from the project site unless otherwise instructed by the Department. The Contractor shall not store or use rejected materials on any Department project.

If there is no applicable standard set forth in this contract for particular Work, then the Contractor shall perform that Work in accordance with industry standards prevailing at the time of bid. If the Department determines that Work is non-conforming, the Contractor

shall remove, replace, or otherwise correct all unacceptable work as directed by the Department at the expense of the Contractor, without cost or liability to the Department.

29. **WARRANTY PROVISIONS** The Contractor unconditionally warrants and guarantees that the project will be free from warranty defects for one year from the date of Final Acceptance. Final Acceptance includes receipt of all conforming closeout documentation. If the Department discovers any warranty defects during the warranty period, the Contractor agrees to promptly perform all remedial work at no additional cost or liability to the Department.

The Contractor hereby assigns to the Department the right to enforce all manufacturer's warranties or guarantees on all materials, equipment or products purchased for the work that exceed the nature or duration of the warranty obligations assumed by the Contractor under this Contract.

The Contractor agrees that the warranty obligations provided by this Contract shall be reported as an outstanding obligation in the event of bankruptcy, dissolution, or the sale, merger, or cessation of operations of the Contractor.

30. **PAYMENT** The Contractor shall submit an itemized invoice to the Department for services monthly, at the completion of the Work or as otherwise noted in the Contract documents for approval and payment. At a minimum, invoices shall include the following information:

Contractor name, address & Contract Number
Invoice Date & Number
Dates of Work
Description and Location of Work
Quantities at the Prices contained in the Contractor's Bid

The Department will approve complete and correct invoices for accepted Work invoiced at bid prices. Payments to the Contractor shall be full compensation for furnishing all labor, equipment, materials, services, and incidentals used to perform all Work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of any kind arising from the nature or execution of the Work. The Contractor shall pay all taxes, charges, fees, and allowances. Except as expressly provided otherwise in this Contract, all such taxes, charges, fees, and allowances are Incidental to the Contract. Most items are exempt from Maine sales tax. The Contractor shall Bid in accordance with the Maine statutory exemption from sales tax. The Department may request that the Contractor submit backup documentation including copies of receipts, invoices, and itemized payments to Subcontractors. The Acceptance by the Contractor of the final payment, as evidenced by cashing of the final payment check, constitutes a release to the Department from all claims and liability under the Contract.

The Department may withhold payments claimed by the Contractor on account of:

A. Incomplete, Inaccurate or Incorrect Invoices,

B. Defective Work or non-conforming Work,
C. Damages for Non-conforming, Defective or Unauthorized Work or Equipment,
D. Failure to provide the Department the opportunity to inspect the Work,
E. Damage to a third party,
F. Claims filed or reasonable evidence indicating probable filing of claims,
G. Failure of the Contractor to make payments to Subcontractors or for Materials or labor,
H. Substantial evidence that the Project cannot be completed for the unpaid balance,
I. Substantial evidence that the amount due the Department will exceed the unpaid balance,
J. Regulatory non-compliance or enforcement,
K. Failure to submit Documentation
L. All other causes that the Department reasonably determines negatively affect the State's interest.

31. **RESPONSIBILITY FOR DAMAGE TO WORK** Except for damage to Project caused by Uncontrollable Events, the Contractor shall bear all risk of loss relating to the Work until Final Acceptance, regardless of cause, including completed Work, temporary Structures, and all other items or Materials not yet incorporated into the Work.

The Contractor shall, at its sole expense, rebuild, repair, restore, or replace such damaged Work or otherwise make good any losses that arise from such damage ("rebuilding, etc."). If the Contractor fails to Promptly commence and continue such rebuilding, etc., the Department may, upon 48 hours advance written notice, commence rebuilding, etc. of the damaged property without liability to the Department with its own forces or with Contracted forces and all costs will be deducted from amounts otherwise due the Contractor.

32. **RESPONSIBILITY FOR PROPERTY OF OTHERS** The Contractor shall not enter private property outside the Project Limits without first obtaining permission from the Owners.

The Contractor shall be responsible for all damage to public or private property of any kind resulting from any act, omission, neglect, or misconduct of the Contractor until Final Acceptance. The preceding sentence includes damage to vehicles passing through the Work area.

The Contractor shall, at its sole expense, rebuild, repair, restore, or replace such damaged property or otherwise make any good losses that arise from such damage ("rebuilding, etc."). If the Contractor fails to commence and continue such rebuilding, etc. in a timely manner, the Department may, upon 48 hours advance written notice, commence rebuilding, etc. of the damaged property without liability to the Department with its own forces or with Contracted forces, and all costs will be deducted from amounts otherwise due the Contractor.

33. **NOTICE REQUIRED** When the Contractor becomes aware of facts or circumstances that may cause the Contractor to seek additional compensation, time, or any other change in Contract requirements ("Issue"), then the Contractor shall notify the Department within 48 hours and before commencing any part of the Work relating to the Issue. The notice must describe the basic nature and extent of the Issue.

The written notice or confirmation will be known as a "Notice of Issue for Consideration". The Contractor will not be entitled to any additional compensation, time, or any other change to Contract requirements without a timely Notice of Issue for Consideration.

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