

NEW

**State of Maine****Master Agreement****Effective Date:** 04/08/19**Expiration Date:** 04/30/20**Master Agreement Description:** AGGREGATE INDUSTRIES - NER INC, Asphalt**Buyer Information**

William Allen

207-624-7871 ext. NULL WJE.Allen@maine.gov

**Issuer Information**

SHARON KRECHKIN

207-624-3038 ext. sharon.krechkin@maine.gov

**Requestor Information**

Sharon Krechkin

207-624-3038 ext. sharon.krechkin@maine.gov

**Authorized Departments**

17A TRANSPORTATION

**Vendor Information****Vendor Line #: 1****Vendor ID**

VC0000204562

**Vendor Name**

AGGREGATE INDUSTRIES - NER INC

**Alias/DBA****Vendor Address Information**

1715 BROADWAY

SAUGUS, MA 01906

US

**Vendor Contact Information**

Bill Donovan

617-590-2615 ext.

bill.donovan@aggregate-us.com

**Payment Discount Terms****Discount 1:** % 0 Days**Discount 2:** % 0 Days**Discount 3:** % 0 Days**Discount 4:** % 0 Days

**Commodity Information**

**Vendor Line #:** 1

**Vendor Name:** AGGREGATE INDUSTRIES - NER INC

**Commodity Line #:** 1

**Commodity Code:** 74508

**Commodity Description:** Asphalt

**Commodity Specifications:** As per the attached specifications made part of this MA

<b>Quantity</b>	<b>UOM</b>	<b>Unit Price</b>
0.00000		\$0.00
<b>Delivery Days</b>	<b>Free on Board</b>	
<b>Contract Amount</b>	<b>Service Start Date</b>	<b>Service End Date</b>
\$0.00	04/08/19	04/30/20
<b>Catalog Name</b>	<b>Discount</b>	
	0.0000 %	
	<b>Discount Start Date</b>	<b>Discount End Date</b>

**Commodity Terms and Conditions**

**Vendor Line #:** 1

**Commodity Line #:** 1

**T&C #:** 165

**T&C Name:** Payment Terms

**T&C Details:**Net 30



**Asphalt  
Concrete Division**  
1715 Broadway  
Saugus, MA

Tel: (617) 590-2615  
Fax: (781) 941-7272  
bill.donovan@aggregate-us.com

## Quotation

Quote Number Q0000591523	Quoted By BILL DONOVAN	Quote Date 2/5/2019	Pricing Valid Until 4/1/2019
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Quote open for acceptance until 3/7/2019

Client Company	MAINE, STATE OF	Project Name	2019 WINTER - MAINE, STATE OF - MIX
Customer Number	47027	Project Description	
Attention	TRAVIS MOORE	PO Number	
Phone Number	(207) 885-7000		
Fax Number	(866) 770-5810		
Email Address	<a href="mailto:travis.b.moore@maine.gov">travis.b.moore@maine.gov</a>		
Street Address	P.O BOX 358 SCARBOROUGH, ME 04070	Project Address	2019 WINTER - MAINE, STATE OF - MIX WATERTOWN, MA 02472

Product	Material Description	Line Description	Plant	Quantity	UOM	Material Price	Truck Type	UOM	Freight Rate	Net Price + Freight
905242	ASPHALT TOP		SAUGUS ASPHALT PLANT	1	TON	\$120.00				
905242	ASPHALT TOP		WATERTOWN ASPHALT PLANT	1	TON	\$120.00				
905246	ASPHALT BERM		PEABODY ASPHALT PLANT	1	TON	\$120.00				
905245	ASPHALT DENSE BINDER		PEABODY ASPHALT PLANT	1	TON	\$120.00				
905244	ASPHALT BINDER		PEABODY ASPHALT PLANT	1	TON	\$120.00				
905243	ASPHALT BASE		PEABODY ASPHALT PLANT	1	TON	\$120.00				
905242	ASPHALT TOP		PEABODY ASPHALT PLANT	1	TON	\$120.00				
905246	ASPHALT BERM		WATERTOWN ASPHALT PLANT	1	TON	\$120.00				
905245	ASPHALT DENSE BINDER		WATERTOWN ASPHALT PLANT	1	TON	\$120.00				
905244	ASPHALT BINDER		WATERTOWN ASPHALT PLANT	75	TON	\$120.00				
905243	ASPHALT BASE		WATERTOWN ASPHALT PLANT	1	TON	\$120.00				
905248	ASPHALT EMULSION		PEABODY ASPHALT PLANT	1	EA	\$54.00				
905249	ASPHALT AGGREGATE		PEABODY ASPHALT PLANT	1	TON	\$23.00				
905247	ASPHALT COLD PATCH		PEABODY ASPHALT PLANT	1	TON	\$83.00				
905249	ASPHALT AGGREGATE		WATERTOWN ASPHALT PLANT	1	TON	\$23.00				
905248	ASPHALT EMULSION		WATERTOWN ASPHALT PLANT	1	EA	\$54.00				

905247	ASPHALT COLD PATCH		WATERTOWN ASPHALT PLANT	1	TON	\$83.00	
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**The following inclusions apply to quote:**

- The prices quoted become effective 2/5/2019 and subject to escalation as provided for in our Terms and Conditions of Sales. Prices are valid until 4/1/2018
- This quotation is open for acceptance until 3/7/2019
- This quotation supersedes all previous quotations for the products, delivery points and project detailed above.
- Payment terms will be 30 DAYS NET. The seller reserves the right to apply a 1.5% finance charge per month (annual rate 18%) on unpaid balances outside terms as stated.
- Detailed instructions regarding commencement of supply and rate of delivery of all materials for the duration of the project should be forwarded to this office with your order. This will facilitate availability and continuity at all times.
- Contract of sale shall be made when the seller receives a signed copy of this quote.
- Unless stated otherwise, the above prices are quoted on a per net ton (2,000 pounds) basis F.O.B.
- This quotation will expire in thirty days unless extended in writing
- Any increase in the price of fuel and/or ingredient materials will result in the quoted prices being adjusted accordingly. This includes liquid asphalt escalation which is subject to fluctuations in the base cost of liquid asphalt.
- Materials are produced to the specifications required by the product designation; compactability and yield estimates.
- The above pricing is applicable out of the plant(s) denoted. Aggregate Industries reserves the right to change the plant location, if conditions warrant.
- All prices are based on Monday through Friday, 7:00 A.M. to 3:00 P.M. Prices will be negotiated for overtime, if necessary, as well as Saturday, Sunday or Holiday pick-up options. Aggregate Industries will not be liable for any delays in supplying material resulting from any unforeseen conditions or any conditions which are beyond the control of Aggregate Industries.
- Incoming recycled materials are subject to inspection prior to dumping, at our designated locations. See yours sales representative for tipping fees.
- Sales tax is not included in the above pricing and is applicable unless exempt by State Law. If the contract is Tax Exempt, the Tax Exempt Certificate must be received prior to commencement of the project. Purchaser shall pay all applicable Federal, State and Local sales, use, excise and other taxes imposed on the sales of materials and on transportation charges with such sale being deemed to have taken place at the point of sale. Notification of tax-exempt status after shipments initiated will require customer to file for tax refund/credit from taxing authority for taxes charge up to the notification date. Credits will not be issued by Aggregate Industries for the taxes billed on the prior invoices.
- THE CONTACT PERSON IS BILL DONOVAN AND ANY QUERIES REGARDING THE ABOVE SHOULD BE ADDRESSED TO HIM/HER AT (617) 590-2615 OR [bill.donovan@aggregate-us.com](mailto:bill.donovan@aggregate-us.com).

**ACCEPTANCE OF THIS QUOTATION:** I certify by my signature that I am an authorized representative of the company named above and that I accept this quotation on behalf of the same company, including the prices, terms and conditions contained herein.

**Please return a signed copy of this quotation by mail to the address below or by facsimile before commencement of delivery.**

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Standard Terms and Conditions of Sale

### 1. ACCEPTANCE

These Standard Terms and Conditions ("Terms") govern all sales of products and materials (the "Products") by Aggregate Industries Management, Inc. ("AI"), or any parent, member, subsidiary or affiliate of AI ("Seller") to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders or electronic orders via EDI (collectively, "Purchase Orders"). Upon receipt by Buyer of an express acceptance by Seller or upon commencement of performance by Seller, these Terms, the Purchase Order, as modified by Seller's acceptance or order acknowledgment, become a binding contract between Buyer and Seller on the terms reflected in those documents (the "Sales Agreement"). Notwithstanding the foregoing, Seller's acceptance of any order is subject to Buyer's assent to these Terms. Buyer's assent to these Terms shall be presumed from Buyer's receipt of Seller's Terms or Buyer's acceptance of all or any part of the Products ordered; no addition or modification of these Terms shall be binding upon Seller unless agreed to by Seller in writing. If a Purchase Order or other correspondence or documentation contains terms or conditions contrary to the terms and conditions contained herein, Seller's acceptance of any order shall not (i) be construed as assent to such contrary or additional terms and conditions or (ii) constitute a waiver by Seller of any of the terms and conditions contained in these Terms. Any additional, inconsistent or different "Conditions of Purchase" or the like of Buyer contained in Buyer's purchase order or other document submitted to Seller at any time, whether before or after the date hereof, are hereby expressly rejected by Seller.

### 2. PRICE

The price of the Products, as set forth in the Purchase Order, does not include sales, use, excise or any other taxes or assessments levied by any federal, state, municipal or other governmental authority, unless Seller expressly agrees otherwise. In case of dispute between verbal or faxed quotations and a written quotation provided by Seller to Buyer (a "Written Quotation"), the Written Quotation shall be the controlling document. If during the performance of this contract, the price of materials increases, through no fault of Seller, the price of Products, under this Sales Agreement shall be equitably adjusted by an amount reasonably necessary to cover any such price increases. Such price increases shall be documented through quotes, invoices, or receipts.

### 3. PAYMENT

Payments must be made to Seller in U.S. dollars within (30) days of Buyer's receipt of the Products or invoice, whichever is sooner. Payments not received when due will bear interest at the lower of 18% per annum or the maximum rate allowed by applicable law. Seller reserves the right to limit or cancel the credit of Buyer, and Seller may require or demand payment or adequate assurances of performance from Buyer prior to taking any preparatory steps for performing the Sales Agreement or beginning the manufacture of the Products. Notwithstanding the foregoing payment terms, in the event of a conflict or discrepancy between the payment terms set forth on the face of a Written Quotation and the terms set forth herein, the payment terms included on such Written Quotation shall control and govern.

### 4. SPECIFICATIONS

Seller shall manufacture the Products in substantial conformity with the drawings, data, instructions, samples and specifications, if any, that are provided by Buyer in a timely fashion and reflected by Seller in a Written Quotation. All product and product-related specifications are subject to applicable freight classification, Seller's customary manufacturing processes and industry courses of dealing and usages of trade.

### 5. SHIPMENT

Unless otherwise specified by Seller, all prices are FOB Seller's manufacturing facility. Buyer must pay all transportation costs of the Products. Seller may make partial shipments at Seller's sole discretion. Seller must endeavor to meet the shipping date specified by Buyer. If Seller is unable to meet such date, Buyer has no claim for damages resulting from any delay in delivery.

### 6. TITLE AND RISK OF LOSS

Title to the Products passes to Buyer when Seller has received full and indefeasible payment for such Products. Seller is not responsible for damage or loss in transit. All risk of loss to the Products passes to Buyer as the Products are loaded onto the carrier. Buyer must obtain adequate insurance to cover the Products from the time risk of loss has passed from Seller.

### 7. LIMITED WARRANTY

Seller warrants that the Products will meet the specifications. **THE FOREGOING NOTWITHSTANDING, SELLER IS NOT LIABLE FOR NORMAL MANUFACTURING DEFECTS OR FOR CUSTOMARY VARIATIONS FROM QUANTITIES OR SPECIFICATIONS. UNLESS EXPRESSLY STATED IN THE SALES AGREEMENT, SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER. THIS SECTION SURVIVES THE TERMINATION OR CANCELLATION OF THE SALES AGREEMENT.**

### 8. CONDITIONS OF APPLICABILITY OR WARRANTY

Seller's warranty of any Product is of no effect if (i) the Product is not stored or handled appropriately, (ii) the defect of the Product resulted from damages occurring after delivery of the Product, (iii) the defect of the Product has not been reported to Seller within thirty (30) days after delivery, or (iv) the defect should have been discovered by Buyer in Buyer's inspection and it is not reported to Seller within ten (10) days after the Product's arrival at the destination

### 9. DEFECTIVE PRODUCTS

If a Product does not conform to the limited warranty in Section 7 and the warranty is not excluded by Section 8, then Buyer must promptly notify Seller. Upon receipt of a claims report, Seller must either ask Buyer for a sample of the defective Product or schedule an inspection of the defective Product. If Seller determines that the Product does not comply with the warranty provided in Section 7, then Seller must repair or replace the defective Product at no cost to Buyer. Except as provided in this Section 9, SUCH REPAIR OR REPLACEMENT IS THE ONLY REMEDY OF BUYER FOR ANY BREACH OF THE LIMITED WARRANTY PROVIDED BY SELLER IN SECTION 7.

### 10. RETURNS

No Products may be returned to Seller without providing prompt written notice of that intent and obtaining Seller's prior written consent. Returned Products must be securely packed by Buyer to reach Seller without damage. Buyer is responsible for the costs of returning the Products without being damaged.

### 11. LIABILITY LIMITATION

**IN NO EVENT IS SELLER RESPONSIBLE TO BUYER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ALL DIRECT AND INDIRECT LOSS PROFITS, REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE.** Except as expressly set forth herein, nothing herein or in any quotation shall (i) create any right, cause of action or claim of, for, or on behalf of the Buyer, its heirs, successors, or assigns, or any third party under any theory, whether in contract, tort, negligence, strict liability or otherwise, other than the rights expressly set forth and created herein; (ii) create, modify or extend any express or implied warranties, or any limitations of those warranties; (iii) give the Buyer any rights to claim any direct or indirect damages of any nature, including but not limited to any incidental or consequential damages that may arise out of the use of any of the goods described herein or in such quotation or any parts thereof, or any Product replacement provided by Seller. As part of the consideration for the Product, Buyer agrees not to sue Seller in respect of these Terms or any quotation related to the Products described herein or therein (unless Seller has breached one of the duties expressly created hereunder), and Buyer further agrees to indemnify Seller from all and all claims, costs, fees and expenses, including reasonable attorneys' fees, that may be incurred or spent incident to any such claim by any party (unless Seller has breached one of the duties expressly created hereunder, and then limited only to that claim alone).

### 12. ENVIRONMENTAL FEE AND FUEL SURCHARGE

Seller is committed to help ensure a clean and safe environment for our employees, our customers, and our communities. Seller also is committed to controlling and covering its costs so we can continue to provide the best overall value across all product lines. Environmentally-related costs and fuel-related costs are something we cannot fully control. Seller's environmental fee and fuel surcharge are meant to help us cover these costs and to help us achieve an acceptable operating margin. The environmental fee and fuel surcharge are separate line items on customer invoices. Seller's environmental fee helps to cover our costs and expenses to operate, on a company-wide basis, in a safe and environmentally responsible manner. The amount or percentage of the environmental component is not specifically tied to the direct or indirect costs to service Buyer's account, but instead to the Seller's overall costs and operating margin goals. Similarly, Seller's fuel surcharge is a charge to cover the Seller's overall costs associated with the delivery of products, including but not limited to the cost of fuel, and the incremental costs for unexpected mileage, wait times, and traffic patterns, and to help meet margin goals. **NOT A GOVERNMENTAL TAX: FUTURE CHANGES.** Seller's environmental fee and fuel surcharge are not taxes, surcharges, or fees imposed by or remitted to any governmental or regulatory agency; they are Seller's charges. The environmental fee and fuel surcharge may be changed at the discretion of Seller. To the extent required by Buyer's applicable customer service terms, the assessment of the environmental fee and fuel surcharge or any change to such charge is effective upon Buyer's acceptance of rebate payments from Seller or Buyer's payment of any such charges to Seller.

### 13. DISPUTE RESOLUTION/ARBITRATION AGREEMENT AND CLASS ACTION WAIVER

Any claims, disputes and controversies related in any way to the Sales Agreement including but not limited to Claims related to the financing of the purchase, ("Claims") shall be resolved by arbitration in the Governing State. "Claims" shall be given the broadest meaning possible and includes, without limitation, Claims against any of Seller's owners, shareholders, affiliates, subsidiaries, directors, officers, employees, representatives, agents, successors, or assigns. "Claims" does not include Seller's bond and/or lien claims, which may be enforced and/or resolved in court. BUYER AND SELLER WAIVE ANY RIGHT TO HAVE CLAIMS DECIDED BY A JUDGE OR JURY. Except as expressly stated in the Class Action Waiver, the arbitrator shall have exclusive authority to decide all issues related to the enforcement, applicability, scope, validity, and interpretation of this Arbitration Agreement, including but not limited to any unconscionability challenge. Notwithstanding this agreement to arbitrate, the Buyer and Seller may (in each party's sole discretion) elect to pursue Claims in small claims court on an individual basis only, rather than arbitrate, if the Claims fall within the jurisdiction of the applicable small claims court. This Sales Agreement evidences a transaction in interstate commerce. All issues relating to this Arbitration Agreement and Class Action Waiver will be determined pursuant to federal substantive law and the substantive and procedural provisions of the Federal Arbitration Act ("Act"), 9 U.S.C. §§ 1-16, or to the extent held applicable under federal substantive law, the law of the Governing State, without regard to conflicts of law. Buyer and Seller further agree that: (1) any dispute or claim arising out of or relating to this Sales Agreement will proceed solely on an individual, nonclass, non-representative basis; and (2) the parties expressly waive any right or ability to bring, assert, maintain, or participate as a class member in, a class action, representative action, or private attorney general action (collectively, "Class Action") in court, arbitration, or any other forum regarding any Claim, and expressly waive the right for anyone to do so on our behalf. NO CLAIM WILL BE ARBITRATED ON A CLASS ACTION BASIS. The Parties agree that the enforcement, applicability, scope, validity, and/or interpretation of this Class Action Waiver shall be decided by a court of competent jurisdiction and not by an arbitrator. If this Class Action Waiver is ruled unenforceable or is interpreted to not prevent a Class Action as to any particular Claim, then the Arbitration Agreement shall be null and void as to that Claim, which shall be resolved in a court of law (and not in arbitration) after the arbitration on the other claims has ended. The Parties agree that if an arbitrator renders a decision regarding the enforcement, applicability, scope, validity, and/or interpretation of this Class Action Waiver, or determines that a Class Action may proceed in arbitration, then: (1) the arbitrator has exceeded his powers, pursuant to §10(a)(4) of the FAA, by taking such action; (2) either party may seek immediate review of that decision by a court of competent jurisdiction; and (3) a court of competent jurisdiction shall apply a "de novo" standard of review of that decision if such standard of review is allowed by the common law or statutes of that state. The arbitration shall be administered by the American Arbitration Association ("AAA"). The arbitration shall be conducted pursuant to the AAA Commercial Arbitration Rules if the Buyer is a company or other commercial entity. The arbitration shall be conducted pursuant to the AAA Consumer Arbitration Rules if the Buyer is an individual whose purchase is intended for personal, family or household use. Information on AAA and a copy of the applicable Rules may be found at the following number and URL: American Arbitration Association, (800) 778-7879, www.adr.org. Each party will pay his/her/its own attorney's fees, as well as costs relating to proof and witnesses, regardless of who prevails, unless applicable law and/or the applicable Rules gives a party the right to recover any of those fees from the other party. The arbitrator(s) is not empowered to award consequential, incidental, treble, exemplary or punitive damages and each party hereby irrevocably waives any right to recover such damages with respect to any dispute resolved in arbitration. If a court determines that a party is making a statutory claim where such damages are provided for by the statute and cannot be waived, then that claim for statutory damages shall be resolved in court, rather than arbitration, and after the arbitration has ended, but only if the Arbitrator(s) have ruled in favor of that party on the liability of that statutory claim. If any portion of this Arbitration Agreement and Class Action Waiver is deemed invalid or unenforceable, all the remaining portions of this Arbitration Agreement and Class Action Waiver shall nevertheless remain valid and enforceable, except as provided in the Class Action Waiver. **CONSUMER OPT-OUT PROVISION.** An individual Buyer whose purchase is intended for personal, family, or household use ("Consumer Buyer") shall have the right to opt out of this Arbitration Agreement and Class Action Waiver by providing written notice of intention to do so within thirty (30) days of the date of this Sales Agreement to: LafargeHolcim Legal Department, 6211 Ann Arbor Road, Dundee, Michigan 48131, ATTN: "Arbitration/Class Action Waiver Opt Out." Consumer Buyer must include in the opt out notice: (a) Consumer Buyer's name and address; (b) the date of this Sales Agreement.

### 14. TERMINATION

In the event of a breach by Buyer, Seller may terminate the Sales Agreement upon giving ten days' written notice of termination. If the Sales Agreement is terminated by Seller because of Buyer's breach, Seller is entitled to reasonable reimbursement from Buyer for any labor, material or other expenses incurred in connection with the Sales Agreement, plus a reasonable amount for overhead.

### 15. EXCUSABLE DELAYS

Seller is not liable or responsible for delay or failure to perform any of Seller's obligations under the Sales Agreement occasioned by (i) any cause beyond its reasonable control, including, but not limited to, a labor dispute, industry disturbance, fires, unusually severe weather conditions, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, delay in transportation, governmental, regulatory or legal action, act of God, or (ii) by acts or omissions of Buyer, including, but not limited to, Buyer's failure to promptly comply with the terms of payment under the Sales Agreement ("Excusable Delays"). The date of delivery shall be extended for a period equal to the time lost by reason of any of the Excusable Delays.

**16. INDEMNIFICATION**

To the maximum extent allowed by law, Buyer shall defend and indemnify Seller and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Seller may incur or be obligated to pay as a result of (i) Buyer's negligence or Buyer's use, ownership, maintenance, transfer, transportation or disposal of the Products; (ii) any infringement or alleged infringement of the industrial and intellectual property rights of others arising from Buyer's plans, specifications (including Buyer's trademarks and brand names) or production of the Products ordered by Buyer; (iii) Buyer's violation or alleged violation of any federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices; or (iv) Buyer's breach of the Sales Agreement.

**17. ENTIRE AGREEMENT**

The Sales Agreement comprises the complete and final agreement between Seller and Buyer and supersedes all prior negotiations, proposals, representations, commitments, understandings or agreements between Seller and Buyer, either written or oral, on its subject. No other agreement, quotation or acknowledgment in any way purporting to modify any of the terms of the Sales Agreement is binding upon Seller unless made in writing and signed by Seller's authorized agent. The Sales Agreement may not be altered or modified except by written agreement of Seller and Buyer. Any other representations or statements (whether oral or written) made by any person, including employees or other agents of Seller, that are inconsistent with the Sales Agreement must be disregarded by Buyer, do not constitute warranties and are not binding upon Seller. If any model or sample was shown to Buyer, such model or sample was used merely to illustrate the general type and quality of goods and not to represent that the Products would necessarily conform to the model or sample.

**18. SUCCESSORS AND ASSIGNS**

The Sales Agreement binds and inures to the benefit of Buyer and Seller and their respective successors and permitted assigns. Buyer may not assign any interest in, nor delegate any obligation under the Sales Agreement, without Seller's prior written consent.

**19. GOVERNING LAW**

The validity, construction and performance of the Sales Agreement is governed by, and must be construed in accordance with, the law of the state of the transaction's point of sale (the "Governing State"), without regard to such state's conflicts of law provisions.

**20. JURISDICTION AND VENUE**

Buyer irrevocably submits and agrees to the jurisdiction of the state and federal courts of the Governing State. Any action, suit or proceeding related to, or in connection with, the Sales Agreement and, to the extent permitted by applicable law, Buyer waives and agrees not to assert as a defense in any such action, suit or proceeding any claim (i) that Buyer is not personally subject to the jurisdiction of the state and federal courts in the Governing State; (ii) that the venue of the action, suit or proceeding is improper; (iii) that the action, suit or proceeding is brought in an inconvenient forum; or (iv) that the subject matter of the Sales Agreement may not be enforced in or by the state or federal courts of the Governing State. Without prejudice to any other mode of service, Buyer consents to service of process relating to any such proceedings by personal or prepaid mailing (air mail if international) in registered or certified form a copy of the process to the Buyer at the address set forth in Section 21.

**21. WAIVER**

The waiver by Seller of any breach by Buyer of any provision of the Sales Agreement may not be construed to be either a waiver of the provision itself as to subsequent application or any other provision of the Sales Agreement.

**22. SEVERABILITY**

If any provision of the Sales Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Sales Agreement remain in full force and effect.

**23. NOTICES**

No notice or other communication under the Sales Agreement is sufficient to affect any rights, remedies or obligations of either party unless the notice or communication is in writing and (as elected by the party giving the notice) is (i) personally delivered, (ii) transmitted by facsimile (with a receipt acknowledgment), (iii) transmitted by electronic computer mail, (iv) transmitted by a recognized courier service, or (v) mailed (air mail if international) in registered or certified form, to the party to which notice or communication is being given at the following address: (a) if to Seller, at its address designated on the face of the Written Quotation; ATTN: SALES DEPARTMENT and (b) if to Buyer, at its address designated on the face of the Written Quotation. Notices or communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) on the date of transmission if delivered by facsimile, (iii) on the date of transmission if transmitted by electronic computer mail, (iv) one day after pickup by courier if delivered by courier or (v) five days after mailing if delivered by the postal service. Either party may change its address by providing notice to the other party.

**24. CONSTRUCTION**

The headings of the Sections in these Terms are provided for convenience only and may not be considered in the interpretation of the Sales Agreement. The parties agree that the provisions of the Sales Agreement may not be construed in favor of or against either party by reason of the extent to which a party or its professional advisors participated in the preparation of the Sales Agreement.

**25. SURVIVAL**

The terms of the Sales Agreement that by their nature are reasonably intended by the parties to survive the Sales Agreement's expiration or earlier termination, including, but not limited to, Sections 7, 8, 9, 10, 11, 12, 13, 16, 19, 20 and this Section 25 shall survive the expiration or termination of the Sales Agreement.

# STATE OF MAINE

## GENERAL TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES UNDER BUYER PURCHASE ORDERS (BPOs) AND MASTER AGREEMENTS (MAs)

- 1. DEFINITIONS:** The following definitions are applicable to these standard terms and conditions:
  - a. The term “Buyer” or “State” shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
  - b. The term “Department” or “DAFS” shall refer to the State of Maine Department of Administrative and Financial Services.
  - c. The term “Bureau” or “BGS” shall refer to the State of Maine Bureau of General Services.
  - d. The term “Division” shall refer to the State of Maine Division of Purchases.
  - e. The term “Contractor”, “Vendor”, or “Provider” shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
  - f. The term “Contract” or “Agreement” shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.
- 2. WARRANTY:** The Contractor warrants the following:
  - a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and
  - b. That all goods and services covered by this Contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and
  - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
  - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
  - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

**3. TAXES:** Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

**4. PACKING AND SHIPMENT:** Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest

transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**5. DELIVERY:** Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, the Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

**6. FORCE MAJEURE:** The State may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The State 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.

**7. INSPECTION:** All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Division of Purchases, at its option, may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.

**8. INVOICE:** The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars, must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.



**9. ALTERATIONS:** The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreements, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

**10. TERMINATION:** The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.

In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

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

**12. COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are

contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

**13. INTERPRETATION:** This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

**14. DISPUTES:** The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

**15. ASSIGNMENT:** None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.

**16. STATE HELD HARMLESS:** The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

**17. SOLICITATION:** The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

**18. WAIVER:** The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.

**19. MATERIAL SAFETY:** All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

**20. COMPETITION:** By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.

**21. INTEGRATION:** All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.

# State of Maine Waiver of Competitive Bidding Request Form

**Form Instructions:** Please provide the requested information in the white boxes below. This form is to precede all contract requests that are not the direct result of a competitive bid process.

<b>Requesting Department's Contract Administrator:</b>	Brian Burne	<b>Office/Division/Program of Contract Administrator:</b>	MaineDOT, Bureau of Maintenance and Operations		
<b>Est. Contract Amount:</b>	\$ 800,000	<b>Contract or RQS Number:</b>			
<b>Proposed Start Date:</b>	<b>April 1, 2019</b>	<b>Proposed End Date:</b>	December 1, 2020		
<b>Vendor/Provider Name, City, State</b>	Various Vendors, See Attached Spreadsheet				
<b>Short Description of Good or Service:</b>	Purchase of bituminous, cold and hot patch, asphalt, and concrete for the 2019/2020 construction season.				
<b>Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Procurement Services website for a period of seven consecutive calendar days.</b>		<b>To be completed by the Division of Procurement Services</b> Posting dates on Division of <b>Procurement Services</b> website: From: <u>4/1/2019</u> To: <u>4/7/2019</u>			
<b>Notice of Intent to Waive Competitive Bidding Number:</b>		NOI# 0420190396			
<b>1. Statutory Justification</b> State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification which applies to this specific request.					
A.	The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;				
B.	The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services;				
	<i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the Governor's "designee") sign and date on the right.</i>	<i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i> <b>Signature:</b>  <table style="width: 100%;"> <tr> <td style="width: 50%;"><b>Printed Name:</b></td> <td style="width: 50%;"><b>Date:</b></td> </tr> </table>		<b>Printed Name:</b>	<b>Date:</b>
<b>Printed Name:</b>	<b>Date:</b>				
C.	After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;				
D.	It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;				
E.	The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs; <i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Procurement Services "GOVCOOP" form, found here: <a href="http://www.maine.gov/purchases/info/forms/govcoop.doc">http://www.maine.gov/purchases/info/forms/govcoop.doc</a>.</i>				
F.	The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids;				
G.	The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.				
<b>X</b>	If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:		<b>MaineDOT Purview – Any willing and able</b>		



# State of Maine Waiver of Competitive Bidding Request Form

Please note that the following four points below (#2 through 5) all require a response.

## 2. Description of Specific Need

Please identify, and fully describe, the specific problem, requirement, or need the resulting non- competitive contract would address and which makes the goods or services necessary. Explain how the requesting Department determined that the goods or services are critical and/or essential to agency responsibilities or operations.

**Throughout the construction season, MaineDOT crews have the need to purchase hot asphalt, cold patch, and concrete products. Since these products must be placed within a limited amount of time, the location of the suppliers plant, in relation to the job site is a determining factor in which plant(s) may be used. This process establishes master agreements with all vendors that are willing to provide a list of products and pricing for each plant location. The selected vendor for any particular project will be based on the particular suitable product available, haul time, and pricing.**

## 3. Availability of other Public Resources

Please explain how the requesting Department concluded that sufficient staffing, resources, or expertise is not available within the State of Maine's government, or other governmental entities (local, other state, or federal agencies) external to the requesting Department, which would be able to address the identified need more efficiently and effectively than the identified vendor.

MaineDOT or other state agencies do not produce these products

## 4. Cost

Since a waiver of competitive bidding is being requested for this procurement, please explain how the requesting Department concluded the negotiated costs, fees, or rates are **fair and reasonable**.

We are receiving pricing from all vendors and those prices can be openly compared.

## 5. Future Competition

Please describe potential opportunities which may be available to foster competition for these goods or services in the future.

Competition in pricing is inherent in this process

Please note that only one of the two points below ("Uniqueness" or "Timeframe") requires a response. Requesting Departments are not required to respond to both points.

## State of Maine Waiver of Competitive Bidding Request Form

### 6. Uniqueness

Please explain if the goods or services required are unique to a specific vendor. Describe the unique qualifications, abilities, and/or expertise of the vendor and how those particular unique factors address the specific need identified above. If the vendor has unique equipment, facilities, or proprietary data, also explain the necessity of these particular unique assets.

Haul time is the most critical factor. Asphalt products must be above a certain temperature upon arriving on the job site. Concrete products must be placed before the concrete sets up in the truck.

### 7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)

Please explain if time is of the essence and an emergency exists which requires the immediate procurement of goods or services. Describe the nature of this emergency, provide the date by which the goods or services must be delivered, and explain how that date was determined and its significance (i.e. impact if delayed beyond this date). Also, provide information as to how it was determined this vendor is the best option to address this time-sensitive procurement.

**Signature of requesting  
Department's Commissioner  
or Chief Executive  
(or designee within the  
Commissioner's Office):**

*By signing below, I signify that my Department requests, and I approve of, this  
Waiver of Competitive Bidding.*



**Printed Name:**

Bruce A. Van Note

**Date:**

3/29/19



COMMODITY	VENDOR	CITY	STATE	TELE
ASPHALT	Aggregate Industries	Saugus	MA	617-590-2615
BITUMINOUS, Hot Mix Asphalt	All States Asphalt Inc	SUNDERLAND	MA	207-894-5040
BITUMINOUS, Cold Patch	C H Stevenson Inc	Wayne	ME	207-685-3600
CONCRETE	COLEMAN CONCRETE	Conway	NH	603-447-5936
Crafco Concrete Patch	Crafco Inc, DBA PAVING MAINTENANCE SUPPLY	PORTLAND	ME	207-822-9969
ASPHALT EMULSIFIED	Downeast Emulsions	Bangor	ME	207-947-8624
CONCRETE & BITUMINOUS	FR CARROLL	LIMERICK	ME	207-793-8615
CONCRETE	HALEY CONST INC	SANGERVILLE	ME	207-876-4002
BITUMINOUS	HARRY C CROOKER	TOPSHAM	ME	207-729-5511
BITUMINOUS	LANE CONSTR. CORP / EUROVIA	BANGOR	ME	207-945-0873
CONCRETE & BITUMINOUS	MATTINGLY PRODUCTS	ANSON	ME	207-635-2719
CONCRETE & BITUMINOUS	McQUADE (STEELSTONE)	HOULTON	ME	207-532-2675
CONCRETE	OWEN J FOLSOM INC	STILLWATER	ME	207-827-3319
BITUMINOUS	PIKE INDUSTRIES INC	HARTFORD	CT	207-782-2411
CONCRETE	R A CUMMINGS INC (Auburn Conc)	AUBURN	ME	207-777-7100
CONCRETE & BITUMINOUS	SARGENT MATERIALS	STILLWATER	ME	207-827-4435
BITUMINOUS	SHAW BROS CONST	GORHAM	ME	207-839-2552
BITUMINOUS Caribou Area	Solderberg CO INC	Caribou	ME	207-498-6300
BITUMINOUS	STATE PAVING AGGREGATE LLC	FARMINGDALE	ME	207-582-7283
CONCRETE	STATE SAND & GRAVEL	BELFAST	ME	207-338-4070
BITUMINOUS	TROMBLEY IND	LIMESTONE	ME	207-328-4503
CONCRETE	TROMBLEY RED-MIX INC	PRESQUE ISLE	ME	207-328-4503
BITUMINOUS	Vaughn Thibodeau II Inc	BANGOR	ME	207-974-2011