**State of Maine**

**ARCHITECT / ENGINEER AGREEMENT**

**Standard DVEM Supplement**

**Consulting Services Agreements**

This Agreement amends and supplements the Core Consulting Services Agreement or Comprehensive Scope Consulting Services Agreement by and between the ***Maine Department of Defense, Veterans and Emergency Services*** hereinafter called the ***Owner*** and ***insert company name of Architect or Engineer firm*** hereinafter called the ***Consultant.***

BGS Project No.: ***insert BGS-designated number (not the PIP number) or "none"***

DVEM Project No.:

For the following Project: ***brief name of project*** at ***facility name***, ***municipality***, Maine.

* *Revisions to the Agreement are as follows:*

*Where the standard terms for phases of a project are shown on BGS contract forms they shall have an equivalent meaning for DVEM projects as follows:*

|  |  |  |
| --- | --- | --- |
| **.1** | Schematic Design Documents | Type A services |
| **.2** | Design Development Documents | Type B services |
| **.3** | Construction Documents | Type B services |
| **.4** | Construction Procurement | Type B services |
| **.5** | Construction Contract Administration | Type C services |

* *Amend Article 13 Attachments by adding this document as* ***Attachment F****.*

1. **American Recovery and Reinvestment Act**
   1. For projects funded with American Recovery and Reinvestment Act (ARRA) monies, the parties to this Agreement shall abide by and fulfill the applicable requirements of the ARRA, including, but not limited to, the Buy American criteria, federal wage rates, ARRA specific reporting requirements.
2. **Federal Requirements**
   1. Work performed under this contract is incident to the implementation of a Federal program with the State. Accordingly, this State contract shall be governed by, and construed according to below listed Federal law(s) as they may affect the rights, remedies, and obligations of the United States. Federal agencies are permitted to require changes, remedies, changed conditions, access to records retention, suspension of work, and other clauses required by the Office of Procurement Policy.
   2. Administrative, contractual or legal remedies in instances where Consultants violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
   3. Termination for cause and for convenience by the grantee (State of Maine) including the manner by which it will be effected and the basis for settlement [All contracts in excess of $10,000].
   4. Notice of awarding agency requirements and regulations pertaining to reporting.
   5. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under this contract.
   6. Awarding agency requirements pertaining to copyrights and rights in data.
   7. Access by the grantee, the subgrantee, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
   8. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
3. **Equal Opportunity**
   1. The Consultant shall comply with Executive Order 11246 of September 24, 1965 entitled “Equal Opportunity,” as amended by Executive Order 11375 of October 13, 1967 and as supplemented by in Department of Labor Regulations [41 CFR Part 60]. [All contracts in excess of $10,000 by grantees and their contractor or subgrantees].
4. **Copeland “Anti-kickback” Act**
   1. The Consultant shall comply with the provisions of the Copeland “Anti-kickback” Act [18 U.S.C. 874] as supplemented in Department of Labor Regulations [29 CFR Part 3]. [All contracts for construction or repair.]
5. **Davis-Bacon Act**
   1. The Consultant shall comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by U.S. Department of Labor Regulations (29 CFR Part 5) -when applicable to the project. All rulings and interpretations of the Davis-Bacon Acts contained in 29 CFR Part 5 are incorporated by reference in applicable contracts. This provision applies to all contracts excess of $2,000 when required by Federal program grant legislation.
   2. The Consultant shall include the appropriate Davis-Bacon Wage Rate in the bidding documents -when applicable to the project. When not applicable, a State of Maine Wage determination may be substituted. In cases where the Davis-Bacon wage determination is applicable, the State Wage Rate will not be used.
6. **Contract Work Hours**
   1. The Consultant shall comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act [40 U.S.C. 327-330] as supplemented by Department of Labor Regulations [29 CFR Part 5]. [Construction contracts in excess of $2,000, and in excess of $2,500 dollars for other contracts which involve the employment of mechanics or laborers.]
7. **Environmental Protection**
   1. Clean Air Act. The Consultant shall comply with all applicable standards, orders, or requirements issued under Sections 114 and 306 of the Clean Air Act [42 U.S.C 18579(h)]. [Contracts, subcontracts, and subgrants of amounts in excess of $100,000.]
   2. Clean Water Act. The Consultant shall comply with all applicable standards, orders, or requirements issued under section 508 of the Clean Water Act [33 U.S.C. 1368], Executive Order 11738, Environmental Protection Agency regulations [40 CFR Part 15], and section 308 of the Federal Water Pollution Control Act (33U.S.C. 1318), that relate generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder. [Contracts, subcontracts, and subgrants of amounts in excess of $100,000.]
   3. Related Environmental Laws. The Consultant shall comply with all applicable standards, orders, or requirements issued under the Resource Conservation and Recovery Act (RCRA); the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA); the National Environmental Policy Act (NEPA); and any applicable Federal, Codes or Local environmental regulation.
   4. Violating Facilities. The Consultant shall insure that no facility used in their performance under this contract is listed on the Environmental Protection Agency (EPA) list of violating facilities pursuant to 40 CFR Part 15 without the concurrence of state. The Consultant/Vendor shall notify State of the receipt of any communication from EPA indicating that a facility to be or being used in their performance under this contract is under consideration for listing on the EPA list of violating facilities.
8. **Energy Policy and Conservation Act**
   1. The Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act [Pub Law 94-163].
9. **Nondiscrimination**
   1. The Consultant shall ensure that no person is denied benefits of, or otherwise be subjected to discrimination in connection with the Consultant’s performance under this agreement, on the grounds of race, religion, color, national origin, sex and handicap. Accordingly, and to the extent applicable, the Consultant/Vendor covenants and agrees to comply with the following:
      1. Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), and DOD regulations 32 CFR Part 300) issued thereunder;
      2. Executive Order 11246 and Department of Labor regulations issued thereunder (41 CFR Part 60);
      3. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and DOD regulations issued thereunder (32 CFR Part 56); and,
      4. The Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.) and regulations issued thereunder (45 CFR Part 90).
10. **Lobbying**
    1. The Consultant will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions; the awarding of any Federal contract; the making of any federal grant; the making of any federal loan; the entering into any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement.
    2. The Interim Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of section 319 of Public Law 101-121 (31 U.S.C., Art 1352) is incorporated by reference.
11. **Drug Free Work Place**
    1. The Consultant will comply with the provisions of the drug-free Work Place Act of 1988 (Public Law 100-690, title V, subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free workplace.
    2. The Final Rule, Government-wide Requirements for Drug-Free Workplace (Grants), issued by the Office of Management and budget and the department of Defense (32 CFR Part 28, Subpart f) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Consultant/Vendor covenants and agrees to comply with all the provisions thereof, including any amendments to the Final Rule that may hereafter be issued.
12. **Use of United States Flag Vessels and Carriers**
    1. The Consultant agrees to use privately-owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) of any equipment, materials, or commodities that are both (1) procured, contracted for, or otherwise obtained with funds made available by State under this contract, and (2) transported by ocean vessel, to the extent such vessels are available at fair and reasonable rates.
    2. The Consultant shall furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 12.1 above to both State and to the division of National Cargo, Office of Market Development, U.S. Maritime Administration, Washington, D.C. 20590.
    3. The Consultant agrees to comply in all contracts issued pursuant to this to contract, and all such provisions inserted in all subcontracts issued pursuant to this contract, where the contract or subcontract is for $100,000 or more and where there is a possibility of ocean transportation of procured equipment or materials.
    4. The Consultant covenants and agrees that travel supported by U.S. Government funds under this agreement shall use U.S. flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981 amendment to Comptroller General Decision B138942.
    5. The Consultant agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7 (b).
13. **Debarment and Suspension**
    1. The Consultant shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension”.
    2. The Final Rule, Government wide Debarment and Suspension (Nonprocurement), issued by the office of management and budget and the Department of Defense (32 CFR Part 25) to implement the provisions of executive order 12549, “Debarment and Suspension” is incorporated by reference and the Consultant/vendor covenants and agrees to comply with all the provisions thereof, including any amendments to the final rule that may hereafter be issued.
14. **Buy American Act**
    1. The Consultant will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EC and NAFTA end products and Construction materials are exempted from application of the Buy American Act.
15. **Uniform Relocation Assistance and Real Property Acquisition Policies**
    1. The Consultant/Vendor covenants and agrees that he/she will comply with the provisions of the uniform relocation assistance and real property acquisition policies act of 1970 (42 U.S.C. 4601 et seq.) and regulations issued thereunder (49 CFR Part 24).
16. **Specification Requirements**
    1. Specifications shall be written in the Master Format 2016. Provide a copy of all Documents in Microsoft Word release 2013, before request for final payment is sent to Owner.
17. **Drawing Requirements**
    1. In addition to providing hard copies, the Consultant shall provide all Drawings in Adobe PDFs and AutoCAD Release 2017 format.
    2. AutoCAD drawings shall follow the MEARNG A/E/C Standards package provided by MEARNG Project Manager. Any additions or modifications must be approved by the MEARNG Project Manager.
    3. Drawings shall be delivered as stand-alone without X-references. If the Drawing originally had X-references, *Bind* them using the *Insert* option and do not explode inserted block.
18. **System for Award Management and Data Universal Numbering Requirements**
    1. The Grantee covenants and agrees to comply with the System for Award Management (SAM) and Data Universal Numbering System (DUNS) requirements as indicated below
       1. Requirements for SAM. You as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this Agreement or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
       2. Requirements for DUNS numbers. If you are authorized to make subawards under this Agreement, you:
          1. Must notify potential subrecipients that no entity (see definition in paragraph 3 (c) of this Agreement term) may receive a subaward from you unless the entity has provided its DUNS number to you; and
          2. May not make a subaward to and entity unless the entity has provided its DUNS number to you.
          3. Definitions. For the purposes of this Agreement:
             1. SAM means the official U.S. Government system that consolidated the capabilities of CCR and EPLS. There is no fee to register in SAM. Entities may register at no cost at [www.sam.gov](http://www.sam.gov). Additional information about registration procedures, updating your recipient account, searching records, as well as user guides and helpful hints may be found at the SAM website.

If you had an active record in CCR, you have an active record in SAM. You do not need to do anything in SAM at this time, unless a change in your business circumstances requires updates to your Entity record(s) in order for you to be paid or receive an award or you need to renew your Entity(ies) prior to its expiration. SAM will send notifications to the registered user via email 60, 30, and 15 days prior to expiration of the Entity. To update or renew your Entity record(s) in SAM you will need to create a SAM User Account and link it to your migrated Entity records. You do not need a user account to search for registered entities in SAM by typing the DUNS number or business name into the search box.

* + - * 1. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the internet (currently at http://fedgov.dnb.com/webform).
        2. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, Subpart C:

A Governmental organization, which is a State, local Government, or Indian Tribe;

A foreign public entity;

A domestic or foreign nonprofit organization;

A domestic or foreign for-profit organization;

A Federal Agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

* + - 1. Subaward:
         1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this Agreement and that you as the recipient award to an eligible subrecipient.
         2. The term does not include your procurement of property and services needed to carry out the project or program.
         3. A subaward may be provided through any legal Agreement, including an Agreement that you consider a contract.
      2. Subrecipient means an entity that:
         1. Receives a subaward from you under this Agreement; and is accountable to you for the use of the Federal funds provided by the subawards.

1. **Reporting Subawards and Executive Compensation**
   1. The Grantee covenants and agrees to comply with the Reporting Subawards and Executive Compensation requirements indicated below:
      1. Reporting of first tier subawards.
         1. Applicability. Unless you are exempt as provided in paragraph 20.1.2.4 of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph 20.1.2.5 of this award term).
         2. Where and when to report.
            1. You must report each obligating action described in paragraph 20.1.1.1 of this award term to http://www.fsrs.gov.
            2. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
         3. What to report. You must report the information about each obligating action that the submission instructions posted at [http//www.fsrs.gov](http://www.fsrs.gov/) specify.
      2. Reporting Total Compensation of Recipient Executives.
         1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if-
            1. the total Federal funding authorized to date under this award is $25,000 or more;
            2. in the preceding fiscal year, you received:

80 percent or more of your gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

* + - * 1. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm).
      1. Where and when to report. You must report executive total compensation described in paragraph 20.1.2.1 of this award term:
         1. As part of your registration profile at <http://www.ccr.gov>.
         2. By the end of the month following the month in which this award is made, and annually thereafter.
    1. Reporting of Total Compensation of Subrecipient Executives.
       1. Applicability and what to report. Unless you are exempt as provided in paragraph 20.1.2.4 of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if-
          1. in the subrecipient's preceding fiscal year, the subrecipient received-

80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

* + - * 1. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execom.htm).
      1. Where and when to report. You must report subrecipient executive total compensation described in paragraph 20.1.2.1 of this award term:
         1. To the recipient.
         2. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
    1. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

* + - 1. Subawards, and
      2. The total compensation of the five most highly compensated executives of any subrecipient.
    1. Definitions. For purposes of this award term:
       1. Entity means all of the following, as defined in 2 CFR Part 200:
          1. A Governmental organization, which is a State, local government, or Indian Tribe;
          2. A foreign public entity;
          3. A domestic or foreign nonprofit organization;
          4. A domestic or foreign for-profit organization;
          5. A Federal Agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
       2. Executive means officers, managing partners, or any other employees in management positions.
       3. Subaward:
          1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
          2. The term does not include your procurement of property and services needed to carry out the project or program.
          3. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
       4. Subrecipient means an entity that:
          1. Receives a subaward from you (the recipient) under this award; and
          2. Is accountable to you for the use of the Federal funds provided by the subaward.
       5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
          1. Salary and bonus.
          2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
          3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
          4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
          5. Above-market earnings on deferred compensation which is not tax-qualified.
          6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee. perquisites or property) for the executive exceeds $10,000.