

**SERVICE AND CONSTRUCTION  
ON CALL  
PUMPING AND DRAINAGE SERVICES  
REGION 5  
2020**

**Updated 4/28/2017**

# **STATE PROJECT**

**MAINTENANCE & OPERATIONS**

## BIDDING INSTRUCTIONS

1. Use pen and ink to complete all paper Bids. Signatures shall be original. Stamped and copied signatures will not be accepted.
2. As a minimum, the following must be received prior to the time of Bid opening: a) a copy of the Notice to Contractors, b) the completed Acknowledgement of Bid Amendments form, c) the completed Schedule of Items or Schedule of Items in Appendix A, d) two copies of the completed and signed Contract Agreement for Transportation Related Maintenance Work form, e) the completed Contractor Information Sheet, and f) any other certifications or Bid requirements listed in the Bid Documents as due by Bid opening.
3. Include prices for all items in the Schedule of Items. Or all items in section bid or all items to be bid
4. All Bid Packages which are mailed or sent express, shall be provided in double (one envelope inside the other) envelopes, for security and other reasons. The *Inner Envelope* shall have the following information provided on it:
  - Bid Enclosed - Do Not Open
  - WIN or Title: On Call Pumping and Drainage Services
  - Towns, Regions or Location: Region 5
  - 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
- WIN or Title: On Call Pumping and Drainage Services
- Towns, Regions or Location: Region 5
- Date of Bid Opening:
- Name of Contractor:

**If a paper Bid is to be sent express, please take note that overnight services do not always arrive in time and that delivery may be affected by carrier volume, weather and other factors.** Packages using express services should be sent directly to the DOT Headquarters Building, Maine Department of Transportation, 24 Child Street, Augusta. "FedEx First Overnight" delivery is suggested as the package is delivered directly to the DOT Headquarters Building, Mailroom, 24 Child Street, Augusta. Allow extra days for U.S. Postal Service Express Mail which has proven not to be reliable and sometimes does not deliver directly to the DOT Headquarters Building but instead delivers to the State of Maine Mail Distribution Center.

If a paper bid is to be mailed, the mailing address is Maine Department of Transportation, 16 State House Station, Augusta, ME 04333-0016. Allow additional working days for this mail to pass through the state mail system in addition to the US Postal Service as this mail is not delivered directly to the Department of Transportation.

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. <http://www.maine.gov/mdot/contact>. Hand-carried Bids may be in one envelope, and should be marked with the following information:

- Bid Enclosed: Do Not Open
- WIN or Title: On Call Pumping and Drainage Services
- Towns, Regions or Location: Region 5
- Date of Bid Opening:
- Name of Contractor:

Bids are not accepted by email or FAX.

*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 Specifications, November 2014 Edition.*

# 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 plan holders 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 fill out the on-line plan holder registration form and provide an email address to the MDOT Contracts mailbox at: [MDOT.contracts@maine.gov](mailto: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 submitting questions concerning specific Contracts that have been advertised for Bid, include additional numbered pages as required. RFI’s may be faxed to 207-624-3431, submitted electronically through the Departments web page of advertised projects by selecting the RFI tab on the project details page or via e-mail to [RFI-Contracts.MDOT@maine.gov](mailto:RFI-Contracts.MDOT@maine.gov).

These are the only allowable mechanisms 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.

When submitting RFIs by Email please follow the same guidelines as stated on the “Request for Information” form and include the word “RFI” along with the Project name and Identification number in the subject line.



### **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

**Contractor Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Vendor Customer Number:** \_\_\_\_\_

**Contact Information (Primary Contact):** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Cell Phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Mailing Address (if different from above):** \_\_\_\_\_

\_\_\_\_\_

**The company has the following organizational structure:**

Sole Proprietorship

Limited Liability Company

Partnership

Joint Venture

Corporation

Other: \_\_\_\_\_

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title Printed)

## 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 **On Call Pumping and Drainage Services Region 5**” 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 April 29, 2020 and at that time and place publicly opened and read. Bids will be accepted from all bidders. The lowest responsive bidder must demonstrate successful completion of projects of similar size and scope to be considered for the award of this contract.

Description: On Call Pumping and Drainage Services

Location: Region 5 – Various locations in the Counties of Washington, Penobscot and Aroostook Maine.

Outline of Work: On Call Pumping and Drainage Services and other incidental work.

**Contracts may be awarded to each responsive, responsible bidder that meets the requirements and specifications.**

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, bid results and an electronic form for RFI submittal. For Project-specific information fax all questions to **Gail Iler** at (207) 624-3431, use electronic RFI form or email questions to [RFI-Contracts.MDOT@maine.gov](mailto:RFI-Contracts.MDOT@maine.gov), project name and identification number should be in the subject line. 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 Documents, specifications and bid forms can be viewed and obtained digitally at no cost 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 Office in Presque Isle. 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, November 2014 Edition”, price \$10 [\$15 by mail], and Standard Details, November 2014 Edition, price \$10 [\$15 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 8, 2020



---

BRIAN BURNE  
HIGHWAY MAINTENANCE ENGINEER  
BUREAU OF MAINTENANCE & OPERATIONS

**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)

CTM: \_\_\_\_\_

TEDOCS# \_\_\_\_\_

CSN \_\_\_\_\_

**MAINE DEPARTMENT OF TRANSPORTATION**  
**CONTRACT AGREEMENT**  
**TRANSPORTATION RELATED MAINTENANCE WORK**

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 Transportation Related  
Maintenance Work

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

**A. The Work.**

The Contractor agrees to complete all work described in Appendix A – Special Provision - Specifications of Work to be Performed, and under the terms of the Contract for **On Call Pumping and Drainage Services in Region 5**, in the counties of **Aroostook, Penobscot and Washington**, Maine.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools, supplies, facilities, permanent materials and temporary materials and services required to perform the Work including quality control, 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.**

This contract commences when executed and expires on **May 31, 2021** unless extended under the terms of this contract. At the Department’s discretion and upon mutual agreement with the Contractor, the Contract may be extended for time and money, under

all the terms of this contract, at bid prices for agreed periods of time up to (3) additional 1 year periods.

**C. Price.**

The original Contract amount is Sixty Thousand Dollars and no cents (\$60,000.00). The Contract amount will be determined by the actual work authorized and performed and the prices included in Appendix A. The Maine DOT does not guarantee the use of any or all of the Contract amount.

**D. Contract.**

This Contract, which may be amended, modified, or supplemented in writing only, consists of the State of Maine, Department of Transportation, Standard Specifications, November 2014 Edition as updated through advertisement, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices. 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 Contract are still complete and accurate as of the date of this contract.
2. The Contractor knows of no legal, contractual, or financial impediment that prevents Contractor from 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. Contract Agreement.**

The undersigned, having carefully examined the site of work, scope of work, State of Maine, Department of Transportation, Standard Specifications, November 2014 Edition, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices contained herein, hereby agrees to supply all the services, materials, tools, equipment and labor to complete the whole of the work in strict accordance with the terms and conditions of this Contract at the prices agreed to in Appendix A.

The Contractor agrees to perform the work required at the prices specified above in accordance with the terms of this Contract and to provide the appropriate insurance.

Contractor also agrees:

First: Contractor 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 upon basis as provided in the contract documents.

Second: Contractor 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.

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

Fourth: The Contractor hereby certifies, to the best of its knowledge and belief that: the Contractor has not, either directly or indirectly, entered into any agreement, 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.

Fifth: Contractor further agrees to provide insurance as required by this Contract.

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.  
documents referenced herein.

This award consummates the Contract, and the

**MAINE DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Brian T. Burne  
Highway Maintenance Engineer  
Bureau of Maintenance & Operations

CTM: \_\_\_\_\_

TEDOCS# \_\_\_\_\_

CSN \_\_\_\_\_

**MAINE DEPARTMENT OF TRANSPORTATION**  
**CONTRACT AGREEMENT**  
**TRANSPORTATION RELATED MAINTENANCE WORK**

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 Transportation Related  
Maintenance Work

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

**A. The Work.**

The Contractor agrees to complete all work described in Appendix A – Special Provision - Specifications of Work to be Performed, and under the terms of the Contract for **On Call Pumping and Drainage Services in Region 5**, in the counties of **Aroostook, Penobscot and Washington**, Maine.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools, supplies, facilities, permanent materials and temporary materials and services required to perform the Work including quality control, 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.**

This contract commences when executed and expires on **May 31, 2021** unless extended under the terms of this contract. At the Department’s discretion and upon mutual agreement with the Contractor, the Contract may be extended for time and money, under

all the terms of this contract, at bid prices for agreed periods of time up to (3) additional 1 year periods.

**C. Price.**

The original Contract amount is Sixty Thousand Dollars and no cents (\$60,000.00). The Contract amount will be determined by the actual work authorized and performed and the prices included in Appendix A. The Maine DOT does not guarantee the use of any or all of the Contract amount.

**D. Contract.**

This Contract, which may be amended, modified, or supplemented in writing only, consists of the State of Maine, Department of Transportation, Standard Specifications, November 2014 Edition as updated through advertisement, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices. 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 Contract are still complete and accurate as of the date of this contract.
2. The Contractor knows of no legal, contractual, or financial impediment that prevents Contractor from 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. Contract Agreement.**

The undersigned, having carefully examined the site of work, scope of work, State of Maine, Department of Transportation, Standard Specifications, November 2014 Edition, Division 100 - General Conditions, Special Provisions, Contract Agreement and Appendices contained herein, hereby agrees to supply all the services, materials, tools, equipment and labor to complete the whole of the work in strict accordance with the terms and conditions of this Contract at the prices agreed to in Appendix A.

The Contractor agrees to perform the work required at the prices specified above in accordance with the terms of this Contract and to provide the appropriate insurance.

Contractor also agrees:

First: Contractor 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 upon basis as provided in the contract documents.

Second: Contractor 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.

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

Fourth: The Contractor hereby certifies, to the best of its knowledge and belief that: the Contractor has not, either directly or indirectly, entered into any agreement, 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.

Fifth: Contractor further agrees to provide insurance as required by this Contract.

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.  
documents referenced herein.

This award consummates the Contract, and the

**MAINE DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Brian T. Burne  
Highway Maintenance Engineer  
Bureau of Maintenance & Operations

CTM: \_\_\_\_\_

**MAINE DEPARTMENT OF TRANSPORTATION**  
**CONTRACT AGREEMENT**  
**TRANSPORTATION RELATED MAINTENANCE WORK**

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 **ABC COMPANY** (“Contractor”) a corporation or other legal entity organized under the laws of the State of ME, with its principal place of business located at 123 ANY STREET, TOWN, ST 00000, with a mailing address of PO BOX XXX, TOWN, ST 00000, and a telephone number of (123)456-7890.

The Vendor Customer Number of the Contractor is VC000000000.

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 Transportation Related Maintenance Services

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 described in Appendix A – Special Provision - Specifications of Work to be Performed, and under the terms of the Contract for **Crushing Services**, in **Regions 2, 3 & 4**, Maine.

The Contractor shall be responsible for furnishing all supervision, labor, equipment, tools supplies, facilities, permanent materials and temporary materials and services required to perform the Work including quality control, 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. This contract expires on **December 31, 2015**.

**C. Price.**

The quantities given in the Appendix A of the Bid Package will be used as the basis for determining the original Contract amount and that the amount of this offer is **Place bid here in alphabetical form such as One hundred, two dollars and ten cents.**

**\$ Repeat bid here in numerical terms such as \$102.10**. The Maine DOT does not guarantee the use of any or all of the Contract amount.

The Maine DOT does not guarantee the use of any or all of the Contract amount.

**D. Contract.**

This Contract, which may be amended, modified, or supplemented in writing only, consists of the State of Maine, Department of Transportation, Standard Specifications, November 2014 Edition, Sections 101, 102, 103 and 111, Special Provisions, Contract Agreement and Appendices. 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 Contract are still complete and accurate as of the date of this contract.
2. The Contractor knows of no legal, contractual, or financial impediment that prevents Contractor from 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. Agreement.**

The undersigned, having carefully examined the site of work, scope of work, State of Maine, Department of Transportation, Standard Specifications, November 2014 Edition, Sections 101, 102, 103 and 111, Special Provisions, Contract Agreement and Appendices contained herein, hereby agrees to supply all the services, materials, tools, equipment and labor to complete the whole of the work in strict accordance with the terms and conditions of this Contract at the prices agreed to in Appendix A.

The Contractor agrees to perform the work required at the prices specified above in accordance with the terms of this Contract and to provide the appropriate insurance.

Contractor also agrees:

First: Contractor 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 upon basis as provided in the contract documents.

Second: Contractor 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.

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

Fourth: The Contractor hereby certifies, to the best of its knowledge and belief that: the Contractor has not, either directly or indirectly, entered into any agreement, 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.

*Date Here*

\_\_\_\_\_  
Date

CONTRACTOR  
*Sign Here*

\_\_\_\_\_  
(Signature of Legally Authorized Representative  
of the Contractor)

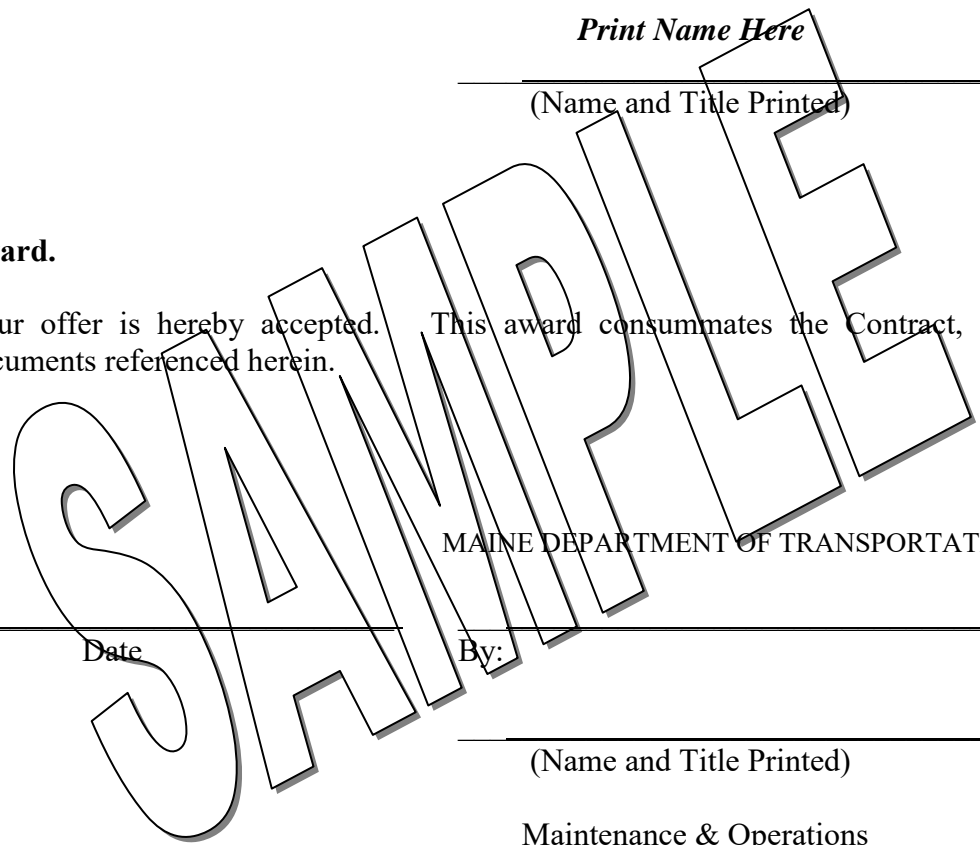
*Print Name Here*

\_\_\_\_\_  
(Name and Title Printed)

**G. Award.**

Your offer is hereby accepted.  
documents referenced herein.

This award consummates the Contract, and the



MAINE DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
(Name and Title Printed)

Maintenance & Operations



APPENDIX A  
SPECIAL PROVISION  
SPECIFICATIONS OF WORK TO BE PERFORMED

Contractor \_\_\_\_\_

**SCHEDULE OF ITEMS**

- The Bid must be Delivered to the precise location and by the precise time as set forth in the Notice to Contractors or any applicable Bid Amendment.
- Required unit prices, lump sum prices and/or bid amounts must be provided and legible.
- Do not make handwritten changes to the bid documents

**Bidders are not required to bid all items.**

**Contractor is required to bid Mobilization related to Items Bid.**

| Item Description  | Units | Unit Price<br>Area 1 | Unit Price<br>Area 2 | Unit Price<br>Area 3 |
|---|-------|----------------------|----------------------|----------------------|
| Vacuuming Highway Drainage Catch Basins - vacuum truck & operator             | Hour  | \$                   | \$                   | \$                   |
| Vacuuming Highway Drainage Catch Basins - laborer                             | Hour  | \$                   | \$                   | \$                   |
| Vacuuming Highway Drainage Catch Basins - vacuum truck, operator and flaggers | Hour  | \$                   | \$                   | \$                   |
| Pumping Floor Drains  | Hour  | \$                   | \$                   | \$                   |
| Pumping Holding Tanks   | Hour  | \$                   | \$                   | \$                   |
| Pumping Maintenance Building/Lot Catch Basins                                 | Hour  | \$                   | \$                   | \$                   |
| Thawing Culverts  | Hour  | \$                   | \$                   | \$                   |
| Removal of Culvert Obstructions   | Hour  | \$                   | \$                   | \$                   |
| Removal of Culvert Obstructions, including flaggers                           | Hour  | \$                   | \$                   | \$                   |
| Fiber Optic Camera Work in Drainage Systems                                   | Hour  | \$                   | \$                   | \$                   |
| Fiber Optic Camera Work in Drainage Systems, including flaggers               | Hour  | \$                   | \$                   | \$                   |

Region 5  
 On Call Pumping and Drainage Services  
 March 25, 2020

|   |      |    |    |    |
|---|------|----|----|----|
| Mobilization, Highway Drainage CB                 | Hour | \$ | \$ | \$ |
| Mobilization, Pumping Floor Drains                | Hour | \$ | \$ | \$ |
| Mobilization, Pumping Holding Tanks               | Hour | \$ | \$ | \$ |
| Mobilization, Pumping Maintenance Building/Lot CB | Hour | \$ | \$ | \$ |
| Mobilization, Thawing Culverts                    | Hour | \$ | \$ | \$ |
| Mobilization, Removing Culvert Obstructions       | Hour | \$ | \$ | \$ |
| Mobilization, Fiber Optic Camera Work             | Hour | \$ | \$ | \$ |

- Paper bids must be signed in pen and ink. Signatures shall be original. Stamped and copied signatures will not be accepted.

\_\_\_\_\_

*Signature*

\_\_\_\_\_

*Date*

\_\_\_\_\_

*(Print Respondent's Name and Title)*

Contract Administrator The contract administrator for this contract will be:

Name: Jimmie Thibodeau  
Title: Transportation Operations Manager  
Address: MaineDOT Region 5  
41 Rice Street, Presque Isle, ME 04769  
(207) 764-2200

Contractor Requirements The Contractor must be able to be notified and the necessary personnel and equipment mobilized and be on site within 72 hours or less when MaineDOT has an emergency.

The Contractor must have a minimum of five years experience performing each type of work that they expect to perform. The Contractor must have the appropriate transport license, if applicable.

Scope of Work The Contractor shall provide vacuuming of highway drainage catch basins and culverts, and transport of collected material to approved appropriate facility, provide pumping services for various building floor drains, building/lot catch basins and holding tanks at Maine Department of Transportation (MaineDOT) and disposal of collected material at MaineDOT specified facilities. The Contractor shall provide thawing for the Departments need of moving water, removal of culvert obstructions such as those caused by wild animals and perform fiber optic camera work in drainage systems as needed in the Region 5, Northern Maine area.

Work will be scheduled by the MaineDOT and will be performed during allowable work times as specified in the contract or as agreed upon for a assignment.

The Northern Region is broken into 3 geographic areas.

Area 1 - Northern Aroostook Area- Include building assets assigned to crews in Fort Kent, Madawaska, Van Buren, Caribou and all out lying towns in this area

Area 2 – Central Aroostook Area – Include building assets assigned to crews in Presque Isle, Ashland, Oakfield, Houlton, New Limerick, and all out lying towns in this area.

Area 3 - Southern Area- Include building assets assigned to crews in Topsfield, Macwahoc, Medway, Sherman, Crystal and all out lying towns in this area.

Work covered by this proposal consists of providing all labor and furnishing all equipment, supplies and other applicable tools to perform the services stated above. Disposal fees will be paid for by MaineDOT directly to the disposal site vendor.

The Contractor is responsible to respond in a timely manner to requests to provide services. Should the response not meet the Department’s requirements, the Department may obtain services from another Contractor.

The Contractor may or may not provide traffic control at the job site, it will be determined on each individual assignment.

Equipment The Contractor shall be required to provide the following equipment appropriate for the work they expect to perform.

- Vacuum truck must have a minimum capacity of 1,000 Gallons of fresh water and 2,000 Gallon holding tank for waste.
- Vacuum trucks used to pump DOT floor drain holding tanks must have a capacity that equals or exceeds the capacity of the tank to be pumped unless otherwise approved by the Department.
- A minimum push and pull fiber-optic camera capable of looking into drainage systems with pan and tilt.
- Industrial Steamer system used for cleaning and thawing with a minimum 1500 PSI, BTU 180,000 and 3GPM.
- Attachment for truck that will be used to cut obstructions with either a saw type blade or the high pressure water driven cutter.

Vacuumping of Highway Drainage Catch Basins

Vacuumping of Highway Drainage Catch Basins - vacuum truck & operator

work will be measured by the actual hours the service is performed to the nearest quarter hour and accepted quantities will be paid for at the unit price per hour which price shall include full compensation for vacuum truck and operator and all equipment, labor, materials and incidentals required.

If a laborer is required in addition to the vacuum truck and operator, Vacuumping of Highway Drainage Catch Basins - laborer will be measured by the actual hours the service is performed to the nearest quarter hour and accepted quantities will be paid for at the unit price per hour which price shall include full compensation for laborer and service truck, if necessary and incidentals required.

If flaggers are required to be furnished by the Contractor in addition to the vacuum truck and operator, Vacuumping of Highway Drainage Catch Basins - vacuum truck, operator and flaggers will be measured by the actual hours the service is performed to the nearest quarter hour and accepted quantities will be paid for at the unit price per hour which price shall include full compensation for vacuum truck, operator, all flaggers, and all equipment, labor, materials and incidentals required.

Transport of collected materials to the disposal site will be measured for payment. Disposal fees will be paid for by MaineDOT directly to the disposal site vendor. If the Work includes servicing multiple locations in one day, the time spent moving between locations will be measured for payment.

Pumping Floor Drains

Pumping Floor Drains will be measured by the actual hours the service is performed to the nearest quarter hour and accepted quantities will be paid for at the unit price per hour which price shall include full compensation for all equipment, labor, materials and incidentals required.

Transport of collected materials to the disposal site will be measured for payment. Disposal fees will be paid for by MaineDOT directly to the disposal site vendor. If the Work includes servicing multiple locations in one day, the time spent moving between locations will be measured for payment.

Pumping Holding Tanks

Pumping Holding Tanks will be measured by the actual hours the service is performed to the nearest quarter hour and accepted quantities will be paid for at the unit price per hour which price shall include full compensation for all equipment, labor, materials and incidentals required.

Transport of collected materials to the disposal site will be measured for payment. Disposal fees will be paid for by MaineDOT directly to the disposal site vendor. If the Work includes servicing multiple locations in one day, the time spent moving between locations will be measured for payment.

Thawing Culverts

Cleaning of culverts, thawing for the purpose of moving water will be measured by the actual hours the service is performed to the nearest quarter hour and accepted quantities will be paid for at the unit price per hour which price shall include full compensation for all equipment, labor, materials and incidentals required. If the Work includes servicing multiple locations in one day, the time spent moving between locations will be measured for payment.

Removal of Culvert Obstructions

Cleaning of culverts, Removal of Culvert Obstructions and Fiber Optic Camera Work in Drainage Systems will be measured by the actual hours the service is performed to the nearest quarter hour and accepted quantities will be paid for at the unit price per hour which price shall include full compensation for all equipment, labor, materials and incidentals required. If the Work includes servicing multiple locations in one day, the time spent moving between locations will be measured for payment.

If flaggers are required to be furnished by the Contractor in order to remove culvert obstructions, or perform fiber optic camera work, Removal of Culvert Obstructions, including flaggers and Fiber Optic Camera Work in Drainage Systems, including flaggers will be measured by the actual hours the service is performed to the nearest quarter hour and accepted quantities will be paid for at the unit price per hour which price shall include full compensation for all equipment, labor, materials and incidentals required. If the Work includes servicing multiple locations in one day, the time spent moving between locations will be measured for payment.

Mobilization

The Contractor will be paid mobilization by the hour for the time it takes to travel to and from the work site. The hours will be measured from the company's closest base of operations to the project site. The total amount of hours will rounded off to the nearest ¼ hour. This may involve work at multiple sites within the specified area on the same day. The Contractor shall be paid for mobilization by the hour for time they travel to or from the project site. If the Work includes servicing multiple locations in one day, the time spent moving between locations will not be measured for payment. The accepted quantity will be paid for at the contract unit price for each respective item. Such price shall be full compensation for preparatory work and including, but not limited to, the movement of personnel, equipment and supplies to the job site and all other incidentals to complete the Work.

Incidentals

Flaggers will include all required flaggers and equipment necessary to flag.

A service truck will not be measured for payment, nor mobilization, but will be considered incidental to related items.

The Contractor must complete service reports stating quantity of material removed, date, time of arrival, time of departure and location. The service reports must be signed by a Department representative and left with the Department.

**Basis of Award and Assignments**

Multiple contracts may be awarded. Assignments will be awarded using the criteria stated below based on the individual unit prices given in the "Schedule of Items",

The Department may award contracts to all responsive, responsible bidders that have the ability to respond in a timely manner and are experienced/qualified and meet "Contractor requirements".

The dollar amount of this Contract does not guarantee that the Department will assign Work for any or all of the total amount.

The Department and each responsive Bidder may enter into a Contract that will obligate each Contractor to perform work at prices listed by the bidder in the Schedule of Items depending upon the needs of the Department according to the following terms. Work will be assigned under these contracts according to the following process: The Department will estimate the Contractor with the lowest cost for the particular Work (the "Assignment") based on the individual unit bid prices for the total quantity of estimated work in that Assignment. The Department will offer to assign the Work to the Contractor with the lowest cost for the particular Work (the "Assignment"), and that Contractor will have first option to perform work. Contractors shall have two business days to accept an Assignment unless otherwise stated in the offer to assign work. Contractors are not required to accept work. If

Contractors do not respond to requests for assignments in the allotted time, The Department may proceed as if the Contractor has declined the assignment. If this Contractor is unable to accept the Assignment, respond in the necessary and appropriate time for the Assignment, or complete the Assignment in the allotted time, then the Contract Administrator will contact the firm that is estimated to have the next lowest assignment cost to see if that Contractor will accept the Assignment and subsequent Contractors in ascending order of the amount of their bids, until a Contractor accepts the Assignment. The Department will estimate for a particular Assignment based on the individual unit bid prices for the total quantity of estimated work in that Assignment. The Department and the Contractor shall mutually agree to quantities and schedules prior to the Contractor beginning the Assignment.

Upon mutual agreement, an Assignment Letter stating the nature of the Work and any time constraints will then be sent to the successful contractor. The Work described in this letter will become part of the Contract.

In the case an emergency arises for which the response time does not allow for the preparation of a bid solicitation, that the Department has determined the work required can best be addressed using one of these contracts, the Department will contact one or more of the Contractors. The Department will select a Contractor to call based on an evaluation of rates, experience and equipment, willingness to perform work in the applicable county, geographic proximity, response time, consideration of Maine business enterprise, and determination of what is in the best interest of the State. The Contractor shall have a half hour to accept or decline. The Contractor shall be onsite in less than three hours unless the Department has directed otherwise.

### **Measurement and Payment**

The Contractor will be paid by the hour for each hour work is performed at the contract unit price per hour, overtime will be paid at the contract unit price per hour at time and 1/2, Sundays and Holidays will be paid at the contract unit price per hour at double time.

No expenses, mileage, meals or phones will be paid.

Hourly Work will be measured as straight time when the work is performed Monday through Friday from 7 AM to 4 PM.

When MaineDOT authorizes overtime work, Hourly Work will be measured as overtime when work hours occur on Saturday or extends after 4 PM or before 7AM Monday through Friday.

When MaineDOT authorizes Sunday and Holiday work, Hourly Work will be measured as Sundays and Holiday when the work is performed on Sunday, or a holiday as defined in Appendix B.

Service truck or vehicle not paid separately, but will be considered incidental to the contract items.

All Travel time including traveling to and from the service location and picking up any parts and materials will be considered incidental.

For the purpose of billing the Contractor will begin billing their time from the time they arrive on a specific job site until the Contractor has left the job site. The total number of hours will be rounded off to the nearest 1/2 hour.

Expenses, mileage, meals, phones, pagers, equipment and the service truck will not be paid for separately but will be considered incidental. Mileage and fuel surcharges will not be measured for payment. There will be no reimbursement for overnight stays.

The Department will pay based upon prices bid and the invoices provided and approved by the Department. The Contractor shall submit an itemized bill to the Contract Administrator for services at the completion of the assignment and acceptance of the finished material.

**Default and Termination of Assignment** The Contractor is in Default of the Assignment if the Contractor:

- A. Fails to adhere to obligations of the Assignment or Contractor Requirements.
- B. Fails to answer or reply to the Department within ½ hour of emergency notification of work.
- C. Fails to commence work or be onsite within 4 hours after accepting an emergency assignment.
- D. Fails to provide sufficient labor, Equipment, or Materials to assure the timely Completion of the Assignment.
- E. After work on assignment has commenced, fails to continuously work on assignment without Department approval.
- F. Performs Defective Work neglects or refuses to repair or correct Unacceptable Work when directed by the Department.
- G. Continues to perform Work after the Department directs that Work be stopped.

If Default and Termination of Assignment occurs, the Department may give written Notice of Default and Termination of Assignment to the Contractor. Failure to give Notice of Default is in no way a waiver by the Department of any provision of the Contract. In this event, the Department may award the Assignment to another Contractor for the Completion of the Work, or use such other methods as in the opinion of the Department are required for the Completion of the intent of the Assignment in an acceptable and timely manner.

Upon receiving a 2<sup>nd</sup> Default and Termination of Assignment, the Department may, in addition, consider this 2<sup>nd</sup> notification as a Default and Termination of Contract 2<sup>nd</sup> Incident written warning.

**Default and Termination of Contract** The Contractor is in Default of the Contract if the Contractor:

- A. Fails to provide labor, Equipment or Materials specified in the Assignment or Contract,
- B. Fails to perform the Work with sufficient labor, Equipment, or Materials to assure the timely Completion of the Assignment,
- C. Fails to perform Work when specified in the Assignment,
- D. Performs Defective Work neglects or refuses to repair or correct Unacceptable Work when directed by the Department,
- E. Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency that could affect the Work in any way,
- F. Discontinues the Work without the Department approval,
- G. Continues to perform Work after the Department directs that Work be stopped,
- H. In any other manner, fails to perform the Work in Substantial Conformity with any material provision of the Contract.

Failure by the Contractor to perform the Work when required or to substantially meet other contractual requirements will result in the following actions:

1<sup>st</sup> Incident: If the Contractor does not take corrective action for a non-emergency Assignment within 2 days upon receipt of verbal warning, for an emergency Assignment within 3 hours after notification the Department will issue a written warning.

2<sup>nd</sup> Incident: The Department will issue a written warning.

3<sup>rd</sup> Incident: The Department may (A) give written Notice of Default to the Contractor and immediately terminate the Contract by written Notice of Termination, or (B) take prosecution of the Work away from the Contractor without violating the Contract (C) for if an emergency will count as 1<sup>st</sup> incident and no time to cure.

If Default occurs, the Department may give written Notice of Default to the Contractor. Failure to give Notice of Default is in no way a waiver by the Department of any provision of the Contract. In this event, the Department may enter into an Agreement with another entity for the Completion of the Work, or use such other methods as in the opinion of the Department are required for the Completion of the intent of the Assignment in an acceptable and timely manner. The Department will pay for all Accepted items of Work as of the date of Termination at agreed upon prices.

SPECIAL PROVISION SECTION 101  
CONTRACT INTERPRETATION

101.2 Definitions Add the following:

“MaineDOT - The Department of Transportation of the State of Maine, as established by 23 MRSA §4205 et seq. for the administration of Highway, Bridge, and other public Works; acting through the Commissioner and his/her duly authorized representatives.”

101.2 Definitions Contract Completion Date Delete the entire section and replace with the following:

“The required completion date of all Work pursuant to the Contract, except warranty work. The Contract Completion Date is usually on the Contract form.”

101.2 Definitions Contract Execution Delete the entire section and replace with the following:

“Execution of the Contract by the Commissioner or their authorized agent by signing the Contract form which action, upon written notification to the Contractor, forms a Contract as provided in Section 103.8 - Execution of Contract by Department.”

101.2 Definitions Contractor Delete the entire section and replace with the following:

“After the Department has executed the Contract by cosigning the Contract form provided in the Bid Documents, previously signed by the successful bidder, the Successful Bidder becomes the Contractor. The Contractor will be the single point of responsibility for all Contract obligations to the Department. The Contractor shall be an independent Contractor with respect to the Department and shall not be an employee, agent, or representative of the Department. Alternatively, “Contractor,” with a lower case “c,” may mean a firm engaged in construction Work.”

SPECIAL PROVISION SECTION 102  
BIDDING

102.6 Bid Guaranty Delete the entire section 102.6.

102.7.1 Location and Time Delete the entire section and replace with the following:

“The Bidder must Deliver its Bid and Bid Guaranty in a sealed envelope to the exact location and before the precise time (as determined by the Department) specified in the Notice to Contractors or any applicable Bid Amendment. The sealed envelope must be labeled with the Bidder's name, the Project or Work location, WIN (if applicable) and/or Title, and the words “Bid Enclosed”. 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 form, and any other Certifications or Bid Requirements listed in the Bid Book. For a related provision, see Section 102.11 - "Bid Responsiveness".

102.11.1 Non-curable Bid Defects E. Delete the entire section 102.11.1 E and replace with the following:

- (1) "The unit price and bid amount is not provided if the item quantity is not one or lump sum, or
- (2) the unit price, bid amount or lump sum price is not provided if the item quantity is one or lump sum or
- (3) the lump sum contract price is not provided or
- (4) the unit price, bid amount or lump sum price is illegible as determined by the Department."

102.11.2 Curable Bid Defects A. Delete the section and replace with the following:

"The Bidder only signs one of the Contract forms or the Bidder does not sign the Contract form but does sign the Schedule of Items."

102.11.2 Curable Bid Defects Add the following after 102.11.2 E:

"F. If a submitted bid contains any additional conditions or alternate bidding language, the Bidder may cure the defect by removing all conditions and alternate language or the Department will reject the bid as non-responsive."

SPECIAL PROVISION SECTION 103  
AWARD AND CONTRACTING

103.1 Analysis of Bids - Amend this Section by adding the following:

103.1a Tie Bids - In the case where two responsive bids from responsible bidders are equal monetarily, the Department shall determine the apparent low bidder by flipping a coin. The coin shall have sides clearly marked as heads and tails. The Contractor whose first letter in their official company name that comes first in the alphabet shall be heads.

If there are three bids, each bidder will flip the coin and the bidder with the odd toss will be the winner. (i.e. if the results are two heads and a tails, the bidder who had tails is the winner). For a three way tie, bidders may flip their own coin or have the Contracts Engineer flip for them.

The coin flip will occur at the next bid opening by the Contracts and Specifications Engineer or a designee. The tied bidders may attend the coin flip in person or watch on the internet as they choose."

103.1.1 Unit Prices Govern Add the following at the end of the paragraph:

“If the item quantity is one and either a unit price or bid amount is not provided, the unit price or bid amount omitted shall be determined mathematically by the Department.”

103.3.2 Notice of Determination Revise this section by removing sections A – M and replacing with the following A - K:

- (A) Default(s) or termination(s) on past or current Contracts.
- (B) Failure on past or current Contracts to pay or settle all bills for labor, Materials or services; to comply with directives of the Department, to fulfill warranty obligations, or to provide Closeout Documentation.
- (C) "Below Standard" performance as determined from the Department's Contractor's Performance Rating process.
- (D) Insufficient bonding capability or Inability of the Contractor to obtain or retain performance or Payment Bonds meeting MDOT requirements, or a pattern of unsupported Claims.
- (E) Failure to accept an Award of a Contract made by the Department.
- (F) Failure to provide information requested by the Department in a timely manner.
- (G) Debarment, suspension or a denial of prequalification or 'award of contract' by any federal, State, or local governmental procurement agency or the Contractor's Agreement to refrain from Bidding as part of the settlement with any such agencies or any of the reasons contained in Section 102.02 of the "Rules Regarding Debarment of Contractors", Maine Department of Transportation Register 17-229, Chapter 102 (October 2, 1985).
- (H) Failure to demonstrate ability to do work to the satisfaction and at the sole discretion of the Department.
- (I) Number of personnel working directly for the Contractor with applicable knowledge and experience is significantly below industry standards.
- (J) Safety Record, Environmental Record, Civil Rights or Equal Opportunity Record significantly below industry standards.
  
- (K) Serious misconduct that the Department reasonably determines will substantially and adversely affect the cost, quality or timeliness of Work, or the safety of Workers or the public, any deceptive, evasive or fraudulent statements or omissions contained in the

Application, made or omitted at any interview or hearing, or otherwise made to or omitted from the Department; or any other substantial deficiencies in experience or conduct that are clearly below industry standards and that clearly demonstrate in the sole discretion of the Department, that the Contractor is “Not Qualified”.

103.5 Award Conditions Replace the first paragraph with the following:

“The Apparent Successful Bidder must provide and/or perform all of the items listed in this Section 103.5 within 14 Days of Receipt of the Notice of Intent to Award. Unless indicated otherwise, all items must be Delivered to the Department’s Bureau of Maintenance & Operations.”

103.5.1 Performance and Payment Bonds Delete the entire section 103.5.1.

103.5.4 Execution of Contract By Bidder Delete the entire section and replace with the following:

“The properly completed and signed Contract form provided with the Bid constitutes the Bidder’s offer. Once the Department has received the bonds (if applicable), insurance, and any other pre-award items required, the Department will sign and execute the Contract. The point of Contract execution is when the Contractor receives written notice that the contract has been signed by the Department and executed.”

Application, made or omitted at any interview or hearing, or otherwise made to or omitted from the Department; or any other substantial deficiencies in experience or conduct that are clearly below industry standards and that clearly demonstrate in the sole discretion of the Department, that the Contractor is “Not Qualified”.

103.5 Award Conditions Replace the first paragraph with the following:

“The Apparent Successful Bidder must provide and/or perform all of the items listed in this Section 103.5 within 14 Days of Receipt of the Notice of Intent to Award. Unless indicated otherwise, all items must be Delivered to the Department’s Bureau of Maintenance & Operations.”

103.5.1 Performance and Payment Bonds Delete the entire section 103.5.1.

103.5.4 Execution of Contract By Bidder Delete the entire section and replace with the following:

“The properly completed and signed Contract form provided with the Bid constitutes the Bidder’s offer. Once the Department has received the bonds (if applicable), insurance, and any other pre-award items required, the Department will sign and execute the Contract. The point of Contract execution is when the Contractor receives written notice that the contract has been signed by the Department and executed.”

SPECIAL PROVISIONS  
FOR STATE FUNDED TRANSPORTATION RELATED MAINTENANCE WORK

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 Work 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 shall have the right to alter the nature and extent of the Work as provided in the Contract, 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 scope, compensation, time, quality, or other Contract requirements shall be by written Contract Modification, signed by both parties.

6. **SUBCONTRACTS** 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 subcontractor. 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 Work 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 of the Department. 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 Contractor hereby certifies that it did not, directly or indirectly, enter into any agreement, participate in any collusion or otherwise take 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 Work Records available for inspection and must provide MaineDOT with copies at all reasonable times without cost or liability to MaineDOT.

13. **TERMINATION AND FAILURE TO PERFORM** The Department may terminate this Contract with or without cause upon 7 days written notice. Termination of the contract shall not relieve the Contractor of its contractual responsibilities for the work completed prior to termination (including warranty obligations), nor shall it relieve the Surety of its obligation for claims arising from the Work or the Contract. The Department will pay for all accepted items of Work completed prior to the date of Termination at agreed upon prices.

If for any reason the Contractor is unable to complete the work in an acceptable manner the Department may give written Notice of Default to the Contractor, which will outline the required remedies. Any

delay by the Department in providing a written Notice of Default shall in no way constitute a waiver by the Department of any provision of the Contract. If the Department determines the default is not curable, the notice of default shall also include the date of termination. Termination of the Contract or portion thereof shall not relieve the Contractor of its Contractual responsibilities for the Work completed.

In addition the Department may enter into an Agreement with another entity for the Completion of the Work, or use such other methods as in the opinion of the Department are required for the Completion of the intent of the Contract in an acceptable and timely manner.

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

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 Agreement, Transportation Related Maintenance Work
- Bid Amendments (most recent to least recent)
- Appendix A – Special Provision Specifications of Work to be Performed or Request for Proposals
- Appendix B – Special Provisions for State Funded Transportation Related Maintenance Work
- Appendix C – Special Provisions
- Any remaining appendices in alphabetical order.
- Any remaining Special Provisions
- The Department's Notice to Contractors and any amendments

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, Holidays and state government closure days, unless expressly specified otherwise in this Contract. 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 as needed to perform the Work in Conformance within the Contract Time. The Contractor shall provide all safeguards, safety devices, and protective Equipment and take all other action that is necessary to continuously and effectively protect the safety and health of all persons from hazards related to the Work.

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 employee shall not be employed again in any portion of the Work without prior approval from the Contract Administrator. 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 Contract Administrator 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. ENVIRONMENTAL REQUIREMENTS

Temporary Soil Erosion and Water Pollution Control If the Work involves excavation or placement of soil, the Contractor shall stabilize the area on a daily basis and comply with all applicable federal, state, and local laws, rules, regulations, permit requirements and conditions.

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.

27. **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. 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.

28. **WARRANTY PROVISIONS** The Contractor unconditionally warrants and guarantees that the Work will be free from warranty defects for one year or as otherwise specified in this Contract. If the Department discovers any warranty defects during the warranty period, the Contractor agrees to perform all remedial work, at no additional cost or liability to the Department. Remedial Work will be completed within two weeks unless a more immediate response is required for safety or convenience, as determined by 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.

29. **PAYMENT** The Contractor shall submit an itemized invoice to the Department for Work 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 require 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. Damage to a third party,
- E. Claims filed or reasonable evidence indicating probable filing of claims,
- F. Failure of the Contractor to make payments to Subcontractors or for Materials or labor,
- G. Regulatory non-compliance or enforcement,
- H. Failure to submit Documentation
- I. All other causes that the Department reasonably determines negatively affect the State's interest.

30. **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.

31. **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.

32. **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 Contract Administrator 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.

33. **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.