

STIPEND AGREEMENT

Project Location: Bangor Lump Sum Stipend Amount: \$125,000

State WIN #: 026095.00 and 027176.00/

Federal Project #: 2609500 and 2717600

Appropriation #: 9095

Employer ID #: _____

This Agreement is entered into by and between the State of Maine, acting through and by its Department of Transportation (hereinafter referred to as the “Department”), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, with a mailing address of 16 State House Station, Augusta, Maine 04333-0016, and _____, a corporation or other legal entity (hereinafter referred to as the “Proposer”), with its principal place of business located at _____.

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

Appendix A - General Conditions for Stipend Agreement

The Department and the Proposer, in consideration of the mutual promises set forth in this Agreement, hereby agree as follows:

- A. The Scope of Work.** Lump Sum Stipend Payment for Design-Build Project - Project Location Bangor, WIN 026095.00 and 027176.00 in response to a Request for Proposals dated November 6, 2024 pursuant to Section 103.5.2 – Payment of Stipend of the Design-Build General Conditions.
- B. Time.** The unsuccessful Proposer shall request the stipend payment within the timeframe identified within the Design-Build Best Value General Conditions, Section 103.5.2, Payment of Stipend.
- C. Stipend Payment.** The mutually agreed upon Lump Sum Stipend Payment is: **\$125,000.**

IN WITNESS WHEREOF, the Proposer and the Department hereby execute two (2) originals of this Agreement and thereby bind themselves to all covenants, terms, and obligations contained in this Agreement.

PROPOSERS NAME HERE

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
(Please Type Name and Title Here)

By: _____
(Please Type Name and Title Here)

(Date Signed)

(Date Signed)

GENERAL CONDITIONS FOR STIPEND AGREEMENT

1. **BENEFITS AND DEDUCTIONS.** If the Proposer is an individual, the Proposer 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 Proposer 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 Proposer for his/her Income Tax records.
2. **INDEPENDENT CAPACITY.** In the performance of this Agreement, the parties hereto agree that the Proposer, and any agents and employees of the Proposer 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 Department's Project Manager shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under this Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Proposer, subject to the approval of the Commissioner of the Department.
4. **AGREEMENT ADMINISTRATOR.** All correspondence and related submissions from the Proposer shall be submitted to:

Name: George M. A. MacDougall, PE
Title: Contract Representative
Address: 16 State House Station
Maine Department of Transportation – Bridge Program
Augusta, ME 04333-0016

who is designated as the Department's Project Manager for this Agreement, except where specified otherwise in this Agreement.

5. **STATE EMPLOYEES NOT TO BENEFIT.** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement 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 Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly due to his employment by or financial interest in the Proposer or any affiliate of the Proposer, without the written consent of the Department.
6. **WARRANTY.** The Proposer warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Proposer, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
7. **ACCESS TO RECORDS.** The Proposer shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Proposer shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.
8. **GOVERNMENTAL REQUIREMENTS.** The Proposer warrants and represents that it has complied with all governmental ordinances, laws and regulations.
9. **GOVERNING LAW.** This Agreement 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 Agreement

shall be brought in State of Maine administrative or judicial forums except that federally funded Agreements may also be adjudicated in federal, administrative or judicial forums. Listed below are some of the Federal and State controlling laws to be observed. This list is provided for reference only and should not be considered inclusive.

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

10. **STATE HELD HARMLESS.** The Proposer agrees to indemnify, defend and save 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 Agreement by the Proposer, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by the Proposer, any subcontractor, material man, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as “person”) providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (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 Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement, 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 Proposer taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

11. **NOTICE OF CLAIMS.** The Proposer shall give the Department’s Project Manager immediate notice in writing of any legal action or suit filed related in any way to this Agreement or which may affect the performance of duties under this Agreement, and prompt notice of any claim made against the Proposer by any subcontractor which may result in litigation related in any way to this Agreement or which may affect the performance of duties under this Agreement.

12. **NON-APPROPRIATION.** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State or Federal Government, if funds are de-appropriated, or if the State or Federal Government does not receive legal authority to expend funds from the Maine State Legislature or Maine courts (or Congress in Federal Courts in the case of the Federal Government), then the State or Federal Government is not obligated to make payment under this Agreement.

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

14. **INTEGRATION.** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of the scope of work and these general conditions.

15. **ENTIRE AGREEMENT.** This document contains the entire agreement 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 this Agreement 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 this Agreement, or to exercise an option or election under this Agreement, 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 this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under this Agreement or at law.