

# **MAINE TURNPIKE AUTHORITY**



## **ENGINEERING CONSULTANT GENERAL CONDITIONS**

**Version 5**

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## TABLE OF CONTENTS

	<u>Page Number</u>
<u>Agreement/Contract Documents</u>	<u>3</u>
<u>Priority of Conflicting Contract Documents</u>	<u>3</u>
<u>General Provisions</u>	<u>3</u>
<u>Funding Sources</u>	<u>4</u>
<u>Standards</u>	<u>4-5</u>
<u>Owner Responsibilities</u>	<u>5</u>
<u>Consultant Responsibilities</u>	<u>6-10</u>
<u>Equal Opportunity &amp; Civil Rights</u>	<u>11</u>
<u>Sexual Harassment</u>	<u>11</u>
<u>Compensation and Payments</u>	<u>12-16</u>
<u>Amounts Due the Authority</u>	<u>17</u>
<u>Indemnity and Insurance</u>	<u>18-20</u>
<u>Safety and Incident Prevention</u>	<u>20</u>
<u>Default, Termination or Suspension</u>	<u>21-22</u>
<u>Claims and Disputes</u>	<u>23</u>
<u>Miscellaneous Provisions</u>	<u>24-26</u>
<u>Definitions / Abbreviations</u>	<u>27-29</u>
<u>Appendix A – Task Order Template</u>	<u>30</u>
<u>Appendix B – Potential Change Notice</u>	<u>31</u>
<u>Appendix C – Invoice Template</u>	<u>32-33</u>

## **Agreement/Contract Documents**

The Agreement between the Consultant and the Authority consists of these General Provisions, the executed Contract Form between the parties, any Task/Project Orders issued by the Authority to the Consultant under that Contract Form, and any other requirements or documents specifically incorporated by a Contract Document. Collectively these documents shall be referred to herein as “the Contract” or “the Contract Documents.” References to “the Contract” or “the Contract Documents” herein shall refer to the Contract Documents taken as a collective whole unless otherwise specified or another interpretation is compelled by the context.

Consultant shall furnish or provide the services assigned to it under Task/Project Orders and in each respective Final Scope of Work thereto for the applicable Project or Program in accordance with these Contract Documents.

## **Priority of Conflicting Contract Documents**

The Parties agree that the following components of the Contract Documents shall control in the following descending order of priority:

Task/Project Order Amendments (including the Final Scope of Work applicable thereto)

Task/Project Order (including the Final Scope of Work applicable thereto)

Contract Modifications

Contract Form

Engineering Consultant General Conditions

Nothing in the Consultant’s proposal can supersede the Engineering Consultant General Conditions, if they conflict, except for specific changes agreed to in the body of the Task/Project Order form. It is the Consultant’s responsibility to ensure that any provisions that are in conflict with the Engineering Consultant General Conditions are agreed to and documented in the body of the Task/Project Order form.

If the Consultant discovers any error, omissions, conflict, or discrepancy related to the Consultant Contract Documents applicable to a specific Task/Project Order thereunder that may significantly affect the cost, quality, conformity, or timeliness of Consultant’s services, the Consultant must notify the Authority upon discovery or becoming aware thereof.

## **General Provisions**

### **Representation by Authority**

By executing a Contract with a Consultant, the Authority’s signatory represents that, to the best of their knowledge, the Consultant (or any of its representatives) has not been required, as a condition of obtaining or carrying out such Contract(s) to:

- a. employ or retain any firm or person, or
- b. pay or agree to pay any firm, person or organization any fee, contribution, donation, or consideration of any kind.

### **Representations by Consultant**

By signing a Contract with the Authority, the signatory represents that they are a duly authorized representative of the Consultant firm and represents that neither he/she nor the Consultant firm has (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the Consultant) to solicit or secure the Contract and related contracts; (b) agreed, as an expressed or implied condition for obtaining such Contract, to employ or retain the services of any firm or person in connection with carrying out the

Contract, or; (c) paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for the Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Contract and any related contracts thereto.

By signing a Contract, the Consultant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental entity.
- b. Have not within three years of submitting the proposal for such Contract(s) been convicted of or had a civil judgment rendered against them for:
  - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract,
  - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in subsections i. and ii. of this subparagraph b of this certification; and
  - iv. have not within a 3-year period preceding this application or proposal had one or more federal, state or local government contracts or transactions terminated for cause or default.

### **Funding Sources**

The Contract is funded by toll or bond revenues, and not by any state or federal moneys, unless expressly stated otherwise.

### **Standards**

All work, to the extent applicable, shall conform to the appropriate, related, current editions of the following publications. Deviations from any referenced design standards must be documented by the Consultant and authorized by the Authority.

Maine Department of Transportation (as modified by the Maine Turnpike Authority where applicable)

- a. MaineDOT Standard Details and Supplemental Standard Details (MTA has additional Standard Details that will be incorporated/provided when applicable)
- b. MaineDOT Standard Specifications with Interim Specifications amended by MTA General provisions and supplemented by a library of special provisions.
- c. MTA Project Development Process
- d. MaineDOT CADD Standards with MTA Border Sheets or Auto CADD equivalent. Consultant to provide with MTA approval.
- e. MaineDOT Bridge Design Manual
- f. MaineDOT Highway Design Guide
- g. MTA Survey Manual or Consultant to provide their own manual for review.
- h. MTA Right-of-way Policies and Procedures
- i. MaineDOT Utilities Policies and Procedures (where applicable)
- j. MaineDOT Construction Manual – (where applicable)
- k. MTA uses English System of Measurement
- l. MaineDOT Best Management Practices for Erosion and Sediment Control - Changes noted in General Provisions, special provisions, and MTA standard details
- m. MaineDOT Format for Bridge Soils Reports
- n. MaineDOT Format for Highway Soils Reports
- o. MTA Electronic Exchange of Data Standard

## AASHTO

- a. A Policy on Geometric Design of Highways and Streets
- b. LRFD Bridge Design Standards with Interim Specifications
- c. Standard Specifications for Highway Bridges with Interim Specifications
- d. Other Applicable AASHTO Standards and Guide Specifications

## Highway Research Board

- a. Highway Capacity Manual, SR 209

## U.S. Department of Transportation

- a. Manual on Uniform Traffic Control Devices for Streets and Highways
- b. Roadside Design Guide

## **Owner Responsibilities**

### **No Personal Liability**

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

### **Notice to Proceed**

Following the execution of a Contract, the Consultant will be given a Notice to Proceed via a Task/Project Order (see Appendix A). The Task/Project Order shall contain the applicable Final Scope of Work mutually agreed upon between the parties and applicable thereto and will be sent to the Consultant who may then commence the services represented thereby. In the case of a Task/Project Order for “on-call” services where the Consultant has a generic scope of work and the amount of effort required and specific tasks required are not defined in the task/project order, written authorization to proceed from the Authority representative for that discipline must be received before work can commence.

The Consultant will not be compensated for any services performed before the fully-executed Task/Project Order is returned to the Authority.

### **Advise Consultant of Services of Other Consultants**

The Authority shall advise the Consultant of the identity and scope of services of any independent third-party consultants employed by the Authority providing services on the Project. The Authority Engineering Program Manager or designee will be responsible for coordinating the efforts of Engineering Consultants under contract with the Authority.

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## **Consultant Responsibilities**

### **Project Coordination and Management**

The Consultant will coordinate its activities with assigned Authority personnel throughout the course of a Contract. Early on, the Consultant will establish a means of coordinating and reporting its activities with the designated project liaison to ensure an expeditious exchange of information. The Consultant shall be responsible for providing an action plan to remedy and address any non-conforming or unacceptable services submitted to the Authority.

The Consultant's Managing Principal and Project Manager of any Task/Project Order shall not be removed from the project without prior written approval from the Authority's Chief Operations Officer or his representative. The Consultant shall also present for Authority approval the appropriate person to be assigned for the position vacated.

The Authority requests the Consultant to utilize recycled paper and print on both sides whenever feasible and appropriate with submission of progress prints, draft reports and documents, and for all correspondence related to the Consultant Contract or task/project order.

### **Requirements for Registration of Designers**

All plans, specifications, estimates, and data prepared by the Consultant shall be signed and sealed with a State of Maine seal by the Consultant's Licensed Professional Engineer, Landscape Architect, Geologist, Site Evaluator, Surveyor, Soil Scientist, Master Plumber or other professional, as applicable under Maine State Law and as interpreted by the Authority.

### **Project Records**

The Consultant shall keep full, true and accurate records conforming to generally accepted accounting principles, of all cost incurred, time and expenses billed and compensation received under this Contract. The Consultant shall make all such materials available at all reasonable times and shall furnish copies thereof, if requested, at reasonable cost to the Authority, during the Contract period and for three years from the date of final payment under the Contract. The Authority shall have the right on an annual basis through its accountants or representatives to examine and audit all such records, including but not limited to internal consultant time sheets and expense statements, and all other documents that may be reasonably necessary from an auditors perspective to provide supporting data for such records, and the Consultant shall make all such records readily available for such annual examination without charge to the Authority.

The Consultant shall maintain a correspondence file which shall contain documentation of project progress as well as dates of all meetings, plan submissions, agreements, etc. with agencies or persons other than Consultant's employees. The Consultant shall keep records in such form as may be easily audited and in accordance with the Authority instruction.

### **Invoice Documentation**

Records of Consultant's costs pertinent to Consultant's compensation under a Contract shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify Consultant's charges or progress of scope, as applicable, and upon Authority's timely written request, copies of such records shall be made available to the Authority at its Portland, Maine office. The employee's salary record shall show time spent on the services for all Contracts, except those entered into under a lump-sum based fee structure.

### **Ownership of Documents (Deliverables/Intellectual Property)**

All project deliverables and work product shall be considered work for hire and the Authority shall possess sole ownership rights therein. Consultant agrees to execute any assignment of rights which the Authority may reasonably deem necessary to ensure the transfer of said ownership. Consultant shall retain an irrevocable, perpetual license to use said deliverables and work product for its own internal use and for the creation of other work, including work for other clients; provided that this material shall be treated as confidential and that no deliverable or work product created under this Contract shall be provided or disclosed to any third party without the Authority's express written permission, which shall not be unreasonably withheld. All project deliverables and work product, whether printed or electronic, shall, upon completion of the work or as requested, be filed with the Authority in a format and media acceptable to the Authority.

If the Authority alters the Consultant's deliverables or work product or uses such work for purposes other than its original intended use, the Consultant shall not be held liable for any claim resulting from such use.

All original data furnished to the Consultant by the Authority shall be returned to the Authority in good order.

### **Accuracy**

The Consultant is responsible for reviewing all reports, data and information provided by the Authority and notifying the Authority of any error, omissions, conflict or discrepancy.

The Consultant shall be responsible for all services rendered, and shall use reasonable professional care to achieve the professional quality, technical accuracy, and the coordination of all documents, designs, drawings, specifications, and other services furnished by the Consultant and Sub-consultant(s) under a Contract. The Authority shall not be responsible for discovering deficiencies in the Deliverables or professional services, but will notify the Consultant if a deficiency is discovered.

### **Standard of Care**

Consultant represents that it has the requisite skills, expertise and licensing to perform all contract work using the accepted standards of care in the Consultant's profession or occupation.

### **Redesign Responsibility for Errors and Omissions**

Upon request, the Consultant agrees to correct any errors or omissions in performance of services by the Consultant or one of the Consultant's Sub-consultant's without undue delay and without cost to the Authority.

### **Utility Coordination**

The Consultant shall make every reasonable effort to minimize the impact to existing utilities and also minimize lengths of relocated or proposed additional utilities.

## **Sub-consultants and Outside Associates and Consultants**

A Consultant may not enter into a subcontract with a party unless that party is specifically identified in the Contract or respective Task/Project Order as a Sub-consultant. The Consultant must first notify the Authority's Engineering Program Manager or designee before retaining any other Sub-consultants. The Authority retains the right to reject any Sub-consultant, if the Authority has concerns about the Sub-consultant's ability to perform the services described.

### **Consultant's Duties Regarding Sub-consultant(s)**

The Consultant is responsible for: a. Assuring that its Sub-consultant(s) has the skill and experience necessary to perform the work properly, and b. Coordinating and managing its Sub-consultant(s) to achieve the intent of the Contract. The Consultant remains fully responsible for the quality and conformance to the Contract of its Sub-consultant's work.

### **Claims**

The Consultant agrees not to bring any claims for damages or payments made by its Sub-consultant(s) against the Authority and hereby indemnifies and holds the Authority harmless against any claims arising from its failure to coordinate and manage its Sub-consultants, to pay its Sub-consultants on a timely basis and from any and all claims or liabilities arising from services performed by its Sub-consultant consistent with the Indemnification provision hereinafter set forth in these General Conditions. Subcontracting does not diminish the Consultant's obligations under a Contract.

### **Flow Down**

All subcontracts of the Consultant, and all lower tier subcontracts, shall contain or reference all applicable provisions of the Contract and these Engineering Consultant General Conditions, including but not limited to all safety, wage, prompt payment, labor, environmental, insurance, claims & disputes, audit and equal opportunity provisions.

All Sub-consultant Contracts will specifically reference these General Conditions and require that the work be performed in accordance with the General Conditions. All Sub-consultant contracts will state that the Sub-consultant will be held to the same standards of performance as a Consultant under these General Conditions.

Copies of all Sub-consultant contracts and any other documentation required, such as sub-Consultant insurance certificates, will be provided to the Authority upon request. The Authority shall be entitled, though not required, to review any documents provided. In no event shall Consultant be relieved of any liability for a deficiency in documents related to a Sub-Consultant's contract by virtue of the fact that Consultant has provided these documents to the Authority.

## **Electronic Exchange of Data**

The Consultant must follow the most recent version of the Authority's Electronic Exchange of Data Standard, at the time of Contract execution, as it relates to engineering design deliverables in effect. Consultants wishing to perform professional engineering services for the Maine Turnpike Authority are required to deliver electronic data as specified in said document. The specification also requires Consultants to accept and utilize pertinent electronic input data as provided by the Authority. It is the responsibility of the Consultant to translate this data into other formats required for use in their design software. A copy of this specification may be obtained from the Authority's Engineering Program Manager or his/her designee.

Reuse of any such deliverables other than for the purpose intended hereunder shall be at the user's sole risk and without liability or legal exposure to Consultant. Consultant shall be responsible for maintaining



copies of any submitted electronic files for 3 years following completion of a construction project. If a project is designed, but no construction occurs, the Consultant shall be responsible for maintaining copies of any submitted electronic files for 7 years. Consultant shall be responsible for maintaining copies of any electronic reports and studies that are not associated with a construction project for 3 years following the submission of the report or study. Consultant shall not be held liable for completeness or accuracy of the electronic data stored by the Authority after the acceptance thereof. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

### **Monthly Status Reports**

Prior to the start of work, the Consultant shall furnish the Authority with a proposed progress schedule in a format acceptable to the Authority. The Consultant will outline the various phases of work that will need to be completed in order to meet the schedule set forth by the Authority.

During the course of the project, the Consultant shall submit to the Authority, a Monthly Project Status Report of accomplishments from the preceding month. The report shall be used to keep team members and the Authority's Engineering Program Manager informed about project status and issues. Information will include:

- a. A written statement describing the work accomplished during the period and to date, including the activity of all Sub-consultants and any other activity documented on the invoice.
- b. An estimate of the percentage of work completed within the specified services.
- c. An estimate of the effort needed to complete the specified services.
- d. The percentage of Task/Project Order time elapsed compared to the approved schedule and the percentage of Task/Project Order amount expended (including any Task/Project Order Amendments).
- h. Actual Task/Project Order costs to date and estimated Task/Project Order cost to finish.
- i. Task/Project Order Amendments to date and anticipated Task/Project Order Amendments.
- j. Any information needed from the Authority to complete the services and avoid unreasonable delays.
- k. An explanation if the percent completion does not agree with the Task/Project Order time elapsed.
- l. Document anticipated problems and possible solutions.

These status reports shall be submitted to the Authority on a monthly basis with the monthly invoice. Failure to submit could result in non-payment of any outstanding invoice, or a determination for cause of default if Consultant consistently fails to submit the status reports as required hereunder, and such failure shall be recorded in the Consultant's Performance Evaluation. If work is temporarily delayed, the Consultant may suspend submittal of the monthly progress reports with written approval from the Authority. The Consultant shall be responsible for addressing any action that may be required to keep the project on schedule; provided, however, should such actions be necessitated for reasons unrelated to Consultant, its employees or Sub-consultants, such additional services required to keep the project on schedule shall be invoiced as Additional Services.

The Authority shall have a period of 15 business days after receipt of the monthly status report submissions to complete review thereof and make any necessary comments. Following the review, the Consultant will make any revisions and corrections agreed upon by the Authority and Consultant.

## **Potential Change Notice**

If the Consultant anticipates, during the course of the Contract or a Task/Project Order, that there is a potential for a change in scope that may require additional hours and/or expense, the Consultant shall submit a Potential Change Notice (See Appendix B). The Potential Change Notice shall contain the following information:

- a. Authority Reference Code Number, Contract Number and Task/Project Order Number
- b. Projected Total Additional Hours
- c. Projected Additional Cost
- d. Reason for Potential Change

Upon receipt of the Potential Change Notice, the Authority's Program Manager will review the estimated additional hours and cost. A Task/Project Order Amendment and/or Contract Modification will be executed if agreement is reached on the revised scope, cost and/or time.

## **Additional Services**

All Potential Change Notices must be submitted in writing to the Authority's Engineering Program Manager or designee as soon as practical after the Consultant has become aware of the possibility of a change. The Authority will issue a Task/Project Order Amendment and/or Contract Modification for revised scope, cost and/or time. The Consultant shall not proceed with any additional work until such Task/Project Order Amendment and/or Contract Modification has been executed by the both parties hereto, or upon a receipt of a "notice to proceed" by the Authority.

## **Time**

Unless expressly agreed to otherwise, time is of the essence in all Authority Consultant Contracts. This is especially true in the majority of Contracts which relate to development, design and permitting of projects.

### **Schedule**

The Consultant shall perform its work in accordance with the timeframes set forth in each applicable Task/Project Order under the applicable Contract.

### **Extensions**

If during the process of the work it is necessary to change or extend a date because of circumstances beyond the Consultant's control, then a request in writing shall be made to the Authority within 10 days of when the Consultant realizes a change or extension is required. This request will include an estimate of any additional cost, if applicable. Any requests of this type will also be noted in the Monthly Project Status Report.

### **Late Delivery**

If the Consultant fails to perform work complying fully with the Contract requirements within the timeframes indicated in the Contract, including any approved time extensions by the Authority, for reasons not caused by actions of the Authority or those arising from Force Majeure events, and the Authority reasonably determines that such failure causes a financial impact on the Authority, the Consultant will be responsible for all direct and consequential damages incurred by the Authority as a result.

### **Equal Opportunity & Civil Rights**

Pursuant to 5 MRSA 784, Consultant agrees that during the performance of any contract with the Authority:

- a. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap.
- c. The Consultant will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment.
- d. The Consultant will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each Sub-consultant.
- e. Consultants and Sub-consultants with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs.

### **Sexual Harassment**

Consultants are responsible, under Maine State Law, for ensuring and maintaining a work environment that is free from sexual harassment. The Consultant shall comply with all relevant provisions of Maine State Law in regard to sexual harassment including, but not necessarily limited to, 5 MRSA 4572, 26 MRSA 806-807, and the regulations of the Maine Human Rights Commission.

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## **Compensation and Payments**

### **Invoicing**

The Consultant will be paid in accordance with the payment method agreed upon in the Contract.

#### **Submission of Invoices**

Invoices shall be submitted monthly as detailed in the Task/Project Order. Invoicing shall be based upon the certified payroll for costs incurred during the previous period. The previous period shall be the previous month and the invoice shall be submitted within 15 days of the close of that period. Invoicing for direct expenses may lag one invoice period so as not to delay the invoice process. Invoices shall be accompanied by the Monthly Status Report. The progress report must correspond to the invoice. Invoices and progress reports shall be sent as both a hard copy and an electronic copy to the distribution list detailed on the Task/Project Order form. If for any reason the invoice will be late, an estimate of the charges needs to be sent to the Authority's Controller, so that the funds can be encumbered.

The Authority shall reserve the right to question and/or reject any item which is unreasonable.

All invoices and time records shall contain a statement that the Consultant certifies, under the pains and penalties of perjury, that all work for which payment is requested has been performed and such performance is in full compliance with the provisions of this Contract.

All invoices shall contain the Authority's Reference Code, Contract Number and Task/Project Order number and other information as shown on Appendix C - Invoice Template.

#### **Direct Expenses:**

Direct expenses such as telephone, tolls, reproduction costs, per diem and approved Sub-consultant(s) costs shall be billed at actual cost. The Authority does not allow any mark-up on direct expenses and Sub-consultant costs. To be considered eligible for reimbursement, itemized receipts shall be included with the invoice, showing the date of occurrence, what the expense is for (e.g., meal, travel, hotel, miscellaneous), employee's name, and cost being incurred. Summary receipts used for credit card transactions are not acceptable documentation for reimbursement; all receipts must be itemized.

#### **Mileage**

The Authority will reimburse for mileage when:

- i. There is authorized mileage incurred between a Consultant or Subconsultant employee's permanent residence or their regular reporting location, to the Project Location as per IRS regulations for calculating travel expense. The Authority will not reimburse for a consultant employees commute from home to their regular reporting location.
- ii. There is travel incurred between the Project and the source of material for the Project, or other Project related business as authorized by the Authority.
- iii. A Consultant or Subconsultant employee assigned to multiple Authority Projects incurs authorized mileage traveling from one to another.

Mileage must be recorded on a daily basis.

#### **Lodging and Meals**

The Authority may elect to reimburse for lodging in lieu of mileage if it is more economical. Allowed reimbursement to any one employee for lodging and meals, on one

calendar day, shall not exceed the combined maximum applicable lodging and meals per diem rates, as established by the United States General Services Administration. Rates are established for specific locations in the continental United States and rates can be found at [www.gsa.gov](http://www.gsa.gov). Reimbursement for lodging and meals shall be the lesser of the actual costs or the per diem rates as evidenced by receipts. The GSA per diem rates do not include tax, however the Authority will reimburse for taxes incurred. The Authority will reimburse for gratuity on food and non-alcoholic purchases only up to 18% of those purchases. A standard per diem rate will also be established which will apply to any location not specified.

Consultants seeking reimbursement for travel on behalf of the Authority should exercise good judgment with respect to incurring travel and meal expenses and are expected to spend the Authority's funds prudently, avoid excess costs or delays, and to pay from their own funds any excess cost incurred for personal preference or convenience.

The Authority will only reimburse up to the Federal Maximum Lodging Allowance. If accommodations cannot be arranged within this allowance the Consultant must request, in advance and in writing, written approval from the Authority.

### **Rental Autos**

If a Consultant chooses to use a rental auto for a trip that would normally be made by personal or company auto, the Consultant will be reimbursed an amount not to exceed the amount that the Mileage provisions would reimburse, unless the Consultant provides justification as to why a rental auto was required and receives approval from the Authority in advance of the trip.

### **Plan Reproduction**

Reproduction of plans for submittal to the Authority shall be charged at actual costs. Any reproduction costs incurred for the Consultant's internal use is considered overhead expenses and shall not be charged as a direct expense.

### **Commercial Air/Train Travel**

All domestic and international travel accommodations are to be in coach class. Whenever possible, travel arrangements are expected to be made at least fourteen (14) days in advance to take advantage of less expensive options. In order to receive the best possible rates, the Consultant or Subconsultant employee shall take advantage of special fares without regard to special airline incentive programs (e.g. frequent flyer programs) when making reservations.

## **Non Reimbursable Expenses**

The Authority will not reimburse for expenses that are not necessary for the Consultant or Subconsultant to conduct Authority business. Such expenses include, but are not limited to:

- i. Personal Entertainment and Services - Personal entertainment and services such as sightseeing tour, barber or beauty shop services, books, golf green fees, gym use charges, pay per view television movies, videos, aspirin, cold tablets, in-room expenses, valet services, limousine services, etc. as well as any gratuities associated with said personal expenses.
- ii. Fines – Fines associated with traffic or parking tickets or other violations of the law resulting from a consultants or sub consultants conduct are not reimbursable.
- iii. Flight Insurance – Personal accident insurance is not reimbursable.
- iv. Alcoholic Beverages – The Authority will not reimburse expenses for alcoholic beverages, nor gratuity for alcoholic beverages
- v. Tickets – The cost of tickets for the theatre, athletic events, etc., will not be reimbursed.
- vi. Consultant or Subconsultant Negligence – Out of pocket charges caused by Consultant or Subconsultant negligence, including but not limited to vehicle service calls cause by the negligence of the Consultant or Subconsultant will not be reimbursed.
- vii. Upgrade fees – The Authority will not reimburse for upgrade fees for premium or luxury rental vehicles, nor will airline ticket upgrade fees to first class be reimbursable. Airline amenities including but not limited to blankets, pillows, headphones, snacks, advanced check in, etc. will not be reimbursed by the Authority.
- viii. Cancellation Fees – Cancellation fees will not be reimbursed by the Authority which including but are not limited to cancellation fees for flights, hotels, car rentals, etc.
- ix. Loss or Theft of Personal of Consultant or Subconsultant Funds or Property – Loss or theft of personal or company items will not be reimbursed by the Authority.
- x. Consultant Supplies – The Consultant shall furnish their employees with all necessary engineering supplies, equipment and consumables required to perform their jobs. Such engineering supplies, equipment and consumables may include, but are not limited to: computers, calculators, personal safety equipment, measuring tapes, flashlights, cameras, batteries, paper and ink. The Authority does not consider such supplies, equipment and consumables a direct expense, but rather a cost associated with the Consultant's overhead costs.

## **Hourly Rate**

The Authority will reimburse the Consultant at hourly rates reported in their Certified Schedule of Hourly Rates at the execution of the Contract. If the Consultant makes wage adjustments, the Consultant shall provide the Authority with an updated Certified Schedule of Hourly Rates prior to invoicing at those rates for review and approval.

## **Overtime Rate**

Overtime charges of 1.5 times the regular hourly rate for eligible non-professional engineering employees working beyond 40 hours in a week (such as technicians and clerical staff) are sometimes unavoidable if a project is being expedited or has other schedule constraints. The Authority will only reimburse at the overtime rate if the hours in excess of 40 hours per week is the direct result of working on an Authority project and where the Authority demanded the work be done in an expeditious manner in order to

meet a deadline. All professional and managerial positions will be paid at the agreed to regular hourly rate regardless of how many hours they have worked that week. The Authority reserves the right to prohibit overtime if the Consultant did not request and receive prior approval.

### **Overhead Rate**

The Authority will reimburse the Consultant's overhead rate as determined through one of the following:

- i. the most recent audit by the Federal Highway Administration or
- ii. an approved audit by a state agency or
- iii. as to be determined by the Authority if federal or state audit is not available.

The Consultant must submit an updated Audited Overhead Report if a new audit occurs during the life of the Contract. The Overhead Rate for a Task/Project Order will remain the same during the life of the Task/Project Order, even if the Audited Overhead Rate changes during the life of the Contract. However, if the Audited Overhead Rate has changed prior to executing a Task/Project Order Amendment, the Amendment shall use the most recent Audited Overhead Rate once the funds from the original task order have been expended.

### **Profit Rate**

The Authority will reimburse the Consultant for profit based on the type of work described in the Task/Project Order and the amount of perceived risk associated with the work. In general, the following profit rates will apply to the respective primary function of the Task/Project Order:

- i. For construction inspection and materials testing work, the profit rate shall be 8%
- ii. For routine engineering design work, engineering studies and construction inspection performed by Resident Engineers, the profit rate shall be 10%
- iii. For engineering design work that is considered technical and specialty, the profit rate shall be 12%
- iv. No other profit rates shall apply.

All management, administrative and support work performed in conjunction with the primary function of the Task/Project order will be reimbursed at the same profit rate as the one determined to be applicable to the primary function.

### **Final Invoice**

The Consultant must make a notation on the final invoice stating it is the "Final Invoice".

### **Payment**

The Maine Turnpike Authority will make payment within 30 days of receipt of a properly documented invoice or in accordance with the terms negotiated in each respective Contract or Task/Project Order. All payments made are subject to correction in subsequent progress payments and the final payment. Invoicing will be based upon the certified payroll for costs incurred during the previous period, except on a pre-negotiated rate Contract or a lump sum based Contract and applicable Task/Project Order plus reimbursement for out-of-pocket expenses. The Authority's review, approval, acceptance of, or payment for, services provided under a Contract will not be construed to be a waiver of any rights, claim or damage, under the Contract, or of any cause of action arising out of the contractual performance.

The Authority will not be required to make any payments until all required documents are received, reviewed and accepted.

### **Sub-Consultant Payments**

The Consultant may invoice the Authority for sub-consultant costs that are treated by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant and the Authority as valid and undisputed, due and payable. By submitting accrued but unpaid sub-consultant cost for reimbursement, the Consultant agrees that within ten (10) days of receipt of reimbursement, the full amount submitted as a reimbursable accrued sub-consultant cost shall be paid to the sub-consultant.

### **Overruns**

When 85% of the total cost estimate (including modifications) has been expended under the Contract or Task/Project Order and overruns are expected, the Consultant shall develop a detailed estimate of the Contract or Task/Project Order dollar amount and work hours necessary to complete the services, including an explanation of where and why any overruns are anticipated to occur. If the Authority is satisfied that sufficient justification exists, a Contract Modification or Task/Project Order Amendment with a revised maximum amount may be approved. Failure to follow this procedure will put the Consultant at risk of having to absorb any and all costs incurred by the Consultant beyond the authorized fee.

### **Final Payment**

Upon the Authority's receipt and acceptance of all required deliverables and services, including but not limited to plans, reports, and documents, the Authority will pay the "Final Invoice". This payment shall constitute payment in full for all services performed under the Task/Project Order. The Maine Turnpike Authority will make payment within 30 days of receipt of a properly documented Final Invoice under a Task/Project Order, or receipt of the last required project deliverable, whichever is later.

In the event of any termination as outlined within these Engineering Consultant General Conditions, Consultant shall be entitled to invoice the Authority and shall be paid, for all accepted work done in conformance with the Contract and applicable Task/Project Order and in accordance with said section, through the effective date of termination.

In the event that a Contract is terminated for reasons other than indicated above, without completion of the services as specified in the Contract, the total cost of the services completed plus, when applicable, a percentage of the fixed fee proportional to the amount of services completed under open Task/Project Orders shall constitute payment in full for the Contract.

### **Maximum Amount Payable**

The total estimated cost shall be stipulated in the Contract and Task/Project Order(s). The amount shall not be exceeded without a written Contract Modification or Task/Project Order Amendment between the Consultant and the Authority. The services are to be completed as economically as possible and shall be subject to review by the Authority.

### **No Inflation Adjustments / Interest**

No payments due the Consultant shall be adjusted for inflation. No interest shall be due or payable on any payment due the Consultant, regardless of any statement on the billing invoice.



### **Amounts Due the Authority**

The Authority may deduct sums otherwise due the Consultant for actions inconsistent with contract requirements. Where the sums to be deducted are more than the funds otherwise due the Consultant, the Consultant shall remit all amounts due to the Authority within 30 days. If payment is not received within 30 days of the agreed upon date the Authority reserves the right to deduct the amount due from future payments owed the Consultant.

The Authority reserves the right to be reimbursed by the Consultant or deduct sums otherwise owed, for the following:

- i. Payment(s) made for work that fails to meet professional standards of construction engineering and inspection;
- ii. Overpayments or incorrect payments identified by audit findings;
- iii. Costs incurred by the Authority due to inadequate or non-conforming work by the Consultant or Sub-Consultant, including costs to correct the work, other direct damages or consequential damages incurred due to Consultant's work, including but not limited to damages to Authority property or to third parties, or damages for delay;
- iv. Payments made to Consultant for payment of Sub-Consultant, when the Consultant has failed to pay the applicable Sub-Consultant;
- v. Costs incurred by the Authority arising out of any action of Consultant or a Sub-Consultant that is in violation of the terms of this Contract.

The Authority shall also have the right to deduct sums owed in accordance with this section from sums otherwise owed the Consultant under any outstanding Contract or Task/Project Order between the Authority and Consultant.

In addition to this right to set off sums against money otherwise owed the Consultant, the Authority retains all of its common law, equitable and statutory rights to recovery, including an action at law or equity. The Consultant agrees that any action arising under this Contract shall be subject to the jurisdiction of the courts of Maine, settled in accordance with the laws of Maine and the venue shall be the courts of Cumberland County, Maine, regardless of the site where the Contract is performed.

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## **Indemnity and Insurance**

This Section contains general requirements for indemnification and insurance by the Consultant.

### **Indemnification**

Consultant agrees to indemnify and hold harmless the Authority and its officers, agents and employees from any and all claims, damages, debts, demands, suits, actions, reasonable attorney fees, court costs, arbitration or other dispute resolution costs, expenses and any liabilities of every kind or nature attributable to, resulting from, or arising out of any negligent or intentional act, error, omission or breach of contract by the Consultant or Sub-consultant(s) in the performance of services under the Contract.

This indemnification provision shall survive any termination or expiration of the Contract and /or Task/Project Order.

### **Insurance**

#### **Procured Insurance**

All insurance coverage must be provided by an insurance company or companies licensed or approved to do business in the State of Maine by the Maine Bureau of Insurance. Consultant and Sub-consultant(s) shall pay all premiums and take all other actions necessary to keep required insurances in effect during such times as Contract obligations exist. Certificates of Insurance shall be provided to the Authority upon execution of a Contract or stand-alone Contract and on an annual basis thereafter. A Consultant may request a waiver for insurances that may not be applicable for the work to be performed; these requests shall be submitted to the Authority.

#### **Additional Insured**

The Authority shall be listed as an additional insured on Commercial General Liability policies carried by both the Consultant and its Sub-consultant(s) that are applicable to the Project.

Nothing in these General Conditions constitutes a waiver of any defense, immunity or limitation of liability that may be available to the Authority, or its officers, agents or employees, under the Maine Tort Claims Act (Title 14 M.R.S.A. 8101 et. seq.), and shall not constitute a waiver of other privileges or immunities that may be available to the Authority.

#### **Certificates of Insurance to the Authority**

Consultant shall deliver to Authority's Engineering Program Manager signed, valid, and enforceable certificates of insurance, endorsements to insurance policies providing additional insured coverage where applicable, and such other documents as the Authority may require proving the coverage required by this Contract. Such certificates and other documentation shall be furnished prior to commencement of Consultant services and whenever said policies are renewed thereafter during the period of the Contract.

#### **Commercial General Liability Insurance**

The Consultant and Sub-consultant(s) shall each purchase and maintain a policy of Commercial General Liability or if unable to provide, such other coverage affording equal or greater protection as authorized by the Authority, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such policy shall include products and completed operations as well as contractual liability coverage. When the work to be performed entails the use of barges, tug boats, work boats, supply boats, etc., Protection and Indemnity coverage shall be provided at the limits called for under Commercial General Liability insurance.

**Professional Liability**

The Consultant and its Sub-consultant(s) shall each purchase and maintain a Professional Liability insurance policy for negligent acts, errors and omissions that provides minimum liability coverage of \$1,000,000 per claim and annual aggregate. The Consultant's policy shall cover negligent acts, errors or omissions by the Consultant and Sub-consultant(s) engaged by Consultant and other any person or entity for whom the Consultant is legally liable arising out of the rendition of services pursuant to the Contract. Each Sub-consultant's policy shall cover negligent acts, errors or emissions of the Sub-consultant. The Authority reserves the right to adjust liability coverage on a project-by-project basis as it deems appropriate.

**Automobile Liability**

The Consultant and Sub-consultant(s) shall each carry Automobile Liability insurance covering the operation of all motor vehicles including all owned, non-owned and hired automobiles used in connection with the project with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence.

**Workers' Compensation Insurance**

Consultant and its Sub-consultant(s) shall carry Workers' Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers' Compensation Board, all in accordance with the requirements of the laws of the State of Maine. When maritime exposures exist, coverage should be arranged to include United States Long Shore and Harbor Workers coverage.

**When Required:****Pollution Liability**

In the event that any disruption, handling, abatement, remediation, encapsulation, removal, transport, or disposal of contaminated or hazardous material is required, the Consultant or its Sub-consultant shall secure a pollution liability policy in addition to any other coverage's required. The insurance shall be provided on an occurrence based policy and shall remain in effect for the duration of the Project. Minimum acceptable limit is \$1,000,000 per occurrence.

**Railroad Protective Liability**

When working adjacent to a railroad, the Consultant and its Sub-consultants shall carry Railroad Protective Liability Insurance, as required by the Railroad. If performing work within 50 feet of a railroad right of way, Consultant or Sub-Consultant will ensure that its Commercial General Liability insurance does not contain an exclusion for work in or near a railroad right of way and shall provide documentation of this to the Authority before commencing work.

## **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.

## **Compliance**

The Consultant and its Sub-consultants, and those each are legally liable for shall be in compliance with this section provided they:

- a. Procure coverage under one policy of insurance covering all risks arising out of performance of the Contract(s); or
- b. Procure separate insurance policies to cover all risks arising out of performance of the Contract(s). In either case, a Certificate of Insurance must be filed for each policy indicating that all required insurance has been obtained prior to performance of services under a Contract.
- c. Agree to provide, upon request, a copy of their insurance policies.

## **Safety and Incident Prevention**

In the performance of its services under a Contract, the Consultant shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation. The Consultant shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, to be reasonably necessary to protect the life and health of Consultant employees on the job and the safety of the public and to protect property in connection with the performance of the services covered by the Contract. In regards to Construction projects or sites, the Consultant is not responsible for general job site safety which is responsibility of construction contractor.

It is a condition of this Contract, and shall be made a condition of each subcontract, which the Consultant enters into pursuant to this Contract, that the Consultant and any Sub-consultant shall not permit any employee, in performance of the Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety.

Traffic Control and General work zone safety on the Maine Turnpike.

- i. All vehicles used within the Maine Turnpike Authority right of way shall have a 360° Strobe Light; a mounted revolving Amber light or amber strobe light with 360-degree visibility. The use of motorcycles is not permitted within a construction site or as a means to arrive at or leave a work zone.
  - ii. Type III Safety Vests: All jobsite personnel shall wear a safety vest labeled as ANSI 107-199 standard performance for Class III risk exposure or an equivalent.
  - iii. Coordinate with Authority Maintenance in advance for any data collection survey or other activities when Consultant employees need to be within the right of way of the highway.
  - iv. Change of Direction: The Consultant will not be allowed to use the median openings or toll plazas on the Maine Turnpike to reverse direction unless the opening is located within a passing lane closures in both directions.
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## **Default, Termination or Suspension**

### **Grounds for Default**

The Consultant is in default of the Contract if the Consultant:

- a. Fails to promptly begin the work under the Contract after being authorized to proceed;
- b. Fails to complete the work (as defined in the executed Task/Project Order or Task/Project Order Amendment) on schedule, through no fault of the Authority or a Force Majeure event.
- c. Fails to meet standards of performance as outlined in the Contract Documents;
- d. Discontinues the performance of the services without Authority approval;
- e. Continues to perform work outside the contract period or after receipt of instructions from the Authority directing that work be stopped;
- f. Fails to resume work that has been suspended when directed to do so by the Authority;
- g. Becomes insolvent or is declared bankrupt or files for bankruptcy;
- h. Allows any final judgment to stand against the Consultant unsatisfied for a period of ten (10) days;
- i. Makes an assignment for the benefit of creditors without authorization by the Authority;
- j. In any other manner, fails to perform the work in Substantial Conformity with any material provision of the Contract; or
- k. Fails to comply with any provision of the Contract Documents.

### **Notice of Default / Cure**

Except as otherwise provided in these Consultant General Conditions, upon the occurrence of a default, the Authority will give a written Notice of Default to the Consultant and elect its remedies as set forth below. Any delay by the Authority in providing a written Notice of Default shall in no way constitute a waiver by the Authority of any provision of the Contract. If the Authority determines the default is not curable, the Notice of Default shall also include the date of termination.

### **Termination**

The Authority may, by written order to the Consultant, terminate the Contract as provided in this section. Termination of the Contract or portion thereof shall not relieve the Consultant of its contractual responsibilities for the work completed prior to termination, or of responsibility for any damages caused or increased costs incurred by the Authority.

### **For Cause**

The Authority may terminate the Contract for cause due to the occurrence of one or more of the events of default set out in this section if the Consultant fails to effect a timely cure of all defaults identified in the Notice of Default within fourteen (14) days from the date of the Notice (the "Cure Period").

The Authority, in its sole discretion, may extend the Cure Period if the Consultant has initiated good faith efforts to cure said default(s) and requires a reasonable amount of additional time to complete the cure. If the Consultant fails to cure the default(s) specified in the Notice of Default within the Cure Period or any extensions thereof, the Authority may immediately terminate the Contract for cause by written Notice of Termination for Cause. In this event, all Consultant work products created pursuant to the Contract are the sole property of the Authority, and the Authority 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 Authority are required for the completion of the intent of the Contract in an acceptable and timely manner.

The Authority shall pay for all accepted items of work performed prior to the date of termination at prices determined by the Authority. The Consultant shall make all project records available to the

Authority upon request regarding payment under this section. All costs and charges incurred by the Authority, together with the cost of completing the work specified in the Contract, shall be deducted from amounts otherwise due the Consultant. If such expenses exceed the sum that would have been payable under the Contract, then the Consultant is liable and shall pay to the Authority the amount of such excess within 30 days of the delivery of a statement setting forth such expenses to the Consultant, as applicable.

If the Consultant files for bankruptcy at any time before expiration of the Contract, then the Consultant agrees, if requested by the Authority and within 30 days of such request, to take all actions necessary or convenient to reject or accept the Contract under the executory contract provisions of the federal bankruptcy code. Upon termination for cause, the Authority may, at its discretion, terminate the Contract.

### **For Convenience**

The Authority may terminate the Contract for convenience or for any reason that is in the best interest of the Authority. Terminations for reasons beyond the control of the Consultant are terminations for convenience. The Authority shall notify the Consultant of such terminations by sending a Notice of Termination for Convenience.

In case of a Termination for Convenience, the Authority shall pay for all accepted items of work as of the date of termination at agreed upon prices. The Consultant shall make all project records available to the Authority upon request regarding payment under this section. Acceptable materials, obtained by the Consultant for the work but which have not been incorporated therein, may at the option of the Authority be purchased from the Consultant at actual cost and shall be delivered by the Consultant to a prescribed location or otherwise disposed of as mutually agreed.

After receipt of Notice of Termination for Convenience from the Authority, the Consultant may also submit a claim for additional damages or costs not covered above or elsewhere in the Contract to the Project Manager within 60 sixty days of the effective termination date. In no event, however, shall loss of anticipated profits be considered as part of any settlement.

The Authority shall respond in writing to such claim within 60 days of receipt.

### **Right to Suspend Work**

The Authority has the right to suspend upon written notice any or all work at any time for any reason as it deems necessary. Consultant shall terminate or suspend performance of the Services on a schedule acceptable to Authority, and Consultant shall receive payment for all accepted work performed through the date of suspension plus any costs reasonably and necessarily incurred by Consultant to effect such suspension.

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## **Claims and Disputes**

### **General**

To preserve any claim arising out of the Contract, the parties shall comply with and exhaust all provisions of this Section. Unless otherwise agreed in writing, the parties hereto shall continue diligently to fulfill their respective obligations hereunder during the pendency of any dispute resolution process. If the Consultant continues to perform, the Authority shall continue to make payments in accordance with the Contract of amounts not in dispute. Failure to follow the dispute resolution process herein, including specifically the requirement that the Consultant notify the Authority promptly of any claim shall be deemed a waiver by the Consultant of the applicable claim.

### **Negotiation with Authority's Engineering Program Manager**

The Consultant shall promptly notify the Engineering Program Manager, or his/her designee, in writing of disputes that could significantly affect scope, schedule or compensation. After such notice, the Consultant and the Engineering Program Manager shall promptly negotiate in good faith to resolve the dispute. The Engineering Program Manager will promptly issue a decision.

### **Review by Director**

If the Consultant desires a review of the Engineering Program Manager's decision, then the Consultant shall promptly request in writing that the Authority's Director of Engineering review the Engineering Program Manager's decision. The Director or the Director's designee(s) shall promptly notify the Consultant in writing of the result of the review. If the Consultant desires a review of the Director's decision, the COO will then review.

### **Dispute Resolution**

If the dispute remains unresolved after negotiation and review as set forth above, the parties shall proceed to mediation by selecting a mediator reasonably acceptable to both. If the parties are unable to reasonably agree upon a mediator, they may follow the process set out in the current Construction Industry Mediation Rules of the American Arbitration Association.

If the parties are unable to resolve the dispute through mediation, the parties may agree to binding arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association or seek judicial review through a civil action commenced in the Superior Court of Maine, Cumberland, County.

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## **Miscellaneous Provisions**

### **Environmental**

#### **Historic and Archeological Considerations**

Unless otherwise expressly provided in the Contract, the Consultant may assume that the Project has no effect upon any site of historic or archaeological significance, as identified by the National Historic Preservation Act of 1966 and the Archaeological and Historic Preservation Act of 1974.

If the Consultant discovers any object of potential archaeological, paleontologic, or other historic interest, all work that could disturb said object shall immediately cease and shall not be resumed until an investigation of the object and related deposits have been completed and the removal of articles of interest has been accomplished. Should such a deposit be discovered, the Consultant shall immediately notify the Engineering Program Manager. The first indication of archaeological deposits may be the burial grounds or campsites of Native Americans that reveal the bones of the dead and people's implements. The first indications of paleontologic deposits may be the exposure of marine fossils or shells found mainly in clay deposits. Indications of deposits of more recent historic interest may be the exposure of dumps in landfill areas, abandoned campfire sites, and building foundations.

All Artifacts, Material and Specimens, as those terms are defined in 27 MRSA 373-A that are found on in or beneath property owned by the Maine Turnpike Authority are property of the Authority and if found by the Consultant, will be delivered to the Authority upon request.

#### **Hazardous Environmental Condition**

The Authority shall give prompt written notice whenever it observes or otherwise become aware of a hazardous environmental condition that affects the Project.

If a Consultant or Sub-consultant(s) suspects that a Hazardous Environmental Condition exists, Consultant or Sub-consultant(s) shall immediately notify the Engineering Program Manager and the Authority's Environmental Service Coordinator at 207-871-7771. This notice requirement does not create a duty or obligation for Consultant to discover any such condition unless that duty is established by the Contract.

#### **Laws to Be Observed**

The Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, rules, regulations, orders, and decrees ("Law") affecting the services including all environmental, wage, labor, equal opportunity, safety, patent, copyright, or trademark laws. The Consultant shall indemnify the Authority and hold the Authority harmless against any and all claims or liabilities arising from or based upon the violation or alleged violation of any such Law caused directly or indirectly by or through the Consultant.

#### **Entire Agreement/Binding Effect/Modification/Assignment**

The Authority and the Consultant including their partners, successors, executors, administrators and legal representatives (and to the extent permitted by the Contract, the assigns of the Authority and Consultant) are hereby bound to each other, with respect to all covenants, agreements and obligations under the Contract. No changes are to be made in the Contract, unless by a Contract Modification, Task/Project Order or Task/Project Order executed by both parties.

Neither the Authority nor Consultant may assign, sublet, or transfer any rights under or interest in the Contract (including, but without limitation, moneys that are due or may become due) without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the Contract.



### **No Third Party Beneficiaries**

The Consultant and the Authority agree that a Contract is not intended to create any third-party beneficiaries or to authorize anyone not a party to the Contract to maintain an action under said Contract or provisions. All duties and responsibilities undertaken pursuant to the Contract shall be for the sole and exclusive benefit of Authority and Consultant and not for the benefit of any other party.

### **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.

### **Non-Waiver**

If the Authority fails or refuses to enforce any provision in the Contract and/or Task/Project Order, that shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision for the remainder of the Contract and/or Task/Project Order.

### **Force Majeure**

The Authority may, at its discretion, excuse the performance of the Consultant in the event that performance of that obligation 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, the Consultant. The Authority 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 the applicable Contract or Task/Project Order.

### **Conflict of Interest**

A person or entity entering into a Contract may not have any financial or other interest, other than the performance of the Contract, in the project or in its outcome. This prohibition includes, without limitation, (a) any agreement with, or other interest involving, third parties who have an interest in the outcome of the project that is the subject of the Contract; (b) any agreement providing incentives or guarantees of future work on the project or related matters; and (c) any interest in real property acquired for the project unless such real property interest is openly disclosed to the Authority before the person or entity entered into the Contract.

- i. This section prohibits all conflicts of interest both at the time the contracting party enters into a Contract and during the life of a Contract and Consultant attests by execution of the Contract that it has no known conflicts of interest as set forth herein and shall not knowingly enter into any relationship that would give rise to a conflict of interest or the appearance of a conflict of interest.
- ii. This section prohibits situations involving an actual conflict of interest and those creating an appearance of a conflict of interest. The Authority may waive this prohibition or impose curative modifications on the scope of any Contract between the person or entity and Authority to eliminate the conflict or the appearance of a conflict.
- iii. A Consultant involved in the preparation of information that shall be used or considered in evaluations under and federal, state or local permitting process, or the National Environmental Policy Act shall, by virtue of signing the Contract, attest that Consultant (a) has no financial or other interest in, or commitment for, any future contract related to the design or construction of the project or any of its alternatives, (b) has no financial or other interest in said project or its alternatives, or any part thereof, and (c) has no other interest

which, under applicable law, would prohibit the selection of said Consultant to prepare an Environmental Assessment, Environmental Impact Statement, or other environmental documents for the project.

- iv. Pursuant to 5 MRSA § 18 or 17 MRSA § 3104, former state employees may face restrictions when they seek to work on matters that were directly within their responsibilities while they were still with the Authority. Consultants are advised to seek approval from the Authority prior to assigning a former State or Authority employee to any matters that were directly within the former employee's responsibility prior to their leaving the employ of the state or Authority.
- v. All determinations made under this section shall be left at the sole discretion of the Authority.

## Definitions / Abbreviations

### Abbreviations

Abbreviations are defined in the following list. Abbreviations not defined in this Section or otherwise in the Contract shall have the meaning that is commonly accepted in the engineering and construction industry.

AASHTO	American Association of State Highway and Transportation Officials
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
MRSA	Maine Revised Statutes Annotated
MTA	Maine Turnpike Authority
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
OSHA	Occupational Safety and Health Administration
RFP	Request for Proposal
RFQ	Request for Qualifications

### Definitions

**Authority/MTA.** Maine Turnpike Authority

**Authority Engineering Program Manager.** Maine Turnpike Authority senior staff member in the Engineering Department whose primary function is to oversee the process for selecting and retaining consulting engineering firms.

**Consultant.** An individual or firm under contract to provide non-construction professional services for the Authority.

**Consultant's Managing Principal.** The consultant's representative responsible for supervising its firm's personnel assigned to Maine turnpike projects.

**Contract/Contract Documents.** The Contract Documents representing a specific contract are comprised of the Contract Form, the Scope of Work under that contract, the Engineering Consultant General Conditions, and any subsequent Task/Project Orders (including the Final Scope of Work for those Task/Project Orders applicable thereto, or Task/Project Order Amendments) or Contract Modifications issued under the Contract.

**Contract Form.** A written binding agreement between the Authority and the Consultant for a specific service, for a specified period, up to a maximum dollar amount.

**Contractor.** An individual or firm, which has been awarded a Construction Contract.

**Deliverables.** A thing of value resulting from a Consultant's performance of services that such Consultant delivers to the Authority in exchange for consideration from the Authority pursuant to the terms of a Contract and respective Task/Project Order.

**Direct Expenses.** Direct expenses as defined by 48 CFR Part 31; such as telephone, tolls, reproduction costs, per diem and approved Sub-consultant(s) costs.

**Effective Date of Contract.** The date indicated in the Contract on which it becomes effective, but if no such effective date is indicated, it means the date on which the Contract is signed by the last of the two parties to sign.

**Engineering Consulting General Conditions.** General terms, conditions, and procedures that govern how the services will be performed or furnished by Consultant with respect to any Project. General

Conditions normally apply to all contracts of the issuing agency. These are differentiated from Special Provisions which would only apply to an individual contract for a specific scope of work.

**Hourly Rate.** The negotiated hourly rate accepted by the Authority for performance of work for the duration of and as defined in the Task/Project Order.

**Indirect Expense.** An expense that is incurred for an entire business enterprise as a unit that cannot be traced directly to a project.

**Lump Sum.** A negotiated payment method. It provides for a price that is not subject to any adjustments because of cost changes the Consultant might encounter in the performance of the services except and unless additional services are authorized under a lump sum Task/Project Order issued under the Contract.

**Notice to Proceed.** A written notice from the Authority to the Consultant stating the date the Consultant can begin work subject to the conditions of the contract. The performance time of the contract starts from the Notice to Proceed date typically in form of Task/Project Order.

**Overhead Costs.** (or indirect expenses) are costs that may benefit or are associated with two or more business activities, but are not specifically allocated to a specific project. Overhead differs from general and administrative costs in that these costs can be associated with a unit based on benefit. Some examples of overhead costs are rent, depreciation, employee recruitment and training, and general or professional insurance policy costs.

**Pre-execution Review.** A financial review of a Consultant's accounting records which are conducted prior to contract execution. The review includes but is not limited to the verification of insurance, and the supportability of overhead rates, and payroll.

**Project.** Any unit of work or study for which a Consultant selection is made and a separate Task/Project Order is entered into under an executed Contract.

**Project Location.** The Authority location, identified in the respective Task/Project Order, where upon, assignment the Consultant may begin charging their time to a project.

**Project Manager.** An employee of the Authority assigned the responsibility for managing project scope, budget, and schedule.

**Proposal.** An offer as part of a negotiation made by a Consultant to the Authority in reply to a Request for Proposal (RFP) which forms the technical and price basis when entering into a mutually binding contract.

**Rates.** The rate paid a Consultant for performance of work.

**Request for Proposal (RFP).** The Authority initiates a request to a Consultant or group of Consultants for a proposal or offer to perform a specific Scope of Work.

**Request for Qualifications (RFQ).** The Authority's request to the Consultant community requesting an outline of the firm's ability to provide Consultant and professional services in a particular area of need, discipline or service.

**Resident Engineer.** The Authority's on-site administrator of a single or multiple construction project(s). This position must be a Maine licensed Professional Engineer.

**Scope of Work (or Services).** A clear, accurate, and detailed description of; the technical requirements for the services to be rendered, how the work must be conducted, how achievements will be assessed, and the obligations of both the Consultant and Authority. The words work and services are used interchangeably throughout this document.

**Special Provision.** A provision unique to an agreement or contract which supersedes any inconsistent or conflicting clause in the Engineering Consultant General Conditions. Special Provisions shall be identified in the Contract.

**Specifications.** That segment of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship to be applied to the work and administration of same.

**Subconsultant.** Individual or entity having a contract with Consultant to furnish services with respect to this Project as Consultant's independent professional associate, Consultant, Sub-consultant, or vendor.

**Substantial Completion.** The time at which the work (or a specified portion thereof) has progressed to the point as determined by the Authority is sufficiently complete to be utilized for the purpose for which it is intended.

**Task/Project.** Any unit of work, project, task or study for which a Consultant selection is made and a Contract entered into.

**Task/Project Order.** A form letter executed by the parties under a Contract, providing the Consultant with authorization to perform the services outlined therein and to assign Key Personnel noted therein to a specific classification under a project or projects. This document outlines the duties, the timeframe within which to complete, and the maximum amount that can be expended for the work ordered without additional approval by the Authority.

Appendix A

Maine Turnpike Authority Task/Project Order

Task/Project #: Consultant Contact:
Reference Code #: Consultant Firm Names:
Accounting Project Key Code #: Address:
Contract #: Vendor Customer #:
MTA Contact:

Date:
Subject: Assignment of Work

Per this Task/Project Order, XX is hereby authorized to perform Engineering Consultant services for:

Project Name:

Work Ordered:

Compensation: Compensation shall be paid based on actual direct labor rates plus fixed overhead and profit up to a maximum. The consultant will be compensated using the following formula: Compensation = Direct Labor x ((1 + Overhead) x (1 + Profit))

The Profit and Overhead in the above equation are expressed as decimal values. Allowable direct expenses shall be reimbursed at cost. Direct Labor shall be actual salaries multiplied by the hours worked.

Overhead: The approved overhead percentage shall remain fixed for the duration of the task order and is not subject to change by audit. The overhead rate is XX%.

Profit: The allowable profit for this task order is XX%.

Amount not to exceed of this Assignment: \$ XX

If the actual amount of the assignment is anticipated to exceed the amount agreed to, the consultant should contact the Engineering Program Manager to communicate the reason for the anticipated excess and seek approval.

Key Personnel:

Schedule: This task order shall become effective on the last date signed by the Authority or upon receipt of a "notice to proceed", whichever is earlier. This task order shall expire on XX, unless mutually extended.

Assignment Deliverable:

This Task/Project Order can be invoiced in conjunction with other invoices, but charges must be identified for each Task/Project Order individually. A copy of all applicable time and expense charges shall be attached to each invoice. Hard copies of the invoices shall be sent to Peter Merfeld, Chief Operations Officer, Maine Turnpike Authority, 2360 Congress St, Portland, Maine 04102. In addition, an electronic copy of the invoices shall be sent to Larry Patneau... Susan Brewer... Reiko Laney... Doug Davidson... Matt Elliott... cc: Jacqueline Hansen. Any questions regarding the invoicing should be directed to Larry Patneau at 871-7771 x118.

Consultant Sign: \_\_\_\_\_ Date: \_\_\_\_\_
Title: \_\_\_\_\_

Maine Turnpike Authority Sign: \_\_\_\_\_ Date: \_\_\_\_\_
Title: \_\_\_\_\_

Sign: \_\_\_\_\_ Date: \_\_\_\_\_
Title: \_\_\_\_\_

**Appendix B**

**POTENTIAL CHANGE NOTICE**

<b>Task/Project #:</b>	<b>Consultant Contact:</b>
<b>Reference Code #:</b>	<b>Consultant Firm Name:</b>
<b>Contract #:</b>	<b>Address:</b>
<b>MTA Contact:</b>	<b>Vendor #:</b>

**Task Order Amendment Number:**

**Date:**

**Project Name:**

**Current Task Order Maximum Amount:** \$

**Additional funds requested:** \$

**Modified Task Order Maximum Amount:**

**Current Contract Expiration Date:**

**Modified Contract Expiration Date:**

**Description and Reason for Change:**

**Is this a change in Project Scope:**

**Will this require additional time to complete:**

Appendix C



Invoice Cover Sheet Template  
MTA Contract #

**Invoice hard copy should be addressed to:**

Peter Merfeld, Chief Operations Officer  
2360 Congress Street  
Portland, ME 04102

*Note: If there are multiple Task/Project Orders under one contract, the consultant may invoice under one invoice, yet all information as noted below should be included separately per task/project order. This information can come in the form of a cover letter. If doing so, please be sure to include the total invoice amount on that cover letter.*

**Task/Project Order Summary Report:**

Task Order Not To Exceed Amount	\$
Less Billed to date	(\$)
Less Billed this period	(\$) _____
Task Order Remaining Balance	_____

**Progress Report/Project Update:**

*Narrative explanation of project status and progress related to the billing period. Narrative should coincide with this invoicing period and the expenses billed for this period. This section would also be for explanation of problems/issues, special circumstances, or additional information. Progress Report/Project Update can be a separate document included with the invoice.*

**Summary Direct Payroll (Detail Attached)**

This Billing Period:	\$
Overhead @ %	\$
Profit @ %	\$ _____
Total Labor and Over head	\$ _____

**Summary Direct Expenses (Detail Attached)**

Sub-Consultant:	\$
Travel:	\$
Printing:	\$
Supplies:	\$
Other (specify):	\$ _____
Total Direct Expenses	\$ _____

**Total Amount Due This Period** \$ \_\_\_\_\_



**Appendix C-Continued**

Note:

- All above charges should be substantiated by appropriate documentation.
- The reimbursable costs for per diem (lodging which requires overnight stay and meals) shall not exceed the current amount allowed by the United States General Services Administration.
- Please pay special attention to meal receipts, as they need to be itemized in order for them to be considered for reimbursement.

*For further explanation of allowable expenses and other compensation and payment related questions, please refer to the MTA's Engineering Consultant General Conditions.*

We certify that the invoiced charges are correct and properly reflex work done during this invoice period.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Title: \_\_\_\_\_