

MAINE TURNPIKE AUTHORITY



ENGINEERING CONSULTANT GENERAL CONDITIONS

Version 4

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TABLE OF CONTENTS

	<u>Page Number</u>
<u>Agreement</u>	<u>3</u>
<u>General Provisions</u>	<u>3</u>
<u>General Scope of Work</u>	<u>4</u>
<u>Standards</u>	<u>4</u>
<u>Owner Responsibilities</u>	<u>5</u>
<u>Consultant Responsibilities</u>	<u>6-9</u>
<u>Equal Opportunity & Civil Rights</u>	<u>10</u>
<u>Sexual Harassment</u>	<u>10</u>
<u>Additional Services and Schedule</u>	<u>10-11</u>
<u>Compensation and Payments</u>	<u>11-14</u>
<u>Amounts Due the Authority</u>	<u>14</u>
<u>Indemnity and Insurance</u>	<u>14-16</u>
<u>Safety and Incident Prevention</u>	<u>17</u>
<u>Default, Termination or Suspension</u>	<u>17-19</u>
<u>Claims and Disputes</u>	<u>19</u>
<u>Miscellaneous Provisions</u>	<u>20-22</u>
<u>Definitions / Abbreviations</u>	<u>23-25</u>

Agreement

The Consultant shall furnish or provide the services assigned to it under subsequent Task/Project Orders and set forth in each respective Final Scope of Work thereto for the applicable Project or Program in accordance with these General Conditions and the Maine Turnpike Authority's (Authority's) requirements, as outlined in the Authority's executed Contract with Consultant therefore.

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 State of Maine government 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 transactions terminated for cause or default.

Priority of Conflicting Contract Documents

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. 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
- Engineering Consultant General Conditions

*Note: Nothing in the Consultant's proposal can supersede the Engineering Consultant General Conditions if they conflict.

General Scope of Work

The Contracts are to be considered funded by tolls, unless expressly stated otherwise in the Contract Documents.

Standards

All work, to the extent applicable, shall conform to the appropriate, related, current editions of the following publications:

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

- 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 – with exception to Federal requirements
- j. MaineDOT Construction Manual – This is to be used as a guide only. MTA does not use federal funds; therefore, references to Federal requirement will be deleted. MTA reserves the right to add or delete items from this manual at anytime.
- 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 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

Deviations from any of those referenced design standards must be made, in writing, by the Authority.

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. 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.

Inform Consultant about Project Requirements

The Authority shall provide all relevant criteria and information pertaining to Authority's requirements for the specific Project represented under each respective Task/Project Order which may include the following, or may ask the Consultant to ascertain, as part of the Project scope of work if information is needed but not yet available:

- a. Property descriptions.
- b. Zoning, deed and other land use restrictions.
- c. Property, boundary, easement, right-of-way and other special surveys or data.
- d. Planning Studies.
- e. Explorations of subsurface conditions, drawings of physical conditions, hydrographic surveys at or contiguous to the site.
- f. Environmental Assessments and other relevant environmental or cultural studies.
- g. Data or consultations as required for the Project.
- h. Coordination with other Authority Projects or other Agencies.

Accuracy

The Consultant can rely on the information provided by the Authority. The Consultant is responsible for reviewing all such reports, data, and information and notifying the Authority of any error, omission, conflict, or discrepancy it becomes aware of.

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.

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 MTA.

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

Design services under a Contract regulated by Maine State Law shall be performed or reviewed, approved and stamped by an employee of the Consultant or Sub-consultant(s) who performed or supervised preparation of same and who has the appropriate registration or license governing the scope of services in the Contract.

Further, 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 MTA.

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 those of the Consultant. The Consultant shall keep records in such form as may be easily audited and in accordance with the Authority instruction. 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.

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.

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.

The Authority acknowledges the Consultant's deliverables and work product as instruments of professional service and agrees that 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.

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 the Sub-consultant, if the Authority has reasonable 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.

Claims

The Consultant agrees not to bring any claims for damages sought 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 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 alter 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.

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.

Accuracy

The Consultant shall be responsible for the 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 caused by the fault or negligence of Consultant and/or its Sub-consultant(s) in performance of services required under a Contract without undue delay and without cost to the Authority.

Electronic Exchange of Data

The Consultant must follow the most recent version of the Authority's Electronic 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 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.

Progress 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 progress 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 Consultant Contract time elapsed compared to approved schedule and the percentage of Consultant Contract amount expended (including Consultant Contract Modifications) compared to the approved Not to Exceed amount.
- e. Actual Year to Date cost and Contract to date costs (if a multi-year contract) and estimated Contract cost to year end and to finish (if beyond year end) for Consultant Contract.
- f. Consultant Contract Modifications to date and anticipated Consultant Contract Modifications.
- g. The percentage of Task/Project Order time elapsed compared to approved schedule and the percentage of Task/Project Order amount expended (including any Task/Project Order Amendments).
- h. Actual Year to Date cost and Task/Project Order costs to date costs (if a multi-year Task/Project Order) and estimated Task/Project Order cost to year end and to finish (if beyond year end).
- 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 Contract or Task/Project Order time elapsed.
- l. Document anticipated problems and possible solutions.

These progress reports shall be submitted to the Authority on a **monthly basis** regardless of whether or not payments are due. 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 progress 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 progress 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. 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 Contract Modification or Task/Project Order Amendment shall be executed once agreement has been reached on the revised scope, cost and time.

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.

Additional Services and Schedule

Additional Services

All requests for additional services must be submitted in writing to the Authority's Engineering Program Manager or designee outlining both the scope and cost. The Authority will issue a Contract Modification or Task/Project Order Amendment after both the Authority and Consultant agree on the services to be performed and the cost of the same. The Consultant shall not proceed with the work until such Contract Modification or Task/Project Order Amendment has been executed by the both parties hereto.

Time

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 within the timeframes indicated in the Contract, including any approved time extensions by the Authority, for reasons unrelated to performance by the Authority, and the Authority reasonably determines that such failure causes a financial impact on the Authority, such failure shall be recorded in the Consultant's Performance Evaluation and used as part of the Authority's selection process for future projects.

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 by the Consultant to the Authority's Chief Operations Officer or his/her designee. Invoices shall be submitted in duplicate accompanied by one copy of a progress report. The progress report must correspond to the invoice.

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, as applicable.

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 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. This information can be found at (www.gsa.gov). The GSA per diem rates do not include tax, however the Authority will reimburse for taxes incurred. Reproduction of plans for submittal to the Authority shall be charged at actual costs. MTA does not allow any mark-up on direct expenses and Sub-consultant costs.

- a. Original, itemized receipts must be included with invoices, showing date of occurrence, what the expense is for (e.g., meal, travel, hotel, miscellaneous), employee's name, and cost being incurred. Allowed reimbursement to any one employee for meals on one calendar day shall not exceed the maximum applicable meals per diem rate, plus any applicable sales tax and gratuity. Summary receipts used for credit card transactions are not acceptable documentation for reimbursement. Indicate on all receipts the names of those who incurred the expenses.
- b. All mileage reimbursement or consultant vehicle rental must include employee name, purpose of trip (or the project being charged) and the total trip cost (using current federal IRS rates).
- c. A separate monthly chart showing every employee and all hours billed and expenses reimbursed for the month shall be provided.

Mileage

The Authority will reimburse for mileage when:

- i. There is authorized mileage incurred between the Inspector'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. An Inspector assigned to multiple MTA Projects incurs authorized mileage traveling from one to another.

Mileage must be recorded on a daily basis and submitted monthly along with other allowable expenses incurred.

Lodging

The Authority may pay lodging in lieu of mileage if it is more economical. Reimbursement for lodging shall be the lesser of the actual cost of the lodging or the per diem lodging rate as evidenced by a receipt. Lodging per diem is a maximum not to exceed amount. Rates are established for specific locations in the continental United States. A standard per diem rate will also be established which will apply to any location not specified.

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. Lodging must be submitted monthly along with other allowable expenses incurred.

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.
- 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.

Overhead Rate

The Authority will reimburse the Consultant’s overhead rate as determined through the most recent audit by the Federal Highway Administration or an approved audit by a state agency or as to be determined by the Authority if federal or state audit is not available. 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.

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 invoice receipt 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 shall not be construed to operate as 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 these documents are received, reviewed and accepted.

Overruns

When 80% to 90% 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 maybe 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 the Final Invoice under a Task/Project Order.

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 unacceptable performance, work, or 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 the Authority such time as the Authority and Consultant agree. 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.

Indemnity and Insurance

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

Indemnification

Consultant promises 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 and furnishing of services under the Contract. The preceding sentence shall not constitute 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. This indemnification provision shall survive any termination or expiration of the Contract.

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. The maximum deductible for any type of insurance required shall not exceed \$10,000.00. . However, the Authority may increase the maximum deductible, at the request of the Consultant, 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 and Railroad Protective Liability insurance policies carried by both the Consultant and its Sub-consultant(s) that are applicable to the Project.

Certificates of Insurance to the Authority

Consultant shall deliver to Authority's Engineering Program Manager signed, valid, and enforceable certificates of insurance proving the coverage required by the executed Contract between the parties. Such certificates 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 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 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.

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 policy.

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.

- a. 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 to or leave a work zone.
- b. 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.
- c. 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.
- d. Change of Direction: The Consultant will not be allowed to use the median openings or the toll plaza on the Maine Turnpike to reverse direction unless the opening is located within a passing lane closures on both roadways.

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 this document;
- 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 as required by the Contract;
- 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 these General Conditions and related Appendices.

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.

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 the 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, any or all Consultant products 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. Such claim may include such cost items as project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, Sub-consultant(s) costs not otherwise paid for, idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the Contract, and any other cost or damage item for which the Consultant reasonably believes reimbursement should be made. 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.

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.

Negotiation with Authority's Engineering Program Manager

The Consultant shall promptly notify the Engineering Program Manager, or his/her designee, 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.

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 MTA'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 and State laws, rules, regulations, orders, and decrees ("Law") affecting the services including all environmental, wage, labor, equal opportunity, safety, patent, copyright, or trademark laws. If required by Contract, the Consultant must also comply with applicable local law, ordinances, and regulations in any manner affecting the conduct of work as defined by the scope of work. 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

Authority and Consultant each is hereby bound and the partners, successors, executors, administrators and legal representatives of Authority and Consultant (and to the extent permitted by the Contract, the assigns of Authority and Consultant) are hereby bound to the other party to the Contract and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of the Contract.

Neither Authority nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the Contract 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.

- a. Unless expressly provided otherwise in the Contract:
 - i. Nothing in the Contract shall be construed to create, impose, or give rise to any duty owed by Authority or Consultant to any Contractor, Contractor's Sub-contractor/Sub-consultant(s), supplier, other individual or entity for or employee of any of them.
 - ii. 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.
- b. No changes are to be made in the Contract, unless by a Contract Modification or Task/Project Order Amendment executed by both parties.

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.

Force Majeure

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

No Waiver

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

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.

- a. 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.
- b. 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.
- c. A Consultant involved in the preparation of information that shall be used or considered in evaluations under 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.

- d. 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
BAFO	Best and Final Offer
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
P.L.	Public Law
QBS	Qualifications Based Selection
RFP	Request for Proposal
RFQ	Request for Qualifications
USC	United States Code

Definitions

As-Built Drawings. The drawings as issued for construction on which the construction contractor upon completion of the work has shown changes due to contract modifications (Change Orders and Supplemental Agreements), actual site conditions, and other information which the Authority had determined to be significant.

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. A written binding agreement between the Authority and the Consultant relating to a specific task or project with a defined scope of work and compensation negotiated pursuant to the Engineering Consultant General Conditions. Consultant Contracts can be "stand-alone" or negotiated under the umbrella of a general multi-year Contract.

Contract Documents. The Contract Documents representing a specific contract are comprised of the Contract, 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.

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 such as telephone, tolls, reproduction costs, per diem and approved Sub-consultant(s) costs shall be billed at actual cost. The reimbursable costs for mileage and per diem (lodging which requires overnight stay and meals) shall not exceed the current amount allowed by the United States General Services Administration. This information can be found at (www.gsa.gov). Reproduction of plans for submittal to the Authority shall be charged at actual costs. MTA does not allow any mark-up on direct expenses and Sub-consultant 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.

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 MTA. 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.

Sub-consultant. 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.