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**Purchasing Department  
73 Harlow Street  
Bangor, Maine 04401**

**REQUEST FOR BIDS  
2015 PAVING PROGRAM  
Bid No.: B15-019**

**Proposal Deadline  
June 24, 2015**

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**NOTICE TO CONTRACTORS**

**Bids are requested for the**

**2015 CITY OF BANGOR PAVING PROGRAM**

This project includes paving and rehabilitation of certain streets within the City of Bangor.

For consideration, the attached Bid Form sealed in an envelope, distinctly marked

**“Bid No.: B15-019: 2015 Paving Program”**

must be received at the office of the City of Bangor Purchasing Department by

**2:00 PM WEDNESDAY, June 24, 2015**

Bid security in the amount of 5% of the bid price will be required in the form of a certified check or bid bond.

The right is reserved to reject any and all bids or to waive informalities or defects in bids if it is deemed to be in the best interest of the City of Bangor.

Specifications may be obtained by visiting the City's website at  
[www.bangormaine.gov](http://www.bangormaine.gov)

**INFORMATION FOR BIDDERS****2015 City of Bangor Paving Program Introduction:**

This project includes the furnishing and placement of bituminous concrete shim and overlays on selected streets which have been prepared previously by the City of Bangor Public Services Department (Owner) and, in some instances, the application of bituminous concrete binder and surface courses to previously compacted and graded gravel base courses. In addition, bids are requested for application of bituminous tack coat, for in place pavement reclamation and for cold planning, for the adjustment of manholes, catch basin frames and covers to grade on streets scheduled for cold planning.

**Description of Work:**

The work contemplated under the terms of this Contract consists of the furnishing and placement of bituminous concrete pavement on various streets including 1 to 2 inch overlays in existing paved areas which have been previously cleaned and prepared. In some instances the application of 3 to 4 inches of bituminous concrete, in two lifts, will be required on a base course of areas which have previously been constructed or reconstructed. Paving is contemplated on approximately 42 different streets with a total estimated quantity of approximately 14,467 tons of hot mix asphalt.

Cold planning and reclamation may also be required on some streets. Minimum daily quantities will be approximately 500 square yards for planning. Work will also include the application of tack coat. All preparatory work will be done by the Owner, including sweeping, cleaning, patching, crack sealing etc.

Bidders are advised that the above mentioned tonnage quantity includes an allowance of approximately 15% for shimming prior to the placement of overlays, including streets that are cold planed.

Under this Contract the successful Bidder shall be responsible for paving apron/approaches of streets, intersecting streets to be paved, and around such catch basin and manhole structures as may exist in the paved traveled way, to the extent necessary to provide a smooth transition as determined by the City Engineer or his/her appointed designee.

**Definitions:**

The following terms or, in the case of the Owner, Engineer or Contractor, the singular, masculine pronouns used in their place, shall have the following meanings within the text of this Contract.

**Owner:**

The City of Bangor, Maine acting through its duly authorized representatives.

**Engineer:**

The City of Bangor Engineer or his/her duly authorized representative.

**Contractor:**

The individual, firm or corporation to whom the Contract has been awarded whether acting on his/her own or through subcontractors or employees.

**Contract:**

The Contract shall be deemed to include the Notice to Contractor, Information for Bidders, the Bid Form, the Contract Agreement, the Performance and Payment Bond(s), the Specifications, any Addenda which may be issued to any of the foregoing, and all other provisions which may be required to be included in this Contract whether actually included or not.

**Bid Security:**

Each Bidder must submit with his/her bid, a certified check, or bid bond in the amount of 5% of his/her total bid price as a guarantee that the Bidder will enter into a Contract, if awarded. Said check or bid bond will be returned to all except the two (2) lowest Bidders immediately following the opening of bids, and the remaining sureties will be returned after the Owner and Contractor have executed the Contract. If the Contract has not been awarded within thirty (30) days of the bid opening, the surety will be returned at any time thereafter to any Bidder who so requests, so long as he/she has not been notified of the acceptance of his/her bid.

**Withdrawal of Bids:**

Any Bidder may withdraw his/her bid prior to the opening of the bids. Any bid received after the time and date specified will not be considered. No Bidder may withdraw his/her bid within thirty (30) days after the actual opening.

**Bids Submitted:**

Bids must be submitted on the prescribed form and all blank spaces must be filled in, in ink, or typewritten, in both words and figures. The prices quoted in the bid shall be for the total project and shall include all labor, tools, materials, supplies, equipment and all else necessary for or incidental thereto.

### **Qualified Bidder:**

The Owner may make such investigation as deemed necessary to determine the ability of any Bidder(s) to perform the work, and the Bidder(s) shall furnish to the Owner all such information and data pertinent to this investigation as the Owner may request. The Owner reserves the right to reject any bid after evidence submitted or investigation of the Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligation of the Contract and to complete the work contemplated therein. Conditional bids will not be accepted.

### **Basis of Award:**

The Contract will be awarded to the Contractor submitting the lowest bid. In the case the Contractor submitting the low bid is found to not be properly qualified to carry out the work, the Contract will be awarded to the next lowest qualified Bidder.

### **Bidder's Obligation:**

At the time of the opening of the bids, it will be presumed that each Bidder will have inspected the site(s) and thoroughly familiarized him/herself with the Contract documents, including the specifications and any Addenda which may have been issued thereto. Failure of the Bidder to receive and examine any form, instrument, or document or to visit and examine the site itself, will not in any way relieve the successful Bidder from any obligation in respect to his/her bid or to the terms of the Contract.

### **Bid Security Forfeited:**

Should the Bidder to whom the Contract is awarded fail for any reason to execute the Contract and to furnish a satisfactory bond within the time specified, the Owner may determine that the Bidder has abandoned the Contract, that his/her bid shall be considered null and void and that the surety accompanying the bid shall be forfeited to and be retained by the Owner as liquidated damages, and the Contract may be awarded to another Bidder. After the execution of the Contract and acceptance of the bond by the Owner, the surety accompany the successful Bidder's bid shall be returned.

### **Performance Bond, Labor and Materials Bond:**

Simultaneously with his/her delivery of the Contract to the Owner, the successful Bidder shall deliver to the Owner an executed Performance Bond and an executed Labor and Materials Bond, each in the amount of 100% of the total bid price, as security for the faithful performance of the Contract and for payment of all persons performing labor or furnishing materials in connection therewith. These bonds shall be on the prescribed forms and shall be furnished by a surety company or companies listed on the current Circular 570 of the U.S. Treasury Department which company or companies shall also have a record of services satisfactory to the Owner, shall be authorized to do business in the State of Maine and shall be independent of the Contractor.

**Work Under the City Engineering Department:**

This project will be administered by the City of Bangor Engineering Department.

Questions by prospective Bidders shall be made in writing at least five (5) working days prior to the bid opening to:

**City of Bangor, Engineering Department  
Project Engineer, 2015 Paving Program  
73 Harlow Street  
Bangor, Maine 04401  
Fax: (207) 992-4194**

No interpretation of the meaning of the plans, specifications or other Contract documents will be made to any Bidder orally. All interpretations and any supplemental instructions will be by written Addenda to the specifications which, if issued, will be mailed to all prospective Bidders at least three (3) working days prior to the bid opening date. Failure of any Bidder to receive any Addenda or interpretation thus mailed will not relieve the Bidder of his/her obligation under the bid submitted. All Addenda so issued will become an integral part of the Contract documents.

The Engineering Department will inspect all items that are delivered to the project site under the Contract to assure the Owner that all items are of first quality materials and workmanship. Any items found to be visibly defective will be rejected and the Contractor will be required to remove and replace such defective items.

Neither the fact of such inspection, nor the omission thereof, will imply acceptance by the Owner of any nor all of the work performed under the Contract or relieve the Contractor of any responsibility for the successful completion of all the terms of the Contract subject to final inspection and review by the Owner.

The City of Bangor is a municipal corporation duly organized under the laws of the State of Maine and therefore is not required to file proof of exemption to the Maine State sales tax.

**Time of Completion:**

All work described in these specifications shall be substantially complete by October 15, 2015.

The City reserves the right to postpone work on certain streets, or to add additional streets or other paved areas, to be completed in the Spring of 2016.

### **Preparation of Streets and Shimming:**

The City of Bangor will prepare the areas to be paved by sweeping and filling all potholes and major cracks. As directed by the Engineer, any sags, or other irregularities shall be shimmed by the Contractor prior to the application of the overlay thickness specified. The quantities shown on the attached Schedule contain an allowance in the tonnage figure of approximately 15% to cover the necessary shimming.

### **Technical Specifications:**

It is the intent that the Technical Specifications contained herein generally conform to the specifications set forth in Section 401 of the State of Maine Department of Transportation Standard Specifications for Highways and Bridges, as revised December 2002, and the Supplemental Specifications date February 2001. In the event of any discrepancies, the provisions of the State of Maine Specifications will apply.

### **Dimensions and Quantities:**

The dimensions and quantities as shown are approximate only, to provide the Bidder with an estimate of the scope of work. The actual dimensions may be different, the extent of paving on various streets may be changed, and the dates that the streets will be available for paving may also change. The Contractor will be given a one (1) week notice on the paving of each street.

The Bidder is advised that additional streets may also be added to the list during the project period, to be paved at the unit prices quoted in the bid.

### **Measurement and Payment:**

Measurement and payment is described in Section D, Item 10.

### FY 16 WEST DISTRICT CITY STREET PAVING

STREET	From	To	L	W	D	SQ YD	TONS
Pond St.	Union St.	Cedar St.	647	34	1.5	2444	240
Lincoln St	Seventh St.	W. Broadway	490	22	1.5	1198	117
Abbott Lane	Ohio Street	End	215	10	1.5	239	23
Maine Ave.	Hammond	Roundabout	4938	42	0.75	23044	1,290
Davis Rd.	Ohio St.	DE Circle	1400	30	1.5	4667	457
Tardet Ind Circle	North Ent	Corner	1730	28	1.5	5382	527
Mecaw Road	Perry Road	City line	330	30	3.25	1100	216
Perry Road	Odlin Road	Mecaw Road	4450	30	1.5	14833	1,454
Perkins	14th St.	Hammond St.	905	24	1.5	2413	237
Winter St.	Ohio St.	End	544	29	1.5	1753	172
Plaisted	Hammond St.	Hersey St.	698	32	1.5	2482	243
Cedar St.	West Broadway	Hammond St.	816	42	1.5	3808	373
Wing St	W. Broadway	Seventh St.	490	28	1.5	1524	149
Savage St	W. Broadway	Seventh St.	490	36	1.5	1960	192
Savage St	W. Broadway	Webster Ave	640	36	1.5	2560	251
Vine St	Fifth St	Third St.	769	23	1.5	1965	193
Larkin St.	Sixth St	Seventh St.	445	28	1.5	1384	136
Totals						72,757	6,270

### FY 16 EAST DISTRICT CITY STREET PAVING

STREET	From	To	L	W	D	SQ YD	TONS
Woodland	New Hot Top	Westwood	1200	28	1.5	3733	366
Westwood	Woodland	Woodland	680	24	1.5	1813	178
Center St	Montgomery	Cumberland (Mill)	2376	36	1.5	9504	931
KD	Montgomery	I-95 overpass	2240	28	1.5	6969	683
Park St	Harlow St	Somerset St	1152	36	1.5	4608	452
French St.	Somerset	State	1045	30	0.75	3483	195
Saratoga	91 Saratoga	Dead End	765	30	1.5	2550	250
Parkview Ave	Mt. Hope Ave	Dead End	1000	28	1.5	3111	305
North Park	French	Broadway	300	24	1.5	800	78
Penobscot St	Broadway	Essex St	450	26	0.75	1300	73
Penobscot St	Broadway	Park St	527	27	0.75	1581	89
Summit	Garland St	State St	544	36	1.5	2176	213
Bellview	Garland St	State St	581	32	1.5	2066	202
Birch	Howard	Fern	520	28	1.5	1618	159
Curve St	Harlow St	Market St	856	24	1.5	2283	224
Thornton	Dead End	Naylor	1315	30	1.5	4383	430
Mount Hope Ave	Saratoga	Hogan	2814	30	1.5	9380	919
Broadway	Center Street	Stillwater Ave (Mill)	2350	44	1.5	11,489	1,126
Forrest	Somerset	State St	630	28	1.5	1960	192
						61,359	5,746
Total city						134,116	12,016

### FY 16 EAST DISTRICT CITY STREET PAVING

STREET	From	To	L	W	D	SQ YD	TONS
Ohio Street	James Street	Hammond Street	2290	38	1.5	9669	948
Harlow	Cumberland	Central (Mill)	1241	44	1.5	6067	595
						15736	1,543



**Bid Form (page 1 of 2)**  
**Paving Program 2015**  
**Bid No.: B15-019**

**Bid Deadline:**  
**2:00 PM, Wednesday**  
**June 24, 2015**

**Note: Services must be proposed by using this Proposal Form. Failure to comply may result in disqualification.**

The undersigned, as Bidder, declares that the only parties interested in the bid as principals are named herein; that this bid is made without collusion with any other person, firm, or corporation; that no officer or agent of the Owner is directly or indirectly interested in this bid; that he/she has carefully examined the location of the proposed work, the annexed form of Contract, and the specifications therein referred to and he/she proposes and agrees that if this bid is accepted, he/she will Contract with the Owner, in the form of the copy of the Sample Contract Agreement attached hereto, to provide all necessary machinery, tools, apparatus and other means of construction and to do all the work and furnish all the materials specified in the Contract in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth and that he/she will take in full payment for the work thereof the unit prices on the following page. The foregoing prices shall include all labor, materials, equipment, overhead, profit, insurance etc., to cover the finished work of the several kinds called for.

<b>Business Name:</b>	
<b>Street or PO Box</b>	
<b>City, State, Zip</b>	
<b>Telephone Number</b>	
<b>Fax Number</b>	
<b>Email Address</b>	
<b>Contact Name</b>	
<b>Title</b>	
<b>Signature (only if mailing bid)</b>	
<b>Date</b>	



Bid Form (page 2 of 2)

Vendor Name: \_\_\_\_\_

<b>FY 16 Paving of City of Bangor Streets &amp; Parking lots</b>					
<b>Item</b>	<b>Description</b>	<b>Est Qty</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Total Price</b>
A-1	HMA 9.5 mm Surface	11,876	Ton	\$	\$
A-2	HMA 19.0 mm Binder	140	Ton	\$	\$
A-3	Bituminous Tack	3353	Gallons	\$	\$
A-4	Milling	20,993	Sq. Yards	\$	\$
A-5	Reclaim	1100	Sq. Yards	\$	\$
<b>Community Development Streets</b>					
B-1	HMA 9.5 mm Surface	1140	Tons	\$	\$
B-2	Bituminous Tack	289	Gallons	\$	\$
B-3	Milling	6067	Sq. Yards		
<b>Parking Lots</b>					
C-1	Milling	2175	Sq. Yards	\$	\$
C-2	19 MM HMA	274	Tons	\$	\$
C-3	9.5 MM HMA	122	Tons	\$	\$
C-4	Tach	54	Gallons		

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**TOTAL BID** \_\_\_\_\_

**Note:** All work listed, unless otherwise noted, must be completed by October 15, 2015; however, the Owner may undertake additional projects in the Spring of 2016. Therefore, the duration of the Contract shall be until June 30, 2016 and the bid prices stated above shall remain in effect until that time.

If this bid is accepted by the Owner and the Bidder fails to Contract as aforesaid and to give a bond in the sum of the full amount of the bid, with surety satisfactory to the Owner, within ten (10) days (not including Sundays or legal holidays) to an address given herewith that the Contract is ready for signature, then the Owner may by option determine that the Bidder has abandoned the Contract and therefore the bid and acceptance shall be null and void, and the bid bond shall be forfeited to the Owner.

## Hot Mix Asphalt Pavement

### 1. Work Included:

The work covered by this section consists of furnishing all labor, equipment, plant and materials, in performing all operations in connection with the construction of various Hot Mix Asphalt (HMA) pavements on a previous prepared base, complete and subject to the terms and conditions of the Contract.

Unless otherwise noted, all work shall comply with the most recent edition of MDOT Specifications, Division 400 – Pavements, Section 401 – Hot Mix Asphalt Pavement.

### 2. Description:

The Contractor shall furnish and place one or more courses of (HMA) pavement on approved foundations in accordance with these specifications, and in reasonable close conformity with the lines, grades, thickness and typical cross sections established by the Engineer. All pavement courses shall not be plant mixed.

Appropriate pavement courses called for shall be placed as follows:

<u>Pavement Thickness</u>	<u>Courses Required</u>
¾ inch surface	One Course
1 ½ inch surface	One Course
2 inch surface	Two: 1 inch surface courses
2 ½ inch surface	1 ½ inch binder and 1 inch surface
3 inch surface	1 ¾ inch binder and 1 inch surface
4 inch surface	2 inch binder and 2 inch surface
4 inch base	Two: 2 inch base
6 inch base	Two: 3 inch base

### 3. Materials:

a. Materials: Materials shall meet the requirements specified in MDOT Specifications, Section 700 – Materials:

- |                                 |        |
|---------------------------------|--------|
| (1) Asphalt Cement              | 702.01 |
| (2) Aggregates for HMA Pavement | 703.07 |
| (3) HMA Mixture Composition     | 703.09 |
| (4) Mineral Filler              | 703.15 |

- b. Composition of Mixtures: The composition of mixture shall conform to MDOT Specifications, Section 401.03.

The Contractor shall compose the Hot Mix Asphalt Pavement with aggregate, Performance Graded Asphalt Binder (PGAB), and mineral filler, if required. The several aggregate fractions shall be sized, uniformly graded and combined in such proportions that the resulting mixture meets the grading requirements of the job mix formula. The Contractor shall submit for the Engineer's approval, a job mix formula for each mixture to be supplied for the project.

The job mix formula with the allowable tolerances shall be within the master range specified for the particular type of mixture. The job mix for each mixture shall establish a single percentage of PGAB to be added to the aggregate, and a single temperature at which the mixture is to be delivered at the point of discharge.

#### **4. Preparation and Placement:**

- a. Asphalt Cement:

The asphalt cement shall be heated at the paving plant to a temperature not less than 275° F and not more than 325° F, and this temperature shall be maintained while the mixing plant is in operation.

- b. Mineral Aggregate:

The fine and coarse aggregate shall be piled in separate stockpiles. Each pile shall be fed to the drier by a separate mechanical feeder so as to produce a uniform bituminous mixture within the job mix specifications. The aggregates shall be heated and thoroughly dried before entering the bins. The heated and dried aggregates shall immediately be screened into three or more fractions and be conveyed into separate bins for batching and mixing with bituminous materials.

- c. Composite Mixture:

Each size of hot aggregate, the mineral filler and the asphalt cement shall be measured separately and accurately to the proportions in which they are to be mixed. In no case shall the aggregate be introduced into the mixture at a temperature of more than 25° F above the temperature of the asphalt. The temperature of the bituminous material at the time of mixing shall not exceed 325° F, and the temperature of the aggregate and mineral filler in the mixer shall not exceed 350° F when the asphalt is added. The mixture, when discharged, shall be at a temperature of not less than 275° F or more than 350° F.

When the mixture is prepared in the twin pug mixer, the volume of mineral aggregate and asphalt cement shall not be so great as to extend above the tips of the batch mixing; after hot aggregate and mineral filler have been charged into the mixer and thoroughly mixed for a period of not less than fifteen (15) seconds, the asphalt cement shall be added and the mixing continued for a period of at least twenty (20) seconds, or longer if necessary, to produce a homogeneous mixture in which all particles of the mineral aggregate are coated uniformly.

When a continuous mixer is employed, the mixing period shall be not less than thirty-five (35) seconds and as much longer as may be required to obtain a homogeneous mixture.

d. Transportation of Mixture:

The mixture shall be transported from the mixing plant to the work site in vehicles having tight, clean, smooth metal bottoms previously cleaned of all foreign material. When directed by the Engineer, the vehicles shall be suitably insulated. Each load shall be covered with canvas or other suitable material of sufficient size to protect it from weather conditions. The inside surface of all vehicles used for hauling the mixture shall be slightly lubricated with a thin oil or soap solution just before loading, but excesses of lubricant will not be permitted. No loads shall be sent out so late in the day as to interfere with spreading or compacting mixture during daylight hours unless artificial light satisfactory to the Engineer is provided.

e. Conditions of Existing Surface:

If a prime coat is called for, it shall consist of treating the gravel base course with MC-250 at a rate of approximately 0.5 gallons per square yard prior to the placement of any bituminous mixture. The actual rate of application shall be determined by the Engineer to suit field conditions.

Any existing asphalt surfaces to be overlaid shall be prepared by cleaning and filling cracks greater than 1/8 inch in width with approved crack filler after which a tack coat of AE-90 shall be applied at a rate of 0.025 gallons per square yard with an approved distributor prior to the placement of the bituminous mixture leveling course.

Prior to the delivery of the bituminous mixture to the work site, the surface upon which the bituminous mixture is to be placed shall be thoroughly cleaned of all objectionable material.

f. Placing the Asphalt Mixture:

Bituminous courses shall be constructed only when the base course of existing pavement is dry and the weather is not rainy, except that authorization may be given by the Engineer for placing the mixture on a damp base course having no free water present. Such courses shall not be constructed when the atmospheric temperature is below 40° F unless otherwise directed by the Engineer and then only when the loads are delivered continuously in insulated trucks so as to permit immediate compaction after spreading. The mixture shall be delivered on the job at a minimum workable temperature which shall be specified by the Engineer, but in no case shall be less than 225° F.

Unless otherwise permitted by the Engineer, the mixture shall be spread by means of a mechanical, self-powered paver capable of spreading the mixture true to the line, grade or crown.

The paver shall be equipped with hoppers and distributing screws of the reversing type to place the mixture evenly in front of adjustable screens without tearing or gouging. The mixture shall be dumped in the center of the hoppers and care shall be exercised to avoid overloading and slopping of the mixture upon the base.

Unless operating on fixed side forms, runners, extra edge runners, evener arms or other compensating devices to adjust the grade end and confine the edges of the mixes to true lines without the use of stationary side forms.

They shall be capable of spreading the mixes without segregation in thickness from  $\frac{3}{4}$  inch to not less than three (3) inches, to a maximum width of not less than twelve (12) feet and with adjustments to spread the mixes in strips of less than ten (10) feet in width, in steps of one (1) foot or less, to a minimum width of six (6) feet.

The term "screed" includes any "strike-off" device operated by cutting, crowding or other practical action which is effective on the mixture at workable temperatures without tearing, shoving, or gouging and which produces a finished surface of the evenness and texture specified. The screed shall be adjustable as to level.

Immediately after any course is screeded and before roller compaction is started, the surface shall be checked, any inequalities adjusted, all fat segregated and sandy accumulations from the screed removed by rake or hoe, and all fat spots in any course removed and replaced with satisfactory material.

Irregularities in alignment and grade along the outside edge shall also be corrected by the addition or removal of mixture before the edge is rolled.

The Contractor shall provide a competent workman who is capable of performing the work incidental to the correction of all pavement irregularities. Special attention shall be given by such workman to the straight edging of each course immediately following the initial rolling.

In deep or irregular sections, intersections, turn-outs or driveways where it is impractical to spread the mixture by machine methods, the Contractor may use approved spreading equipment or acceptable hand methods as directed by the Engineer.

The mixture shall be placed in lanes and the operation shall be as nearly continuous as possible. The six (6) inch strip adjacent to the area on which additional material is to be laid, shall not be rolled until such additional material is placed, except when the work is to be discontinued. After the first lane has been placed and rolled, the second lane shall be placed and rolling extended to include the six (6) inches of the first lane not previously rolled. The succeeding lanes shall be placed while the unrolled six (6) inch edge of the preceding lane is hot and in a readily compactable condition.

The mechanical spreader shall be adjusted and the speed regulated so that after compaction is complete, the surface of the course will be smooth and of such depth that it will conform to the cross section, grade and contour specified herein.

Unless otherwise directed by the Engineer, the placing shall begin along the centerline of areas to be paved on a crowned section and on the high side of a section with a one way slope.

The Contractor shall pave all driveway aprons, approaches of streets intersecting the work, to joints or lines provided by the Bangor Public Services Department, and around such catchbasins and manhole structures as may exist in or within three (3) feet of the paved travel way.

The Contractor shall hand rake around the catchbasins and manhole structures such that the transitional area from the structure to the normal surface source of the paving placed shall not be less than three (3) feet. Transitions to driveway aprons and approaches of intersections shall not leave any irregularities between the old and new pavement of more than one (1) quarter inch.

Driveway aprons shall include the area of the driveway entrance extending back a distance of up to three (3) feet from the traveled way. Sidewalk paving shall be machine placed to the same tolerances as street paving.

g. Joints:

Longitudinal and transverse joints shall be made in a careful manner. Joints between old and new pavements or between successive days of work shall be carefully made in such a manner as to insure a thorough and continuous bond between the old and new surfaces. Except when a rope type joint is used for transverse joints, the edge of the previously laid course shall be cut back to its full depth so as to expose a fresh surface, after which the hot mixture shall be placed in contact with it and raked to a proper depth and grade. Hot smoothers or tampers shall be carefully employed in such a manner as to heat up the old pavement sufficiently (without burning it) to insure a proper bond before placing the mixture against them, all contact surfaces of longitudinal joints, curbs, gutters, headers, manholes, etc., shall be painted with a thin uniform coating of hot asphalt cement or asphalt cement dissolved in naphtha. Competent workmen shall be employed who are capable of making correct, clean and neat joints. All edges of sidewalks and walls shall be protected during placing and compacting of the pavement to prevent discoloration. Longitudinal joints subject to traversing by traffic shall receive a coating of emulsified asphalt in accordance with Section 401.18 of the MDOT Standard Specifications prior to placement of adjacent pavement courses.

h. Compaction or Rolling:

After spreading, the mixture shall be thoroughly and uniformly compacted in accordance with Section 401.10 of the MDOT Standard Specifications. Initial rolling shall be accomplished using a three wheel or tandem self-propelled roller or rollers weighing not less than ten (10) tons.

Rolling shall commence as soon after spreading as the mixture will bear the roller without undue displacement. Delays in rolling freshly spread mixture will not be tolerated.

The first pass of the roller shall compact the longitudinal joint between lanes. Rolling shall continue starting longitudinally at the sides and proceed towards the center of the rear wheel. Alternated trips of the roller shall be of slightly different lengths.

Where the width permits, the pavement shall then be subjected to diagonal rolling in two directions with a tandem roller weighing not less than ten (10) tons, the second diagonal rolling crossing the lines of the first.

The roller shall pass over the unprotected end of the freshly laid mixture only when the laydown of the course is to be discontinued to the extent that the mixture becomes cold.

The speed of the roller shall not exceed three (3) miles per hour and shall at all times be slow enough to avoid displacement of the hot mixture and any displacement occurring as a result of reversing the direction of the roller or from any other cause, shall at once be corrected by the use of rakes and of fresh mixture where required. Rolling shall proceed continuously until all roller marks are eliminated and a density not less than ninety percent (90%) or the calculated density of a void less mixture composed of the same materials in like proportion is attained. To prevent adhesion of the mixture to the roller, the wheels shall be kept properly moistened but excesses of either water or oil will not be permitted.

At the curbs, headers, manholes and similar structures and at all places not accessible to the roller, thorough compaction must be secured by means of hot tampers and at all contacts of this character, the joint between these structures and the mixture must be effectively sealed.

No traffic shall be permitted on the finished pavement until it has cooled to atmospheric temperature.

i. Pavement Tolerances:

The courses after final compaction shall conform to the following requirements: They shall be smooth and true to the established crown and grade. They shall have the average thickness specified and shall at no point vary more than ¼ inch from the specified thickness. The surface will be tested by the Engineer, using a ten (10) foot straight edge at selected locations. The variation of the surface from the testing edge of the straight edge between any two contacts with the surface shall at no point exceed 3/16 of an inch. All humps or depressions exceeding the specified tolerances shall be corrected by removing defective work and replacing it with new material as directed by the Engineer, at the Contractor's expense. A ten (10) foot straight edge, acceptable to the Engineer shall be supplied by the Contractor, and shall at all times be available at the paving operation.

**5. Paving Samples:**

The Contractor shall cut samples, of suitable size, from the compacted pavement for testing. Samples of the mixture shall be taken for the full depth of the course at the locations directed by the Engineer. The Contractor shall remove the samples and replace the pavement at his/her own expense. The samples shall be removed and submitted to a qualified and approved testing laboratory within twenty-four (24) hours after the pavement has been placed. The testing of all samples will be without cost to the Owner. If the deficiency in composition, density and thickness exceeds the requirements specified, no payment will be made for such areas of pavement until they are removed and replaced by the Contractor as directed.

**6. Inspection of Plant Equipment:**

The Engineer shall have access at all times to all parts of the paving plant for checking the adequacy of the equipment in use, inspecting the operation of the plant, verifying proportions, and character of materials.

**7. In-Place Pavement Reclamation:**

In-place full depth pavement reclamation shall be done in accordance to MDOT Standard Specifications Section 307 unless otherwise specified by the Engineer.

a. Description:

This work shall consist of pulverizing the existing bituminous pavement and blending and mixing it with a portion of the underlying gravel into a homogeneous mass, grading and compacting this material to the lines, grades and dimensions shown on the plans or established by the Engineer.

b. In-Place Recycled Material:

In-place recycled material shall consist of the existing bituminous pavement and a designated portion of the underlying gravel pulverized and blended into a homogeneous mass.

c. Pulverizer:

The pulverizer shall be a self-propelled machine, specifically manufactured for in-place recycling of bituminous pavements, and capable of reducing the required existing materials to a size which will pass a two (2) inch square mesh sieve. The machine shall be equipped with a standard automatic depth control and must maintain a consistent cutting depth and width.

d. Placement Equipment:

Grading of the cold in-place recycled mixture to the required slope and grade shall be done with an approved highway grader or by another method approved by the Engineer.

- (1) Cross slopes shall be maintained at 3-4% with a tolerance of 1/4% as directed by the Engineer.
- (2) Center line grades shall be carried so as to approximate the existing street profiles, after the pavement has been placed and compacted to the thicknesses specified.

e. Rollers:

The full depth reclamation recycled material shall be rolled with a vibratory pod/taming foot roller with a minimum 1.4 m (54 in) diameter single drum. The drum shall have a minimum of 112 tamping feet, 75 mm (3 in) in height, and a minimum contact area per foot of 110 cm<sup>2</sup> (17 in<sup>2</sup>). Final rolling shall be accomplished by a minimum 2.15 m (84 in) width single drum vibratory soil compactor.

f. Pulverizing:

The entire depth of existing pavement shall be pulverized together with six (6) inches of the underlying gravel into a homogeneous mass of in-place recycled material. All pulverizing shall be done with equipment that will provide a homogeneous mass of recycled material, processed in-place which will pass a two (2) inch square mesh sieve.

g. Liquid Calcium Chloride:

N/A

h. Weather Limitations:

In-place recycling shall not be performed when the atmospheric temperature is below 40° F or when weather conditions are such that proper pulverizing, spreading or compaction of the recycled material cannot be accomplished.

i. Timing of the Work:

The Contractor shall not repave immediately upon completion of the reclamation. The Contractor shall allow five (5) days prior to placing the final paving to provide the Owner and utility companies with sufficient time to adjust and repair any structures within the limit of work.

j. Dig Safe Notification:

The Contractor shall assume all responsibility for notifying Dig Safe of the schedule and in coordination with the Engineer, the limits of the area to be reclaimed. The Contractor shall provide written notification/verification of said notice.

**8. Cold Planning (removing) Pavement Surface:**

a. Description:

This work shall consist of removing the surface of the bituminous concrete pavement to the depth, width, grade and cross sections as directed by the Engineer.

b. Construction Requirements:

(1) Removing Material:

The equipment for removing the bituminous surface shall be a power operated planing machine or grinder capable of removing the bituminous concrete pavement to the required depth. The equipment shall be capable of accurately establishing profile grades by referencing from either the existing pavement or from an independent grade control and shall have a positive means of controlling cross slope elevations. The equipment shall also have an effective means for removing excess material.

(1.1) Excess Material:

The material removed shall become the property of the Owner and shall be delivered to the Bangor Public Services Facility, 530 Maine Avenue, Bangor, Maine.

(1.2) Transportation:

The transportation of the planed material will be by vehicles provided by the Contractor. The Contractor shall provide all transportation for material delivered to the site selected by the Engineer.

(2) Lines and Grades:

The Contractor shall follow the natural lines of the existing street grades unless directed otherwise by the Engineer. The depth of grinding may vary as directed by the Engineer or as required to ensure a uniform cross slope of 3-4% with a tolerance of one (1) quarter of one percent (1%).

(3) Method of Measurement:

The pavement surface removed will be measured by the square yard of material removed to the specified lines and grades required. As a general rule, the grinding will be expected to average two (2) inches in depth unless directed otherwise by the Engineer.

(4) Dig Safe Notification:

The Contractor shall with the assistance of the Engineer be responsible for marking the areas to be cold planed. The Contractor shall be responsible for providing a timely notification to Dig Safe and providing written certification of the notice to the Engineer.

(5) Timing of the Work:

The Contractor shall allow at least five (5) days after completion of the cold planning before placing the final paving to allow the Owner and utility companies to adjust and or repair their facilities.

The Contractor shall commence within ten (10) working days, unless directed otherwise by the Engineer, to place the final paving on the cold planed surfaces.

**9. Measurement and Payment:**

a. General:

Measurement and payment for the various types of work required will be for work acceptably completed in full accordance with the Standard Specifications, the Contract Documents and as directed by the Engineer. Payment will be made on the following basis:

(1) Items A-1,A-2,B-1,C-1 & C-2: Hot Mix Asphalt (HMA) Pavement:

Payment shall be made by the number of actual tons placed, determined by load slips, properly marked with street identification, and given to the representative of the Engineer, on the site, at the time of placement.

(2) Items A-3, B-2 & C-3: Bituminous Tack:

Payment shall be made based on the actual number of gallons applied, based on slips provided to the representative of the Engineer, from the applicator at the time of application.

**Special Provisions**  
Asphalt Escalator Payment

SECTION E

Price Adjustment for Hot Mix Asphalt:

A price adjustment for performance graded binder will be made for the following pay items:

- Item 403.206 Hot Mix Asphalt – 25 mm
- Item 403.207 Hot Mix Asphalt – 19 mm
- Item 403.208 Hot Mix Asphalt – 12.5 mm
- Item 403.210 Hot Mix Asphalt – 9.5 mm
- Item 403.212 Hot Mix Asphalt – 4.75 mm
- Item 403.213 Hot Mix Asphalt – 12.5 mm (Base & Intermediate course)

Price adjustments will be based on the variance in costs for the performance graded binder component of hot asphalt. They will be determined as follows:

The quantity of hot mix asphalt for each pay item will be multiplied by the performance graded binder percentages given in the table below times the difference in the price between the base price and the period price of asphalt cement. Adjustments will be made upward or downward, as prices increase or decrease.

- Item 403.206: 4.8%
- Item 403.207: 5.2%
- Item 403.208: 5.6%
- Item 403.210: 6.2%
- Item 403.212: 6.8%
- Item 403.213: 5.6%

Hot Mix Asphalt:

The quantity of hot mix asphalt will be determined weekly by totaling the load slips turned in to the representative of the Engineer.

Base Price:

The base price of performance graded binder to be used is the price per standard ton current with the bid opening date. This price is determined by using the average New England Selling Price, as listed in the Asphalt Weekly Monitor.

Period Price:

The period price of performance graded binder will be determined by using the average New England Selling Price, listed in the Asphalt Weekly Monitor current with the date of the application of the Hot Mix Asphalt.

Department of Community & Economic Development  
Community Development Block Grant Program

**INFORMATION FOR BIDDERS  
PLEASE READ CAREFULLY!**

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**FOR YOUR BID TO BE CONSIDERED RESPONSIVE YOU MUST COMPLETE THE  
FOLLOWING CERTIFICATIONS:**

**For Contracts Between \$10,000 and \$100,000**

1. CERTIFICATION OF CONTRACTOR REGARDING SEGREGATED FACILITIES
2. CERTIFICATION OF CONTRACTOR REGARDING EQUAL EMPLOYMENT OPPORTUNITY

**For Contracts Exceeding \$100,000**

1. CERTIFICATION OF CONTRACTOR REGARDING SEGREGATE FACILITIES
2. CERTIFICATION OF CONTRACTOR REGARDING EQUAL EMPLOYMENT OPPORTUNITY
3. SECTION 3: AFFIRMATIVE ACTION PLAN

**Additional Certification by Subcontractor Prior to the Start of Work Date**

1. For all subcontracts exceeding \$10,000: Certification of Subcontractor Regarding Segregated Facilities and Certification of Subcontractor Regarding Equal Employment Opportunity.
2. For all subcontracts exceeding \$100,000; Section 3: Affirmative Action Plan.

**Submission of Section 3: Utilization Report for Contracts Exceeding  
\$100,000**

Prime Contractors must submit a Section 3: Utilization Report to the CDBG grantee or their designee prior to final payment of CDBG funds for the project. This Report must include all Section 3 employees of both the Contractor and all Subcontractors according to the terms of Section 3: Affirmative Action Plan.

**City of Bangor**

**Department of Community & Economic Development  
Community Development Block Grant Program  
CERTIFICATION OF CONTRACTOR REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY  
(For Prime Contracts Exceeding \$10,000)**

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any Bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the Contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause, and if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the Bidder has not filed a compliance report due under applicable instructions, such Bidder shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such report is submitted.

**CERTIFICATION BY BIDDER**

Name and address of Bidder

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1. Bidder has participated in a previous contract or subcontract subject to the EEO clause.  
 Yes    No
  
2. Compliance reports were required to be filled in connection with such contract or subcontract.  
 Yes    No
  
3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.  
 Yes    No
  
4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?  
 Yes    No

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Name and Title of Authorized Representative (print or type)

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Signature of Authorized Representative

Date

**City of Bangor**

**Department of Community & Economic Development  
Community Development Block Grant Program**

**CERTIFICATION OF CONTRACTOR REGARDING  
SEGREGATED FACILITIES**

**(For Prime Contracts Exceeding \$10,000)**

Name of Prime Contractor: \_\_\_\_\_

Project Name and/or Number: \_\_\_\_\_

The undersigned hereby certifies that:

- (a) No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.



\_\_\_\_\_  
Name and Title of Authorized Representative (print or type)

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

**City of Bangor**  
**Department of Community & Economic Development**  
**Community Development Block Grant Program**  
**SECTION 3: AFFIRMATIVE ACTION PLAN**  
**(Prime Contractor)**  
**(For Prime Contracts Exceeding \$100,000)**

\_\_\_\_\_, Contractor, agrees to implement the following specific affirmative action steps directed at increasing the utilization of Section 3 residents and Section 3 business concerns within the City of Bangor, Maine, Penobscot County.

- A. To ascertain from the locality's CDBG Program official the exact boundaries of the Section 3 Covered Project Area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the City of Bangor, the necessary individuals to fill employment opportunities generated by Section 3 covered assistance through: local advertising media, signs placed at the proposed site for the project, community organizations and public or private institution operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service and providing preference for these opportunities in the following order:
  - (i) Section 3 residents residing in the service area or neighborhood in which the Section 3 covered project is located;
  - (ii) Participants in HUD Youthbuild Programs, and
  - (iii) Other Section 3 residents.
- C. To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and a vacancy exists.
- D. To insert this Section 3 Affirmative Action Plan in all bid documents for contracts over \$100,000, and to require all bidders on subcontracts over \$100,000 to submit a Section 3 Affirmative Action Plan, including utilization goals and the specific steps planned to accomplish these goals.
- E. To ensure that subcontracts over \$100,000 which are typically negotiated rather than going through the bid process in areas other than Section 3 covered project areas, also on negotiated, whenever feasible, when in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associates to secure their cooperation for this program.

- G. To notify Section 3 residents and Section 3 business concerns about economic opportunities generated by Section 3 covered assistance and to award Section 3 covered contracts, to the greatest extent feasible, to Section 3 business concerns in the following order of preference.
  - (i) Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located
  - (ii) Applicants selected to carry out HUD Youthbuild projects; and
  - (iii) Other Section 3 business concerns.
- H. To notify potential contractors about Section 3 requirements of this part, and incorporating the Section 3 clause in all solicitations and contracts
- I. To facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns undertaking activities to reach the numerical goal established by HUD.
- J. To cooperate in obtaining the compliance of contractors and subcontractors with the requirements of Section 3.
- K. To submit a report to the City of Bangor and HUD on the results of actions taken to provide training, jobs and contracts to Section 3 residents and Section 3 business concerns.
- L. To appoint an executive official of the company or agency as Equal Employment Opportunity Officer to coordinate the implementation of the Section 3 Affirmative Action Plan.
- M. To document utilization of Section 3 employees on the covered project by having new employees, (including those of all subcontractors) from the Section 3 area, complete the Section 3 Income Worksheet as provided by the City of Bangor.
- N. To complete a Section 3 Utilization Report and submit said report to the City of Bangor, HUD, or their designee prior to final payment for the covered project; this report will list all Section 3 employees documented on the Section 3 Income Worksheet and be in the format provided by the City of Bangor.
- O. To maintain records, including copies of correspondence, income verification memoranda, etc., which document that all levels of the above affirmative action steps have been taken.

**CONTRACTOR CERTIFICATION**

As officer and representative of: \_\_\_\_\_  
 (Name of Contractor)

\_\_\_\_\_  
 Name and Title of Authorized Representative (print or type)

\_\_\_\_\_  
 Signature of Authorized Representative Date

**City of Bangor**  
**Department of Community & Economic Development**  
**Community development Block Grant Program**  
**SECTION 3: UTILIZATION REPORT**  
**(For Prime Contracts Exceeding \$100,000)**

***A. Section 2: Employee Information***

Name of CDBG Grantee: \_\_\_\_\_

Name of Project: \_\_\_\_\_

CDBG Project Number: \_\_\_\_\_ Wage Decision Number: \_\_\_\_\_

Number of Section 3 Employees Utilized on Project by Prime Contractor: \_\_\_\_\_

Number of Section 3 Employees Utilized on Project by Prime Subcontractor: \_\_\_\_\_

Total number of Section 3 Employees Utilized on Project: \_\_\_\_\_

***B. Certification of Prime Contractor***

As office and representative of: \_\_\_\_\_  
Name of Prime Contractor

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

On behalf of the Company, I hereby certify that the above information is true and accurate and is reported fully as required by the Section 3 Affirmative Action Plan as part of the contract for this CDBG assisted construction project. It is further understood that final payment from the State of Maine CDBG Program for this project cannot be made until this report is submitted to the CDBG Grantee or authorized designee.

\_\_\_\_\_  
Name and Title of Authorized Representative (print or type)

\_\_\_\_\_  
Signature of Authorized Representative Date

## City of Bangor

### Department of Community & Economic Development Community Development Block Grant Program **DIRECTIONS FOR COMPLETION OF SECTION 3: UTILIZATION REPORT** (For Prime Contracts Exceeding \$100,000)

1. Determine if there has been Section 3 participation in the construction project.
  - a. If you hire new employees who reside in the county where the construction is taking place to work on the CDBG project, have them complete the one page Section 3 Income Worksheet and return it to you. Compare the Worksheet to the Section 3 Income Schedule provided to you at the pre-construction conference to determine if they are Section 3 eligible.
  - b. Distribute copies of the Section 3 Income Worksheet to all subcontractors you engage for the project. Instruct them to have any new employees they hire who reside in the county where the construction is taking place complete the worksheet and have the subcontractor return the forms to you. Compare as in (a) above to determine Section 3 eligibility.
2. Retain all Section 3 Income Worksheets with you project records.
3. Complete (A) Section 3 Employee Information area of the report.
  - a. Enter name of the community where the project is located.
  - b. Enter project.
  - c. Enter CDBG Project Number & Federal Wage Decision Number (located in the contract documents).
  - d. Enter the number of Section 3 employees you utilized on the project.
  - e. Enter the number of Section 3 employees utilized by subcontractors on project.
  - f. Enter total number (d+e) of Section 3 employees utilized on the project.
  - g. Complete (B) Certification by Prime Contractor area of Report.
  - h. List your name, address and telephone number of your company.
  - i. Print or type name and title of authorized company representative.
  - j. Have authorized representative sign and date the report.

#### **IMPORTANT REMINDER**

Final payment of CDBG funds will not be made until Section 3 Utilization Report is submitted to CDBG grantee or designee.

**City of Bangor**  
**Department of Community & Economic Development**  
**Community Development Block Grant Program**  
**CERTIFICATION OF CONTRACTOR REGARDING**  
**EQUAL EMPLOYMENT OPPORTUNITY**  
**(For Prime Contracts Exceeding \$100,000)**

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any Bidder or prospective contractor, or any other proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause, and if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the Bidder has not filed a compliance report due under applicable instructions, such Bidder shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such report is submitted.

**CERTIFICATION BY SUBCONTRACTOR**

Name and address of Bidder

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5. Bidder has participated in a previous contract or subcontract subject to the EEO clause.  
\_\_\_ Yes \_\_\_ No
6. Compliance reports were required to be filled in connection with such contract or subcontract.  
\_\_\_ Yes \_\_\_ No
7. Bidder has filed all compliance reports due under applicable instructions, including SF-100.  
\_\_\_ Yes \_\_\_ No
8. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?  
\_\_\_ Yes \_\_\_ No

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Name and Title of Authorized Representative (print or type)

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Signature of Authorized Representative

Date

**City of Bangor**

**Department of Community & Economic Development  
Community Development Block Grant Program**

**CERTIFICATION OF CONTRACTOR REGARDING  
SEGREGATED FACILITIES**

**(For Prime Contracts Exceeding \$100,000)**

Name of Subcontractor: \_\_\_\_\_

Project Name and/or Number: \_\_\_\_\_

The undersigned hereby certifies that:

- (b) No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.

\_\_\_\_\_  
Name and Title of Authorized Representative (print or type)

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

## **FEDERAL CONTRACT PROVISIONS**

### **1. Title VI of the Civil Rights Act of 1964:**

(P.L. 88-352), as amended, (42 USC 2000d) and the requirement imposed by the Regulation of the Department of Commerce (15 CFR Part 8) issued pursuant to that Title. In accordance therewith no person in the United States shall, on the grounds of race, handicap, color, sex, national origin or familial status be excluded from participation in, be denied the benefits or be otherwise subjected to discrimination under any program or activity which is paid for with federal funds. The Owner further add that there shall not be any form of discrimination by any party in the CDBG contract on the basis of familial status, sexual orientation or sex.

### **2. Rehabilitation Act of 1973:**

29 USC 794, Executive Order 11914, Section 504: No otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity receiving federal financial assistance.

### **3. Section 202 of Executive Order 11246:**

#### **A. Activities and Contracts NOT Subject to Section 202:**

(Applicable to Federally assisted construction contracts and related subcontracts of \$10,000 and under)

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provision of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. Contractors shall incorporate the foregoing requirement in all subcontract.

**B. Activities and Contracts Subject to Section 202:**

(Applicable to Federally assisted construction contracts and related subcontracts of \$10,000 and under)

During the performance of this Contract, the Contractor agrees as follows:

1. (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or nation origin. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post inconspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provision of this nondiscrimination clause.
- (b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin.
- (c) The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement, or understanding, a notice to be provided by the CONTRACT Compliance Officer advising that said labor union or worker's representative of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and order of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts to the Owner and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or order, this Contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

- (g) The Contractor will include the provisions of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provision will be binding upon each subcontractor or vendor.

The Contractor will take such action with respect to any subcontract or purchase order as the Owner may direct as a means of enforcing such provision, including sanctions for non-compliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

- 2. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or nation origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.
- (b) The Contractor will, in all solicitations or advertisements for employment placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (c) The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement, contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
- (e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and order of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for the purpose of investigation to ascertain compliance with such rules, regulations and orders.
- (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulation or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract unless exempted by rules, regulation or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any subcontract as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that the applicant so participating is a State or local government agency, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulation and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may

require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract, or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II Subpart D of the Executive order.

In addition, the applicant agrees that if it fails or refuses to comply within these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. **Certification of Non-Segregated Facilities as required by the May 19, 1967, Order (32 F.R. 74390 on Elimination of Segregated Facilities, by the Secretary of Labor):**

Prior to the award of any construction contract or subcontract exceeding \$10,000, the contractor shall submit the signed Certification of Non-segregated Facilities Form for him/herself and all subcontractors.

5. **The Age Discrimination Act of 1975:**

No person in the United States shall, on the basis of age, be excluded from participation or be denied the benefits of, or be subjected to discrimination under, any program or activity undertaken with Federal funds.

6. **Section 109 of the Housing and Community Development Act of 1974:**

No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under Title I of the Housing and Community Development Act of 1974.

**7. Section 3 of the Housing and Urban Development Act of 1968:**

In connection with the planning and carrying out of any project assisted with CDBG funds, and to the greatest extent feasible, opportunities for training and employment should be given to lower-income persons residing within the unit of local government in which the project is located, and contracts for work in connection with the project should be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in, the same unit of local government in which the project is located. And that this contract, or any subcontracts, must adhere to and contain what is referred to as the Section 3 Clause, and which follows in its entirety:

**Section 3 Clause:**

- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this Contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with Part 135 regulations.
- c. The contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contract's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for employment and training positions can see the notice.

The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135.

Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontract has been found in violation of the regulations in 24 CFR Part 135.

- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- f. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default and debarment for suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preferences and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

## **8. Labor Standards:**

### a. Davis-Bacon Act:

As amended (40 U.S.C. 276a-276a-5). All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

### b. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333):

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the CONTRACT Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulation pertaining to labor standards.

### c. Copeland Anti-Kickback Act:

Requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions.

**9. Title IV of the Lead Based Paint Poisoning Prevention Act:**

LEAD-BASED PAINT HAZARDS: The use of lead-based paint, that is any paint containing more than 1% lead by weight, is strictly prohibited from use on any interior surface or exterior surface in any building being rehabilitated with funding from the Community Development program. Additionally, any evidence of a health hazard, which is, defined as cracking, scaling, peeling and loose lead-based paint must be treated to prevent the ingestion of the contaminated paint. It is further necessary to assume that any of the above conditions constitute an immediate or potential hazard and must be corrected using appropriate methods.

**10. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970:**

(P.L. 91-646 as amended). 15 CFR Part 916 including amendments thereto and regulations thereunder, as provided by 1 M.R.S.A. 901 et. seq. The contractor and Grantee will ensure that all work performed under this contract will be done in accordance with this act.

**11. The National Environmental Policy Act of 1969 (P.L. 90-190); The National Historic Preservation Act of 1966 (80 Stat 915, 16 USC 470); and Executive Order No. 11593 of May 31, 1971:**

The chief executive officer of the Grantee consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and other provisions of Federal law, as specified in 24 CTR 58, which further the purposes of NEPA in the areas of historic preservation, noise control floodplains, coastal zones and wetlands, air quality, water quality, wildlife, endangered species, solid waste disposal and environmental effects abroad.

The chief executive officer is authorized and consents on behalf of the Grantee and him/herself to accept the jurisdiction of the federal courts for the purpose of enforcement of his/her responsibilities as such an official.

**12. The Flood Disaster Protection Act of 1963 (P.L. 93-234 as Amended):**

The Grantee will fulfill any flood insurance requirements under this Act and any regulations issued thereunder which NOAA may issue.

**13. Architectural Barriers Act (P.L. 90-480), 42 USC 4151, as Amended, and the regulation issued or to be issued thereunder, prescribing standards for the design and construction of any building or facility intended to be accessible to the public or which may result in the employment of handicapped person therein.**

**14. The Clean Air Act as Amended, 42 USC 1857 et seq. 9; The Federal Water Pollution Control Act, as Amended, 33 USC 1251 et seq. and the regulation of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as Amended from time to time:**

In no event shall any amount of the assistance provided under this contract be utilized with respect to a facility, which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

**15. Minority Business Enterprises:**

Referenced in Executive Order 11625, OMEB Circular A-102 Attachment 0 Procurement Standards, Grantees are to give priority to Minority Business Enterprises in the purchase of supplies, equipment, construction and services.

**16. CDBG Certification:**

Grantee shall provide any certification required under Sections 104(b), 106(d)(5) or under any other provision of Title I of the Housing and Community Development Act of 1974 as amended through 1983, including Amendments made by the Housing and Urban Rural Recovery Act of 1983, and shall comply with the terms of such certifications.

**17. Section 319 of Public Law 101-121:**

The Grantee shall comply with the requirements of Section 319 of Public Law 101-121 regarding government wide restrictions on lobbying.

## **Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention**

### **A. Lead-Based Paint Hazards:**

(Applicable to contracts for construction or rehabilitation of residential structures). The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The contractor and subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under sub-part B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof.

### **B. Use of Explosives:**

When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state and federal laws in purchasing and handling explosives. The contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats. The contractor shall notify all owners of public utility property of intention to use explosives at least eight hours before blasting is done, close to such property. Any supervision or direction of the use of explosives by the Engineer does not in any way reduce the responsibility of the contractor or his/her Surety for damages that maybe caused by such use.

### **C. Danger Signals and Safety Devices:**

The contractor shall make all necessary precautions to guard against damages to property and injury to persons. He/she shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the contractor fails to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the contractor. Such action by the Owner does not relieve the contractor of any liability incurred under these specifications or contract.

## **Federal Labor Standards Provisions**

### **U.S. Department of Housing and Urban Development**

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#### **Applicability**

The Project of Program to which the construction work covered by this contract pertains is being assisted by the United State of America and the following Federal Labor Standards Provisions are included in this contract pursuant to the provisions applicable to such Federal assistance.

#### **A. 1. (i) Minimum Wages:**

All laborers and mechanics employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provision of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii)(a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification, wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in wage determination;
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a relationship to the wage rates contained in the wage determination.
- (b) If the contractor, laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140).
- (c) In the event the contractor, laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).
- (d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met.

The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OBM Control Number 1215-0140).

## **2. Withholding:**

HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much that the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract. HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

## **3. (i) Payrolls and Basic Records:**

Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address and social security number of each such worker, his/her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) or the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

- (ii) (a) The contractor shall submit weekly payrolls for each employee in which any contract work is performed. A copy of all payrolls must be submitted to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-34 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), Government Printing Office, Washington DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).
- (b) Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the contractor or his/her agent who pays or supervisors the payment of the persons employed under the contract and shall certify the following:
  - (1) That the payroll for the payroll period contains the information required to be maintained under 20 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed under the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and

- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by paragraph (a)(b)(3)(ii)(b) of this Section.
- (d) The falsification of any of the above certifications may be subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during work hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment pursuant to 29 CFR Part 5.12.

**4. (i) Apprentices and Trainees:**

Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in her/her first 90 days of probationary employment as an apprentice in such an apprentice program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the age determination for the work actually performed.

Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees:**

Except as provided in 29 CFR 5.16, trainees will not be permitted to work less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, and Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeymen's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program.

If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeymen wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal Employment Opportunity:**

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with equal employment opportunity requirements of Executive Order 11246 as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act Requirements:**

The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

**6. Subcontracts:**

The contractor or subcontractor will insert any subcontract the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee deem appropriate, including instruction, requirements and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all contract clauses in 29 CFR Part 5.5.

**7. Contracts Termination, Debarment:**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirement:**

All ruling and interpretations of the Davis-Bacon and Related Act contained in 29 CFR Parts 1, 3 and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning Labor Standards:**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6 and 7.

**10. (i) Certification of Eligibility:**

By entering into this contract, the contractor certifies that neither he nor she nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Part 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No Part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act of 29 CFR Part 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

- (iii) The Penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transaction", provides in part: "Whoever, for the purpose of influencing in any way the action of such Administration, publishes any statement, knowing the same to be false, shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

## **11. Complaints, Proceedings or Testimony by Employees:**

No laborer or mechanic to whom the wage, salary or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or related to the labor standards applicable under this contract to his/her employer.

### **A. Contract Work Hours and Safety Standards Act:**

As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

#### **(1) Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he/she is employed on such work, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

#### **(2) Violation; Liability for Unpaid Wages; Liquidated Damages:**

In the event of any violation of the clause set forth in subparagraph (1) or this paragraph, the contractor or any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this section, in the sum of \$10.00 for each calendar day on which such individual was required or permitted to work in excess of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this section.

**(3) Withholding for Unpaid Wages for Liquidated Damages:**

HUD or its designees shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold, or cause to be withheld from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this section.

**(4) Subcontracts:**

The contractor or subcontractor shall insert in any subcontract the clauses set forth in subparagraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this section.

**B. Health and Safety:**

- (1) No laborer or mechanic shall be required to work in surrounding or under working conditions that are unsanitary, hazardous or dangerous to his/her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly Part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).
- (3) The contractor shall include the provision of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**City of Bangor**

**Department of Community & Economic Development  
Community development Block Grant Program**

**SECTION 3: INCOME WORKSHEET**

To be completed by all new employees in the county where the construction work is taking place. Completion of this worksheet is solely to determine if there is utilization of Section 3 employees on this construction project and should not be considered as a condition of employment.

New Employee's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of New Employee

\_\_\_\_\_  
Date

Please place an "X" in the appropriate spaces pertaining to your family's size, annual income and markup.

<u>Family Size</u>	<u>Income</u>		
1	30,450	Above ____	Below ____
2	34,800	Above ____	Below ____
3	39,150	Above ____	Below ____
4	43,500	Above ____	Below ____
5	46,950	Above ____	Below ____
6	50,450	Above ____	Below ____
7	53,900	Above ____	Below ____
8	57,400	Above ____	Below ____

Read this Carefully

In determining total family income, use your Total Adjusted Gross Income for your household as reported on your most recent Federal Income Tax form.

If you use Form 1040 – use line 33  
If you use Form 1040A – use line 19  
If you use Form 1040EZ – use line 4



**FOR USE BY PRIME CONTRACTOR ONLY**

Name of Prime Contractor: \_\_\_\_\_

Project Name: \_\_\_\_\_

Is new employee Section 3 eligible? \_\_\_\_ Yes \_\_\_\_ No

If yes, must be included in SECTION 3 UTILIZATION REPORT.

General Decision Number: ME130051 02/01/2013 ME51

Superseded General Decision Number: ME20120051

State: Maine

Construction Type: Highway

County: Penobscot County in Maine.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Modification Number	Publication Date
0	01/04/2013
1	02/01/2013

\* ENGI0004-013 12/01/2012

	Rates	Fringes
Power equipment operators: Grader/Blade, Milling Machine	\$ 26.21	23.64

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SUME2011-046 09/14/2011

	Rates	Fringes
Carpenter Including Form Work	\$ 14.72	1.72
Cement Mason/Concrete Finisher	\$ 16.94	0.00
Electrician	\$ 21.55	3.51
Ironworker, Reinforcing	\$ 17.45	0.00
Ironworker, Structural	\$ 18.75	4.56
Laborers: Common or General	\$ 12.83	2.20
Laborer: Flagg	\$ 9.00	0.00
Laborer: Highway/Parking Lot Striping	\$ 14.63	0.00
Laborer: Landscape	\$ 15.43	2.09
Operator: Backhoe	\$ 17.27	3.45
Operator: Bobcat/Skid Steer/ Skid Loader	\$ 16.21	4.60

	Rates	Fringes
Operator: Broom/Sweeper	\$ 13.49	1.22
Operator: Bulldozer	\$ 17.74	2.72
Operator: Crane	\$ 19.03	1.70
Operator: Excavator	\$ 16.33	2.78
Operator: Loader	\$ 15.66	4.79
Operator: Mechanic	\$ 21.71	6.29
Operator: Milling Machine Reclaimer Combo	\$ 24.77	8.39
Operator: Paver (Asphalt, Aggregate, and Concrete)	\$ 19.89	7.20
Operator: Roller excluding Asphalt	\$ 19.97	7.43
Operator: Screed	\$ 19.58	5.95
Truck Driver, Includes all axles Including Dump Trucks	\$ 12.31	4.44
Truck Driver: Low Truck	\$15.15	5.62

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WELDERS – Receive rate prescribed for craft performing operation to which welding is incidental.  
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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a) (1) (ii)).  
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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of “identifiers” that indicate whether the particular rate is union or non-union.

**Union Identifiers**

An Identifier enclosed in dotted lines beginning with characters other than “SU” denotes that the union classification and rate found to be prevailing for that classification. Example: PLUM198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council

number where applicable, i.e., Plumber Local 0198. The nest number, 005 in the example, is an internal number used in processing the wage determination. The date, 7/1/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union rates will be published annually each January.

#### Non-Union Identifiers

Classifications listed under as "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non0union data. Example: SULA2004-007 5/13/2000. Su indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under the identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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#### WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter.
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

- 2) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requester considers relevant to the issue.

- 3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formally the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

- 4) All decisions by the Administrative Review Board are final

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END OF GENERAL DECISION



**Contract Agreement  
between  
The City of Bangor  
and**

**THIS CONTRACT** made this \_\_\_ day of \_\_\_\_\_, 2013 by and between the City of Bangor, (hereinafter referred to as the "OWNER"), and \_\_\_\_\_, (hereinafter referred to as the "CONTRACTOR").

**WITNESSETH**, that the CONTRACTOR and the OWNER, for consideration stated herein mutually agree as follows:

**Article 1: Statement of Work:**

In consideration of the promises herein contained the CONTRACTOR agrees to perform the following work:

*Furnish all personnel, labor and materials to perform the work for the OWNER in accordance with the terms, conditions and specifications in bidding documents as well as all Federal standards.*

**Article 2: The Contract:**

The following shall be deemed to be part of this CONTRACT.

- a. Notice to Contractor;
- b. Information for Bidders;
- c. Bid Form;
- d. Contract Agreement;
- e. Performance and Payment Bonds;
- f. Specifications and Plans;
- g. Addenda, if any, issued to any of the foregoing; and
- h. Any and all other provisions required by law to be included in this Contract, whether actually included or not.

All of the foregoing, taken as a whole, shall constitute this CONTRACT document.

### **Article 3: Definitions:**

The following terms and/or the singular, masculine pronouns used in their place shall have the following meanings within the context of this CONTRACT:

- Owner: The City of Bangor, Maine acting through its duly authorized representatives.
- Engineer: The City of Bangor Engineer or his/her duly authorized representatives.
- Contractor: The individual, firm or corporation to whom this CONTRACT has been awarded whether acting on his/her own or through subcontractors or employees.

### **Article 4: Site Investigation:**

The CONTRACTOR acknowledges that he/she has satisfied him/herself as to the nature and location of the work, the general and local conditions including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and condition of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the work.

The CONTRACTOR further acknowledges that he/she has satisfied him/herself as to the character, quality and quantity of surface and subsurface material or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the OWNER as well as from information presented by the plans and specifications hereof.

Any failure by the CONTRACTOR to acquaint him/herself with the available information will not relieve him/her from responsibility for estimating properly the difficulty or cost of successfully completing the work.

The OWNER assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR on the basis of the information made available to him/her.

### **Article 5: Prices for Work:**

The OWNER will pay and the CONTRACTOR shall accept the prices stipulated in the bid as full and just compensation for everything furnished and done by the CONTRACTOR, and for any and all expenses of any nature incurred by the CONTRACTOR in completing properly and to the entire satisfaction of the OWNER all work under this CONTRACT, including any losses or damages incurred by the CONTRACTOR as a result of work under this CONTRACT and expecting only such expenses, losses, etc., for which other provisions are specifically made elsewhere herein.

**Article 6: Money may be Retained:**

The OWNER may keep any monies which would otherwise be payable at any time hereunder, and may apply the same, or so much as may be necessary therefore, to the payment of expenses, losses or damages incurred by the OWNER and determined as herein provided, and may retain, until all claims are settled, so much of such money as, in the OWNER's opinion, will be required to settle all claims filed with the OWNER relating to this CONTRACT.

**Article 7: Progress Estimates:**

Except as hereinafter provided, the Engineer shall, once in each month, make an estimate in writing of the total amount of the work done to the first of the month, and the amount earned by the CONTRACTOR.

The OWNER will retain ten percent (10%) of such estimated value as part security for fulfillment of this CONTRACT by the CONTRACTOR and shall deduct from the balance all previous payments and all sums to be retained under this and/or other provisions of this CONTRACT.

The OWNER shall pay to the CONTRACTOR each month, the balance not retained as aforesaid, except that such money payment may be withheld at any time if the work, in the opinion of the Engineer, is not proceeding expeditiously and in accordance with this CONTRACT. The OWNER may, if it is deemed expedient to do so, cause estimated and payments to be made more frequently than once a month.

Estimates of lump sum items will be based on the Engineer's estimate of the percentage of each such item completed, each such percentage to be applied to the appropriate lump sum prices as set forth on the Bid Form attached hereto.

Payment for materials will not be made unless and until such materials have been satisfactorily installed or otherwise incorporated into the work.

**Article 8: Engineer's Authority:**

The Engineer will in all cases determine the amount, quality, acceptability and fitness of the several kinds of work and materials which are to be paid for under this CONTRACT. He/she will determine all questions in relation to said work and the construction thereof, and will in all cases decide every question of fact which may arise relative to the fulfillment of this CONTRACT on the part of the OWNER and on the part of the CONTRACTOR. His/her estimate and decision will be final and conclusive upon both parties to this CONTRACT.

Any difference or conflicts which may arise between the CONTRACTOR and other contractors of the OWNER in regard to their work will be adjusted and determined by the Engineer. The Engineer will make all necessary explanations as to the meaning and intent of the plans and will give all necessary orders and directions.

The order or sequence of execution of the work and the general conduct of the work will be subject to the approval of the Engineer and, should public necessity or welfare so require, to his/her direction. No such approval or direction will, however, in any way affect the responsibility of the CONTRACTOR in the conduct of the work.

#### **Article 9: Night and Sunday Work:**

No night work requiring the presence of the Engineer will be permitted except in the case of emergency and then only to such an extent as is absolutely necessary and with the written permission of the Engineer.

In the case of a regular gang organized specifically for regular and continuous night work, this clause may be waived but only when so specified elsewhere herein or when such work shall be deemed necessary and/or beneficial to the OWNER by the Engineer, provisions for the night time inspection and payment therefore had been made and agreed upon by the CONTRACTOR and the Engineer, and the foregoing has been certified in writing by the Engineer.

No Sunday work will be permitted except in the case of great emergency and then only with the written consent of the Engineer and only to such an extent as he/she may judge necessary.

#### **Article 10: Obligations and Liability of the Contractor:**

The CONTRACTOR shall furnish all labor, materials, tools and equipment, except as may be otherwise specified herein, and all else necessary for, or incidental to the proper performance and completion of all work required by this CONTRACT in the manner and within the time herein specified. He/she shall complete the entire work, subject to the direction of the Engineer and to the Engineer's complete satisfaction in accordance with the specifications which are a part hereof, at the prices herein agreed upon and fixed therefore.

The CONTRACTOR shall conduct his/her work in such a manner as to interfere as little as possible with private business and/or public travel and to protect both life and property. He/she shall at his/her own expense, provide all necessary fences, barricades, lights, watchmen, flagmen, traffic directors etc., and shall take any and all such other precautionary measures as common sense might dictate or as may be required by the Engineer.

The CONTRACTOR will be held solely liable for any and all damages occasioned in any way by his/her act or failure to act, or by any such action or negligence on the part of his/her agents, employees, suppliers or workmen.

The CONTRACTOR shall take full responsibility for work done under this CONTRACT, for the protection all such work, and for the prevention of injuries to persons and/or damage to property, including utilities, on or about the work site. He/she shall under no circumstances be relieved of his/her responsibility by any right of the Engineer to give permission or issue orders relating to any part of the work, or by any such permission given, or by the failure of the Engineer to issue any such orders. The CONTRACTOR shall bear any and all losses resulting to him/her or to the OWNER on account of the amount or character of the work, or because the nature of the land in or on which the work is done is different from what was estimated or expected, or on account of the weather, elements, acts of God or any other causes whatsoever.

The CONTRACTOR shall assume the defense of any and all claims of any nature whatsoever against the CONTRACT or the OWNER, and shall indemnify, save harmless and insure the OWNER and OWNER's officers and/or agents against all claims arising out of injury or damage to persons, corporations or property, whether such claims arise out of negligence or not, or whether said claims are for unavoidable damage or not, and from all claims relating to labor and/or materials furnished for the work. The CONTRACTOR will not be required to indemnify the OWNER against damage or claims occasioned by acts of the OWNER.

**Article 11: Contractor to Employ Competent Workers:**

The CONTRACTOR shall employ only competent workers, and whenever the Engineer shall notify the CONTRACTOR in writing that any person(s) employed under this CONTRACT are, in his/her opinion, incompetent, unfaithful, disorderly or in any other way unsatisfactory or not employed in accordance with the provisions of this CONTRACT, then such person or persons shall be discharged from work under this CONTRACT and shall not again be employed under this CONTRACT except by written consent of the Engineer.

**Article 12: Contractor to Employ Sufficient Labor and Equipment:**

If, in the opinion of the Engineer, the CONTRACTOR is not employing sufficient labor or equipment to complete this CONTRACT satisfactorily and within the time specified, the Engineer will so notify the CONTRACTOR in writing and the CONTRACTOR shall, immediately upon receipt of such notice, employ such additional labor and/or equipment as may be deemed necessary by the Engineer.

**Article 13: Superintendence:**

The CONTRACTOR shall keep competent supervisory personnel at the site at all times during which work is in progress. He/she shall designate in writing, before commencement of work under this CONTRACT, a project superintendent who shall be an employee of the CONTRACTOR and who shall have complete authority to represent and to act on behalf of the CONTRACTOR. The Engineer shall be notified in writing prior to any change in superintendent assignment.

The superintendent shall receive on behalf of the CONTRACTOR, all communications from the Engineer. Communications of major importance will be confirmed in writing upon request from the CONTRACTOR.

**Article 14: Intoxicating Substances:**

The CONTRACTOR shall neither permit on site nor suffer the introduction or use on site of alcoholic beverages, drugs, or other controlled substances which might in any way impair the judgment, alertness, or efficiency of any person or persons employed under this CONTRACT or which might be used in violation of any State or Federal law or local ordinance.

**Article 15: Access to Work:**

The OWNER, the Engineer, their agents and employees shall be permitted access to all parts of the work site at all times throughout the duration of this CONTRACT, and the CONTRACTOR shall at all times provide safe and proper facilities therefore.

**Article 16: Examination of Work:**

The Engineer shall be furnished with every reasonable facility for ascertaining that all work is in accordance with the requirements and intent of this CONTRACT, even to the extent of uncovering or taking down portions of finished work.

Should the work thus exposed or examined prove satisfactory, the uncovering or taking down and the replacement material and rebuilding of the work shall be considered as extra work, as defined and provided for elsewhere herein, unless the original work was done in the absence of the Engineer or his/her inspector without the Engineer's written authorization. In the latter case, and/or if unsatisfactory work should be so uncovered, then all such uncovering, taking down, replacement and rebuilding, together with the repair or replacement of any and all such unsatisfactory work as may have been so uncovered, will be at the CONTRACTOR's sole cost and expense.

### **Article 17: Protection Against Water and Storm:**

The CONTRACTOR shall take all necessary precautions to prevent damage to the work by storms or by water entering the work site directly or through the ground. In case of damage by storms or water, the CONTRACTOR shall make such repairs and/or replacements or rebuild such parts of the work as the Engineer may require in order that the finished work shall be completed in full accord with the plans and specifications.

The Engineer may prohibit the carrying out of any work at any time that, in his/her judgment, the conditions are not suitable or the proper precautions are not being taken, whatever the weather or season may be.

### **Article 18: Progress Schedule:**

The CONTRACTOR shall, within five (5) days of commencement of work, prepare and submit to the Engineer for approval a practicable schedule showing the order in which the CONTRACTOR proposes to carry on the work, the date on which he/she will start the several salient features thereof, and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate approximately the percentage of work scheduled for completion at any time and shall be acceptable to the Engineer.

If, in the opinion of the Engineer, the CONTRACTOR falls behind such schedule, the CONTRACTOR shall take any and all such steps as may be deemed necessary by the Engineer to improve his/her progress toward completion of the work and shall submit and maintain such supplemental schedules as the Engineer may deem necessary to demonstrate that all work under this CONTRACT will be completed within the time and/or by such completion date as may be specified elsewhere herein. None of the foregoing shall result in any additional cost to the OWNER.

### **Article 19: Protection of Existing Utilities:**

Existing utilities, structures or other works that may be shown on the plans, reasonably located or anticipated by a site investigation, or marked on the ground or in any other way by the OWNER or by the respective utility companies shall be protected from damage by the CONTRACTOR during construction operations and, if damaged, shall be repaired by the CONTRACTOR at his/her sole expense. It will be the CONTRACTOR's sole responsibility to contact the Dig Safe Center at 1-800-225-4977 and to assure that any and all utility companies in the project area have been notified, furnished with sufficient information, and have located on the ground their respective underground utilities in any area(s) where excavation will occur, all prior to commencement of any such excavation.

Materials below existing utilities which are removed or disturbed during excavation shall be replaced and thoroughly compacted to prevent future settlement and damage to the utility. Utilities damaged due to subsequent settlement of the backfill or of any materials disturbed by the CONTRACTOR shall be repaired by the CONTRACTOR, or as otherwise required by the utility company, at the CONTRACTOR's sole expense.

The locations of certain existing subsurface pipes and utilities are indicated to the best of the OWNER's knowledge but are approximate only and no guarantee is made either to the accuracy or completeness thereof.

It is the CONTRACTOR's absolute responsibility to determine to his/her best ability the existence and location of any and all underground utilities prior to commencement of excavation and to exercise such precautions during excavation as may be necessary to compensate for any incompleteness or inaccuracy of such determination.

Should the Scope of Work under this CONTRACT be substantially altered because of the existence of subsurface utilities not shown or reasonably anticipated by the CONTRACTOR at the time of bidding hereon, then the CONTRACT price may be adjusted accordingly by the OWNER but the mere fact of damage by the CONTRACTOR to an existing utility, whether shown or not, shall under no circumstance result in extra compensation to the CONTRACTOR by the OWNER, and all necessary repairs together with any and all related costs, damages, and/or claims related thereto or arising therefore will be the CONTRACTOR's sole responsibility and shall be made and/or otherwise satisfied at the CONTRACTOR's sole expense.

**Article 20: Temporary Field Office and Storage Facilities:**

The CONTRACTOR shall provide and maintain a suitable temporary field office at the project site for his/her own use and the use of the Engineer. It shall be provided with adequate heat, electric lighting, telephone and desk for plan reference.

It shall be located at a site acceptable to the Engineer, shall be relocated at any time during the course of construction under this CONTRACT if and as deemed necessary by the Engineer, and shall be removed from the site immediately upon completion of said construction.

The CONTRACTOR shall provide and maintain such additional offices, storage sheds, and/or other temporary buildings and/or trailers at the site as may be required for his/her own use, all subject to the Engineer's direction and approval.

### **Article 21: Compliance with Laws:**

The CONTRACTOR shall keep him/herself fully informed of all existing and future State and Federal laws, municipal ordinances and all regulations in any manner affecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

If any discrepancy or inconsistency is discovered in the plans, specifications or elsewhere in the CONTRACT in relation to any such law, ordinance, regulation, order or decree, he/she shall forthwith report the same to the Engineer in writing.

He/she shall at all times observe and comply with, all such existing and indemnify the OWNER and all officers and agents of the OWNER against any claim arising from or based upon violation of any such laws, ordinances, regulations, orders or decrees, whether by him/herself or his/her employees.

### **Article 22: Permits:**

The CONTRACTOR at his/her own expense, shall obtain all necessary permits from the county, municipal and/or other public authorities; he/she shall give all notices required by law or ordinances; and he/she shall post all bonds and pay all fees and charge incident to the due and lawful prosecution of the work covered by this CONTRACT.

### **Article 23: Patents:**

The CONTRACTOR shall indemnify and save harmless the OWNER, and all persons acting for or on behalf of the OWNER, from all claims and liability of any nature including costs and expenses arising from or occasioned by any infringement or alleged infringement of patent rights on any invention, process, article or apparatus or any part thereof, furnished and installed by said CONTRACTOR or arising from or occasioned by the use of manufacture thereof, including their use by the OWNER.

### **Article 24: Contractor Not to Sublet or Assign:**

The CONTRACTOR shall give his/her personal attention constantly to the faithful prosecution of the work, shall keep the same under his/her personal control and shall not assign by power of attorney or otherwise, nor sublet the work or any part thereof without the previous written consent of the OWNER, and shall not either legally or equitable assign any of the monies payable under this CONTRACT, or his/her claim thereto, unless by and with the like consent of the OWNER and the surety on the bond(s).

### **Article 25: Time of Beginning Work:**

Except as herein provided, the CONTRACTOR shall commence work at such points as the Engineer may direct or approve, within ten (10) days after the date of the Notice to Proceed from the OWNER.

Such time of starting may be postponed but only by written agreement between the OWNER and CONTRACTOR and then only because of unexpected delays in receipt of materials and/or equipment, or if the season is unsuitable for commencement of the work, or because of other contingency clearly beyond the control or responsibility of the CONTRACTOR.

### **Article 26: Delay by Owner:**

The OWNER may delay the beginning of the work or any part thereof if the necessary lands or rights-of-way for such work has not been obtained by the OWNER or if necessary materials or equipment to be furnished by the OWNER are not delivered. The CONTRACTOR shall have no claim for damages on account of such delay, but shall be entitled to so much additional time wherein to perform and complete this CONTRACT as the Engineer shall certify in writing to be just.

### **Article 27: Time of Completion:**

All work described in this CONTRACT shall be substantially complete by October 15, 2013. The OWNER reserves the right to postpone work on certain streets, or to add additional streets or other paved areas, to be completed in the Spring of 2014. The rate of progress shall be such that the whole work shall be performed in accordance with the terms of this CONTRACT within the number of calendar days stipulated in the bid unless and except as any part may be delayed under the provisions of this CONTRACT. All work shall in any case be complete on or before any specific date of completion which may be specified elsewhere herein.

It is agreed that the rate of progress herein required has been purposely made low enough to allow for ordinary delays incident to construction work of this character. No extension of time will be made for the ordinary delays, inclement weather and/or accidents and the occurrence of such will not relieve the CONTRACTOR from the necessity of maintaining this rate of progress.

If delays are caused by acts of God, acts of State or Federal government, strikes, extra work, floods or other contingencies clearly beyond the control or responsibility of the CONTRACTOR, the CONTRACTOR will be entitled to so much additional time wherein to complete this CONTRACT as the Engineer shall certify in writing to be just. The time in which work under this CONTRACT is to be performed and completed is of the essence.

### **Article 28: Liquidated Damages:**

In the case the CONTRACTOR fails to satisfactorily complete the entire work, or any phase of the work, contemplated and provided for under this CONTRACT on or before the date of completion determined as described elsewhere herein, the OWNER shall deduct from the payments otherwise due the CONTRACTOR each month the sum of five hundred dollars (\$500.00) for each calendar day, excluding Sundays and legal holidays, of delay, which sum is agreed upon not as a penalty but as fixed and liquidated damages for each day of such delay to be paid in full and subject to no deduction.

If the payments otherwise due the CONTRACTOR are less than the amount of such liquidated damages, said damages shall be deducted from any other monies due or to become due the CONTRACTOR, and in case such damages shall exceed the amount of all monies due or to become due the CONTRACTOR then the CONTRACTOR or his/her surety shall pay the balance to the OWNER.

### **Article 29: Extra Work:**

The CONTRACTOR shall do any work incidental to the proper completion of the CONTRACT not otherwise provided for when and as so ordered, in writing, by the Engineer, either (1) at a price agreed upon before the work is commenced and named in the written order for the work, or (2) if the Engineer so elects, of the reasonable cost of said work, as determined by the Engineer, plus fifteen percent (15%) of such cost. No extra work will be paid for unless specifically ordered as such by the Engineer in writing.

The fair rental for all machinery shall be based upon the most recent edition of "Compilation of Rental Rates for Construction Equipment" as published by the Associated Equipment Distributors, rental rates established by the Maine State Department of Transportation, or similar publication approved by the Engineer.

Rental for machinery which was upon the work site immediately before, or which will be required by or used upon the work or after the extra work is done, shall be based upon an appropriate fraction of the approved monthly rate schedule.

If said work requires the use of machinery not upon the work site or otherwise to be used upon the work, then the cost of transportation, not exceeding a total round trip distance of one hundred-fifty (150) miles, of such machinery to and from the work shall be added to the fair rental as accepted by the Engineer.

The Engineer shall include in the cost of extra work the cost to the CONTRACTOR of additional premiums paid on the required insurance on account of such extra work, and the cost of Social Security and/or other direct assessment upon the CONTRACTOR's payroll by Federal or other properly authorized public agencies.

The Engineer shall not include in the cost of extra work any cost or rental of small tools, buildings or any portion of the time of the CONTRACTOR or his/her superintendent, or any allowance for use of capital or the premium on the bond as assessed upon the amount of extra work, these items being considered as being covered by the fifteen percent (15%) added to the reasonable cost.

**Article 30: Extension of Time on Account of Extra Work:**

When extra work is ordered at any time during the progress of work is such as to require, in the opinion of the Engineer, an unavoidable increase in the amount of time necessary for completion of the CONTRACT, then a suitable extension of time will be added to the completion date.

**Article 31: Change not to Affect Bond:**

It is distinctly agreed and understood that any changes made in or to the plans and/or specifications, whether the amount of work to be done under this CONTRACT should thereby be affected or not, or any change or changes in the manner of time of payments made by the OWNER to the CONTRACTOR, shall in no way annul, release or affect the liability and/or surety on the bond or bonds provided by the CONTRACTOR.

**Article 32: Defective Work:**

Inspection of the work by the Engineer and/or his/her agents shall neither imply that all such work will prove acceptable to the OWNER nor will it relieve the CONTRACTOR from any obligations or responsibility whatsoever under the terms of this CONTRACT. Any and all defective work and/or materials shall be replaced by the CONTRACTOR, at his/her sole expense, at any time prior to final acceptance of the work as such may be discovered, regardless of whether such work has previously been inspected and/or included in estimates for partial payment.

Any material furnished by the CONTRACTOR which shall be judged by the Engineer, at any time, to be defective and/or not in conformance with the specifications shall be immediately removed from the site and replaced at the CONTRACTOR's sole cost and expense, as shall any materials or goods furnished by the OWNER which have been, in the opinion of the Engineer, damaged by the CONTRACTOR, his/her agents or employees.

**Article 33: Mistakes of the Contractor:**

The CONTRACTOR shall pay to the OWNER all expenses, losses and/or damages, as determined by the Engineer, incurred in consequence of any defect, omission or mistake of the CONTRACTOR, his/her agents or employees, or the making good thereof.

### **Article 34: Right to Materials:**

Nothing in this CONTRACT shall be construed as vesting in the CONTRACTOR any right of property in the materials used after they have been attached or affixed to the work or the soil, but all such materials shall, upon being so attached or affixed, become the property of the OWNER.

### **Article 35: Alterations:**

The Engineer may make alterations in the line, grade, plan, form, dimensions or materials of the work or any part thereof, either before or after the commencement of construction. If such alterations increase or diminish the quantity of work to be done, adjustment for such increase or decrease shall be made at the unit prices stipulated for such work under this CONTRACT. With the exception that if unit prices are not stipulated for such work, compensation for increased work will be made under the provision for extra work made elsewhere herein, and for decrease work the CONTRACTOR shall allow the OWNER a reasonable credit as determined by the Engineer. If such alterations diminish the quantity of work to be done, they shall not warrant any claim for damages or for anticipated profits on the work that is dispensed with.

### **Article 36: Indemnification:**

The CONTRACTOR shall indemnify, defend and hold harmless the OWNER from and against all claims and actions, and all expenses incidental to such claims or actions, based upon or arising out of damage to property or injuries to person or other tortious acts caused or contributed to by the CONTRACTOR or anyone acting under his/her control or in his/her behalf in the course of his/her performance under this CONTRACT, provided the CONTRACTOR's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the sole negligence of the OWNER.

The CONTRACTOR hereby expressly agrees that he/she will defend, indemnify and hold the OWNER harmless from any and all claims made or asserted by the CONTRACTOR's agents, servants or employees arising out of the CONTRACTOR's activities under this CONTRACT. For this purpose, the CONTRACTOR hereby expressly waives any and all immunity he/she may have under Maine's Workers Compensation Act in regard to such claims made or asserted by the CONTRACTOR's agents, servants or employees. The indemnification provided under this paragraph shall extend to and include any and all costs incurred by the OWNER to answer, investigate, defend and settle all such claims, including but not limited to the OWNER's cost for attorney's fees, expert and other witness fees, the cost of investigators, and payment in full of any and all judgments rendered in favor of the CONTRACTOR's agents, servants or employees against the OWNER in regard to claims made or asserted by such agents, servants or employees.

**Article 37: Insurance:**

The CONTRACTOR shall arrange insurance for the minimum limits indicated and shall maintain the below listed coverage throughout the period of performance.

- |   | <u>LIMITS</u>  |
|---|--|
| a. Workers' Compensation Insurance  | Statutory  |
| Employer's Liability Insurance  | \$100,000 each accident<br>\$500,000 disease - policy unit<br>\$100,000 disease - each empl. |
| b. Comprehensive General Liability (Public Liability) Insurance including:  |  |
| General Liability   | \$1,000,000 aggregate  |
| Products, Completed Operations  | \$1,000,000 aggregate  |
| Personal & Advertising Injury   | \$ 500,000   |
| Each Occurrence   | \$ 500,000   |
| Fire Damage   | \$ 50,000 any one fire   |
| Medical Expense   | \$ 5,000 any one person  |
| c. Automobile Liability Insurance (owned, hired & non-owned):   |  |
| Bodily Injury & Property Damage   | \$1,000,000 combined single limit  |
| d. The CONTRACTOR shall provide a waiver of any rights of subrogation which the CONTRACTOR may have against the OWNER, its agents or its employees.   |  |
| e. Before any of the work is started under this CONTRACT, the CONTRACTOR shall file with the Purchasing Department a certificate of insurance containing the following information in respect to all insurance carried:   |  |
| (1) Name of insurance company, policy number and expiration date;   |  |
| (2) The coverage required and the limits on each, including the amount of deductible or self-insured retentions (which shall be for the account of the CONTRACTOR);   |  |
| (3) A statement indicating that the OWNER shall receive thirty (30) days notice of cancellation or significant modification of any of the policies which may affect the OWNER's interest; and   |  |
| (4) The OWNER as an additional insured (except Workers' Compensation Insurance).  |  |
| f. If any of the work performed under this CONTRACT includes blasting, excavating, pile driving or caisson work; moving, shoring, underpinning, razing or demolition of any structure or removal or rebuilding of any structural support thereof, or any subsurface or underground work, the Comprehensive General Liability Insurance policy shall include coverage for the explosion, collapse and underground hazards. |  |

### **Article 38: Discrepancies, Errors and Omissions:**

The plans and specifications are intended to be explanatory of each other, but should any discrepancy appear or any misunderstanding arise as to the importance of anything contained in either, the interpretation or decision of the Engineer will be final and binding on both parties to this CONTRACT.

Any correction of errors or omissions in plans and/or specifications may be made by the Engineer when such correction is necessary for the fulfillment of their intention as construed by him/her. Where said correction of errors or omissions, except as provided in the next paragraph, adds to the amount of work to be done by the CONTRACTOR, compensation for said additional work will be made in accordance with Article 29 hereof regarding Extra Work except where the additional work may be classed under some item of work for which a unit price is included in the bid, in which case compensation will be made accordingly.

The fact that specific mention of a fixture, or any part of the work, is omitted in the specifications, whether intentionally or otherwise, when the same is clearly shown or indicated on the plans or is usually and customarily required to fully complete such work as specified herein, will not entitle the CONTRACTOR to consideration in the matter of any claim for extra compensation, but said fixtures and/or work shall be installed or done the same as if called for by both the plans and specifications. All work indicated on the plans and not mentioned in the specifications, or vice versa, and all work and material usual and necessary to make the work complete in all its parts, whether or not they are indicated on the plans or mentioned in the specifications shall be furnished and executed the same as if they were called for by both the plans and specifications and no extra compensation will be made.

### **Article 39: Abandonment of Work:**

If the work to be done under this CONTRACT shall be abandoned, or if this CONTRACT or any part thereof shall be sublet without the previous written consent of the OWNER, or if the CONTRACTOR or any claim thereunder shall be assigned by the CONTRACTOR otherwise than as herein specified, or if at any time the Engineer shall be of the opinion, and shall so certify in writing, that the conditions herein specified as to the rate of progress of work under this CONTRACT are not fulfilled, or that the work or any part thereof is unnecessarily or unreasonably delayed, or that the CONTRACTOR has violated any of the provisions of this CONTRACT, the OWNER may notify the CONTRACTOR by a written order with a copy to the home office of the surety to discontinue all work or any part thereof, and thereupon the CONTRACTOR shall discontinue such work or such part thereof as the OWNER may determine, complete the work or any part thereof, and charge the entire expense of completing such work or part thereof to the CONTRACTOR.

For such completion, the OWNER, or such contractors as the OWNER may employ, may take possession of and use or cause to be used in the completion of the work or part thereof, any of such materials, equipment, machinery, implements and tools of every description as may be found at the location of said work.

Any and all costs or expenses, including liquidated damages as specified elsewhere herein, incurred by the OWNER under this Article shall be deducted and paid out of any monies then due or to become due the CONTRACTOR under this CONTRACT, or any part thereof.

The OWNER shall not be held to obtain the lowest figure for the work of completing the CONTRACT or any part thereof, or for insuring its proper completion, but all sums actually paid therefore shall be charged to the CONTRACTOR.

If the aforementioned costs and expenses so incurred, coupled with payments already made to the CONTRACTOR, shall exceed the amount which would have been payable under this CONTRACT if the same had been completed by the CONTRACTOR, then the CONTRACTOR or the CONTRACTOR's surety shall pay the full amount of any such excess to the OWNER.

#### **Article 40: Termination:**

##### Termination for Convenience:

The CITY may terminate this CONTRACT, in whole or in part, whenever the OWNER determines that such termination is in the best interest of the OWNER, without showing cause, upon giving written notice to the CONTRACTOR. The OWNER shall pay all reasonable costs incurred by the CONTRACTOR up to the date of termination. However, in no event shall the CONTRACTOR be paid an amount that exceeds the price bid for the work performed. The CONTRACTOR will not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

##### Termination for Default:

When the CONTRACTOR has not performed or has unsatisfactorily performed the CONTRACT, the OWNER may terminate the CONTRACT for default. Upon termination for default, payment may be withheld at the discretion of the OWNER. Failure on the part of a CONTRACTOR to fulfill contractual obligations shall be considered just cause for termination of the CONTRACT. The CONTRACTOR will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the OWNER in completing the work.

#### **Article 41: Claims for Damage:**

If the CONTRACTOR claims compensation for any damages sustained by breach of CONTRACT or otherwise, be the same based on claims that due and full credit has not been given the CONTRACTOR for work performed or materials furnished in accordance with the terms of this CONTRACT or for any other cause, he/she shall, promptly after the sustaining of any such damage, make a written statement to the Engineer of the nature of the damage sustained and shall, on or before the fifteenth (15<sup>th</sup>) day of the month following that in which the damage shall have been sustained, file with the Engineer an itemized statement of the details and amount of such damage.

Unless such statement is made in such time and manner as thus required, his/her claim for compensation will be forfeited and invalidated and he/she will not be entitled to payment on account of any such damage.

#### **Article 42: Final Estimate and Payment:**

The Engineer shall, as soon as practicable following the completion of work under this CONTRACT, make a final estimate in writing of the total amounts of such work done under the various items contained in the bid and of the total amount of money due the CONTRACTOR for said work, and he/she shall also fix the date of substantial completion of such work and incorporate same into said final estimate.

The OWNER will pay to the CONTRACTOR the entire sum so found to be due hereunder, including the ten percent (10%) interim retainage withheld from previous payments, after deducting from said entire sum all previous payments, a retainage of two percent (2%) as guaranty for a period of one (1) year following the certified date of substantial completion unless said guarantee is specifically waived in writing by the OWNER, and any and all other amounts as may be retained under the various provisions of this CONTRACT.

Such payment shall be made no later than fifteen (15) days after, but in no event before, the expiration of the time within which claims for labor performed and materials used or employed must be entered under the Lien Law, or if such time is not specified by law, the expiration of thirty (30) days after the aforementioned date of substantial completion.

All prior progress estimates and payments shall be subject to correction in the final estimate and payment.

#### **Article 43: Liens:**

If, at any time before the expiration of the period within which claims must be entered under the Lien Law or, if not otherwise specified by law, within thirty (30) days after the certified date of substantial completion of all work under this CONTRACT, any person, corporation, firm or other legal entity shall claim to have performed any of the work or to have furnished any of the materials under this CONTRACT and shall file with the OWNER suitable notice, the OWNER will retain until discharge of such notice sufficient money to satisfy and discharge the amount claimed to be due in such notice together with the cost of any action or actions brought to enforce such lien created by the filing of such notice.

#### **Article 44: Waivers:**

Neither inspection by the OWNER or any agents thereof, nor any orders, measurement or certificate by the Engineer, nor any order by the OWNER for the payment of money, nor any payment for or acceptance of the whole or any part of the work performed under this CONTRACT by the OWNER, nor any extension of time nor any possession taken by the OWNER or agents thereof shall operate as a waiver of any provision of this CONTRACT, or of any power herein reserved to the OWNER, or any right to damages herein provided, nor shall any waiver of any breach of this CONTRACT be held to be a waiver of any other or subsequent breach.

Any remedy provided in this CONTRACT shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided, and in addition to all other suits, actions or legal proceedings. The OWNER shall also be entitled as a right to a writ of injunction against any breach of any of the provisions of this CONTRACT.

#### **Article 45: Liability of Owner:**

No person, firm, corporation or other legal entity other than the CONTRACTOR has any interest hereunder, and no claim shall be made or be valid, and neither the OWNER nor an agent of the OWNER shall be liable for or be held to pay any money except as herein provided. The acceptance by the CONTRACTOR of the payment of the final estimate shall operate as and shall be a release to the OWNER, and every agent of the OWNER, from all claim and liability to the CONTRACTOR for anything done or furnished for, or relating to the work performed under this CONTRACT, or for any act or neglect of the OWNER or of any person relating to or affecting said work except the claim against the OWNER for the remainder, if any there be, of the amounts kept or retained as provided elsewhere herein.

**Article 46: Guaranty:**

The CONTRACTOR guarantees that the work to be done under this CONTRACT and the materials to be furnished by him/her for use in the construction of same will be free from defects or flaws. This guaranty shall remain in effect for a period of one (1) year from the certified date of substantial completion of all work under this CONTRACT.

It is agreed and understood, however, that this guaranty shall not include any repairs made necessary by any cause or causes other than defective work or materials furnished by the CONTRACTOR.

As surety of this guaranty, the OWNER will retain, at the time of payment of the final estimate, an amount equal to two percent (2%) of the total final CONTRACT amount.

If at any time within said period of guaranty any part of the work constructed under this CONTRACT shall require repairs because of, in the opinion of the Engineer, defective workmanship and/or materials, then the OWNER may notify the CONTRACTOR in writing by certified mail, return receipt requested, of his/her obligation to make such repairs. Should the CONTRACTOR fail to make such repairs to the complete satisfaction of the OWNER within ten (10) calendar days of receipt of such notice, then the OWNER may elect to employ others to make said repairs and to pay for the same out of the sum retained hereby for that purpose.

Upon the expiration of the period of guaranty the Engineer will inspect the work, or cause same to be inspected, and upon his/her determination that the work is in good order the retainage, less any amount which may have been expended in the making of repairs, will be released upon receipt of invoice from the CONTRACTOR.

It is agreed and understood, however, that the OWNER may keep the whole or any portion of the sum retained for settlement of any and all claims which may have arisen out of this CONTRACT against the OWNER or agents thereof, and for any and all expenses, losses or damages incurred by the OWNER by reason of said claims.

**Article 47: Entire Agreement:**

This CONTRACT contains all the terms, conditions and provisions pertaining to the work, there being no other understandings, agreements, warranties either express or implied, relative to the CONTRACT that are not fully expressed herein.

IN WITNESS WHEREOF, the parties hereto have caused this CONTRACT to be executed on the day and year first above written.

WITNESS:

CITY OF BANGOR

\_\_\_\_\_

By: \_\_\_\_\_  
Deborah A. Cyr  
Finance Director

Or By: \_\_\_\_\_  
Catherine M. Conlow  
City Manager

WITNESS:

(Owner and Party of the First Part)

By: \_\_\_\_\_  
Name of Individual, Firm or Corporation

\_\_\_\_\_

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

Name: \_\_\_\_\_  
Printed or Typed

Title: \_\_\_\_\_  
Printed or Typed  
(Contractor and Party of the Second Part)