



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

This CONTRACT made this ____ day of _____ 2012, between the City of Bangor (hereinafter referred to as the "OWNER") and CONTRACTOR NAME, Inc, (hereinafter referred to as the "CONTRACTOR").

The parties noted above agree as follows:

Article 1: Statement of Work:

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

DESCRIPTION OF PROJECT AND IN ACCORDANCE WITH BID DOCUMENTS SUBMITTED.

Article 2: Examination of Site:

The CONTRACTOR agrees that the CONTRACT price specified herein is based on the CONTRACTOR's examination of the site and that he/she will make no claim for additional compensation if the conditions encountered differ from those anticipated by such examination.

Article 3: Ground Repair:

The CONTRACTOR shall level, reseed, and place in good condition any grounds or pavements that are damaged by said CONTRACTOR or payment due the CONTRACTOR will be withheld.

Article 4: Permits, Licenses and Compliance with Law:

In connection with the work to be performed, the CONTRACTOR at his/her own expense, shall procure all necessary permits and licenses and agrees to comply with all laws, ordinances, codes and regulations applicable to the performance of work hereunder.

Article 5: Definitions:

- (a) The term "OWNER" shall mean the City of Bangor.
- (b) The term "CONTRACTOR" shall mean the person or firm entering into this CONTRACT to perform work or services for the OWNER.
- (c) The term "DAYS" shall mean calendar days.
- (d) The term "WORK" shall include all obligations, duties, requirements and responsibilities required for the successful completion of this CONTRACT by the CONTRACTOR including furnishing of all supervision, labor, materials, equipment and other supplies, in accordance with the terms and conditions set forth herein.

Article 6: Responsibilities of Contractor:

- (a) Obtain all necessary licenses and permits at his/her own expense.
- (b) Provide competent superintendence.
- (c) Take all precautions necessary to protect persons or property against injury or damage and be responsible for any such injury or damage as a result of his/her fault or negligence
- (a) Perform the work diligently and without unnecessarily interfering with other contractor's work or other activities of the OWNER.

Article 7: Contract Amount:

For full and complete performance, OWNER agrees to pay CONTRACTOR the sum of CONTRACT AMOUNT, payable after completion of the work in accordance with the terms hereof and to the satisfaction of the OWNER.

Article 8: Labor, Materials, Equipment, Etc.:

The CONTRACTOR agrees to furnish all labor, materials, supervision, tools, equipment and all other items of expense, except as otherwise specified herein, required to complete this CONTRACT.

Article 9: Taxes:

Unless otherwise specifically provided elsewhere, the CONTRACTOR shall not pay any sales and use taxes on labor, equipment, materials and personal property used or purchased for use in connection with the work.

Article 12: Bonds:

In the event this CONTRACT **exceeds \$50,000.00**, performance and payment bonds will be required by the CITY in the amount of 100% of the cost of the project prior to the start of work and the issuance of a purchase order.

Article 10: 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
\$500,000 disease - policy unit
\$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 11: Title and Risk of Loss:

Title to all completed or partially completed work on the OWNER's property and to all materials to be incorporated in the work, stored at the OWNER's property shall be in the name of the OWNER.

Article 12: 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 persons or other tortious acts caused or contributed to by the CONTRACTOR or anyone acting under its direction or control or in its behalf in the course of its 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 it will defend, indemnify and hold the OWNER harmless from any and all claims made or asserted by CONTRACTOR's agents, servants or employees arising out of CONTRACTOR activities under this CONTRACT. For this purpose, CONTRACTOR hereby expressly waives any and all immunity it may have under Maine's Workers Compensation Act in regard to such claims made or asserted by 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 costs 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 CONTRACTOR's agents, servants or employees against the OWNER in regard to claims made or asserted by such agents, servants or employees.

Article 13: Defective Work:

No payment, in whole or in part, shall be deemed a waiver of any defect in materials or workmanship, and the OWNER reserves the right to withhold payment pending inspection of the work performed by the CONTRACTOR.

In spite of payment by the OWNER, the sums due hereunder or failure of the OWNER to discover or reject defective material and workmanship, the CONTRACTOR shall re-execute any work that fails to conform to the requirements of this CONTRACT and appears during the progress of the work, and shall remedy any defects due to faulty materials or workmanship which appear within a period of one (1) year from the date of completion of this CONTRACT. The provisions of this Article apply to work done by subcontractors as well as work done by direct employees of the CONTRACTOR.

Article 14: Cleaning:

The CONTRACTOR shall, at his/her own expense, at all times keep the premises free from accumulation of debris, waste material and rubbish, and at the completion of the work, he/she shall remove all tools, equipment, surplus materials, debris, waste material and rubbish and shall leave the premises in a neat and clean condition.

If the CONTRACTOR does not attend to such cleaning, the OWNER shall have the right to have this work done by others and deduct the cost from the payment due the CONTRACTOR hereunder.

Article 15: Independent Contractor:

The CONTRACTOR shall at all times be an Independent Contractor in performing the work under this CONTRACT including any addition thereon and shall furnish all supervision and direction required to complete the work.

Article 16: Subcontractors:

The submission of the name of a subcontractor in the bid shall be deemed to constitute an acceptance by the CONTRACTOR, if awarded the CONTRACT, of the bid of such subcontractor. Any alteration therein, after the award of the CONTRACT, shall be subject to the approval of the OWNER.

Article 17: Materials and Workmanship:

Unless accepted or directed by the OWNER, all materials incorporated in the work shall be new. The work shall be performed in a skillful and professional manner. Both materials and workmanship shall be subject to inspection by the OWNER, who shall require the CONTRACTOR to correct defective workmanship or materials without cost to the OWNER subject to limitations of the warranties and guaranties set forth in Article 19 below. Failure to inspect, or complete work not in accordance with the specifications, shall not relieve the CONTRACTOR from correcting all such work at his/her own expense.

Article 18: Payments to Contractor:

Upon completion and acceptance of all work by the OWNER, the amount due the CONTRACTOR under this CONTRACT shall be paid upon the receipt of a properly supported invoice. Upon receipt of the invoice, the CITY shall make payment to the SUPPLIER in accordance with its normal invoice payment cycle (every two (2) weeks).

Prior to receiving final payment, the CONTRACTOR shall certify and furnish lien waivers as satisfactory proof that all material and labor costs incurred herein have been fully paid and discharged.

Article 19: Warranties and Guaranties:

- (a) Manufacturer's warranties on equipment purchased and installed by the CONTRACTOR will be assigned by the CONTRACTOR to the OWNER for its benefit prior to final payment.
- (b) In addition to any specific guaranties which may be required by the Technical Specifications, the CONTRACTOR guarantees all the work to be performed and all the materials to be furnished under this CONTRACT against defects for a period of two (2) years from the later of the date of acceptance, or the date of completion and use by the OWNER.

The CONTRACTOR shall, as promptly as practicable after written notice, thereof, repair/replace any defects in materials or workmanship which occur within said guarantee period, and any damage to other work caused by such defects or damage, at his/her own expense and without any cost to the OWNER whatsoever. Repaired or replaced work shall carry the same warranties and guaranties as the original work.

Article 20: Laws, Ordinances and Work Rules:

The CONTRACTOR shall comply with all applicable laws and regulations and shall fully indemnify, save harmless and protect the OWNER, the OWNER's successors, assigns, agents, customers, affiliates, and agents and employees of all of them against any loss, claim liability damage, and expense arising from the CONTRACTOR's actual or alleged noncompliance with such laws and regulations.

Article 21: Changes:

The OWNER may order changes in writing in the drawings and specifications within the general scope of the Order. If the changes involve an increase or decrease in the cost of or time required for performing the work, the CONTRACTOR shall so advise the OWNER in writing and an equitable adjustment in costs or schedule will be negotiated. As a condition to any increase in the cost of the work, the CONTRACTOR shall submit in writing adequately documented costs incurred for any authorized change for review, evaluation and approval by the OWNER.

Article 22: Termination of Contract:

Termination for Convenience: The OWNER 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 thirty (30) days written notice to the CONTRACTOR. The OWNER will pay all invoices for services up to the date of termination. The CONTRACTOR will not be reimbursed for any profits that may have been anticipated but have not been earned up to the date of termination.

Termination for Default: When the CONTRACTOR has not performed or has unsatisfactorily performed this CONTRACT, the OWNER may terminate this CONTRACT for default. Upon termination for default, payment may be withheld at the discretion of the OWNER. Failure on the part of the CONTRACTOR to fulfill contractual obligations shall be considered just cause for termination of this CONTRACT.

Article 23: Equal Employment Opportunity:

The CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of age, race, color, religion, sex or national origin. The CONTRACTOR shall comply with applicable laws, Executive Orders, and regulations concerning nondiscrimination in employment, including the Equal Opportunity Clause of Section 202. Executive Order 11246, as amended, which is hereby incorporated by reference.

Article 24: Assignment of Contract:

This CONTRACT or any part thereof shall not be assigned by the CONTRACTOR without written consent of the OWNER, nor shall the CONTRACTOR assign any monies due or to become due to him/her thereunder, without the prior written consent of the OWNER.

Article 25: Governing Laws/Disputes:

In spite of any other provision of this CONTRACT, any dispute concerning any question of fact or law arising between the CONTRACTOR and the OWNER shall be decided by a court of competent jurisdiction of the State of Maine in accordance with the laws of the State of Maine.

Article 26: Liens:

The CONTRACTOR shall indemnify and save harmless the OWNER from all claims, demands, causes of action, or suits of whatever nature arising out of services, labor and materials furnished by the CONTRACTOR or his/her subcontractors in the work, and from all laborers', materialmen and mechanic's liens upon the property upon which the work is located arising out of the services, labor and materials furnished by the CONTRACTOR or any of his/her subcontractors under the work. Shall keep said property free and clear of all liens, claims, and encumbrances arising from the performance of the work by the CONTRACTOR or his/her subcontractors.

The CONTRACTOR shall have the right to contest the validity or amount of any such lien. If the CONTRACTOR shall contest the validity or amount of any such lien, then upon the final determination of such questions, any judgment which may be rendered against the CONTRACTOR shall be promptly paid and he/she shall procure the release of such lien.

Pending the discharge of any such lien of record and notice thereof to the OWNER, the OWNER may retain out of any monies then due or to become due the CONTRACTOR an amount sufficient to discharge such lien and to reimburse the OWNER for any cost or expense incurred in any action or proceeding for the enforcement or removal thereof. The CONTRACTOR agrees to reimburse the OWNER for all monies paid and expenses incurred by the OWNER in discharging such liens or in connection with any action or proceedings for the removal or enforcement of same.

Prior to receiving final payment for his/her work, the CONTRACTOR shall certify and furnish proof satisfactory to the OWNER that all material and equipment embodied in the work and all labor costs incurred thereon have been fully paid and discharged.

The CONTRACTOR shall include a provision satisfying the requirements of this Article as a part of any and all subcontractors entered into for the work or any portion thereof.

Article 27: Protection of Property and Persons:

The CONTRACTOR will adequately protect the OWNER's property from injury or loss, and will take all necessary precautions during the progress of the work to protect all persons and the property of others from injury or damage. The CONTRACTOR will assume full responsibility for all tools, equipment and materials to be used in connection with the completion of the work.

Article 28: Assignment and Subcontracts:

The CONTRACTOR shall not assign his/her interest in this CONTRACT, sublet or subcontract any portion of the work without written permission of the OWNER. The CONTRACTOR agrees to bind every subcontractor approved by the OWNER to all of the terms and conditions of this CONTRACT. The CONTRACTOR agrees that he/she is fully responsible to the OWNER for the acts and omissions of his/her subcontractors and of persons either directly or indirectly employed by any subcontractor, as the CONTRACTOR is for the acts and omissions of him/herself and of persons directly employed by him/her.

Article 29: Other Work:

It is understood that work not covered by this CONTRACT may be performed by the OWNER or others in the same area that must be occupied by the CONTRACTOR. In such event, the CONTRACTOR shall properly connect and coordinate his/her work with theirs. It is also understood that the OWNER may occupy the premises during performance of work by the CONTRACTOR hereunder and that such occupancy shall not constitute acceptance of the work by the OWNER.

Article 30: Safety Regulations and Security Requirements:

The employees of the CONTRACTOR will observe the OWNER's general safety rules and the area or departmental safety rules in the area in which they are working which will include the following:

- a. Smoking: Absolutely no smoking will be permitted except in authorized smoking areas. Any CONTRACTOR violating this rule shall be asked to leave the premises and will forfeit payment for work up to that point.
- b. Personal Protective Equipment: The CONTRACTOR will observe all reasonable requirements and be held responsible for furnishing to his/her employees any items of personal protective equipment which may be necessary for the safe performance of the work (safety glasses, hard hats, etc.).
- c. Excavations and Barricading: The CONTRACTOR will be expected to use proper barricading, ropes, warnings signs and other such devices wherever excavating, performing overhead work, hoisting, opening pits or trenches or the like is in progress.

The CONTRACTOR will also keep all aisles and roadways clear, and at no time obstruct passageways to existing emergency equipment such as showers, eye wash fountains, fire blankets, hoses, alarm boxes, extinguishers, shut off valves and switches, etc.

- d. Unless other arrangements are worked out in advance with local management, the CONTRACTOR is expected to supply fire extinguishers, blankets and other firefighting equipment in or near the work area.
- e. Good housekeeping conditions will be maintained at all times. The CONTRACTOR is responsible for cleanup and disposal of debris, the proper storage of materials, keeping work areas clean and free of tripping hazards and wherever necessary, the daily removal of trash and other waste.
- f. The CONTRACTOR will not manipulate any switch controls, valves or instruments without the advanced approval of the OWNER. The CONTRACTOR will request advance permission before undertaking any work on piping distribution systems, utility lines entering tanks, sewers or vessels and as necessary for any work in or near special or hazardous operations.

Article 31: Conflicting Terms, Conditions or Specifications:

In the event that one item conflicts with another item found in this CONTRACT or any other document pertaining to this CONTRACT, the item with the most stringent requirements shall prevail.

Article 32: Notices:

All notices required or permitted to be given under this CONTRACT or the specifications shall be in writing and shall be deemed to be properly and sufficiently given when deposited in the mail, postage prepaid, registered or certified, and addressed to the party entitled to receive such notice as set forth below or to such other address as that party shall subsequently designate to the other party by notice given in accordance with this section.

CITY:

CONTRACTOR:

Notice given in any other manner shall be deemed effective only when the written notice is actually received.

Article 33: 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 agreement to be executed on the day and year first above written.

WITNESS:

CITY OF BANGOR (OWNER)

WITNESS:

(CONTRACTOR)

Date Signed