



CONTRACT FOR PROFESSIONAL SERVICES

XXXXXXXX

XXXXXXXXXXXX

A CONTRACT BETWEEN

THE CITY OF NASHUA, 229 MAIN STREET, NASHUA, NH 03061-2019

AND

NAME AND TITLE OF SERVICE PROVIDER

ADDRESS OF SERVICE PROVIDER

WHEREAS, the City of Nashua, a political subdivision of the State of New Hampshire, from time to time requires the services of a Service Provider ; and

WHEREAS, it is deemed that the services of a Service Provider herein specified are both necessary and desirable and in the best interests of the City of Nashua; and

WHEREAS, Service Provider represents they are duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. DOCUMENTS INCORPORATED. The following exhibits are by this reference incorporated herein and are made part of this contract:

Exhibit A-- General Conditions for Contracts

Exhibit B—XXXXXX

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

2. WORK TO BE PERFORMED Except as otherwise provided in this contract, Service Provider shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the

work described.

3. PERIOD OF PERFORMANCE. Service Provider shall perform and complete all work with final plans, [TBD]. The time periods set forth may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Service Provider shall begin performance upon receipt of the **signed contract**.

4. COMPENSATION. Service Provider agrees to perform the work for a total cost not to exceed

(\$.00)

Unless Service Provider has received a written exemption from the City. Service Provider shall submit requests for payment for services performed under this agreement directly to

City of Nashua
Attn: Accounts Payable
PO Box 2019
Nashua, NH 03061-2019

To facilitate the proper and timely payment of applications, the City of Nashua requires that all invoices contain a valid **PURCHASE ORDER NUMBER**.

Requests for payment shall be submitted no later than fifteen (15) days after the end of each month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Service Provider agrees to provide the following with each request for payment:

1. Appropriate invoice forms. The forms shall include the project purchase order number, a listing of personnel hours and billing rates, and other expenditures for which payment is sought.
2. A progress report. The report shall include, for each monthly reporting period, a description of the work accomplished, problems experienced, upcoming work, any extra work carried out, and a schedule showing actual expenditures billed for the period, cumulative total expenditures billed and paid to date under the contract, and a comparison of cumulative total expenditures billed and paid to the approved budget.

The City will pay for work satisfactorily completed by Service Provider. The City will pay Service Provider within **30** days of approval by the City of the submitted invoice forms and progress reports. The City will make no payments until the invoice forms and progress reports have been submitted and approved.

5. EFFECTIVE DATE OF CONTRACT. This contract shall not become effective until and unless approved by the City of Nashua.

6. NOTICES. All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:

CITY REPRESENTATIVE:

REPRESENTATIVE:

Name
Title
Economic Development Division
Office of the Mayor – City Hall
229 Main Street
Nashua, NH 03060

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City or Service Provider may change the address or representative by giving written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

City of Nashua, NH (signature)

consultant

(signature)

Jim Donchess, Mayor

(Printed Name and Title)

(Printed Name and Title)

Date

Date

**EXHIBIT A
TABLE OF CONTENTS
GENERAL CONDITIONS**

1. DEFINITIONS	GC--3
2. SERVICE PROVIDER STATUS AND PROVISION OF WORKERS' COMPENSATION COVERAGE	GC--3
3. STANDARD OF CARE	GC--4
4. CITY REPRESENTATIVE	GC--4
5. CHANGES TO SCOPE OF WORK	GC--4
6. CITY COOPERATION	GC--5
7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES	GC--5
8. TERMINATION OF CONTRACT	GC--5
9. DISPUTE RESOLUTION	GC--7
10. NO DAMAGES FOR DELAY	GC--7
11. INSURANCE	GC--7
12. INDEMNIFICATION	GC--8
13. FISCAL CONTINGENCY	GC--8
14. COMPENSATION	GC--8
15. COMPLIANCE WITH APPLICABLE LAWS	GC--8
16. NONDISCRIMINATION	GC--9
17. FEDERAL SUBCONTRACTING REQUIREMENTS	GC--9
18. ENDORSEMENT	GC--10
19. ASSIGNMENTS, TRANSFER, DELEGATION, OR SUBCONTRACTING	GC--10
20. CITY INSPECTION OF CONTRACT MATERIALS	GC--10
21. DISPOSITION OF CONTRACT MATERIALS	GC--10
22. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS	GC--10
23. FINAL ACCEPTANCE	GC--11
24. TAXES	GC--11
25. NON-WAIVER OF TERMS AND CONDITIONS	GC--11
26. RIGHTS AND REMEDIES	GC--11
27. PROHIBITED INTERESTS	GC--11
28. THIRD PARTY INTERESTS AND LIABILITIES	GC—12

29. SURVIVAL OF RIGHTS AND OBLIGATIONS	GC--12
30. SEVERABILITY	GC--12
31. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT	GC--12
32. CHOICE OF LAW AND VENUE	GC--13

GENERAL CONDITIONS

1. **DEFINITIONS.** Unless otherwise required by the context, "Service Provider" includes any of the Service Provider's consultants, sub consultants, contractors, and subcontractors

2. **SERVICE PROVIDER STATUS AND PROVISION OF WORKERS' COMPENSATION COVERAGE.** The parties agree that Service Provider shall have the status of and shall perform all work under this contract as a Service Provider, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City and Service Provider, and nothing in this contract shall create any contractual relationship between the City and Service Provider's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Service Provider is not a City employee and that there shall be no:

- (1) Withholding of income taxes by the City;
- (2) Industrial insurance coverage provided by the City;
- (3) Participation in group insurance plans which may be available to employees of the City;
- (4) Participation or contributions by either the Service Provider or the City to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the City;
- (6) Unemployment compensation coverage provided by the City.

Service Provider agrees, if applicable and before commencing any work under the contract, to complete and to provide the following written request to its insurer:

XXXXXXXXX, Inc. has entered into a contract with the City of Nashua to perform work upon receipt of a **Notice to Proceed** to **Final Completion** and requests that the Insurer provide to the City of Nashua 1) a certificate of coverage, and 2) notice of any lapse in coverage or nonpayment of coverage that the Service Provider is required to maintain. The certificate and notice should be mailed to:

Risk Management
City of Nashua
229 Main Street
Nashua, NH 03060

Service Provider agrees, if not exempt, to maintain required workers' compensation coverage throughout the entire term of the contract. If Service Provider does not maintain coverage throughout the entire term of the contract, Service Provider agrees that City may, at any time the coverage is not maintained by Service Provider, order the Service Provider to stop work, suspend the contract, or terminate the contract. For each six-month period this contract is in effect, Service Provider agrees, prior to the expiration of the six-month period, to provide another written request to its insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If Service Provider does not make the request or does not provide the certificate before the expiration of the six-month period, Service Provider agrees that City may order the Service Provider to stop work, suspend the contract, or terminate the contract.

3. **STANDARD OF CARE.** Service Provider shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract.

Service Provider warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Service Provider to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City may have, Service Provider shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Service Provider's failure to perform in accordance with this standard of care. Any approval by the City of any products or services furnished or used by Service Provider shall not in any way relieve Service Provider of the responsibility for professional and technical accuracy and adequacy of its work. City review, approval, or acceptance of, or payment for any of Service Provider's work under this contract shall not operate as a waiver of any of the City's rights or causes of action under this contract, and Service Provider shall be and remain liable in accordance with the terms of the contract and applicable law.

Service Provider shall furnish competent and skilled personnel to perform the work under this contract. The City reserves the right to approve key personnel assigned by Service Provider to perform work under this contract. Approved key personnel shall not be taken off of the project by Service Provider without the prior written approval of the City, except in the event of termination of employment. Service Provider shall, if requested to do so by the City, remove from the job any personnel whom the City determines to be incompetent, dishonest, or uncooperative.

4. CITY REPRESENTATIVE. The City may designate a City representative for this contract. If designated, all notices, project materials, requests by Service Provider, and any other communication about the contract shall be addressed or be delivered to the City Representative.

5. CHANGES TO SCOPE OF WORK. The City may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Service Provider's performance under the contract. Service Provider shall provide to the City within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Service Provider should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Service Provider's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Service Provider for adjustment under this clause shall be asserted in writing within 30 days of the date the City notified Service Provider of the change.

When Service Provider seeks changes, Service Provider shall, before any work commences, estimate their effect on the cost of the contract and on its schedule and notify the City in writing of the estimate. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Service Provider should proceed with any or all of the proposed change.

Except as provided in this paragraph, Service Provider shall implement no change unless the City in writing approves the change. Unless otherwise agreed to in writing, the provisions of this contract shall apply to all changes. The City may provide verbal approval of a change when the

City, in its sole discretion, determines that time is critical or public health and safety are of concern. Any verbal approval shall be confirmed in writing as soon as practicable. Any change undertaken without prior City approval shall not be compensated and is, at the City's election, sufficient reason for contract termination.

6. CITY COOPERATION. The City agrees that its personnel will cooperate with Service Provider in the performance of its work under this contract and that such personnel will be available to Service Provider for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The City also agrees to provide Service Provider with access to City records in a reasonable time and manner and to schedule items that require action by the Board of Public Works and Finance Committee in a timely manner. The City and Service Provider also agree to attend all meetings called by the City or Service Provider to discuss the work under the Contract, and that Service Provider may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City.

7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES. Service Provider warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City in writing, and has concluded that the City's resolution of each matter is satisfactory to Service Provider. All future questions Service Provider may have concerning interpretation or clarification of this contract shall be submitted in writing to the City within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Service Provider's question or position. The City representative shall render a decision within 15 calendar days. The City's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Service Provider prior to having received the City's resolution shall be at Service Provider's risk and expense. At all times, Service Provider shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City. Service Provider is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

8. TERMINATION OF CONTRACT

A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL. The City, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City chooses to terminate, abandon, or suspend all or part of the project, it shall provide Service Provider 10 day's written notice of its intent to do so.

If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, Service Provider shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
3. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of all orders or subcontracts to the extent they relate to the

performance of work terminated, abandoned, or suspended under the notice, assign to the City any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.

4. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City to resume performance.

In the event of a termination, abandonment, or suspension at will, Service Provider shall receive all amounts due and not previously paid to Service Provider for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

B. TERMINATION FOR CAUSE. This agreement may be terminated by the City on 10 calendar day's written notice to Service Provider in the event of a failure by Service Provider to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, pursue the project or to complete work in a timely and professional manner. Service Provider shall be given an opportunity for consultation with the City prior to the effective date of the termination. Service Provider may terminate the contract on 10 calendar days written notice if, through no fault of Service Provider, the City fails to pay Service Provider for 30 days after the date of approval of any submitted invoice forms and progress reports.

In the event of a termination for cause, Service Provider shall receive all amounts due and not previously paid to Service Provider for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City by reasons of Service Provider's failure. Service Provider shall not be relieved of liability to the City for damages sustained from the failure, and the City may withhold any payment to the Service Provider until such time as the exact amount of damages due to the City is determined. All claims for payment by the Service Provider must be submitted to the City within 30 days of the effective date of the notice of termination.

If after termination for the failure of Service Provider to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, pursue the project or to complete work in a timely and professional manner, it is determined that Service Provider had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City shall make an equitable adjustment in the compensation paid to Service Provider. The adjustment shall include a reasonable profit for services or other work performed up to the effective date of termination less all previous payments.

C. GENERAL PROVISIONS FOR TERMINATION. Upon termination of the contract, the City may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Service Provider shall cease conducting business, the City shall have the right to solicit applications for employment from any employee of the Service Provider assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Service Provider's principals, officers, employees, agents,

subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Service Provider's control.

9. DISPUTE RESOLUTION. Any dispute not within the scope of section 7 or section 8 shall be resolved under this paragraph. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City Representative and a Service Provider representative. At all times, Service Provider shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City. If the dispute is not resolved within 30 days, either party may request that the dispute be submitted to the Board of Public Works for final resolution. The decision of the Board of Public Works shall be final and binding on the parties. If either party is dissatisfied with the decision of the Board of Public Works, that party may immediately terminate the contract under this paragraph, with Service Provider being entitled to compensation for work actually and satisfactorily performed up to the time of the termination and the City being entitled to all contract materials in accordance with paragraph 21, and compensation for any additional damages or expenses incurred in completing the work under the contract, including, without limitation, the costs of securing the services of other Service Providers.

10. NO DAMAGES FOR DELAY. Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Service Provider for damages because of hindrances or delays in the progress of the work from any cause, and Service Provider agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City may provide.

11. INSURANCE. Service Provider shall carry and maintain in effect during the performance of services under this contract:

- General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
- \$1,000,000 Combined Single Limit Automobile Liability;
***Coverage must include all owned, non-owned and hired vehicles.**
- ~~➤ \$1,000,000 Profession Liability;~~
- and Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

Service Provider shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Service Provider are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Service Provider under this contract. The City of Nashua shall not maintain any insurance on behalf of Service Provider. Subcontractors are subject to the same insurance requirements as Service Provider and it shall be the Service Provider's responsibility to ensure compliance of this requirement.

Service Provider will provide the City of Nashua with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the City issues the notice of award. The City of Nashua requires thirty days written

notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability and Auto Liability policies must name the City of Nashua as an additional insured** and reflect on the certificate of insurance. Service Provider is responsible for filing updated certificates of insurance with the City of Nashua's Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Service Provider must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve Service Provider of its responsibilities or limit the amount of its liability to the City or other persons, and Service Provider is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Service Provider is responsible for and required to remedy all damage or loss to any property, including property of the City, caused in whole or part by Service Provider or anyone employed, directed, or supervised by Service Provider.

12. INDEMNIFICATION Regardless of any coverage provided by any insurance, Service Provider agrees to indemnify and shall defend and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Service Provider or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Service Provider's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

13. FISCAL CONTINGENCY. All payments under this contract are contingent upon the availability to the City of the necessary funds. This contract shall terminate and the City's obligations under it shall be extinguished at the end of any fiscal year in which the City fails to appropriate monies for the ensuing fiscal year sufficient for the performance of this contract.

Nothing in this contract shall be construed to provide Service Provider with a right of payment over any other entity. Any funds obligated by the City under this contract that are not paid to Service Provider shall automatically revert to the City's discretionary control upon the completion, termination, or cancellation of the agreement. The City shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Service Provider. Service Provider shall have no claim of any sort to the unexpended funds.

14. COMPENSATION. Review by the City of Service Provider's submitted monthly invoice forms and progress reports for payment will be promptly accomplished by the City. If there is insufficient information, the City may require Service Provider to submit additional information.

Unless the City, in its sole discretion, decides otherwise, the City shall pay Service Provider in full within **30 days of approval** of the submitted monthly invoice forms and progress reports.

15. COMPLIANCE WITH APPLICABLE LAWS. Service Provider, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Service Provider shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

16. NONDISCRIMINATION. If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Service Provider agrees to the following terms. Service Provider will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Service Provider agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

Without limitation of the foregoing, Service Provider's attention is directed to 41 C.F.R. § 60-1.4, and the clause entitled "Equal Opportunity Clause" which, by reference, is incorporated into this contract, to 41 C.F.R. § 60-250 et seq. and the clause entitled "Affirmative Action Obligations of Service Providers and Subcontractor for Disabled Veterans and Veterans of the Vietnam Era," which, by reference, is incorporated in this contract, and to 41 C.F.R. § 60-471 and the clause entitled "Affirmative Action Obligations of Service Providers and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

Service Provider agrees to assist disadvantaged business enterprises in obtaining business opportunities by identifying and encouraging disadvantaged suppliers, consultants, and sub consultants to participate to the extent possible, consistent with their qualification, quality of work, and obligation of Service Provider under this contract.

In connection with the performance of work under this contract, Service Provider agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or sexual orientation. This agreement includes, but is not 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.

Service Provider agrees, if applicable, to insert these provisions in all subcontracts, except for subcontracts for standard commercial supplies or raw materials. Any violation of any applicable provision by Service Provider shall constitute a material breach of the contract.

17. FEDERAL SUBCONTRACTING REQUIREMENTS. If Service Provider awards a subcontract under this contract, Service Provider, if applicable, shall use the following alternative steps:

- A. Using the services of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce, as appropriate; and
- B. Requiring the subcontractor, if it awards subcontracts, to take the affirmative steps set forth in paragraph A.

If applicable, Service Provider agrees to complete and submit to the City a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization Report (Standard Form 334) within 30 days after the end of each fiscal quarter until the end of the contract.

18. ENDORSEMENT. Service Provider shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Service Provider or under its direction as required under the laws of the State of New Hampshire.

19. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING. Service Provider shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City is void. Any consent of the City to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

20. CITY INSPECTION OF CONTRACT MATERIALS. The books, records, documents and accounting procedures and practices of Service Provider related to this contract shall be subject to inspection, examination and audit by the City, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

21. DISPOSITION OF CONTRACT MATERIALS. Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Service Provider in the performance of its obligations under this contract shall be the exclusive property of the City and all such materials shall be remitted and delivered, at Service Provider's expense, by Service Provider to the City upon completion, termination, or cancellation of this contract. Alternatively, if the City provides its written approval to Service Provider, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Service Provider in the performance of its obligations under this contract must be retained by Service Provider for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City, in writing, requests any or all of the materials, then Service Provider shall promptly remit and deliver the materials, at Service Provider's expense, to the City. Service Provider shall not use, willingly allow

or cause to have such materials used for any purpose other than the performance of Service Provider's obligations under this contract without the prior written consent of the City.

22. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS. Service Provider expressly agrees that all documents ever submitted, filed, or deposited with the City by Service Provider (including those remitted to the City by Service Provider pursuant to paragraph 21), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Service Provider in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Service Provider. The City shall have the right to reproduce any such materials.

Service Provider expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Service Provider agrees to indemnify, to defend, and to hold harmless the City, its representatives, and employees from any claim or action seeking to impose liability, costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Service Provider infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Service Provider infringes any patent.

Service Provider shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

23. FINAL ACCEPTANCE. Upon completion of all work under the contract, Service Provider shall notify the City in writing of the date of the completion of the work and request confirmation of the completion from the City. Upon receipt of the notice, the City shall confirm to Service Provider in writing that the whole of the work was completed on the date indicated in the notice or provide Service Provider with a written list of work not completed. With respect to work listed by the City as incomplete, Service Provider shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.

24. TAXES. Service Provider shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Service Provider hereby indemnifies and holds harmless the City from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

25. NON-WAIVER OF TERMS AND CONDITIONS. None of the terms and conditions of this contract shall be considered waived by the City. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City in a written waiver.

26. RIGHTS AND REMEDIES. The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

27. PROHIBITED INTERESTS. Service Provider shall not allow any officer or employee of the City to have any indirect or direct interest in this contract or the proceeds of this contract. Service Provider warrants that no officer or employee of the City has any direct or indirect interest, whether contractual, non-contractual, financial or otherwise, in this contract or in the business of Service Provider. If any such interest comes to the attention of Service Provider at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City. Service Provider also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Service Provider further warrants that no person having such an interest shall be employed in the performance of this contract. If City determines that a conflict exists and was not disclosed to the City, it may terminate the contract at will or for cause in accordance with paragraph 8.

In the event Service Provider (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, City may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, Service Provider shall refund to the City any profits realized under this contract, and Service Provider shall be liable to the City for any costs incurred by the City in completing the work described in this contract. At the discretion of the City, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

Service Provider warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Service Provider to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract. If City determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with paragraph 8.

The rights and remedies of this section shall in no way be considered for be construed as a waiver of any other rights or remedies available to the City under this contract or at law.

28. THIRD PARTY INTERESTS AND LIABILITIES. The City and Service Provider, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City and Service Provider.

29. SURVIVAL OF RIGHTS AND OBLIGATIONS. The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

30. SEVERABILITY. In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

31. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT. This contract constitutes the entire contract between the City and Service Provider. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

32. CHOICE OF LAW AND VENUE. This contract shall be governed exclusively by the laws of the State of New Hampshire and any litigation shall be brought in a court located in the State of New Hampshire.