

ATTACHMENT

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**Notice:** This agreement and all of its attachments shall become public upon submission for approval. Any information that is private, confidential or proprietary must be clearly identified to the City and agreed to in writing prior to signing the contract.

## AGREEMENT

The City of Laconia and the Contractor hereby mutually agree as follows:

### GENERAL PROVISIONS

#### 1. IDENTIFICATION.

<b>1.1. City Agency Name</b>  City of Laconia	<b>1.2. City Agency Address</b>  45 Beacon Street East, Laconia, NH 03246	
<b>1.3. Contractor Name</b>	<b>1.4. Contractor Address</b>	
<b>1.5. Contractor Phone Number</b>	<b>1.7. Completion Date</b>	<b>1.8. Price Limitation</b>
<b>1.9. City Agency Point of Contact</b>  Gina Mastine, Purchasing Specialist	<b>1.10. City Agency Telephone Number</b>  (603) 524-3877	
<b>1.11 Contractor Signature</b>   <b>Date:</b>	<b>1.12. Name and Title of Contractor Signatory</b>	
<b>1.13. City Signature</b>   <b>Date:</b>	<b>1.14. Name and Title of City Signatory</b>  Kirk Beattie, City Manager	

## **2. SERVICES TO BE PERFORMED.**

The City of Laconia, acting through the agency identified in block 1.1 ("City"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

## **3. EFFECTIVE DATE / COMPLETION OF SERVICES.**

**3.1.** Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the City Council of the City of Laconia, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the City Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the City Agent as shown in block 1.13 ("Effective Date").

**3.2.** If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the City shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed.

**3.3.** Contractor must complete all Services by the Completion Date specified in block 1.7.

## **4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the City hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. In no event shall the City be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any City or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the City shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The City shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

## **5. CONTRACT PRICE / PRICE LIMITATION / PAYMENT.**

**5.1.** The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C, which is incorporated herein by reference.

**5.2.** Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the City of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services.

**5.3.** The City reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

**5.4.** The City's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the City and hereby waives any right to specific performance or other equitable remedies against the City.

## **6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS / EQUAL EMPLOYMENT OPPORTUNITY.**

**6.1.** In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the City or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

**6.2.** During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, gender expression, or any other protected class, and will take affirmative action to prevent such discrimination, unless exempt by City or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

**6.3.** No payments or transfers of value by the Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

**6.4.** The Contractor agrees to permit the City or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.

Initials: \_\_\_\_\_ Date: \_\_\_\_\_

## **7. PERSONNEL.**

**7.1.** The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

**7.2.** The City Agency Point of Contact specified in block 1.9, or any successor, shall be the City's point of contact pertaining to this Agreement.

## **8. EVENT OF DEFAULT / REMEDIES.**

**8.1.** Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

**8.1.1.** failure to perform the Services satisfactorily or on schedule;

**8.1.2.** failure to submit any report required hereunder; and/or

**8.1.3.** failure to perform any other covenant, term or condition of this Agreement.

**8.2.** Upon the occurrence of any Event of Default, the City may take any one, or more, or all, of the following actions:

**8.2.1.** give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar days after giving the Contractor notice of termination;

**8.2.2.** give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the City determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

**8.2.3.** give the Contractor a written notice specifying the Event of Default and set off against any other obligations the City may owe to the Contractor any damages the City suffers by reason of any Event of Default; and/or

**8.2.4.** give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

## **9. TERMINATION**

**9.1.** Notwithstanding paragraph 8, the City may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the City is exercising its option to terminate the Agreement.

**9.2.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the City's discretion, deliver to the City Agency Point of Contact, not later than fifteen (15) calendar days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the City's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the City a transition plan for Services under the Agreement.

## **10. PROPERTY OWNERSHIP / DISCLOSURE.**

**10.1.** As used in this Agreement, the word "Property" shall mean all data, information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

**10.2.** All data and any Property which has been received from the City, or purchased with funds provided for that purpose under this Agreement, shall be the property of the City, and shall be returned to the City upon demand or upon termination of this Agreement for any reason.

**10.3.** Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the City.

## **11. CONTRACTOR'S RELATION TO THE CITY.**

In the performance of this Agreement the Contractor is in all respects an independent contractor and is neither an agent nor an employee of the City. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the City or receive any benefits, workers' compensation or other emoluments provided by the City to its employees.

## **12. ASSIGNMENT / DELEGATION / SUBCONTRACTS.**

**12.1.** The Contractor shall provide the City written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the City.

**12.2.** For the purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

**12.3.** None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the City.

Initials: \_\_\_\_\_ Date: \_\_\_\_\_

**12.4.** The City is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

### **13. INDEMNIFICATION.**

13.1 To the fullest extent permitted by law, Contractor shall protect, indemnify, save, defend and hold harmless the City of Laconia, including its officials, agents, volunteers and employees (Indemnified Parties”), from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, interest and expenses, including but not limited to reasonable attorney and paralegal fees, which Indemnified Parties may become obligated or suffer by reason of any accident, bodily injury, personal injury, death of person, economic injury or loss of or damage to property, arising indirectly or directly under, out of, in connection with, or as a result of this Contract or the activities of Contractor or its agents, employees, contractors or subcontractors, and even if caused in part by a negligent act or omission of Indemnified Parties.

13.2 In addition, and regardless of respective fault, Contractor shall defend, indemnify and hold harmless the Indemnified Parties for any costs, expenses and liabilities arising out of a claim, charge or determination that Contractor’s officers, employees, contractors, subcontractors or agents are employees of the Indemnified Parties, including but not limited to claims or charges for benefits, wages, fees, penalties, withholding, damages or taxes brought in connection with laws governing workers compensation, unemployment compensation, social security, Medicare, state or federal taxation, and/or any other similar obligation associated with an employment relationship.

13.3 The Contractor’s obligations to defend, indemnify and hold harmless the Indemnified Parties hereunder shall survive the term of this Contract.

13.4 The City of Laconia shall not be required to defend or indemnify the Contractor, any subcontractor or any professional service provider.

### **14. INSURANCE.**

14.1 The Contractor agrees that it will carry any and all insurance which will protect it, the City of Laconia and their officials, agents, volunteers and employees from any and all claims and demands, costs, damages, loss of service or consortium, expenses, compensation and attorneys’ fees including but not limited to any and all claims for personal injury and/or death, works’ compensation injuries, and property damages which may, in any way, arise from or out of the operations of the Contractor whether such operations be performed by the Contractor itself, anyone directly or indirectly employed by it or any other persons or company retained in any way to carry on all or portion of the operations, activities or work required by or related to the Contract. The Contractor further agrees that the City of Laconia and its officials, agents, volunteers and employees shall be named as an additional insured in any and all such liability insurance policies required by the City of Laconia.

14.2 Prior to commencing work, the Contractor shall demonstrate that it carries a general liability policy with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, as well as completed operations coverage, applicable to the work performed under this Contract and all liabilities as set forth above. The general liability policy must also contain contractual liability coverage applicable to the contractual indemnification obligation set forth below.

14.3 The Contractor shall provide proof of automobile insurance coverage in an amount deemed satisfactory to the City of Laconia.

14.4 The Contractor will furnish to the City of Laconia a Certificate of Insurance and an endorsement prior to executing the Contract or commencing work demonstrating that the City of Laconia and its officials, agents volunteers and employees are named as an additional insured on the general liability and automobile liability insurance coverage on a primary and noncontributory basis.

14.5 The Contractor shall provide proof of workers compensation insurance meeting State of New Hampshire required limits and providing employer’s liability coverage.

14.6 Contractor shall carry and provide proof of builder’s risk insurance covering the project at its full value, and shall name the City of Laconia as loss payee.

14.7 to the extent Contractor utilizes the services of an architect, engineer, surveyor or any other industry professional, all such professionals, in addition to the general and automobile liability coverages described above, shall carry professional liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such professionals shall name the City of Laconia and its officials, agents, volunteers and employees as an additional insured on the general and automobile liability coverages by certificate and amendatory endorsement.

14.8 The City of Laconia shall not be required to insure the Contractor, any subcontractor or any professional service provider.

### **15. WORKERS’ COMPENSATION.**

**15.1.** By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (“Workers’ Compensation”).

**15.2.** To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers’ Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the City Agency Point of Contact identified in block 1.9, or any successor, proof of Workers’ Compensation in the manner described in N.H. RSA chapter 281-A and any applicable re- newal(s) thereof, which shall be attached and are incorporated herein by reference. The City shall not be responsible for payment of any Workers’ Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers’ Compensation laws in connection with the performance of the Services under this Agreement.

Initials: \_\_\_\_\_ Date: \_\_\_\_\_

## **16. WAIVER OF BREACH.**

A City's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the City to later enforce any such rights or to enforce any other or any subsequent breach.

## **17. NOTICE.**

Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

## **18. AMENDMENT.**

This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the City Council of the City of Laconia unless no such approval is required under the circumstances pursuant to City law, rule or policy.

## **19. CHOICE OF LAW AND FORUM.**

**19.1.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**19.2.** Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Belknap County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

## **20. CONFLICTING TERMS.**

In the event of a conflict between the terms of this General Provisions form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the General Provisions (as modified in EXHIBIT A) shall control.

## **21. THIRD PARTIES.**

This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

## **22. HEADINGS.**

The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

## **23. SPECIAL PROVISIONS.**

Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

## **24. FURTHER ASSURANCES.**

The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

## **25. SEVERABILITY.**

In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

## **26. ENTIRE AGREEMENT.**

This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

SAMPLE