



**THE STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF TRANSPORTATION**



**Victoria F. Sheehan**  
**Commissioner**

**William Cass, P.E.**  
**Assistant Commissioner**

Bureau of Environment  
 March 11, 2021

His Excellency, Governor Christopher T. Sununu  
 and the Honorable Council  
 State House  
 Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Transportation to enter into an Agreement with Hoyle, Tanner & Associates, Inc., Manchester, NH, Vendor #154903, in the amount of \$500,000.00 for on-call environmental services for various projects and facilities located throughout the State, effective upon Governor and Council approval, through April 30, 2024.

Funds to support this request are available in the following account in State FY 2021, and are contingent upon the availability and continued appropriation of funds in FY 2022, FY 2023, and FY 2024, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office, if needed and justified:

	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
04-096-96-963515-3054 Consolidated Federal Aid				
046-500464 Gen-Consultants Non-Benefit	\$50,000.00	\$150,000.00	\$150,000.00	\$150,000.00

The Consolidated Federal Fund, AU 3054, is utilized at this time to encumber funds for this request. Actual funding sources will be determined by each particular project incurring expenses as a result of this request.

**EXPLANATION**

The Department requires on-call environmental engineering and technical consulting services to perform tasks in order to meet regulatory requirements and project commitments. The Department proposes to retain a qualified environmental engineering consulting firm to assist the Department with a number of environmental engineering related tasks in and adjacent to proposed and existing highway rights-of-way, Department construction sites, and at Department-owned mitigation facilities. The consultant shall perform, as necessary, tasks required to develop environmental documentation, wetland mitigation design and development of wetland mitigation monitoring strategies, monitoring wetland mitigation construction, hydrology, water quality, and stream fluvial geomorphology related services.

The consultant selection process employed by the Department for this qualifications-based contract is in accordance with RSAs 21-I:22, 21-I:22-c, 21-I:22-d, 228:4 and 228:5-a, and all applicable Federal laws and the Department's "Policies and Procedures for Consultant Contract Procurement, Management, and Administration" dated August 25, 2017. The Department's Consultant Selection Committee is a standing committee that meets regularly to administer the process and make determinations. The Committee is comprised of the Assistant Director of Project Development (Chair), the Chief Project Manager, the Administrators of the Bureaus of Highway Design, Bridge Design, Environment, and Materials and Research, and the Municipal Highways Engineer.

The consultant selection process for this qualifications-based contract was initiated by a solicitation for consultant services for two (2) Statewide On-Call Environmental Services contracts. The assignment was listed as a "Project Soliciting for Interest" on the Department's website on August 31, 2020, asking for letters of interest from qualified firms. From the list of firms that submitted letters of interest, the Committee prepared a long and then short list of Consultants on October 22, 2020 for consideration and approval by the Assistant Commissioner. Upon receipt of that approval, six shortlisted firms were notified on October 27, 2020 through a technical "Request

for Proposal" (RFP). Committee members individually rated the firms' technical proposals on January 14, 2021 using a written ballot to score each firm on the basis of comprehension of the assignment, clarity of the proposal, capacity to perform in a timely manner, quality and experience of the project manager and the team, and overall suitability for the assignment. (A compilation of the completed individual rating ballots and the ranking summary form is attached.) The individual rankings were then totaled to provide an overall ranking of the six firms, and the Committee's ranking was submitted to the Assistant Commissioner for consideration and approval. Upon receipt of the Assistant Commissioner's approval, the short listed firms were notified of the results and the two (2) highest-ranking firms were asked to submit a fee proposal for negotiations.

The long list of twelve (12) consultant firms that were considered for this assignment, with the six (6) short-listed firms shown in bold, is as follows:

<u>Consultant Firm</u>	<u>Office Location</u>
BSC Group	Manchester, NH
<b>Comprehensive Environmental, Inc.</b>	<b>Merrimack, NH</b>
Dubois & King, Inc.	Randolph, VT
<b>Fitzgerald &amp; Halliday, Inc.</b>	<b>Hartford, CT</b>
<b>GM2 Associates, Inc.</b>	Concord, NH
<b>Hoyle, Tanner &amp; Associates, Inc.</b>	<b>Manchester, NH</b>
<b>McFarland-Johnson, Inc.</b>	<b>Concord, NH</b>
Normandeau Associates, Inc.	Bedford, NH
Stantec Consulting Services, Inc.	Auburn, NH
Tighe & Bond, Inc.	Portsmouth, NH
TRC Environmental Corporation	Manchester, NH
<b>Vanasse Hangen Brustlin, Inc.</b>	<b>Bedford, NH</b>

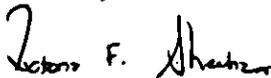
The firm of Hoyle, Tanner & Associates, Inc. has been recommended for one of the two contracts. This firm has an excellent reputation and has demonstrated its capability to perform the required services in previous contracts with the Department.

Hoyle, Tanner & Associates, Inc. has agreed to furnish the on-call services for an amount not to exceed \$500,000.00. The cost for individual Task Orders assigned under this contract will be negotiated as, and use a cost-plus-fixed fee, or lump sum method of compensation, determined based on the complexity and scope of engineering and technical services required. No new tasks may be assigned after the above-noted completion date, however, completion of previously assigned work begun prior to the completion date shall be allowed, subject to the written mutual agreement of both parties, which shall include a revised date of completion.

This Agreement (Statewide On-Call Environmental Services 43218) has been approved by the Attorney General as to form and execution. The Department has verified that the necessary funds are available. Copies of the fully-executed Agreement are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

It is respectfully requested that authority be given to enter into an Agreement for consulting services as outlined above.

Sincerely,



Victoria F. Sheehan  
Commissioner

Attachments

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- A. SPECIAL CONTRACT PROVISIONS FOR COVID-19
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- 2. CONSULTANT DISCLOSURE STATEMENT FOR PREPARATION OF ENVIRONMENTAL EVALUATIONS
- 3. CERTIFICATION OF CONSULTANT/SUBCONSULTANT
- 4. CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION
- 5. CERTIFICATION FOR FEDERAL-AID CONTRACTS EXCEEDING \$100,000 IN FEDERAL FUNDS
- 6. SIGNATURE PAGE
- 7. CERTIFICATION OF GOOD STANDING
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AGREEMENT  
FOR PROFESSIONAL SERVICES

**PREAMBLE**

THIS AGREEMENT made this 12<sup>th</sup> day of March in the year 2020 by and between the STATE OF NEW HAMPSHIRE, hereinafter referred to as the STATE, acting by and through its COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the COMMISSIONER, acting under Chapter 228 of the Revised Statutes Annotated, and Hoyle, Tanner & Associates, Inc., with principal place of business at 150 Dow Street, in the City of Manchester, State of New Hampshire, hereinafter referred to as the CONSULTANT, witnesses that:

The Department of Transportation, State of New Hampshire, hereinafter referred to as the DEPARTMENT, requires on-call engineering and technical services to advance environmental documentation and permitting for various transportation-related projects and facilities located throughout the STATE. These services are outlined in the CONSULTANT'S technical proposal dated December 3, 2020 and fee proposal dated February 11, 2021, which are hereby adopted by reference and considered to be part of this AGREEMENT.

This AGREEMENT becomes effective upon approval by the Governor and Council.

## ARTICLE I

### **ARTICLE I - DESCRIPTION OF PROFESSIONAL SERVICES TO BE RENDERED**

NOW THEREFORE, in consideration of the undertakings of the parties hereinafter set forth, the DEPARTMENT hereby engages the CONSULTANT, who agrees to render services to the DEPARTMENT which shall include, but not be restricted to, the following items, in accordance with conditions and terms hereinafter set forth:

#### **A. DESCRIPTION OF SERVICES**

The types of services required under the terms of this AGREEMENT shall generally include, but are not necessarily limited to, providing any and all aspects of analysis necessary to advance permitting, and development of National Environmental Policy Act (NEPA) documentation for various transportation projects and facilities located throughout the State, including: wetlands/shoreland impacts, floodplains/floodways, water quality, farmland soils, parks/recreation areas, conservation areas, Section 4(f) resources, Section 6(f) resources, wildlife and wildlife habitats, fisheries and stream crossings, Threatened and Endangered species, historic and archaeological resources, noise studies, air quality studies, invasive species, Coastal Zone Management areas, Essential Fish Habitat (EFH), hazardous/contaminated materials, public involvement, and preliminary engineering in support of environmental assignments.

#### **B. SCOPE OF WORK**

The DEPARTMENT requires consulting services that will complement the work being performed by the staff of the Bureau of Environment. The CONSULTANT may be required to provide (but not be limited to) any of the following services:

##### **Resource Identification**

Collect data through field and desktop surveys, analysis and documentation, as appropriate, sufficient to support development of plans and drawings for transportation projects. Resources of particular concern include wetlands, shorelands, floodplains, floodways, water quality, farmland soils, parks and recreation areas, conservation areas, Section 4(f) resources, Section 6(f) resources, wildlife and wildlife habitats, fisheries, streams and stream crossings, Threatened and Endangered species, historic and cultural resources, archaeological resources, noise receptors, air quality, aesthetics, socio-economic resources, EFH, and hazardous wastes and materials. CONSULTANT staff completing jurisdictional wetland delineations shall be certified by the NH Board of Natural Scientists. All work completed for historic, cultural and archaeological resources shall be conducted by CONSULTANT staff qualified under 36 CFR 61 for the position they hold.

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### **Resource Impact Analysis and Documentation**

Complete analysis of data gathered as part of CONSULTANT'S own resource identification, or of that completed by the DEPARTMENT, including development of recommendations for impact avoidance or minimization by design, use of innovation, or alternative methods. All work related to state- or federally-listed threatened or endangered species completed for compliance with Alteration of Terrain requirements shall be completed by a wildlife biologist who has education and experience in performing property surveys for threatened or endangered species, using an accepted process, consistent with Env-Wq 1503.19(h).

### **Coordination/Participation in Interagency and Public Meetings**

Coordinate with the DEPARTMENT, Federal Highway Administration (FHWA), other State and Federal Agencies, Regional Planning Commissions, municipal officials, the general public etc., for the purpose of obtaining environmental resource information, disseminating environmental resource information, and complying with required permits. Attend DEPARTMENT monthly Natural Resource Agency Coordination Meetings, and Cultural Resource Agency Coordination Meetings. Attend and/or conduct public meetings to obtain project information as well as to present and explain project information previously developed. This may include, but is not limited to, Public Officials Meetings, Public Informational Meetings, Public Hearings, NH Department of Environmental Services (NHDES) Wetlands Public Hearings, and US Army Corps of Engineers (ACOE) Public Hearings.

### **Preparation of Environmental Documentation**

Prepare NEPA documentation for approval of the DEPARTMENT, FHWA, or other Federal agencies. It is anticipated that NEPA assignments under this AGREEMENT will involve projects classified as Individual Categorical Exclusions (CE) or Programmatic Categorical Exclusions (Prog CE), however Environmental Assessments (EA) and/or Environmental Impact Statements (EIS) and/or associated documentation may also be required. Prepare Section 4(f) Evaluations. The CONSULTANT may also be required to prepare State-level environmental documentation for approval by the Bureau of Environment for State funded projects. It is anticipated that State-level assignments under this AGREEMENT would involve use of the "*NHDOT Environmental Review-Short Form for Non-Federal Projects*," or other similar format.

### **Plan Development and/or Review**

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Develop, and/or review engineering plans and designs for avoidance, minimization and/or mitigation of environmental impacts, including but not limited to: preliminary roadway design plans, noise barrier layout and design, alternative roadway alignments, design of wetland mitigation sites, wetland and shoreland impact plans sufficient for State and Federal permits, and Stormwater Pollution Prevention Plans (SWPPP).

### **Preparation of Environmental Permit Applications**

Prepare permit applications, with or without development of accompanying plans, for State and Federal environmental permit applications, including but not limited to: NHDES wetland permits/notifications, NHDES Shoreland permits, ACOE Section 404 permits, ACOE Section 401 Water Quality Certificates, and US Coast Guard Bridge permits.

### **Miscellaneous/Other Technical Evaluations**

Research and develop process and/or procedures or operations manuals, best management practices guides, environmental design guides, environmental studies, and such other general environmental documents/plans/products or services as may be required by the DEPARTMENT. Provide environmental permit compliance monitoring, reporting and certification on transportation projects both during and following construction. This will include but not be limited to, environmental commitments made as part of the NEPA process, environmental permit conditions, and Section 106 stipulations.

### **Applicable Laws and Regulations**

The CONSULTANT will be required to perform work as needed to address State and Federal laws, regulations, and rules, including but not limited to the following:

#### **FEDERAL ENVIRONMENTAL LAWS AND REGULATIONS**

- Section 106 of the National Historic Preservation Act
- Section 4(f), 23 CFR 774 of the Department of Transportation Act
- Section 6(f) of the Land and Water Conservation Fund Act
- The National Environmental Policy Act (NEPA), 23 CFR 771
- The Farmland Protection Policy Act
- Federal Clean Air Act
- Magnuson Stevens Fisheries Conservation and Management Act
- Coastal Zone Management Act

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- The Federal Clean Water Act and EPA regulation pursuant to 40 CFR Section 122 & 123, i.e. the National Pollutant Discharge Elimination System
- Executive Order 11988 "Floodplain Management"
- Executive Order 11990 "Protection of Wetlands"
- The Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Livability Act
- Section 401 of the Clean Water Act
- Section 404 of the Federal Water Pollution Control Act as amended by the Clean Water Act, (i.e. the Army Corps of Engineers 404 Permit)
- The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21)
- FHWA Noise Regulations, 23 CFR 772

### STATE ENVIRONMENTAL LAWS, REGULATIONS AND POLICIES

- RSA 482-A: Fill and Dredge in Wetlands
- Administrative Rules Env-Wt 100-900
- RSA 483: New Hampshire Rivers Management and Protection Program
- RSA 483-A: New Hampshire Lakes Management and Protection Program
- RSA 483-B: Shoreland Water Quality Protection Act
- Administrative Rules Env-Wq 1400
- NH Executive Order 96-4
- RSA 674:56: Floodplain Ordinances
- RSA 485-A:17: Terrain Alteration
- Administrative Rules Env-Wq 1500: Alteration of Terrain
- RSA 212-A: Endangered Species Conservation Act
- RSA 217-A: New Hampshire Native Plant Protection Act
- NHDOT Policy and Procedural Guidelines for the Assessment and Abatement of Highway Traffic Noise for Type I Highway Projects
- RSA 430: Insect Pests and Plant Diseases
- Administrative Rules Agr 3800: Prohibited Invasive Plant Species
- Administrative Rules Env-A: Air Program Rules
- Administrative Rules Env-Hw: Hazardous Waste Rules
- Administrative Rules Env-Or: Oil & Remediation Program Rules
- Administrative Rules Env-Sw: Solid Waste Rules

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- RSA 227-C: Historic Preservation

### C. STAFFING

The CONSULTANT shall revise, as necessary, and submit a new Salary Rate Table (furnished to the CONSULTANT by the DEPARTMENT prior to contract award) which contains the average salary rates for the personnel anticipated to be assigned to the Task Order. The "Average NHDOT Allowed Rate" for each classification of employee will be used for Task Order cost development independently by the CONSULTANT and the DEPARTMENT prior to entering into negotiations for Task Orders under this AGREEMENT.

### D. QUALITY CONTROL

The CONSULTANT is expected to perform in a professional manner and all work shall be neat, well organized, fully comply with the requirements of this AGREEMENT and Task Orders, and meet the specified accuracy requirements. The DEPARTMENT will reject any data that does not comply with the above. The DEPARTMENT will decide when the data and services have fully met the project requirements. The CONSULTANT will not be paid for insufficient work.

### E. TASK ORDERS

As needs develop, the DEPARTMENT will issue specific Task Orders to the CONSULTANT. A Task Order is an individually funded order with its own unique scope of work issued against the basic contract scope of work, terms and conditions, to carry out a specific project for the DEPARTMENT. These Task Orders will be initiated by a Request for Proposal (RFP) letter that may include a detailed description of the project or elements of work, an outline of the services required, responsibilities of the parties, materials to be supplied by the DEPARTMENT, specified accuracy requirements, and other information necessary to complete the work for the Task Order. The CONSULTANT shall then submit to the DEPARTMENT for approval a scope of work and fee proposal and a tentative work schedule and completion date for each Task Order assigned. The DEPARTMENT will review the CONSULTANT'S proposal and schedule negotiations, if necessary, to clarify the proposed scope of work, the number of work hours needed, and any other associated proposed costs in order to establish the final not-to-exceed or lump-sum amount for the Task Order. Upon approval of the CONSULTANT'S proposal by the DEPARTMENT and FHWA (if applicable), the DEPARTMENT will issue a Task Order Authorization to Proceed Letter. The CONSULTANT shall sign the Authorization to Proceed Letter and return it to the DEPARTMENT. A conference may be required to turn over a Task Order to the CONSULTANT. Costs associated with the CONSULTANT'S preparation of a scope of work and fee for a Task Order are non-reimbursable.

### F. MATERIAL FURNISHED BY THE DEPARTMENT OF TRANSPORTATION

## ARTICLE I

The DEPARTMENT will furnish the CONSULTANT with the appropriate materials (maps, plans, reports, and results from other investigations and studies, as available, and, when necessary, a letter of introduction or right-of-entry permit from the private property owners for permission to perform any necessary testing or other work, etc.), in electronic and/or hardcopy format, as needed to perform the assigned work.

### **G. WORK SCHEDULE AND PROGRESS REPORTS**

The CONSULTANT shall be aware that the services to be performed under this AGREEMENT will be on an as-needed basis. In addition, the CONSULTANT shall realize that emergency situations may arise that will require immediate response/action.

Following approval of the contract by the Governor and Council, the CONSULTANT shall be available to begin performance of the services designated in the Contract promptly upon receipt from the DEPARTMENT of a Notice to Proceed Letter. Upon receipt of a Task Order Authorization to Proceed Letter, the CONSULTANT shall complete the services required for each Task Order without delay unless unable to do so for causes not under the CONSULTANT'S control.

It is imperative that close coordination between the CONSULTANT and the DEPARTMENT be maintained at all times so as to ensure compliance with the DEPARTMENT'S requirements for specific Task Orders.

The CONSULTANT'S sequence of operation and performance of the work under the terms of this AGREEMENT shall be varied at the direction of the DEPARTMENT to give priority in critical areas so that schedules and other STATE commitments, either present or future, can be met.

The CONSULTANT shall report progress monthly for each active Task Order with activity during the billing period, in accordance with the DEPARTMENT'S Standardized Invoicing.

### **H. SUBMISSION OF REPORTS, PLANS AND DOCUMENTS**

Each submission shall be supplemented with such drawings, illustrations and descriptive matter as are necessary to facilitate a comprehensive review of proposed concepts.

Upon completion of the AGREEMENT, the CONSULTANT shall turn over all documentation, including, but not limited to, all reports, test results, drawings, plans, and all financial supporting documentation in their original format and in the format submitted to the DEPARTMENT.

### **I. DELIVERABLES**

All work and supporting documents for Task Orders completed under this AGREEMENT shall be developed by the CONSULTANT and delivered to the DEPARTMENT according to the following formats:

**Electronic Transfer of Data:** The DEPARTMENT requires the following to ensure compatibility with software used by the DEPARTMENT and to ensure the efficient and timely exchange of computer

## ARTICLE I

files between the DEPARTMENT and the CONSULTANT.

All files submitted must be fully compatible with the formats listed in this document without any conversion or editing by the DEPARTMENT. Any files requiring conversion and/or editing by the DEPARTMENT will not be accepted. All files shall be virus free. All files shall use the DEPARTMENT'S file naming convention.

**Computer Aided Design/Drafting (CAD/D) files:** Any and all CAD/D-related work during the course of this project shall be performed in conformance with the DEPARTMENT'S CAD/D Procedures and Requirements in effect at the time of execution of this AGREEMENT, which will be coordinated on each assignment. All files submitted must be fully compatible with the current version of MicroStation being used by the DEPARTMENT. (The DEPARTMENT'S CAD/D Procedures and Requirements document can be found on the CAD/D website by following the "Downloads" link at [www.nh.gov/dot/cadd/](http://www.nh.gov/dot/cadd/).)

**Word Processing, Spreadsheet, and Database Files:** For each Phase, all relevant files shall be provided in a format fully compatible, as appropriate, with the following:

- Word Processing: Microsoft Word 2010 or NHDOT compatible version
- Spreadsheets: Microsoft Excel 2010 or NHDOT compatible version
- Databases: Microsoft Access 2003 or NHDOT compatible version

These specifications will be updated as necessary to reflect changes in DEPARTMENT software such as adding new software or updating to new versions of existing software. In such instances, the CONSULTANT will be promptly notified.

**Computer File Exchange Media:** Electronic files shall be exchanged between the DEPARTMENT and the CONSULTANT using the following media as appropriate for Windows Operating Systems:

Compact Disc (CD): Files on CD(s) should be actual size, not compressed.

DVD: Files on DVD(s) should be actual size, not compressed.

Email: Files 10 MB or smaller may be transferred via Email. If compressed, the files should be self-extracting and encrypted based on content.

**Copies:** The CONSULTANT shall provide hard (paper) and electronic copies of the deliverables for each Phase of Work. For all deliverables, provide electronic copies in two electronic versions; an electronic version in the original electronic file format (i.e., MicroStation (\*.DGN), Microsoft Word (\*.DOC), Microsoft Excel (\*.XLS), etc.) and an electronic version in Adobe Acrobat (\*.PDF) file format.

**Website Information:**

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- a. Website Content: All external NHDOT websites created for Task Orders under this AGREEMENT shall meet the ADA Section 508 requirements as stated in the NH DoIT Website Standards. Those standards are outlined in <https://www.nh.gov/doit/vendor/documents/nh-website-standards.pdf>.
- b. Website Documents: All documents posted to a website created for Task Orders under this AGREEMENT, or that are submitted to be posted to a NHDOT website, shall meet ADA Section 508 accessibility requirements. A checklist for document compliance is provided in <https://www.section508.gov/content/build/create-accessible-documents> (go to second link down under "Checklists").

### **J. DATE OF COMPLETION**

The date of completion for the professional services rendered under this AGREEMENT is **April 30, 2024** unless terminated earlier upon the depletion of the total amount payable under this AGREEMENT, or extended as allowed by the following provision:

No new tasks may be assigned after the above noted completion date, however, the CONSULTANT shall complete any tasks begun prior to the completion date, but not yet completed, in accordance with the methods of compensation specified in Article II and all other applicable portions and contractual requirements of this AGREEMENT. This shall be subject to the written mutual agreement of both parties, which shall include a revised Date of Completion to allow completion of the previously assigned work.

## ARTICLE II

### **ARTICLE II - COMPENSATION OF CONSULTANT FOR ON-CALL SERVICES**

#### **A. AGREEMENT GENERAL FEE**

In consideration of the terms and obligations of this AGREEMENT, the STATE, through the DEPARTMENT, hereby agrees to pay and the CONSULTANT agrees to accept as full compensation for the combined total cost of all work, expenses, and profit for Task Orders issued under this AGREEMENT, an amount not to exceed **\$500,000.00**. (The CONSULTANT shall note that no payments will be made for work, expenses, or profit, whether authorized or not, exceeding the **\$500,000.00** total amount.)

#### **B. METHOD OF COMPENSATION FOR TASK ORDERS**

The method of compensation for Task Orders issued under this agreement will either be a **Cost-Plus-Fixed-Fee** format with method of payment as described in Section C, or a **Lump-Sum** format with method of payment as described in Section D. A **Task Order Fee Summary** will be included in the DEPARTMENT-issued Authorization to Proceed for a Task Order.

#### **C. COST-PLUS-FIXED-FEE FORMAT**

1. **Task Order Cost Development** - The negotiated not-to-exceed cost of each cost-plus-fixed-fee format Task Order will be computed as follows:

$$\begin{aligned} & \text{Labor Costs [hours x average rates* + indirect cost rate x (hours x rates)]} \\ + & \text{ Fixed Fee (negotiated amount)} \\ + & \text{ Direct Expenses (estimated amount)} \\ + & \text{ Subconsultant Costs (estimated amount or lump sum)} \\ \hline = & \text{ Negotiated Task Order Cost} \end{aligned}$$

- \* The average rates are the Average NHDOT Allowed Rates from the most-current version of the **Salary Rate Table** submitted for staff anticipated to work on the Task Order (see Article I Section C - Staffing).

2. **Task Order Cost Reimbursement** - In consideration of the terms and obligations of this AGREEMENT, the STATE, through the DEPARTMENT, hereby agrees to pay and the CONSULTANT agrees to accept as full compensation for all services rendered to the satisfaction of the DEPARTMENT for each Task Order an amount equal to the sum of the following costs (a)+(b)+(c)+(d)+(e):

- a. Actual salaries\* approved by the DEPARTMENT paid to technical and other employees by the CONSULTANT, including salaries to principals, for the time such employees are directly utilized on work necessary to fulfill the terms of this AGREEMENT.

- \* In accordance with DEPARTMENT policy, the maximum direct-labor rate allowed for all positions under this AGREEMENT, including subconsultants, shall be \$60.00 per

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hour unless a waiver to the salary cap has been specifically approved for specialty services.

- b. Overhead costs applicable to the direct salary costs. The audited indirect cost rate of 163.84%, as submitted to and approved by the DEPARTMENT, will be applied to the direct salary costs. The CONSULTANT agrees that the indirect cost rate shall be extended at that rate for the duration of the Contract in accordance with 23 CFR 172.11 (b)(1)(vi). An overtime premium of one and one half times the direct labor rate for non-exempt employees working beyond the standard 40 hours per workweek may be allowed for special circumstances when approved by the DEPARTMENT in writing in advance. The overhead portion of non-exempt employees' salary rates shall not be adjusted. Engineers are not eligible for overtime premium rates.
- c. A fixed fee amount based on the estimated risk to be borne by the CONSULTANT [maximum 10.00% of Labor Costs (including overhead costs)] for profit and non-reimbursed costs.
- d. Reimbursement for direct expenses, including, but not limited to, subconsultants with a subcontract value of less than \$100,000, printing, reproductions and travel not included in normal overhead expenses. The reimbursable costs for mileage and for per diem (lodging and meals) shall be that allowed by the CONSULTANT'S established policy but shall not exceed that allowed in the Federal Acquisition Regulation (Subpart 31.205-46) and in the Federal Travel Regulation. Mileage and per diem costs shall be subject to approval by the DEPARTMENT. Subconsultants with a subcontract value of less than \$100,000 shall be invoiced as direct expenses and do not require individual invoices.
- e. Reimbursement for actual cost of subconsultants.

The amount payable under categories (a), (b), (d), and (e) may be reallocated within the not-to-exceed Task Order amount upon mutual agreement of the DEPARTMENT and CONSULTANT. The fixed fee (c) shall only change when there has been a significant increase or decrease in the scope of work. The estimated amounts for (a), (b), (d), and (e) and the actual amount for (c) are listed in the Fee Summary section of the Authorization to Proceed for each Task Order.

- 3. **Task Order Limitation of Costs** – The total amount to be paid for any Task Order shall not exceed the sum of the amounts shown in the Task Order Fee Summary limits contained in the Authorization to Proceed Letter. It is expected that the CONSULTANT agrees to use best efforts to perform the work specified in the Task Order Scope of Work and all obligations under this contract within such limiting amount.

## ARTICLE II

4. **Task Order Payments** - Monthly payments on account may be made upon submission of invoices by the CONSULTANT to the DEPARTMENT. The CONSULTANT shall follow the DEPARTMENT'S Standardized Invoicing format. The fixed fee shall be invoiced during the billing period based upon the overall percent complete calculated within the approved progress report found in the DEPARTMENT'S Standardized Invoicing.

### **D. LUMP-SUM FORMAT**

**Task Order Cost Reimbursement** - The negotiated total amount of each lump-sum format Task Order will be considered full compensation for all services for the Task Order performed to the satisfaction of the DEPARTMENT. Said lump-sum amount includes all labor, overhead, profit (maximum 15.00% of total labor + total overhead; based on the estimated risk to be borne by the CONSULTANT), direct expenses, and subconsultant costs. The CONSULTANT shall follow the DEPARTMENT'S Standardized Invoicing format. The lump-sum amount may only be adjusted (increased or decreased) if there is a significant change in the scope or character of the work, as determined by the DEPARTMENT. Any change to the lump-sum amount shall be documented in writing by a DEPARTMENT Bureau-level amendment. For a substantial lump-sum Task Order, the DEPARTMENT'S Lump Sum Article II for standalone agreements will be furnished to the CONSULTANT for additional reference information.

### **E. SUBCONSULTANT SUPPORTING SERVICES**

Preservation Company – architectural history services

Independent Archaeological Consulting, LLC – archaeological services

Harris Miller Miller & Hanson, Inc. – air quality and noise studies

Stoney Ridge Environmental, LLC – wetlands services

Golder Associates, Inc. – hazardous/contaminated materials services

**Note:** Subconsultants can be engaged at any time if needed for a Task Order, whether they were included in the CONSULTANT'S Technical Proposal or not. Subconsultant costs may be either negotiated as a not-to-exceed amount for each Task Order and reimbursed at actual cost or negotiated as a lump-sum amount. See Article IV.G – SUBLETTING for subconsultant Professional Liability Insurance information.

### **F. TASK ORDER AMENDMENTS**

If revisions to a Task Order scope of work, and/or the fee summary or completion date included in the Task Order Authorization to Proceed is/are required, it shall be documented in writing by a DEPARTMENT Bureau-level amendment. The amendment will be filed with the Authorization to Proceed in the AGREEMENT.

## ARTICLE II

### **G. RECORDS, REPORTS, AND FINAL AUDIT**

The CONSULTANT shall maintain adequate cost records for all work performed under this AGREEMENT and all items charged on this project. All records and other evidence pertaining to cost incurred shall be made available at all reasonable times during the AGREEMENT period, and for three (3) years from the date final payment is made and all other pending matters are closed, for examination by the STATE, Federal Highway Administration, or other authorized representatives of the Federal Government, and copies thereof shall be furnished if requested. Applicable cost principles are contained in the Federal Acquisition Regulation (FAR) in Title 48 of the Code of Federal Regulations (Subpart 31.2 and Subpart 31.105).

**For Cost-Plus-Fixed-Fee Task Orders only:** All costs are to be determined by actual records kept during the term of the AGREEMENT, which are subject to Final Audit by the STATE and Federal Governments. The final payment, and all partial payments made, may be adjusted to conform to this Final Audit. In no case will any adjustments exceed the negotiated amount for any Task Order. All Subconsultant costs may also be subject to Final Audit by the STATE and Federal Governments.

**ARTICLE III**

**ARTICLE III - GENERAL PROVISIONS**

**A. HEARINGS, ETC.**

(Not applicable to this AGREEMENT)

**B. CONTRACT PROPOSALS**

(Not applicable to this AGREEMENT)

## ARTICLE IV

### **ARTICLE IV - STANDARD PROVISIONS**

#### **A. STANDARD SPECIFICATIONS**

The CONSULTANT agrees to follow the provisions of the Design Manuals, Standard Specifications for Road and Bridge Construction, and Standard Plans for Road and Bridge Construction of the DEPARTMENT; A Policy on Geometric Design of Highways and Streets and LRFD Bridge Design Specifications of the American Association of State Highway and Transportation Officials (AASHTO), and amendments thereto, and/or other professional codes or standards applicable to the services to be performed under this AGREEMENT. When a publication (including interim publications) is specified, it refers to the most recent date of issue in effect at the time of execution of this AGREEMENT.

#### **B. REVIEW BY STATE AND FHWA - CONFERENCES - INSPECTIONS**

It is mutually agreed that all portions of the work covered by this AGREEMENT shall be subject to the inspection of duly-authorized representatives of the STATE and Federal Highway Administration, United States Department of Transportation, at such time or times as the STATE or Federal Highway Administration deems appropriate.

The location of the office where the work will be available for inspection by STATE and Federal Highway Administration representatives is 150 Dow Street, Manchester, NH.

It is further mutually agreed that any party, including the duly-authorized representatives of the Federal Highway Administration, may request and obtain conferences, visits to the site, and inspection of the work at any reasonable time.

#### **C. EXTENT OF CONTRACT**

##### **1. Contingent Nature of AGREEMENT**

Notwithstanding anything in this AGREEMENT to the contrary, all obligations of the STATE, including, without limitation, the continuance of payments, are contingent upon the availability and continued appropriation of funds, and in no event shall the STATE be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the STATE shall have the right to terminate this AGREEMENT.

##### **2. Termination**

The DEPARTMENT shall have the right at any time, and for any cause, to terminate the work required of the CONSULTANT by this AGREEMENT, by written notice of such termination provided to the CONSULTANT by the DEPARTMENT, and, in the event of such a termination of this AGREEMENT, without fault on the part of the CONSULTANT, the CONSULTANT shall be entitled to compensation for all work theretofore satisfactorily performed, pursuant to this AGREEMENT, such compensation to be fixed, insofar as possible, based upon the work performed prior to termination. If no contract or contracts for construction of the project contemplated by this AGREEMENT is (are) entered into within two (2) years after satisfactory completion of the

## ARTICLE IV

services outlined in Article I, all of the services contemplated by this AGREEMENT shall be deemed to have been completed. It shall be a breach of this AGREEMENT if the CONSULTANT shall fail to render timely the services required under this AGREEMENT, in accordance with sound professional principles and practices, to the reasonable satisfaction of the DEPARTMENT, or shall be in such financial condition as to be unable to pay its just debts as they accrue, or shall make an assignment for the benefit of creditors, or shall be involved in any proceeding, voluntary or involuntary, resulting in the appointment of a receiver or trustee over its affairs, or shall become dissolved for any cause. In the event of the happening of any one or more of the foregoing contingencies, or upon the substantial breach of any other provisions of this AGREEMENT by the CONSULTANT, its officers, agents, employee, and subconsultants, the DEPARTMENT shall have the absolute right and option to terminate this AGREEMENT forthwith, and, in addition, may have and maintain any legal or equitable remedy against the CONSULTANT for its loss and damages resulting from such breach or breaches of this AGREEMENT; provided, however, that as to all plans, drawings, tracings, estimates, specifications, reports, proposals, sketches, diagrams and calculations, together with all material and data theretofore furnished to the DEPARTMENT by the CONSULTANT, of a satisfactory nature in accordance with this AGREEMENT, which plans, drawings, tracings, etc., are of use to the DEPARTMENT, the CONSULTANT shall be entitled to a credit, based on the contract rate for the work so performed in a satisfactory manner and of use and benefit to the DEPARTMENT.

### **D. REVISIONS TO REPORTS, PLANS OR DOCUMENTS**

The CONSULTANT shall perform such additional work as may be necessary to correct errors in the work required under the AGREEMENT, caused by errors and omissions by the CONSULTANT, without undue delays and without additional cost to the DEPARTMENT.

Furthermore, prior to final approval of plans, specifications, estimates, reports or documents by the DEPARTMENT, the CONSULTANT shall make such revisions of them as directed by the DEPARTMENT, without additional compensation therefor except as hereinafter provided:

1. If, after its written approval thereof, the DEPARTMENT shall require changes to the plans or documents that revise engineering or other factors specifically approved, thereby necessitating revisions of the contract plans or documents, or,
2. When applicable, if during the term of this AGREEMENT, a revision of the alignment is ordered to the extent that the revised alignment will lie completely or partially outside the limit of the survey data plotted by the CONSULTANT (this does not apply to those adjustments and refinements to the alignments anticipated under the scope of work), or,
3. If, after approval by the DEPARTMENT of the final contract plans or documents, the CONSULTANT shall be ordered in writing by the DEPARTMENT to make revisions, or to

## ARTICLE IV

perform services other than those necessary in order to adapt said plans, reports or documents to conditions observed during field inspections and encountered during construction; the CONSULTANT shall be entitled to compensation therefor in accordance with Article II, Section B, such compensation to be in addition to the fee specified in Article II, Section A, for its original work on the plans, reports or documents.

### **E. ADDITIONAL SERVICES**

If, during the term of this AGREEMENT, additional professional services are required due to a revision in the limits of the project, or it becomes necessary to perform services not anticipated during negotiation, the DEPARTMENT may, in writing, order the CONSULTANT to perform such services, and the CONSULTANT shall be paid a fee in accordance with the provisions of Article II, Section B.

If, during the term of this AGREEMENT, additional professional services are performed by the CONSULTANT due to the fact that data furnished by the DEPARTMENT are not usable or applicable, the STATE will, upon written approval of the DEPARTMENT, reimburse the CONSULTANT for such additional design services in accordance with the provisions of Article II, Section B.

If additional services are performed by the CONSULTANT through its own acts, which are not usable or applicable to this project, the cost of such additional services shall not be reimbursable.

### **F. OWNERSHIP OF PLANS**

All data, plans, drawings, tracings, estimates, specifications, proposals, sketches, diagrams, calculations, reports or other documents collected, prepared, or undertaken either manually or electronically by the CONSULTANT, under the provisions of this AGREEMENT, immediately shall become the property of the DEPARTMENT, and, when completed, shall bear the CONSULTANT'S endorsement. The CONSULTANT shall surrender to the DEPARTMENT, upon demand at any time, or submit to its inspection, any data, plan, drawing, tracing, estimate, specification, proposal, sketch, diagram, calculation, report or document which shall have been collected, prepared, or undertaken by the CONSULTANT, pursuant to this AGREEMENT, or shall have been hitherto furnished to the CONSULTANT by the DEPARTMENT. The CONSULTANT shall have the right, with the written approval of the DEPARTMENT, to use any of the data prepared by it and hitherto delivered to the DEPARTMENT at any later stage of the project contemplated by this AGREEMENT.

### **G. SUBLETTING**

The CONSULTANT shall not sublet, assign or transfer any part of the CONSULTANT'S services or obligations under this AGREEMENT without the prior approval and written consent of the DEPARTMENT.

All subcontracts shall be in writing and those exceeding \$10,000 shall contain all provisions of this AGREEMENT, including "Certification of CONSULTANT/Subconsultant". For subconsultants working on design, hazardous materials, geotechnical services, etc., the minimum limits of their professional liability

## ARTICLE IV

(errors and omissions) insurance coverage shall be not less than \$2,000,000 in the aggregate, with a deductible of not more than \$75,000. For subconsultant contracts with less risk, e.g., wetland evaluations, materials inspection and testing, structural steel fabrication inspection, underwater bridge inspection, research, bridge deck condition surveys, land surveying, mapping, noise studies, air-quality studies, etc., the minimum limits of their professional liability (errors and omissions) insurance coverage shall be not less than \$1,500,000 in the aggregate, with a deductible of not more than \$50,000. For subconsultant contracts with no risk, e.g., archaeology, cultural resources, data gathering, traffic counting etc., professional liability insurance shall not be required. Subconsultants completing field exploration for geotechnical, hazardous materials/environmental, and subsurface exploration shall also have pollution liability insurance coverage not less than \$2,000,000 in the aggregate, with a deductible of not more than \$75,000. If coverage is claims made, the period to report claims shall extend for not less than three years from the date of substantial completion of the construction contract. A copy of each subcontract shall be submitted for the DEPARTMENT'S files.

### **H. GENERAL COMPLIANCE WITH LAWS, ETC.**

The CONSULTANT shall comply with all Federal, STATE and local laws, and ordinances applicable to any of the work involved in this AGREEMENT and shall conform to the requirements and standards of STATE, municipal, railroad and utility agencies whose facilities and services may be affected by the construction of this project. The services shall be performed so as to cause minimum interruption to said facilities and services.

### **I. BROKERAGE**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the STATE shall have the right to annul this Contract without liability, or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

### **J. CONTRACTUAL RELATIONS**

#### **1. Independent Contractor**

The CONSULTANT agrees that its relation to the STATE is as an independent contractor and not as an agent or employee of the STATE.

#### **2. Claims and Indemnification**

##### **a. Non-Professional Liability Indemnification**

## ARTICLE IV

The CONSULTANT agrees to defend, indemnify and hold harmless the STATE and all of its officers, agents and employees from and against any and all claims, liabilities or suits arising from (or which may be claimed to arise from) any (i) acts or omissions of the CONSULTANT or its subconsultants in the performance of this AGREEMENT allegedly resulting in property damage or bodily injury and/or (ii) misconduct or wrongdoing of the CONSULTANT or its subconsultants in the performance of this AGREEMENT.

b. Professional Liability Indemnification

The CONSULTANT agrees to indemnify and hold harmless the STATE and all of its officers, agents and employees from and against any and all claims, liabilities or suits arising from (or which may be claimed to arise from) any negligent acts or omissions of the CONSULTANT or its subconsultants in the performance of professional services covered by this AGREEMENT.

- c. These covenants shall survive the termination of the AGREEMENT. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the STATE, which immunity is hereby reserved by the STATE.

3. Insurance

a. Required Coverage

The CONSULTANT shall, at its sole expense, obtain and maintain in force the following insurance:

1. Commercial or comprehensive general liability insurance including contractual coverage, for all claims of bodily injury, death or property damage, in policy amounts of not less than \$250,000 per occurrence and \$2,000,000 in the aggregate (STATE to be named as an additional insured); and
2. comprehensive automobile liability insurance covering all motor vehicles, including owned, hired, borrowed and non-owned vehicles, for all claims of bodily injury, death or property damage, in policy amounts of not less than \$500,000 combined single limit; and
3. professional liability (errors and omissions) insurance coverage of not less than \$2,000,000 in the aggregate. If coverage is claims made, the period to report claims shall extend for not less than three years from the date of substantial completion of the construction contract. No retention (deductible) shall be more than \$75,000; and
4. workers' compensation and employer's liability insurance as required by law.

b. Proof of Insurance

The policies described in paragraph (a) of this section and Section G shall be in the standard form employed in the STATE, issued by underwriters licensed or approved by the Department of Insurance of the STATE. Each policy shall contain a clause prohibiting cancellation or

## ARTICLE IV

modifications of the policy earlier than 30 days, or 10 days in cases of non-payment of premium, after written notice thereof has been received by the STATE. The CONSULTANT shall provide to the STATE a certificate of insurance evidencing the required coverages, retention (deductible) and cancellation clause prior to submittal of the AGREEMENT to Governor and Council for approval and shall have a continuing duty to provide new certificates of insurance as the policies are amended or renewed.

### 4. No Third-Party Rights

It is not intended by any of the provisions of the AGREEMENT to make the public or any member thereof a third-party beneficiary of the AGREEMENT, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this AGREEMENT. The duties, obligations and responsibilities of the parties to this AGREEMENT with respect to third parties shall remain as imposed by law. No portion of this AGREEMENT shall be understood to be a waiver of the STATE'S sovereign immunity.

### 5. Construction of AGREEMENT

This AGREEMENT is executed in a number of counterparts, each of which is an original and constitutes the entire AGREEMENT between the parties. This AGREEMENT shall be construed according to the laws of the STATE.

## K. AGREEMENT MODIFICATION

The assignment of the CONSULTANT, generally established by the scope of work in this AGREEMENT, shall not be modified in any way without prior approval of the Governor and Council.

## L. EXTENSION OF COMPLETION DATE(S)

If, during the course of the work, the CONSULTANT anticipates that they cannot comply with one or more of the completion dates specified in this AGREEMENT, it shall be the CONSULTANT'S responsibility to notify the DEPARTMENT in writing at least ninety (90) days prior to the completion date(s) in question. The CONSULTANT shall state the reasons that a completion date(s) cannot be met and request a revised date(s) for consideration by the DEPARTMENT.

## M. TITLE VI (NONDISCRIMINATION OF FEDERALLY-ASSISTED PROGRAMS) COMPLIANCE

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- (1) Compliance with Regulations: The CONSULTANT shall comply with Title VI of the Civil Rights Act of 1964 regulations relative to nondiscrimination in federally-assisted programs of the DEPARTMENT, such regulations entitled Title 49 Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the REGULATIONS), and which are herein incorporated by reference and made a part of this AGREEMENT.

## ARTICLE IV

- (2) Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, religion, age, sex, handicap, sexual orientation, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment specific to this project. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment specific to the project, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to nondiscrimination on the grounds of race, color, religion, age, sex, handicap, sexual orientation, or national origin.
- (4) Information and Reports: The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the DEPARTMENT or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with nondiscrimination provisions of this AGREEMENT, the DEPARTMENT shall impose sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- (a) withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies; and/or
  - (b) cancellation, termination or suspension of the AGREEMENT, in whole or in part.
- (6) The CONSULTANT shall take such action with respect to any subcontract or procurement as the DEPARTMENT or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the DEPARTMENT to enter

## ARTICLE IV

into such litigation to protect the interests of the STATE, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

- (7) 23 CFR 710.405(b) and Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in Department of Labor REGULATIONS (41 CFR Part 60), shall be applicable to this AGREEMENT and any subagreements hereunder.
- (8) Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (7) in every subcontract, including procurements of materials and leases of equipment specific to the project, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

In accordance with EXECUTIVE ORDER 11246, the DEPARTMENT has the authority and responsibility to notify the Office of Federal Contract Compliance Programs of the United States Department of Labor if they become aware of any possible violations of Executive Order 11246 and 41 CFR Part 60. The Office of Federal Contract Compliance Programs is solely responsible for determining compliance with Executive Order 11246 and 41 CFR Part 60 and the CONSULTANT should contact them regarding related compliance issues.

### **N. DISADVANTAGED BUSINESS ENTERPRISE POLICY AGREEMENT REQUIREMENTS**

1. Policy. It is the policy of the United States Department of Transportation (USDOT) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBE's), as defined in 49 Code of Federal Regulations (CFR) Part 26, to participate in the performance of agreements and any subagreements financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.
2. Disadvantaged Business Enterprise (DBE) Obligation. The STATE and its Consultants agree to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 CFR Part 26, to participate in the performance of agreements and any subagreements financed in whole or in part with Federal funds. In this regard, the STATE and its Consultants shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the opportunity to compete for and perform work specified in the agreements. The STATE and its Consultants shall not discriminate on the basis of race, color, religion, age, sex, handicap, sexual orientation, or national origin in the award and performance of agreements financed in whole or in part with Federal funds.
3. Sanctions for Non-Compliance. The CONSULTANT is hereby advised that failure of the CONSULTANT, or any Subconsultant performing work under this AGREEMENT, to carry out the requirements set forth in paragraphs 1 and 2 above shall constitute a breach of agreement and, after the notification of the United States Department of Transportation, may result in termination of this AGREEMENT by the STATE or such remedy as the STATE deems appropriate.

## ARTICLE IV

### **O. DOCUMENTATION**

The CONSULTANT shall document the results of the work to the satisfaction of the DEPARTMENT and the Federal Highway Administration. This shall include preparation of progress reports, plans, specifications and estimates and similar evidences of attainment of objectives called for in this AGREEMENT.

### **P. CLEAN AIR AND WATER ACTS**

If the amount of the AGREEMENT or subcontract thereunder exceeds \$100,000, the CONSULTANT or subconsultant shall comply with applicable standards, orders or requirements issued under Section 306 of the Federal Clean Air Act (43 U.S.C. 1857(h)), Section 508 of the Federal Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The CONSULTANT or subconsultant shall report violations to the FHWA and to the U. S. Environmental Protection Agency Assistant Administrator for Enforcement (EN-329).

## ATTACHMENT A

### Special Contract Provisions for COVID-19

The CONSULTANT acknowledges and agrees that this AGREEMENT was entered into following the coronavirus disease 2019 (COVID-19) outbreak. The CONSULTANT agrees that to the extent the COVID-19 outbreak, or any federal, state or local orders, regulations, rules, restrictions, or emergency declarations relating to COVID-19, disrupt, delay, or otherwise impact the Scope of Services to be performed by the CONSULTANT as set forth in Article I of this AGREEMENT, any such disruption, delay, or other impact was foreseeable at the time this AGREEMENT was entered into by the Parties and does not excuse the Contractor's performance under this AGREEMENT. The CONSULTANT agrees that any such impact, including any disruption to supply chains, workforce reductions, delays or interruptions in performance, or other effects on businesses, are not the fault of the STATE and the CONSULTANT may not seek damages against the STATE for any such impacts.

If the CONSULTANT experiences or anticipates any such COVID-19-related impacts to this AGREEMENT, the CONSULTANT shall immediately notify the DEPARTMENT'S Contract Manager. In the event of any COVID-19-related impact or anticipated impact to this AGREEMENT, the Contract Manager shall have the right to temporarily modify, substitute, or decrease the services, without the approval of the Governor and Executive Council, upon giving written notice to the CONSULTANT. The STATE'S right to modify includes, but is not limited to the right to modify service priorities, including how and when services are delivered, and expenditure requirements under this AGREEMENT so as to achieve compliance therewith, provided such modifications are within the Scope of Services and cost limitations of this AGREEMENT. By exercising any of the rights described within this subsection, the STATE does not waive any of its right under this AGREEMENT.

In the event that a modification by the STATE under this subsection would result in a permanent reduction of services that cannot be supplemented during the remaining term of this AGREEMENT with either replacement or substituted services of substantially similar value, the Parties shall submit a formal amendment to this AGREEMENT with a commensurate reduction in the price. This amendment will require the approval of the Governor and Executive Council. In order to facilitate reconciliation of services performed under this AGREEMENT, the CONSULTANT shall submit weekly reports detailing the following for any service not fully performed pursuant to the terms of the AGREEMENT:

- 1) The services required to be performed under the terms of this AGREEMENT as written;
- 2) The services actually performed;
- 3) Any replacement or substituted services performed with reference to the associated unperformed contracted services.

Attachment 1

**CERTIFICATION WITH REGARD TO THE PERFORMANCE OF  
PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO  
THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS**

The CONSULTANT  X , proposed subconsultant \_\_\_\_\_, hereby certifies that it has  X , has not \_\_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Order 11246 and that it has  X , has not \_\_\_\_\_, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Hoyle, Tanner & Associates, Inc.

\_\_\_\_\_  
(Company)

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

Senior Vice President

\_\_\_\_\_  
(Title)

Date:  March 12, 2021

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by consultants and proposed subconsultants only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime consultants and subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

(Revised: June, 1980) **NOTE: TO BE COMPLETED BY CONSULTANT WHEN SIGNING AGREEMENT.**

*Attachment 2*

**CONSULTANT DISCLOSURE STATEMENT  
FOR PREPARATION OF  
ENVIRONMENTAL EVALUATIONS**

I hereby affirm that I have read and reviewed the Council on Environmental Quality (CEQ) regulation [40 CFR 1506.5(C)] and related guidance issued by CEQ and that pursuant thereto this firm has no financial or other interest in the outcome of this project.

I further hereby affirm that the information provided herein is true and correct and acknowledge that any knowingly false statement or false representation as to any material part contained herein may subject me to a fine and/or imprisonment, pursuant to pertinent provisions of the United States Code.

March 12, 2021

\_\_\_\_\_  
(Date)

  
\_\_\_\_\_  
(Signature)

*Attachment 3*

**CERTIFICATION OF CONSULTANT/SUBCONSULTANT**

I hereby certify that I am the Senior Vice President and duly-authorized representative of the firm of Hoyle, Tanner & Associates, Inc. and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the Contract:

I/WE do also, under penalty of perjury under the laws of the United States, certify that, except as noted below, the company or any person associated therewith in the capacity of (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of Federal funds): (a) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency; (b) has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three years; (c) does not have a proposed debarment pending; and (d) has not been indicted, convicted or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

except as here expressly stated (if any):

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate below to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

I acknowledge that this certificate is to be furnished to the State Department of Transportation and the Federal Highway Administration, U. S. Department of Transportation, in connection with this Contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

March 12, 2021

(Date)

  
(Signature)

*Attachment 4*

**CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION**

I hereby certify that I am the Director of Project Development of the Department of Transportation of the State of New Hampshire, and the above consulting firm or its representatives has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Contract, to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind:

except as here expressly stated (if any):

March 17, 2021  
(Date)

  
(Signature)

*Attachment 5*

**CERTIFICATION FOR FEDERAL-AID CONTRACTS  
EXCEEDING \$100,000 IN FEDERAL FUNDS**

The prospective participant certifies, by signing and submitting this agreement, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Attachment 6

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT on the day and year first above written.

Consultant

WITNESS TO THE CONSULTANT

By: [Signature]  
Senior Vice President

Dated: March 12, 2021

CONSULTANT

By: [Signature]  
Senior Vice President  
(TITLE)

Dated: March 12, 2021

Department of Transportation

WITNESS TO THE STATE OF NEW HAMPSHIRE

By: Phyllis C. Jowelakas

Dated: March 17, 2021

THE STATE OF NEW HAMPSHIRE

By: [Signature]  
Director of Project Development  
DOT COMMISSIONER

Dated: March 17, 2021

Attorney General

This is to certify that the above AGREEMENT has been reviewed by this office and is approved as to form and execution.

Dated: 4/14/21

By: [Signature]  
Assistant Attorney General

Secretary of State

This is to certify that the GOVERNOR AND COUNCIL on \_\_\_\_\_ approved this AGREEMENT.

Dated: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Secretary of State

HOYLE, TANNER & ASSOCIATES, INC.

Certificate of Vote

I, Matthew J. Low, hereby certify that I am a duly elected Assistant Secretary of Hoyle, Tanner & Associates, Inc.

I hereby certify the following is a true copy of a vote taken by Directors of the Corporation on March 12, 2021.

**Voted:** That Hoyle, Tanner & Associates, Inc. enter into an Agreement with the State of New Hampshire, acting through its Department of Transportation, for the provision of engineering services for the following project:

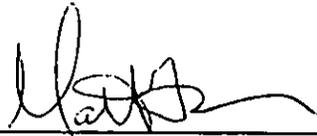
**Environmental Services  
43218**

**Voted:** To authorize Matthew J. Low or Sean T. James on behalf of Hoyle, Tanner & Associates, Inc., to enter into the said Agreement with The State of New Hampshire, acting through its acting through its Department of Transportation, and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto which, in his judgment, may be necessary, desirable or appropriate to affect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of March 12, 2021 and that **Matthew J. Low** and **Sean T. James** are duly elected senior vice presidents, respectively, of this corporation.

Attest:

Date: March 12, 2021



Assistant Secretary

(CORPORATE SEAL)

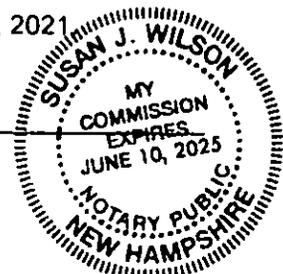


STATE OF NEW HAMPSHIRE  
HILLSBOROUGH, SS

The foregoing instrument was acknowledged before me this 12th day of March, 2021



Susan Wilson, Notary Public  
My commission expires: June 10, 2025



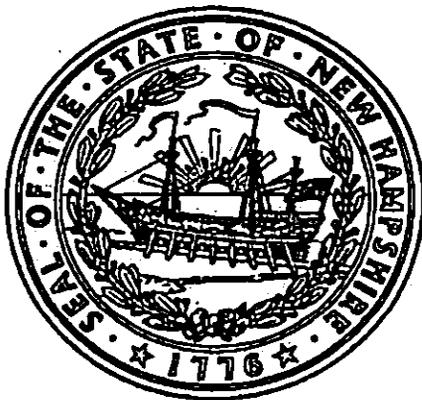
**State of New Hampshire**  
**Department of State**

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that HOYLE, TANNER & ASSOCIATES, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on February 10, 1975. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 10883

Certificate Number: 0005333426



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire.

this 1st day of April A.D. 2021.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner

Secretary of State



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/09/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> FIAI/Cross Insurance 1100 Elm Street Manchester NH 03101		<b>CONTACT NAME:</b> Tara Dean, CIC <b>PHONE (AC, Ho, Ext):</b> (603) 669-3218 <b>E-MAIL ADDRESS:</b> tdean@crossagency.com		<b>FAX (AC, Mo):</b> (603) 645-4331
<b>INSURED</b> Hoyle, Tanner & Assoc., Inc. 150 Dow Street Manchester NH 03101		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
		<b>INSURER A:</b> Massachusetts Bay Ins Co		22306
		<b>INSURER B:</b> Hanover Ins Co.		22292
		<b>INSURER C:</b> MEMIC Indemnity Company		11030
		<b>INSURER D:</b>		
		<b>INSURER E:</b>		
		<b>INSURER F:</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** 20-21 All- Manchester NH                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			ZDVH087921	10/01/2020	10/01/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY			ZDVH087921	10/01/2020	10/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$			UHVH057400	10/01/2020	10/01/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	3102807127	05/01/2020	05/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	<b>WC (3a.) States:</b> CT DE FL MA ME NH NY RI VA VT						

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
Project: #43218 Statewide On-Call Environmental Services. The State of New Hampshire is included as additional insured with respects to the CGL as required by written contract with named insured. Notice of cancellation to the certificate holder is 30 days, 10 days for non-payment, with respects to CGL, business auto and umbrella policies.

<b>CERTIFICATE HOLDER</b> State of New Hampshire Department of Transportation PO Box 483 Concord NH 03302-0483	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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