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State of New Hampshire

DEC 0 3 2025

DEPARTMENT OF ADMINISTRATIVE SERVICES
25 Capitol Street
Concord, New Hampshire 03301
(603) 271-3201 | Office@das.nh.gov

Charles M. Arlinghaus
Commissioner

Catherine A. Keane
Deputy Commissioner

Sheri L. Rockburn
Assistant Commissioner

November 5, 2025

The Honorable Ken Weyler, Chairman
Fiscal Committee of the General Court

Her Excellency, Governor Kelly A. Ayotte
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 14:30-a, VI, authorize the Department of Administrative Services, to accept and expend $9,900,000 from SMRT Inc., for remediation work related to the design and construction of a new Secure Psychiatric Unit Forensic Hospital. Effective upon Fiscal Committee and Governor and Executive Council approval, through June 30, 2027. **100% Agency Income**

Funds will be budgeted as follows:
001-014-014-141910 – NEW AU XXXX000 Forensic Hospital Project

	Class	Rev Group	Account	FY 26 Requested Action
Revenue	008	44	402308 Misc. Income	$ 9,900,000
Expense	034		500161 Construction	$ 9,900,000

EXPLANATION

SMRT, Inc. was awarded the contract for architectural and engineering services for the design, bidding, and construction administration phases of a new Secure Psychiatric Forensic Hospital. This facility is a 41,000 square-foot addition to the existing New Hampshire Hospital (NHH) facility located at the Governor Hugh Gallen State Office Park in Concord, New Hampshire. The addition will feature a 24-bed, two-floor forensic psychiatric hospital, including spaces required for patient treatment and administration. Treatment spaces include a medical treatment suite, recreational therapy space, vocational kitchen, group meeting rooms, a library/chapel, seclusion rooms, dining space and visitation rooms. There will also be two exterior yards for patient exercise and exposure to the outdoors. A secure

entrance lobby is being shared by the new and existing facilities with a separate, higher security station for the new facility. Food services, housekeeping, maintenance, and other personnel will also be shared with both facilities.

Work on portions of the Forensic Hospital project was delayed in some areas while the State and its partners investigated and analyzed some design errors in work that had been completed. The State and its partners developed a comprehensive plan to remediate, correct errors, and complete the project. This item is to accept the money from SMRT's insurance carriers that will support the remediation work and added costs resulting from delay that happened on portions of the project while corrective action was designed and negotiated.

Funds will be allocated as follows:

Class 034 – Capital Projects – Construction – to support remediation work and added costs for the Forensic Hospital.

Respectfully submitted,

FOR Charles M. Arlinghaus
Commissioner

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (hereinafter "Agreement") is entered into as of this 31st day of October 2025 by and among the following parties: (1) the State of New Hampshire, through its Department of Administrative Services (the "Owner"); and (2) SMRT, Inc. (the "Designer"). The Owner and the Designer are referred to individually as a "Party" and collectively herein as "the Parties."

Recitals

WHEREAS, the Owner retained the Designer by written agreement dated December 10, 2021, to perform professional services required for the planning, design, and construction of an addition to the New Hampshire Secure Psychiatric Hospital located in Concord, New Hampshire (the "Project");

WHEREAS, Designer provided services for Owner on the Project pursuant to the Parties' agreement;

WHEREAS, during the course of construction the Parties discovered the pile foundation design was predicated upon an insufficient load-bearing capacity;

WHEREAS, the Owner claimed the Designer was negligent in the design of the structural system for the Project and that this error resulted in the need to redesign the Project structural system to address the load-bearing capacity issue (the "Corrective Work");

WHEREAS, Designer redesigned the structural system of the building and issued Supplementation Information package #16 on April 25, 2025, with further revisions on May 9, 2025, and May 21, 2025 (the "Remediation Plan");

WHEREAS, on May 28, 2025, the general contractor on the Project, PC Construction (the "Contractor"), prepared its preliminary estimate for the cost to implement the Remediation Plan and subsequently updated its estimate during the following months ("Cost of Repair");

WHEREAS, Contractor provided Owner with its itemization of costs incurred to date, as well as projected future costs, damages, and expenses arising from delays associated with performing the Corrective Work and completing the original project scope ("Additional Costs");

WHEREAS, for purposes of this Agreement, the term "Claim" shall mean the Cost of Repair and the Additional Costs associated with the error in the design of the structural system impacting the load-bearing capacity to be corrected by the Remediation Plan;

WHEREAS, on June 19, 2025, counsel for the Owner wrote a letter to counsel for the Designer requesting that the Designer surrender the policy limits of its primary and excess liability insurance policies (the "Demand Letter");

WHEREAS, in accordance with the provisions articulated below, the Parties agree to resolve in good faith and settle any and all claims and/or issues pertaining to the Claim, the Remediation Plan, and/or the Demand Letter;

WHEREAS, the Owner and the Designer desire that the Designer continue to provide services on the Project following resolution of this Claim and acknowledge and agree that for this to happen, it is necessary that Designer obtain project specific insurance coverage for this Project;

WHEREAS, Designer has obtained $2 million of project specific insurance for this Project through the Beazley Insurance Company;

WHEREAS, Owner acknowledges and agrees the Beazley project specific insurance will not be available to pay for any damage, cost, expense, fee, or claim that is being released by this Agreement;

WHEREAS, the Parties agree that no Party is admitting to any liability and that this Agreement is being executed for the sole purpose of resolving any and all claims and/or issues related to the load-bearing capacity issue, including the Claim and the Remediation Plan associated with the load-bearing capacity issues referenced above, and avoiding the cost, expense and uncertainty of litigation.

NOW THEREFORE, in consideration of the foregoing Recitals, which Recitals the Parties expressly acknowledge and agree are true and accurate statements of fact and are essential contractual elements of this Agreement, and in exchange for their mutual promises and undertakings hereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Payment.** In exchange for the release set forth herein, within thirty days of the Parties' execution of this Agreement and Designer's receipt of a W-9 for the Owner/Payee, the Designer will cause its professional liability and excess liability insurance carriers to issue checks to the Owner in the amounts, of the remainder of the primary professional liability policy in the amount of Four Million Nine Hundred Thousand Dollars ($4,900,000.00) and Five Million Dollars ($5,000,000.00) which is the limit of liability of the excess carrier, for a total amount of Nine Million Nine Hundred Thousand Dollars ($9,900,000). The Owner acknowledges and agrees that in consideration for receiving the sum referenced above: (a) it will apply this settlement payment to address damages and expenses arising from or in any way relating to the Claim and the Remediation Plan,; and (b) the Designer will have no obligation to pay the Owner any additional sums, relating to the Claim and the Remediation Plan in excess of this payment of $9,900,000.00.

The Parties expressly acknowledge that the releases set forth herein are sufficient consideration that forms the basis for this Agreement.

2. **Release.** In further consideration of the promises, covenants and recitations contained herein, the receipt and sufficiency of which is hereby acknowledged, the Owner, on behalf of the State of New Hampshire, its agencies, employees, agents, lawyers,

representatives, successors, and/or assigns does hereby remise, waive, release, acquit and forever discharge Designer, and the Designer's heirs, personal representatives, predecessors, successors, representatives, agents, lawyers, officers, directors, trustees, shareholders, subsidiaries, affiliates, partners, employees, insurers, subconsultants, subcontractors, affiliates, partners and/or assigns of and from any and all claims, causes of actions, suits, litigation, demand, and obligations of every kind, including claims for damages, wages, attorneys' fees and any other form of relief available at law or in equity, which the Owner has or may have arising from, or in any way relating to the Claim, the Remediation Plan and/or Demand Letter. The Owner represents to Designer that it has the right to execute this Agreement and that it has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to and released in this Agreement. The Parties acknowledge and agree that the scope of this release does not extend to claims unrelated to the Claim, the Remediation Plan, and/or the Demand Letter of which the Parties are now unaware but that may manifest in the future.

This release shall become effective upon the Parties' execution of this Agreement which may be done in counterparts.

3. **No Admission of Liability.** This Agreement constitutes the settlement and release of disputed claims and does not constitute an admission of liability on the part of any party as to any matters whatsoever.

7. **Miscellaneous**.

A. Jurisdiction and Applicable Law. This Agreement and all amendments, modifications, alterations or supplements hereto shall be construed under and governed by the laws of the State of New Hampshire. In the event either Party to this Agreement commences a judicial proceeding to enforce any provision of this Agreement, the Parties agree that any such proceeding shall be brought in the Merrimack County Superior Court in Concord, New Hampshire.

B. Attorneys' Fees and Costs. The Parties shall bear their respective costs and attorneys' fees incurred in preparing and/or executing this Agreement.

C. Modification. No provisions of this Agreement may be changed, altered, modified, or waived except in writing signed by all of the Parties.

D. Entire Agreement. The Parties each further acknowledge that no representation, promise or inducement has been made other than as set forth in this Agreement and/or attached hereto, and that none of them enters into this Agreement in reliance upon any other representation, promise or inducement not set forth herein and/or attached hereto.

E. Understanding. The Parties acknowledge that they have carefully read and understand the contents of this Agreement, and have read and had the opportunity to consult with counsel of their choice concerning the provisions of this Agreement and the effect of the releases contained herein, and have caused this Agreement to be

signed as their own free acts and deeds upon the date set forth to their signatures, or the signature of any of their duly authorized representatives.

F. Severability. Should any part or provision of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion or provision, which remaining portion or provision shall remain in force and effect as if this Agreement had been executed with the invalid portion or provision thereof eliminated.

G. Counterparts. This Agreement may be executed in counterparts and when each Party has signed and delivered to each other at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one agreement that shall be binding and effective as to all parties. In addition, PDF or facsimile signatures on the Agreement are deemed acceptable and a photocopy may be used in place of originals for any purpose.

H. Authority to Bind the Parties. Each of the Parties to this Agreement represents and warrants as a material term of this Agreement that it has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and that such action has been duly authorized by all necessary action or approval by each Party and its respective officers, trustees, directors, members, shareholders and any other persons necessary to bind the Parties.

I. Cooperative Drafting. The Parties have participated jointly in the negotiation and preparation of this Agreement. Therefore, the Parties agree not to assert that any other Party is the sole or principal drafter of this Agreement. The Parties also agree not to assert that any canon of construction applicable to sole or principal drafters should be applied against any other Party.

IN WITNESS WHEREOF, the Parties hereto have duly executed, sealed and delivered this Agreement the day and year first above written.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ADMINISTRATIVE SERVICES

By: _____
(An Authorized Representative)
Its: Associate Attorney General
Date: 11/3/25

SMRT, INC.

By: Dennis Morin
(An Authorized Representative)
Its: Senior Principal / Director of Operations
Date: October 31, 2025