New Hampshire Department of Agriculture, Markets & Food

May 15, 2013

Lorraine S. Merrill, Commissioner

Her Excellency, Governor Margaret Wood Hassan and the Honorable Council State House Concord, NH 03301

Dear Governor Hassan and Honorable Council:



REQUESTED ACTION

Authorize the New Hampshire Department of Agriculture, Markets & Food (DAMF) to enter into a retroactive agreement with Gary Saccomani, 461 Barry St, Feeding Hills, MA 01030, vendor #220251, to provide custodial and general maintenance work at the Eastern States Exposition New Hampshire Building, West Springfield, MA., for the period effective April 1, 2013 to March 31, 2014 in the amount of \$7,063. 100% Other funds – Big E Building.

Funding is available in account, <u>Big E Building</u>, as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified pending FY 14 budget approval.

Funding is available as follows: 02-18-18-185010-28260000 BIG-E BUILDING ACCOUNT

OBJECT

<u>CLASS</u> <u>ACCOUNT</u> <u>FY2013</u> <u>FY2014</u> <u>TOTAL</u> 28260000-102-500731 Contracts for Services \$1,883 \$5,180 \$7,063

EXPLANATION

This request is retroactive as there was a hold up on the contractor's part with completing the documents/support materials and returning them to the department.

The New Hampshire Department of Agriculture, Markets and Food (DAMF) is charged with operation and maintenance of the New Hampshire Building at Eastern States Exposition in West Springfield, MA. DAMF wishes to contract with Gary Saccomani for custodial and maintenance work at the building, including interior, exterior and grounds responsibilities. Mr. Saccomani was one of two contractors to respond to solicitation for proposals to perform these functions for DAMF and Mr. Saccomani was the low bid. His costs were within the budget restrictions set for this position and he has knowledge of the Big E. DAMF is confident Mr. Saccomani can effectively carry out the tasks imposed by the contract.

Respectfully submitted,

Commissioner

Office of Commissioner

25 Capitol Street

PO Box 2042

Concord, NH 03302-2042

www.agriculture.nh.gov

(603) 271-3551

Fax: (603) 271-1109

Subject:

1,

Big E NH Building Caretaker

FORM NUMBER P-37 (version 1/09)

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.									
1.1 State Agency Name		1.2 State Agency Address							
NH Dept. of Agriculture, Markets & Foo	od	PO Box 2042, Concord, NH 03302-2042							
1.3 Contractor Name		1.4 Contractor Address							
Gary Saccomani		461 Barry St., Feeding Hills, MA 01030							
l ·	Account Number	1.7 Completion Date	1.8 Price Limitation						
Number 413-786-4552 2826	50000-500731	March 31, 2014	\$7,063.00						
1.9 Contracting Officer for State Agen	ncy	1.10 State Agency Telephone Number							
Lorraine S. Merrill		603-271-3788							
1.11 Contractor Signature		1.12 Name and Title of Contractor Signatory							
Conj Escuerra		GARY FJACCOMMI, CARETAKER							
1.13 Acknowledgement: State of MA, County of Hampden									
On a pail 20, 2013, before the un			block 1.12, or satisfactorily						
proven to be the person whose name is									
indicated in block 1.12. 1.134 Signature of Notary Public or Ju	ustice of the Peace	1							
LORI A. STICKLES									
[Seal] Sou L	a Store	Ø ♠ NOT	ARY PUBLIC						
1.13.2 Name and Title of Notary or Jus	stice of the Peace	1 60 10 79	ITH_OF_MASSACHUSETTS ion Expires Nov. 30, 2018						
Lori A Stickles, Notary									
1.14 State Agency Signature		1.15 Name and Title of State Agency Signatory							
Loshe	enil	Lorraine S. Merrill, Commissioner							
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)									
Ву:		Director, On:							
1.17 Approval by the Attorney General (Form, Substance and Execution)									
By: Mik. Bru		on: 5/11/13							
1.18 Approval by the Governor and Ex	xecutive Council	:							
Ву:		On:							

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination. 6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

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

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or ther successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials 7.2

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8. EVENT OF DEFAULT/REMEDIES.

- 8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):
- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or 8.1.3 failure to perform any other covenant, term or condition of this Agreement.
- 8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

- 9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.
- 9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

 9.3 Confidentiality of data shall be governed by N.H. RSA.
- 9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.
- 10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

or other emoluments provided by the State to its employees.

The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. 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 to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

- 14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:
- 14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and
- 14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property. 14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.
- 14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Page 3 of 4

Contractor Initials 19

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

- 15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").
- 15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.
- 16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.
- 17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.
- 18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

- intent, and no rule of construction shall be applied against or in favor of any party.
- 20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
- 21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- 22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.
- 23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.
- 24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials JX/

Exhibit A

Work to be performed in the New Hampshire Building, Eastern States Exposition, 1305 Memorial Avenue, West Springfield, Massachusetts, from approval through March 31, 2014, excluding September 13-29, 2013.

Work shall consist of, but not be limited to the following:

- 1. Sweep, mop and refinish floors with varnish or paint as needed/directed.
- 2. Clean and paint bathrooms as needed, excluding the period of time during the exposition, September 13-29, 2013.
- 3. Turn on hot water (gas) by September 1, 2013 or as directed by the NH Dept. of Agriculture, Markets & Food.
- 4. Clean, paint or repair, as directed, in exhibit hall and other areas, as necessary. July & August.
- Dust main show hall and touch up paint where necessary. Touch up paint on trim on outside of building. Monitor physical condition of the building and advise NH Dept. of Agriculture, Markets & Food of any structural problems. Replace broken window glass if breakage occurs.
- 6. Do custodial work before and after the Exposition: sweeping floors, picking up trash, mopping floors, emptying trash barrels, moving articles outside for exposition and indoors for the winter, making building/equipment repairs, etc., as directed by the NH Dept. of Agriculture, Markets & Food.
- 7. Order supplies from Big E supplier as appropriate; service fire extinguishers at Massachusetts Fire Equipment, service emergency lights and make sure they are operational.
- 8. Maintain NH Building grounds: water lawn and gardens, plant shrubs, grass, flowers, etc, weed, prune and mulch as necessary under the direction of the Director of Agricultural Development.
- 9. Assist with central exhibit area preparation before the exposition and tear down afterwards.
- 10. After threat of freezing has past, work with Big E plumbers to turn on the water and check for leaks, faulty valves or worn faucets in the spring. Repair/replace as needed. Before freezing, work with Big E plumbers to turn water off and check pipes after Expo. There are 92 check points to drain system.
- 11. Oversee electrical system, lights etc. Report any problems to NHDAMF as soon as found.
- 12. Periodically check building during the year to make sure there are no structural problems, vandalism, or other situations that warrant immediate attention. Under the direction of the NH Dept. of Agriculture, Markets & Food, assist exhibitors and others with access to the building as needed.

Exhibit B

- 1. The contract price for the services to be rendered shall be \$7,063.
- 2. The contract price shall be paid in seven (7) installments totaling \$7063.
 - There shall be contract payments due on the last working day of June, July, August and a. October, in the amount of \$920.
 - There shall be one payment of \$1500 for work done in preparation for the opening of the b. Exposition. Payment to be made September.
 - There shall be one payment of \$920 for the period of November 2013 through March 2014 C. for periodic safety and status checks of the building during this period. Payment to be made the last working day of March.
 - d. There shall be one payment of \$963 for the period of April-May, 2013 for opening the building, assisting with turning on the water and beginning spring maintenance of the building. Payment to be made the last working day of June.
 - 3. The contractor shall be paid in seven installments, upon satisfactory completion of all duties specified in Exhibit A and within 30 days from submission of an invoice to the contracting officer.

Exhibit C

No changes or additions to items as outlined in Paragraph 14.

Initials (1)
Date 04/22/13

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Big E, New Hampshire Building Caretaker Bids Received:

Gary Saccomani, Feeding Hills, MA

Bid: \$7,063.00

Roger Augustine, Gill, MA

Bid: \$30,600.00