

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
STATE OF NEW HAMPSHIRE

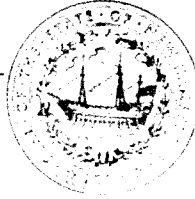
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121 South Fruit Street
Concord, N.H. 03301-2412

PETER D. DANLES
Executive Director

Telephone 603-271-6766 · Fax 603-271-0597

MELISSA VAN SICKLE
Director of Finance



March 28, 2018

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

REQUESTED ACTION

Authorize the New Hampshire Office of Professional Licensure and Certification (OPLC) to **RETROACTIVELY** enter into a **SOLE SOURCE** contract in the amount of \$30,000.00 with the National Association of State Boards of Geology (ASBOG), vendor number 171363, Douglasville, Georgia, for membership in ASBOG and the preparation and scoring of the national professional geologist examinations from May 1, 2018 through April 30, 2020 effective upon Governor and Council approval. The Office of Professional Licensure and Certification, Division of Technical Professions, is a 125% agency funded entirely by examination and licensing fees. 100% general funds

Funds to support this request are available in the following account:

01-21-21-212010-2405 DIVISION OF TECHNICAL PROFESSIONS

	<u>FY 2018</u>	<u>FY 2019</u>
104 – 500742 CERTIFICATION EXPENSE	\$10,500	\$10,500
026 – 500251 ORGANIZATIONAL DUES	\$ 4,500	\$ 4,500

EXPLANATION

The Office of Professional Licensure and Certification hereby submits an agreement between the State of New Hampshire and the National Association of State Boards of Geology (ASBOG) commencing May 1, 2018 through April 30, 2020 for membership in ASBOG and the purchase and correction of national geologist examinations. Our present contract expired April 30, 2018. This is a **sole-source** contract because ASBOG is the only provider of examinations for professional geologists in the country. It is **retroactive** as we did not receive the executed contract from the vendor before the April meeting closing date.

Respectfully submitted,

Melissa Van Sickle
Melissa Van Sickle
Director of Finance

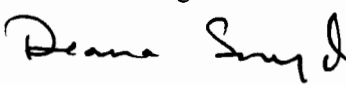
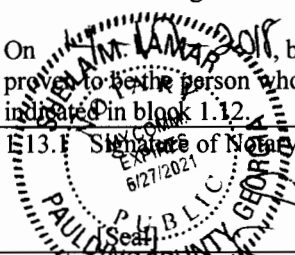
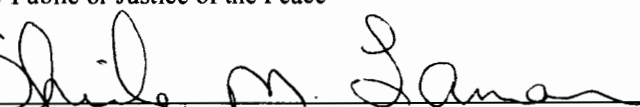
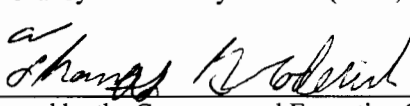
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Office of Professional Licensure and Certification		1.2 State Agency Address 121 S. Fruit Street, Concord, NH 03301	
1.3 Contractor Name National Association of State Boards of Geology (ASBOG)		1.4 Contractor Address 6000 Stewart Parkway, PO Box 5219, Douglasville, GA 30154	
1.5 Contractor Phone Number 678-713-1251	1.6 Account Number 01-21-21-2120-2405	1.7 Completion Date 04/30/2020	1.8 Price Limitation \$30,000
1.9 Contracting Officer for State Agency Melissa VanSickle		1.10 State Agency Telephone Number 603-271-0142	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Deana Sneyd, Executive Director	
1.13 Acknowledgement: State of <u>Georgia</u> , County of <u>Douglas</u> On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proved to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Sheila M. Lamar</u>			
1.14 State Agency Signature <u>Melissa VanSickle</u>		1.15 Name and Title of State Agency Signatory <u>Melissa VanSickle, Dir. of Finance</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>4/19/18</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ 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, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 (“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. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. 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 her 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.

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 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 or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and 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 \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form 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.

Contractor Initials DSS
Date 7/17/18

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 thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) 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 unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

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.

EXHIBIT A

SCOPE OF SERVICES

- I. Membership of the New Hampshire Board of Professional Geologists (“Board”) in the National Association of State Boards of Geology. (ASBOG®)
- II. ASBOG® provides examinations for the Fundamentals of Geology (FG) examination; the Practice of Geology examination; and the Proctoring for Another Jurisdiction examination to the Board. The examinations are in booklet form and are graded by ASBOG®.
- III. Examinations will be administered by the Board on dates specified by ASBOG®.

Exam Prices:

Examination	Cost
Fundamentals of Geology Exam	\$200
Practice of Geology Exam	\$250
Proctoring for Another Jurisdiction	\$150

Organizational Dues for Membership in ASBOG	Cost
FY 2018	\$4,500
FY 2019	\$4,500

EXHIBIT B

CPNTRACT PRICE, METHOD OF PAYMENT AND TERMS OF PAYMENT

1. The State of New Hampshire ("State") agrees to compensate the Contractor as follows:

For each EXAMINATION given, payment shall be made as set forth below, but only after receipt of invoices for services performed and provided that total payments do not exceed \$30,000.00. The final payment shall be made only after the Contractor has completely performed his/her duties under the AGREEMENT and no later than 45 days from receipt of the National Association of State Boards of Geology ("ASBOG®") invoice.

2. ASBOG® shall maintain documentation for all charges against the State under this AGREEMENT. The Books, records and documents of ASBOG®, in so far as they relate to work performed, or money received under this AGREEMENT, shall be maintained for a period of one (1) full year from the date of final payment, and shall be subject to audit by the State, at any reasonable time, upon reasonable notice, at the business office of ASBOG® or other such location as may be mutually agreed upon by both parties hereto. The State affirms that the EXAMINATIONS and related materials provided under this AGREEMENT must be kept secret and secure. All copies of the EXAMINATIONS and related materials furnished pursuant to this AGREEMENT are specifically excluded from any audit or disclosure for any reason except under oath of a Court of appropriate jurisdiction.
3. ASBOG® will receive compensation in the amount of two hundred dollars (\$200.00) for each Fundamentals of Geology (FG) Examination submitted for scoring during the term of this AGREEMENT.
4. ASBOG® will receive compensation in the amount of two hundred fifty dollars (\$250.00) for each Practice of Geology (PG) Examination submitted for scoring during the term of this AGREEMENT.
5. ASBOG® will receive compensation in the amount of one hundred fifty dollars (\$150.00) for each Proctoring for Another Jurisdiction Examination submitted for scoring during the term of this AGREEMENT.
6. ASBOG® will receive compensation in the amount of twenty-five dollars (\$25.00) for any unused, sealed copies of the EXAMINATIONS returned. The BOARD is responsible for full payment charges for EXAMINATIONS returned with broken seals to ASBOG® as prescribed in Paragraphs 3 and 4 above.
7. ASBOG® will receive compensation in the amount of twenty-five dollars (\$25.00) for each "adjustment" made to the official request of the total number of EXAMINATIONS desired by the Board that is submitted to ASBOG® past the prescribed 45-day cut-off date defined in Exhibit C, Section 3a of this

AGREEMENT. For the purposes of this section, an "adjustment" is defined as a written request submitted by the Board to ASBOG® to change the total number of EXAMINATIONS desired by the Board.

8. The Board shall pay the items contained in Paragraphs 3, 4, 5, 6 and 7 above no later than 45 days from receipt of an ASBOG® invoice by the Board.
9. ASBOG® will receive compensation in the amount of seventy-five dollars (\$75.00) per EXAMINATION section for each written request for a post-examination review; the fee shall be paid by the requesting candidate or the Board and shall be paid in advance of shipment of review documentation.
10. ASBOG® will receive compensation in the amount of seventy-five dollars (\$75.00) per EXAMINATION section for each written request for a post-examination manual re-grade; the fee for re-grading shall be paid by the requesting candidate of the Board and shall be paid in advance of re-grade services.
11. In no event shall there be a deferral of EXAMINATION fees or refund of any previous payments made under this AGREEMENT.
12. ASBOG® agrees to provide the Board with notification of future increases in the fess schedule to occur during the term of this AGREEMENT, not later than one (1) year prior to the effective date of such change. The parties hereto may agree to a reduction of the fee schedule by written instrument signed by both parties.

EXHIBIT C

SPECIAL PROVISIONS

The National Association of State Boards of Geology (“ASBOG®”) and the State of New Hampshire Office of Professional Licensure and Certification, for the Board of Professional Geologists (“Board”) agree to the following special provisions, further agreeing that provisions of the Standard Form P-37 AGREEMENT are modified only where explicitly stated in the special provisions.

- 1. MEMBERSHIP REQUIREMENT.** *ASBOG®* has independently developed and maintains a standardized written examination for determining qualifications of applicants seeking licensure as professional geologists (the *Fundamentals of Geology Examination (FG)*, herein referred to as “EXAMINATION”. Notwithstanding any other provision of this AGREEMENT, ASBOG® shall retain all right, title and interest in and to the EXAMINATION, including any work product, licensed material, deliverable, services, modifications, answers, derivative works, knowhow, data, compilations, studies and other materials produced, furnished or delivered to the Board (together with the EXAMINATION, the “DELIVERABLES”). ASBOG® reserves the right to refuse shipment of EXAMINATIONS and related materials to the Board if the Board is not a member in good standing. Good standing shall be defined as a member Board which has met all obligations defined in the ASBOG® Charter and Bylaws and has paid all applicable examination access fees and annual dues and has no outstanding charges for EXAMINATIONS, post-examination reviews, manual re-grades or any other fees defined in this AGREEMENT.
- 2. OWNERSHIP INTEREST IN EXAMINATIONS.** The EXAMINATION is the work product of ASBOG®. It is a trade secret and ASBOG® holds copyright and other proprietary interests in support of the administration of the EXAMINATIONS. The Board acknowledges the requirement and duty to keep the EXAMINATIONS and related materials provided under this AGREEMENT secret and secure. The Board agrees not to copy or reproduce in any manner any portion of such material without the written permission of ASBOG® and not to allow any other entity to use, copy or reproduce any of ASBOG®’s proprietary materials. All copies of the EXAMINATIONS and related materials furnished pursuant to this AGREEMENT shall be and remains the property of ASBOG®. DELIVERABLES are exempt from disclosure under 5 U.S.C. § 522(b)4 and disclosure of DELIVERABLES hereunder is conditioned upon Board delivery to ASBOG® any disclosure request made under this act or pursuant to any open records state law, discovery request or Board charter or procedure so that ASBOG® may seek confidential treatment or otherwise object to release and disclosure. No such disclosure nor the delivery of DELIVERABLES hereunder grants any public rights in rights in data or release of copyrights unless pursuant to a signed

writing of the Executive Director of ASBOG® citing this Exhibit C, Section 3.

3.

4. ORDERING AND SHIPMENT OF EXAMINATIONS.

- a. The Board shall submit a written official request to ASBOG® for the desired number of EXAMINATIONS no later than forty-five (45) days prior to the EXAMINATION administration date.
- b. ASBOG® will provide to the Board the ASBOG® Professional Geologists Candidate Handbook for reproduction and distribution to qualified candidates. ASBOG® will also ship the number of controlled copies of the EXAMINATIONS and answer sheets officially requested by the Board.
- c. The EXAMINATIONS and all related materials shall be sent by the PARTIES insured and prepaid by a secure and traceable method to meet established deadlines. ASBOG® shall pay all costs associated with shipping the EXAMINATIONS and related materials to the Board. The Board shall pay all costs associated with shipping the EXAMINATIONS and related materials to ASBOG®.

5. ADMINISTRATION OF EXAMINATIONS.

- a. The Board shall be solely responsible for the administration of the EXAMINATIONS.
- b. The Board shall administer EXAMINATIONS only to those candidates who have met the Board's statutory and regulatory prerequisites that qualify the candidates to take the examination.
- c. The Board shall be responsible for taking appropriate steps to ensure that the security and integrity of the EXAMINATIONS and related materials are maintained at all times while said EXAMINATIONS and related materials are in the possession and control of the Board. Said steps shall include, but not be limited to, the following:
 - 1. The EXAMINATIONS shall be given only in the sequence prescribed and on the administration dates specified by ASBOG®.
 - 2. The EXAMINATIONS and related materials shall be kept by the Board in a safe and secure place, under lock and key, at all times, except during such time as the EXAMINATIONS are actually being administered or for the purposes of a Review as outlined in Section 6 herein.

3. The Board agrees to follow any and all protocols for secure and uniform administration of the EXAMINATIONS.
4. Candidates shall not be permitted to:
 - (a) bring any references, hand instruments, electronic devices, cellular phones, supplies, or other materials into the testing area other than those specified in the ASBOG® *Professional Geologists Candidate Handbook*.
 - (b) leave their seat at the EXAMINATION administration without first surrendering their EXAMINATION booklet, answer sheet and any other EXAMINATION materials in their possession.
5. The Board shall not permit any EXAMINATION or related materials or answers thereto to be examined or inspected by any person, except as authorized by this AGREEMENT or as further authorized by ASBOG® in writing.
- d. Upon completion of the administration of the EXAMINATIONS by the Board, all used and unused controlled copies of the EXAMINATION booklets, answer sheets and related materials shall be returned to ASBOG® by a secure and traceable method within five (5) working days.
- e. The EXAMINATIONS shall be administered twice per calendar year in accordance with the schedule prepared by ASBOG®. Once determined, the examination dates shall not be altered except upon written notice from ASBOG® received by the Board at least ninety (90) days prior to the scheduled examination date.
- f. The member Board shall notify ASBOG® by oral and electronic communication of discovery or any suspicion of evidence of a breach of security of examination materials or if it acquires information that causes it to believe that unauthorized entities may have gained access to the EXAMINATIONS or related materials.

6. SCORING OF THE EXAMINATIONS.

- a. ASBOG® shall score the EXAMINATIONS and provide the Board with a roster of candidate scores. The Board shall be solely responsible for notifying the candidates of their scores and maintaining records of all scores. ASBOG® shall complete the grading and reporting process within sixty (60) days from receipt of the completed EXAMINATIONS provided that all payments as prescribed in this AGREEMENT have been satisfied. Score reports will include individual performance statistics.

- b. To assure national uniformity, ASBOG ® shall set nationally recommended EXAMINATION cut scores that reflect minimum competency for each EXAMINATION administration.
- c. ASBOG ® will release numerical scores to a component MEMBER BOARD upon receipt of a written request from the component MEMBER BOARD. Under no circumstances shall scores be released directly to candidates.
- d. The decision to license or register a candidate is solely that of the BOARD. If the BOARD licenses or registers a candidate on any basis other than the candidate attaining a score equal to or greater than the cut score set by ASBOG ®, the BOARD shall notify ASBOG ® in writing of its decision.

7. POST-EXAMINATION REVIEW.

- a. ASBOG ® does not recognize a right of a Review from any candidate regarding the examination score or individual examination questions. In those jurisdictions which allow a Review by law, any such request shall be made directly to the BOARD as prescribed by law. The BOARD shall notify ASBOG ® in writing of the institution of any such request within thirty (30) days after the release of the EXAMINATION grades to the BOARD, Any request received after the time prescribed will not be honored. The written notice must include an outline of the jurisdiction's Review process, a copy of the applicable statutory language, the procedures and time-line for the jurisdiction's post-examination Review process and payment of the prescribed fee.
- b. Only one post-examinations Review will be allowed for each administration of the EXAMINATIONS.
- c. Requests from the BOARD for a manual re-grade shall be submitted as part of the post-examination Review request.
- d. ASBOG ® shall, within thirty (30) days after the receipt of the written request from the BOARD.
 - 1. If such has been requested complete a manual re-grade of answer sheets of any of the EXAMINATIONS. The cost for a manual re-grade shall be paid by the requesting candidate or the BOARD at the time of the written request for the re-grading.
 - 2. Deliver, along with a copy of the above-referenced manually-graded answer sheet(s), if one has been requested, via secured and traceable method, a copy of the EXAMINATION, a written summary of the results, and related reference materials.

3. The BOARD shall instruct candidate that no notes shall be taken during post-examination review process, nor are they to write in the EXAMINATION booklets.
 4. The EXAMINATION, the copy of the manually-graded answer sheet (s), if one has been requested, and all related reference materials shall be returned by the BOARD (using a secured and traceable method) to ASBOG ® promptly upon conclusion of the post-examination Review.
 - e. ASBOG ® shall further respond to requests from the BOARD for assistance with respect to challenges to the EXAMINATIONS by providing the BOARD with written documentation that describes a statistical performance of the EXAMINATION. ASBOG ® shall also, at the BOARD's written request, provide Subject Matter Experts (SMEs) regarding the performance of the EXAMINATION. Compensation for the services of such experts shall be paid by the BOARD and agreed to, in writing by all parties concerned.
 - f. Release to the BOARD of the above materials shall not be constructed as ASBOG ®'s consent to release such materials to any part not affiliated with the BOARD. Any release of such materials by the BOARD without ASBOG ®'s express written consent is strictly prohibited under this AGREEMENT and the BOARD shall not allow the materials to be released from its control without such written consent.
 - g. In no event shall the Answer Key be released.
- 8. RETENTION OF RECORDS,** ASBOG ® shall retain scores, copies of the EXAMINATIONS, scoring keys and the candidate's original sheet for a period of three (#) years after the EXAMINATIONS are administered by the BOARD. In the event the BOARD wants the above-stated documents retained for a period in excess of three (#) years from the date the EXAMINATIONS are administered, the BOARD shall provide written notice of this request to ASBOG ® at least ninety (90) days prior to the end of the retention period.
- 9. DURATION OF AGREEMENT.** The period of this AGREEMENT shall be for two (2) years, commencing May 1, 2018 and terminating April 30 2020.
- 10. TERMINATION OF AGREEMENT.** This AGREEMENT may be terminated without cause by either party at any time by the giving of one hundred and eight (180) days advance written notice to the other party. The written notice shall be sent via certified mail, return receipt requested, to the address listed on page one of this AGREEMENT. This address may be changed by giving sixty (60) days written notice of the requested change. Such written notice shall specify the extent to which performance of the work

under this AGREEMENT is terminated and the date on which such termination becomes effective. It is understood that the termination of this AGREEMENT by the BOARD does not abrogate or abolish in any manner the BOARD's legal obligation to satisfy any outstanding indebtedness at the time of termination of this AGREEMENT. These special provisions on termination do not alter and are subservient to Clause 4, Condition Nature of the Agreement and Clause 10, Termination, as set forth in Standard Form P-37 to which this document is an exhibit.

- 11. NON-ASSIGNABILITY.** This AGREEMENT is personal to the BOARD, and it shall not assign or transfer to anyone, or permit any other entity other than the governmental body within which the BORD is organized to have the benefit or avail of any rights, privileges or benefits hereunder. If the BOARD contemplates the use of a testing service, then such use shall not modify, abrogate or abolish in any manner the BOARD's legal obligations under this AGREEMENT. This special provision on assignment does not alter and is subservient to Clause 12, Assignment, Delegation and Subcontracts, as set forth in Standard Form P-37 to which this document is an exhibit.
- 12. HEADINGS.** The various headings in this AGREEMENT are inserted for convenience only and shall not affect the meaning or interpretation of this AGREEMENT or any section thereof.
- 13. ADA COMPLIANCE.** ASBOG ® agrees to make reasonable modifications to examination materials, expense of such modifications to be borne by the BOARD. Any request for such modifications must be submitted in writing by the BOARD and received by ASBOG ® no later than ninety (90) calendar days prior to the next scheduled examination. The BOARD is responsible for administration of the EXAMINATIONS.
- 14. FORCE MAJEURE.** Neither of the PARTIES shall be responsible for any resulting loss if the fulfillment of any of the terms of this AGREEMENT is delayed or prevented by acts beyond the control of the party whose performance is interfered with, provided said party takes all reasonable steps to prevent a delay or failure to perform and to accommodate therefore. Such acts shall include, but are not limited to, acts of God, strikes, riots, acts of war, fire, communication line failure, power failures, earthquakes or other disasters.
- 15. TESTING SERVICE.** ASBOG ® acknowledges that the BOARD may utilize the service of a professional testing organization for examination purposes. The BOARD may discharge any of its examination administration duties under this AGREEMENT by and through such testing organization. The BOARD shall give written notice to ASBOG ® of the duties and examination functions that the BOARD chooses to perform by and through a testing organization. With respect to such duties and functions, ASBOG ® shall cooperate fully with the testing organization. If the BOARD utilizes a testing organization then such use will in no way modify abrogate or abolish in any

manner the BOARD's legal obligations as outlined in this AGREEMENT, and it will be the sole duty and obligation of the BOARD to ensure any such testing organization faithfully performs the obligations contained in this AGREEMENT, including, but not limited to, EXAMINATIONS security and receive a courtesy copy of the invoices for information purposes.

16. MODIFICATION. The General Provisions, Paragraph 8. Event of Default: Remedies of Standard Form R-37 is hereby modified as follows: Provision 8.2.2 is deleted in its entirety.

17. MODIFICATION. The General Provisions Paragraph 14. Insurance, of Standard Form P-37 is hereby modified as follows. Contractor shall, at its sole expense, obtain and maintain in force the insurance policies and form of coverage as set forth in Contractor's certificate of insurance attached hereto.



CERTIFICATE OF AUTHORITY

I hereby certify and affirm that I am the President of the **NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG®)** and that by common agreement and consent, the Executive Committee of the **NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG®)** has authorized and does hereby affirm the authority of its Executive Director, Deana Sneyd, PG, to execute all documents necessary to complete the contractual arrangements for the **NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG®)** including all written contracts and addendums thereto. Further, I hereby certify that this authority has not been revoked and is still in full force and effect.

NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG®)

Erick Weiland, PG
ASBOG President

19 MARCH 2018

Date



NATIASS-05

KBERRY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/01/2018

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).

PRODUCER Columbia (FC) / AssuredPartners NL 3860 Faber Place Drive, Suite 400 North Charleston, SC 29405	CONTACT NAME: PHONE (A/C, No, Ext): (843) 569-1888 FAX (A/C, No): (843) 569-7209	
	E-MAIL ADDRESS:	
INSURED National Association of State Boards of Geology PO Box 11591 Columbia, SC 29211	INSURER(S) AFFORDING COVERAGE NAIC #	
	INSURER A : Owners Insurance Company 32700	
	INSURER B : Navigators Insurance Company 42307	
	INSURER C : Darwin Select Insurance Company 24319	
	INSURER D :	
	INSURER E :	
INSURER F :		

COVERAGES **CERTIFICATE NUMBER:** **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 SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS					
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		4845771802	03/07/2018	03/07/2019	EACH OCCURRENCE	\$ 1,000,000				
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000				
	MED EXP (Any one person)					\$ 5,000					
	PERSONAL & ADV INJURY					\$ Excluded					
	GENERAL AGGREGATE					\$ 2,000,000					
	PRODUCTS - COMP/OP AGG					\$ 1,000,000					
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC										
	OTHER:										
	AUTOMOBILE LIABILITY										
	<input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY									COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$	
<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$					
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N/A						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$					
B	Directors & Officers		NY18DOLV02085NV	03/07/2018	03/07/2019	Limit	1,000,000				
C	Professional Liab		03065698	03/07/2018	03/07/2019	Limit	1,000,000				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER FOR INSURANCE VERIFICATION PURPOSES ONLY	CANCELLATION 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 <i>Matthew Perry</i>



CERTIFICATE OF AUTHORITY

I hereby certify and affirm that I am the President of the **NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG®)** and that by common agreement and consent, the Executive Committee of the **NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG®)** has authorized and does hereby affirm the authority of its Executive Director, Deana Sneyd, PG, to execute all documents necessary to complete the contractual arrangements for the **NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG®)** including all written contracts and addendums thereto. Further, I hereby certify that this authority has not been revoked and is still in full force and effect.

NATIONAL ASSOCIATION OF STATE BOARDS OF GEOLOGY (ASBOG®)

Erick Weiland, PG
ASBOG President

19 MARCH 2018

Date