



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



Handwritten initials '22' and 'Bunker' in the top right corner.

VICTORIA F. SHEEHAN
COMMISSIONER

WILLIAM CASS, P.E.
ASSISTANT COMMISSIONER

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

Bureau of Bridge Design
June 12, 2017

REQUESTED ACTION

Authorize the Department of Transportation to enter into an Agreement with GM2 Associates, Inc., Concord, NH, Vendor #163283, for a total amount not to exceed of \$508,200.84, for the development of the design to Slope & Drain and Preliminary Bridge Plans, associated environmental & cultural services, public involvement process including a Public Informational Meeting near the time of advertisement, development of design build and documents, review of RFQ and RFP proposals, and review of Design Build (DB) Team plan and construction documents for the bridge carrying US Route 4 over Bunker Creek in the Town of Durham, effective upon Governor and Council approval, through August 31, 2020. 100% Federal Funds.

Funding is contingent upon the availability and continued appropriation of funds in FY 2018, FY 2019, and FY 2020 with the ability to adjust encumbrances between State Fiscal Years if needed and justified:

Table with 4 columns: Line Item, FY 2018, FY 2019, FY 2020. Row 1: 04-96-96-963515-3054 Consolidated Federal Aid. Row 2: 046-500463 Eng Consultants Non-Benefit with values \$175,200.84, \$183,000.00, \$150,000.00.

EXPLANATION

The Department requires professional engineering design and environmental consultant services to prepare Slope & Drain and Preliminary Bridge Plans, associated environmental & cultural services, public involvement process including a Public Informational Meeting near the time of advertisement, development of design build and documents, review of RFQ and RFP proposals, and review of Design Build (DB) Team plan and construction documents for the bridge carrying US Route 4 over Bunker Creek in the Town of Durham. Constructed in 1933, this 15' clear-span concrete slab bridge on cut stone abutments bridge has a total length of 18 feet and a total width of 35 feet. It is on the Department's R&R List of deficient structures. This project is shown in the 2017-2026 Ten Year Plan for construction (\$4.0M) in 2019.

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 and 21-I:22-d, all applicable Federal laws and the Department's "Consultant Selection and Service Agreement Procedures" dated December 1999. 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 Bridge Design, Environment, Highway Design, Materials and Research, and the Municipal Highways Engineer.

On July 10, 2013, the Governor and Council authorized the Part "A" Agreement (Item #119, copy attached) to prepare preliminary design, environmental documents, preliminary plans to progress the project through the permitting process, and estimates of quantities for the selected alternative to address this Red List bridge. The Part "A" preliminary design and environmental documentation process incorporated context sensitive solutions and techniques, and included meetings with officials and citizens of Durham. The Department reserved the right to either negotiate a scope and fee for the Part "B" final design services or terminate the contract. Since the firm of GM2 Associates, Inc. satisfactorily completed the preliminary plans and environmental documentation efforts in Part "A" for this project, the Department proposes to continue with this firm to perform the final design. Part "B" will develop environmental & cultural services, public involvement process including a Public Informational Meeting near the time of advertisement, development of design build and documents, review of RFQ and RFP proposals, and review of Design Build (DB) Team plan for the selected alternative of bridge replacement.

The Consultant Committee Chairman initiated the recommendation to continue with the consultant selected for Part "A" to perform Part "B" final design engineering and associated environmental services for the Durham 16236 bridge replacement. The Committee prepared a memo dated March 24, 2015 requesting consideration and approval by the Assistant Commissioner for proceeding with GM2 Associates, Inc. for the Part "B" services. Upon receipt of that approval, GM2 Associates, Inc. was notified of the results and asked to submit a fee proposal for negotiations.

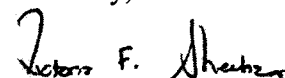
GM2 Associates, Inc. has agreed to furnish the required services for a total amount not to exceed of \$508,200.84. This is a reasonable fee and is commensurate with the complexity of the project and the scope of engineering and technical services to be furnished.

This project funding is 80% Federal funds with 20% State match. Turnpike toll credit is being utilized for New Hampshire's match requirement, effectively using 100% Federal funds.

This Agreement 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

2017 JUN 28 PM 1:26

STATE OF NH  
DEPT OF JUSTICE

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1. CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS, ETC.
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AGREEMENT  
FOR PROFESSIONAL SERVICES

PREAMBLE

THIS AGREEMENT made this 30 day of May in the year 2017 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 GM2 Associates, Inc., with principal place of business at 197 Loudon Road, in the City of Concord, 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, proposes to replace Br. No. 145/116 carrying US Route 4 over Bunker Creek in the Town of Durham, NH.

The DEPARTMENT intends to have prepared for said project development of documents necessary for the Design-Build replacement of Br. No. 145/116, Right-of-Way Registry Plans, permitting, and construction support. These services are outlined in the CONSULTANT'S technical and fee proposal dated March 17, 2017, 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 that shall include, but not be restricted to, the following items, in accordance with conditions and terms hereinafter set forth:

#### **A. LOCATION AND DESCRIPTION OF PROJECT**

This project involves the bridge replacement of Bridge No. 145/116 carrying US Route 4 over Bunker Creek in the Town of Durham, NH. This bridge was built in 1933 and is a 15' single span concrete bridge on cut stone abutments. All plans, calculations, etc. shall be submitted using English Units. This project is on the Department's Bridge Priority List and is currently scheduled to advertise for construction bids in January 2019.

The CONSULTANT shall provide Design-Build procurement documents, preliminary plans to acquire necessary permits, post award plan review and construction services for the design-build construction effort.

#### **B. SCOPE OF WORK (GENERAL)**

The scope of the work involves development and preparation of Design-Build procurement documents, pre-award preliminary plans, specifications, and estimates for the layout, necessary permits, as approved in the Final Environmental Document, assistance to the DEPARTMENT during the Design-Build procurement process, and post award plan review and construction services.

Designs shall consider temporary and permanent erosion-control measures, traffic control measures, utility coordination, drainage, and treatments to minimize environmental impacts.

Coordination may be required between the DEPARTMENT and the Town of Durham. The CONSULTANT shall be prepared to support such efforts as required. Responsibilities of the CONSULTANT team shall include attendance at meetings when requested, preparation of minutes reflecting meeting commitments, and preparation of illustrative plans and exhibits for the meetings, as directed by the DEPARTMENT.

The DEPARTMENT and the CONSULTANT have processed the project through the draft NEPA process. The preliminary horizontal and vertical alignments previously developed and approved will be used as a basis for developing the final horizontal and vertical alignments in preparation of the final plans.

The scope of work required under the terms of this AGREEMENT for the post award effort may include, but are not necessarily limited to, any combination of the following:

1. Review of plans and calculations prepared by others.
2. Review of substructure and superstructure structural components/elements.
3. Review of Bunker Creek bridge.
4. Review of roadway approach design within the bridge area.

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5. Review of Project Management Plan with CPM scheduling, Quality Assurance Plan, Maintenance and Operation Plan, and Health and Safety Plan.
6. Review of construction schedule (CPM management).
7. Review, check, and approve shop drawings prepared by others including construction contractors or their subcontractors subject to the provisions of Section 105 of the Standard Specifications.

### **C. SCOPE OF WORK (GEOTECHNICAL)**

The DEPARTMENT anticipates completing the full geotechnical program required for the project. In support of the DEPARTMENT's geotechnical program, the CONSULTANT shall provide engineering to include preliminary and final subsurface exploration plan development and siting of the subsurface explorations by providing the station(s), offset(s) and associated GPS coordinate(s) for proposed or actual subsurface exploration locations for all bridge structures, as well as highway design elements, to include but not be limited to water quality BMP's, roadways, retaining walls, box culverts, etc. No geotechnical work by the CONSULTANT is anticipated.

### **D. SCOPE OF WORK (ENVIRONMENTAL)**

Temporary erosion control for the project shall be located / preliminary designed by the consultant for the project during pre-award design. Permanent erosion and sedimentation control and water-quality features shall be shown at the Preliminary Plans submission with design backup calculations complete. Conceptual erosion and sedimentation control and water-quality plans shall be part of the Preliminary Plans - Roadway submission. The CONSULTANT shall furnish conceptual design calculations with Q2, Q10, Q25, Q50 flows and first-flush volumes, as appropriate. Site locations, estimated drainage/treatment areas, and design elevations shall be proposed in sufficient detail to complete geotechnical investigations at each proposed location. Wetland mitigation design and plan development shall be in accordance with the DEPARTMENT'S Wetland Mitigation Plan - Consultant Requirement Manual. Currently no wetland mitigation is anticipated within the project limits. The CONSULTANT'S plans shall include all commitments made in the environmental documents, to the extent practicable.

### **E. SCOPE OF WORK (FINAL DESIGN)**

The scope of work proposed by this AGREEMENT includes:

1. The development of base plans drafted by the CONSULTANT using updated ground survey provided by the DEPARTMENT.
2. The refinement of the alignment, grades, and intersections of the proposed roadway(s), as shown on the preliminary conceptual designs.
3. The incorporation of utility relocations, as designed by others, into the preliminary plans. Municipal utility relocations (e.g., sewer and/or water), as provided by the DEPARTMENT, shall be included, as necessary, into the contract plans, summary sheets, and estimate. Municipal

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utility relocation items, as incorporated into the contract plans, shall be kept separate from the highway and/or bridge items in the estimates submitted. The unit item numbers and unit prices to be used for the utility relocations shall be provided by the DEPARTMENT.

The engineering design shall take into consideration all factors affecting the cost of the construction, such as foundation problems, earthwork quantities, erosion and sedimentation control, water-quality-treatment issues, construction phasing and complexity, utilities affected, environmental issues and commitments, construction materials, etc. During all phases of design, the CONSULTANT shall make a continuous effort to identify and minimize impacts on existing and proposed utilities.

The CONSULTANT shall, when requested by the DEPARTMENT, render such assistance as required, including the preparation and explanation of sketches and plans for, or at, any meetings or conferences held by the DEPARTMENT. Meeting notes and conference memos shall be the responsibility of the CONSULTANT.

The CONSULTANT shall submit for review, as requested, progress prints (black line) showing grades, cross-sections, special details, and general design. Paper prints shall be submitted upon request for soils studies, right-of-way use, evaluation of utility impacts, and other purposes. The DEPARTMENT will provide the existing right-of-way layout and property layout in the appropriate CAD/D format. The CONSULTANT shall incorporate the abstracting information into the base plans.

All horizontal alignment notes, including traverse-line notes furnished by the DEPARTMENT, shall be computed by the CONSULTANT to include coordinates.

Designs shall conform to the current standards, specifications, policies, and guidelines enumerated in the Federal-Aid Policy Guide, Subchapter 6, Part 625, or to 23 Code of Federal Regulations, Part 625, and the DEPARTMENT'S Design Manuals and Standard Plans for Road and Bridge Construction, except as approved.

Data from survey notes shall be transcribed and plotted on base plans, profiles, and cross-sections as required, if not furnished by the DEPARTMENT under Article I-F.

Visits to the site shall be made during the design to detect changed field conditions and, if required, additional surveys will be performed by the DEPARTMENT upon request. The DEPARTMENT will process additional survey requests to the extent necessary to ensure continuity between new and current detail model files. The CONSULTANT will be given these files and shall be responsible for the incorporation of these files into the current detail base plans and digital terrain models (DTM). The incorporation of additional survey information shall include all drafting, labeling, detailing, and field-checking of the detail of all survey requests.

The CONSULTANT shall examine which elements of design, such as horizontal and vertical alignments, typical sections, traffic control, earthwork utilization, drainage pipes and structures, as well as soils suitability, might affect aerial and underground utilities. Any conflict between design elements and



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utilities shall be identified and brought to the attention of the DEPARTMENT. A special effort shall be made by the CONSULTANT to modify drainage features to avoid conflicts with underground utilities.

All plotting, drafting, and calculations performed by the CONSULTANT shall be independently checked by members of the CONSULTANT'S staff other than those who performed the original work. The work of each stage submission (including quantity estimates) shall have been appropriately checked. The CONSULTANT shall verify all computations and design calculations. The CONSULTANT shall furnish two (2) permanent, legible copies of the design calculations, suitably bound, and when directed, all study plans, work plans, alternate studies, and estimates indexed in accordance with DEPARTMENT procedures.

The CONSULTANT'S Licensed Professional Engineer stamp for the State of New Hampshire shall appear on the construction plans, reports, and any other documents that will be submitted to the DEPARTMENT. Stamps shall be those of the professional engineers who prepared them or under whose direct supervisory control they were prepared.

### **F. SCOPE OF WORK (UTILITIES)**

The utility coordination for this project will be performed by the DEPARTMENT. The CONSULTANT shall incorporate utility relocations, as designed by the individual utility owner, into the preliminary plans (if available). Municipal utility relocations (e.g., sewer and/or water), as approved by the DEPARTMENT, shall be included, as necessary, into the contract plans, cross-sections, summary sheets, and estimate. Non-participating municipal utility relocation items shall be kept separate from the highway and/or bridge items in the estimates submitted. The DEPARTMENT will provide the unit item numbers and unit prices to be used for the utility relocations.

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

The DEPARTMENT will furnish the following data to the CONSULTANT:

1. Electronic files in English units of the following information, in accordance with the DEPARTMENT'S CAD/D Procedures and Requirements, for incorporation into the plans by the CONSULTANT.
  - a. All existing survey and baseline data on disk or tape, notes, and note reductions in the format outlined in the DEPARTMENT'S CAD/D Procedures and Requirements. An electronic ground model will be provided, if available, along with all existing information that can be used to create a model (ASCII point file, SDR data files, etc.).
  - b. Electronic survey-data-file notes (meaning an unprocessed, survey-data dump) of all additional surveys requested by any party during the design process. The CONSULTANT shall be responsible for the reduction, editing, and incorporation of this data into the ground-terrain model and the plans. This data will be provided in a format as indicated in paragraph 1.a. above. Upon completion, the CONSULTANT shall confirm that the survey is correct by conducting appropriate field inspections.
  - c. Electronic preliminary horizontal and vertical alignments for the project limits as envisioned. This data will be in MX format and coordinate (x, y, z) data (ASCII) format, in accordance with the DEPARTMENT'S CAD/D Procedures and Requirements.
  - d. Any additional surveys of adjacent parcels, mitigation sites, wetland boundaries, or other pertinent items deemed necessary and processed by the DEPARTMENT. Incorporation of this information into the ground-terrain model and plans shall be the responsibility of the CONSULTANT.
  - e. Electronic drawings in Microstation format, along with reproducible sheets, of roadway typical cross-sections and other detail sheets, shall be provided, when available from the DEPARTMENT'S CAD/D library, upon request by the CONSULTANT, in accordance with the DEPARTMENT'S CAD/D Procedures and Requirements.
  - f. Electronic drawings in Microstation format of the existing underground utilities, if provided to the DEPARTMENT by the utility. The CONSULTANT shall be prepared to provide an electronic copy of preliminary base plans to the DEPARTMENT for use by the utilities. The CONSULTANT shall be responsible for the incorporation and manipulation of this information (either in paper or electronic format) into the plans, in accordance with the DEPARTMENT'S CAD/D Procedures and Requirements.
  - g. Prints of any information outlined in Article I.F.1.a. through f. above, both existing and proposed, when available, for verification by the CONSULTANT.

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

The CONSULTANT shall begin performance of the services designated in the Contract promptly upon receipt from the DEPARTMENT of a Notice to Proceed and the material to be furnished as herein described. The CONSULTANT shall complete these services without delay unless unable to do so for causes not under the CONSULTANT'S control.

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 develop an acceptable reporting system capable of indicating project status on at least a monthly basis for all critical activities of the project. Monthly progress reports shall be submitted by the CONSULTANT to the Project Manager, giving the percentage of completion of the work required by this AGREEMENT. These monthly progress reports shall be received by the DEPARTMENT by the 10th day of each month. All correspondence shall include the STATE and Federal project numbers as well as the municipality's name.

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

During the prosecution of this AGREEMENT, the CONSULTANT shall prepare and submit to the DEPARTMENT separate submissions as described hereinafter.

The CONSULTANT, with each submission, shall submit a transmittal describing the "design issues" addressed in that submission. In addition, the transmittal shall include anticipated or outstanding issues and the CONSULTANT'S recommendations to resolve these issues. All issues shall be noted as to whether the CONSULTANT feels that the issue is within the scope of work described in Article I. Meetings between the CONSULTANT and the DEPARTMENT shall be held prior to submissions to discuss design issues and recommendations.

All plan drawings, including size of sheets, lettering, symbols, and scale of said drawings, shall conform to the requirements and standards of the DEPARTMENT. Any and all CAD/D-related work completed 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. Final right-of-way registry plans shall be submitted to the County Registry using waterproof ink on permanent, archival-quality, double-matte, polyester-base film (.004 in. thick), or silver-halide emulsion ("wash-off") reproduction on polyester-base film (.004 in. thick). Construction and right-of-way plans shall be submitted on 22 in. x 34 in. sheets.

In addition to the reproducible plans being furnished as noted herein, the CONSULTANT shall provide electronic file copies of all highway and bridge project plan sheets with real State plane coordinates, including, but not limited to, typicals and detail sheets, general plans and profiles, cross-sections, and right-of-way plans. In addition to these plan sheets, an electronic file of the entire project's

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Preliminary design shall be submitted in an “uncut” format showing all design features in a real State plane-coordinate system, unrotated. These Preliminary electronic files shall be indexed with file name, description of the contents of the file, and applicable project sheet number. All files shall be submitted in conformance with the DEPARTMENT’S CAD/D Procedures and Requirements. Any plans (e.g., quantity summary sheets) produced from a spreadsheet (e.g., Excel, or equivalent) shall be submitted in ASCII file or a format suitable for incorporation into Microsoft Office or the current DEPARTMENT software. The CONSULTANT shall also be prepared to submit separate electronic files of all alignments, ROW bound locations, and other project features, as requested, in a format acceptable to the DEPARTMENT, throughout the design contract, in conformance with the DEPARTMENT’S CAD/D Procedures and Requirements. The CONSULTANT shall also provide a hard copy of all proposed alignments (25-foot) minimum station interval and curve control points) with associated State plane coordinates (x, y, z).

### 1. Roadway Design Submissions

The plan submissions for roadway design shall follow the procedures outlined below:

#### a. Pre-Preliminary Plans – Roadway

Not Required

#### b. Preliminary Plans – Roadway

The Post-Hearing Alignment Shift plans already submitted to the Department will be revised with Department review comments and provided to the short-listed Design-Build teams. The plans will include a General Plan (roll plan), Profile (roll plan), Typical Section, and Cross Sections. The Cross Sections will include limits of lightweight fill, ledge lines, and 25’ cross sections in ledge areas as defined by the Department in the geotechnical report. It is assumed that the description of the proposed project detour during the anticipated U.S. Route 4 closure will be supplied as part of the RFQ. A framework outlining the acceptable Level of Service and lane closures during construction will be developed with assistance of the Department for use by the proposing firms.

#### c. Slope and Drainage Plans - Roadway

Not Required

#### d. Utility Plans

Not required

#### e. Preliminary PS&E – Roadway

Not Required

#### f. PS&E - Roadway

Not Required

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### g. Contract Plans and Consultant Documents

Not Required

### 2. Bridge Design Submissions

The plan submissions for bridge structures shall follow, in general, the "Instructions for Consulting Engineers Concerning Routine Procedures on Bridge Design Projects" formats prepared by the DEPARTMENT.

The content, completeness, and scales for all drawings shall be as approved by the DEPARTMENT, and shall be such as to accurately portray the placement and positioning of components, surfaces, and the general appearance of the structural units. Large-scale details shall be employed as directed for congested areas or connections between components.

The CONSULTANT shall perform a load-rating analysis for each bridge using the appropriate AASHTO Method, or as directed by the DEPARTMENT, to be submitted on a form provided by the DEPARTMENT.

The phases for the development of the project are as follows, unless approved otherwise during scope development between the Department and the Consultant:

- Not Required
- Not Required
- Not Required

### a. TSL (Type-Span-Location) Studies

Not Required

### b. Boring Layout

Not Required

### c. Preliminary Plans - Bridge

Preliminary plans for each bridge shall be prepared following acceptance by the DEPARTMENT of the TSL Study and Boring Layout, completion of the subsurface explorations, and preparation of the subsurface data sheets.

The preliminary structural designs completed as part of the TSL phase shall be refined to incorporate the review comments, minor changes in profile and/or alignment, and the results of soils investigations. Also included in this phase shall be the development of the survey plan for the bridge location. This plan shall include the existing surface contours, boring locations, sub- and superstructure layout, slope limits, and major topographical items.

The plan and elevation sheets developed in the TSL phase shall be refined as necessary (including addition of plans). Profiles shall be developed for each alignment and shall include the appropriate section of the bridge, including substructure and foundation details.

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Additional items to be included are the typical approach sections for the facilities over and under the bridge and the developed view of the abutments showing foundation treatment and rock lines, as appropriate. These items shall become part of the final PS&E plans.

Reproducible prints of these Preliminary Plans and estimated quantities and construction costs shall be submitted for approval by the DEPARTMENT prior to progressing to final design of the bridge.

d. Preliminary PS&E - Bridge

Not Required

e. PS&E - Bridge

Not Required

f. Contract Plans

Not Required

3. Right-of-Way Plans (Not Required)

Right-of-way plans shall consist of a separate set of plans for the purpose of negotiating, defining and recording the required right-of-way for the project.

Final right-of-way plans shall be developed to include:

- a. Front sheet
- b. Property-layout plan sheets 1"=200'-scale (or as appropriate) showing existing detail, complete parcel boundaries, proposed roadway layout, parcel numbers, property owners' names and access points granted
- c. Summary sheets
- d. Purchase plan sheets showing all impacts (temporary or permanent)
- e. Registry Plans

In order to expedite right-of-way acquisitions by the DEPARTMENT, it may be necessary to complete the right-of-way plans in stages, with work in some areas being accomplished very early in the project schedule. The preparation of the right-of-way plans in stages shall coincide with the limits and scope of the corresponding phased-construction contract plans. Right-of-way plans shall be in English units. The CONSULTANT shall be prepared to provide working (progress) right-of-way plans (front sheet, summary sheets, plan sheets) (three sets of paper prints) concurrent with the Slope and Drainage Plans submission for each roadway contract, if requested. Where the proposed right-of-way lines have been firmly established, acquisition calculations shall be performed. Acquisition and easement calculations may be submitted in handwritten format. The purpose of this working (progress) submission is to show anticipated areas of acquisition and easements, as well as the correct format of the right-of-way plans.

The preliminary right-of-way submission (three sets of paper prints) shall be submitted concurrently with, or shortly after, the CONSULTANT'S submission of the contract specific

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Slope and Drainage plans. The preliminary right-of-way plans shall include a front sheet, summary sheets and all plan sheets. Acquisition and easement areas shall be calculated and summary boxes filled in. Handwritten format is acceptable.

The right-of-way purchase plans shall be submitted after the CONSULTANT has received and incorporated the DEPARTMENT'S Slope and Drainage, and preliminary right-of-way plan comments. The CONSULTANT shall be prepared to make corrections and/or revisions as required. Upon DEPARTMENT review and written approval of the purchase plan submission, nine sets of paper prints will be required for use by the DEPARTMENT'S Bureau of Right-of-Way. The CONSULTANT shall be prepared to make revisions to the final right-of-way plans based on the DEPARTMENT'S negotiations with property owners. The Consultant shall modify the final negotiated purchase plans to develop a separate set of plans for registry recordation based on the guidance of RSA 478:1-a and DEPARTMENT procedures. The final mylars (as described previously) of the registry plans shall be submitted with the mylars of the Contract Plans submission.

In the event that the DEPARTMENT needs to acquire a particular parcel in advance of completing the right-of-way plan process, the CONSULTANT shall be prepared to submit a working (progress) print(s) containing the parcel(s) in question. The working (progress) print(s) are intended to be construction plans showing the impacts, easements, etc., with summary boxes illustrating impacts to the parcel(s). Upon completion of the negotiation process, the CONSULTANT shall revise the ROW plans to allow for recordation at the registries. Revisions shall include the removal of hatching, miscellaneous text, etc.

### **J. SCOPE OF WORK (CONSTRUCTION SUPPORT SERVICES)**

If a contract for construction of the project, or part of it, is entered into within two years after completion by the CONSULTANT of the services outlined in Articles I, III and IV, the CONSULTANT shall, without additional compensation therefor, render services to the DEPARTMENT, including, but not restricted to, the following:

#### **1. Construction**

If and when required by the DEPARTMENT during the construction of the project, the CONSULTANT shall:

- a. At the CONSULTANT'S sole expense, correct and resolve errors and/or omissions within the contract plans and specifications found during construction.
- b. Render interpretations, as necessary, of the contract plans and specifications and submit recommendations for necessary modifications in either or both and, upon approval of recommendations by the DEPARTMENT, revise the contract plans and specifications to cover same and prepare other detailed drawings as may be needed to supplement the contract

## ARTICLE I

plans in order to permit the proper completion of the project. This work effort, if required, will be viewed as additional services, subject to an adjustment in the fee.

### 2. Shop Drawings

The CONSULTANT shall:

- a. Review, check and approve all working drawings prepared by others including the construction contractors or their subcontractors subject to the provisions of Section 105. Only that work designed by the DEPARTMENT will be excluded from this requirement.
- b. Design and prepare drawings for the substructure elements required for overhead sign structures. The Contractor shall submit fabrication plans and design parameters for overhead sign structures that, in combination with soils information obtained by the DEPARTMENT, shall be used by the CONSULTANT to develop the designs and drawings for substructure elements.

### **K. DATE OF COMPLETION**

In accordance with the Governor and Council Resolution authorizing this AGREEMENT, the date of completion for the professional design services rendered under this AGREEMENT is **August 31, 2020**.



## ARTICLE II

### ARTICLE II - COST PLUS FIXED FEE COMPENSATION OF CONSULTANT

#### A. 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 all services rendered to the satisfaction of the DEPARTMENT under this AGREEMENT (except as otherwise herein provided) an amount equal to the sum of the following costs:

1. 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. A list of those personnel working on the project with their classifications and current salary rates shall be submitted to the DEPARTMENT for approval. The rates of any additional personnel working on the project, if any, shall require written approval of the DEPARTMENT prior to working on the project. The CONSULTANT shall submit classifications and rates for any additional personnel a minimum of 14 days prior to using the additional personnel.

\*In accordance with DEPARTMENT policy, the maximum direct-labor rate allowed for all positions under this AGREEMENT shall be \$60.00 per hour unless a waiver to the salary cap has been specifically approved for specialty services.

2. Costs that are directly applicable to the salaries, salary burden, and direct and indirect costs, including administration costs. These costs may be applied to only straight-time salary extensions where overtime is employed. These amounts shall be based on actual costs to the CONSULTANT for such items during the period of the AGREEMENT and those allowable in accordance with the applicable cost principles contained in Federal Acquisition Regulations Subpart 31.2 and Subpart 31.105. Further, any overtime required for this project shall have the prior written approval of the DEPARTMENT.
3. A fixed fee amount as shown in Article II, Section B for profit and non-reimbursed costs. The fixed fee shall be a negotiated amount based on the estimated risk to be borne by the CONSULTANT (maximum 10.00% of total labor + total overhead).
4. Reimbursement for direct expenses, including work performed by other parties, such as borings, laboratory tests, field survey, special electronic computer services, services of other specialists, printing, photogrammetry, traffic counts, 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 Regulations (Subpart 31.205-46) and in the Federal Travel Regulations. The General Services Administration (GSA), Regulation 41 CFR Part 301-4,

## ARTICLE II

specifies the FTR automobile mileage reimbursement. Mileage and per diem costs shall be subject to approval by the DEPARTMENT.

All costs as described in the foregoing paragraphs are to be determined by actual records kept during the term of the AGREEMENT, which are subject to 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 total amount to be paid shown in the following paragraph and in Article II, Section C.1. All Subconsultant costs may also be subject to audit by the STATE and Federal Governments.

The total amount to be paid under this AGREEMENT shall not exceed **\$508,200.84**, the sum of the amounts shown in Article II, Section B (which amount is based on the CONSULTANT'S fee and man-hour estimates of **March 17, 2017**), except by agreement of all parties made after supplemental negotiations, and documented by a formal amendment to the AGREEMENT. Should circumstances beyond the control of the CONSULTANT require extension of the time of completion by more than one (1) year, the general fee may be renegotiated; however, the fixed fee (b) shall not change for reasons of work duration alone. The fixed fee (b) may only be adjusted (increased or decreased) if there is a significant change in the scope or character of the work outlined in this AGREEMENT, as determined by the DEPARTMENT.

All salaries and increases thereof paid to technical or other employees assigned to this project shall be the result of a company-wide evaluation of all employees and shall not be restricted to employees assigned to this project.

If, in the opinion of the DEPARTMENT, any salary or increase thereof of engineering or technical personnel assigned to this project is unreasonable, it shall notify the CONSULTANT of its opinion with regard thereto and request the CONSULTANT to justify said salary or increase thereof. In the event that the CONSULTANT furnishes justification satisfactory to the DEPARTMENT for said salary or increase thereof, then such salary or increase thereof shall be approved as a payroll expense.

The DEPARTMENT shall have the right to exercise the power of review and approval of salary increases thereof, for a period of thirty (30) days after the submission of a monthly invoice by the CONSULTANT. Unless the DEPARTMENT notifies the CONSULTANT in writing during the thirty-day period that such salary increase thereof is, in its opinion, unreasonable, such lack of notice shall constitute approval of said salary increase thereof from the first day of the preceding month.

The DEPARTMENT shall have the right, at the time of audit, to review all items charged to overhead on this project. If, in the opinion of the DEPARTMENT, such payment is unreasonable, the CONSULTANT shall be required to justify such payment or payments before they will be approved as direct or indirect cost.

## ARTICLE II

The CONSULTANT shall maintain adequate cost records for all work performed under this AGREEMENT. All records and other evidence pertaining to cost incurred shall be made available at all reasonable times during the contract period and for three (3) years from the date of final voucher payment 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).

### **B. SUMMARY OF FEES**

The STATE, through the DEPARTMENT, hereby agrees to pay and the CONSULTANT agrees to accept as full compensation the following:

- a. Actual CONSULTANT'S salaries\*, costs applicable to actual salaries, salary burden (direct and indirect) and administrative costs attributable to overhead, the sum of which is estimated at \$408,344.60. For billing purposes, salary burden and overhead costs are currently estimated at 153.92% of actual salaries.
- b. A fixed fee to cover profit and non-reimbursed costs at \$40,834.46.
- c. Reimbursement for direct, out-of-pocket expenses estimated at \$700.00.
- d. Reimbursement for actual cost\* of subconsultants estimated as follows:
  - Normandeu Associates \$58,321.78

The actual amount payable under each category (a), (c) and (d) is only estimated and shall be changed only upon mutual agreement of the DEPARTMENT and CONSULTANT and documented by a formal amendment to the AGREEMENT.

\*In accordance with DEPARTMENT policy, the maximum direct-labor rate allowed for all positions under this AGREEMENT shall be \$60.00 per hour unless a waiver to the salary cap has been specifically approved for specialty services.

The actual amount payable under each category (a), (c) and (d) is only estimated and shall be changed only upon mutual agreement of the DEPARTMENT and CONSULTANT and documented by a formal amendment to the AGREEMENT.

### **C. LIMITATION OF COSTS**

1. Costs incurred against this AGREEMENT shall not exceed \$508,200.84 unless otherwise authorized. The CONSULTANT shall give the DEPARTMENT a ninety (90)-day written notice when it appears that this limit will be exceeded.
2. It is expected that the total cost to the STATE shall be the cost set forth under Article II, Section A and the CONSULTANT agrees to use its best efforts to perform the work specified in the AGREEMENT and all obligations under this contract within such limiting amount.

## ARTICLE II

3. The STATE shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the limiting amount set forth in Article II, Section A.
4. Change orders issued under this Contract shall not be considered an authorization to the CONSULTANT to exceed the limiting amount set forth in the Summary in the absence of a statement in the change order, or other contract modifications, increasing the limiting amount.

### **D. PAYMENTS**

Payments on account of services rendered under this AGREEMENT shall be made as follows:

1. Monthly payments on account may be made upon written request by the CONSULTANT. Detailed vouchers shall include certification of man-hours of effort by employee classification and actual salaries and other costs incurred accompanied by satisfactory evidence of work performed during the period. Actual salaries paid and percentage factor shown in Article II, Section B, part (a) as well as for all approved subconsultants, including those listed in part (d) of Section B, shall be used until such time as true costs of salary burden and overhead are fixed by audit. At that time, payments shall be adjusted to agree with the percentage factors as determined by audit for the period in which the work was performed, as approved by the DEPARTMENT. The fixed fee shall be invoiced during the billing period based upon the overall percent complete of the project's scope of work as approved by the DEPARTMENT.
2. The CONSULTANT shall submit a final voucher upon completion of services required by this AGREEMENT, which includes any unbilled portion of the allowable costs or fixed fee and adjustments, if necessary, for audited actual costs and deliver all required plans, documents and records.

## ARTICLE III

### ARTICLE III - GENERAL PROVISIONS

#### A. HEARINGS, ETC.

Not Required

#### B. CONTRACT PROPOSALS

After the CONSULTANT has furnished to the DEPARTMENT contract drawings, special provisions, specifications, and estimate of quantities and unit cost by items, the DEPARTMENT will prepare the documents for receipt of proposals from construction contractors and for execution of a construction contract or contracts.

## 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 by 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 197 Loudon Road, Concord, 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

## ARTICLE IV

contemplated by this AGREEMENT is (are) entered into within two (2) years after satisfactory completion of the 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, employees, 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 by the DEPARTMENT 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,

## ARTICLE IV

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 perform services other than those necessary 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 by 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.



## ARTICLE IV

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 wetland evaluations, mapping, noise studies, and air-quality studies, the minimum limits of their professional liability (errors and omissions) insurance coverage shall be not less than \$1,500,000 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 \$25,000. 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**

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.

## ARTICLE IV

### b. Professional Liability Indemnification

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 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 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

## ARTICLE IV

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 Contract. 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 one or more of the completion dates specified in this AGREEMENT cannot be met, 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.
- (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

## ARTICLE IV

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 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.

## ARTICLE IV

- (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

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termination of this AGREEMENT by the STATE or such remedy as the STATE deems appropriate.

### **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 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 , proposed subconsultant \_\_\_\_\_, hereby certifies that it has , 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 , 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.

GM2 Associates, Inc.  
(Company)

By: Madan M. Gupta  
President  
(Title)

Date: 5/30/2017

**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.

5/30/2017  
(Date)

Madan M. Gupta  
(Signature)



**CERTIFICATION OF CONSULTANT/SUBCONSULTANT**

I hereby certify that I am the President and duly-authorized representative of the firm of GM2 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 ineligibility 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.

5/30/2017  
(Date)

Madan M. Gupta  
(Signature)

Attachment 4

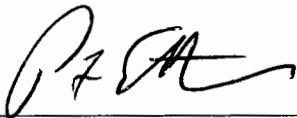
**CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION**

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):

6/16/17  
(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 9

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

**Consultant**

WITNESS TO THE CONSULTANT

By:

Kimberly A. Buetow  
Kimberly A. Buetow

Dated:

5/30/2017

CONSULTANT

By:

Madan M. Gupta  
President

(TITLE)

Dated:

5/30/2017

**Department of Transportation**

WITNESS TO THE STATE OF NEW HAMPSHIRE

By:

Michelle Brown

Dated:

6/16/17

THE STATE OF NEW HAMPSHIRE

By:

PFEA  
Director of Project Development

for DOT COMMISSIONER

Dated:

6/16/17

**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:

6/29/17

By:

Dianne Mart  
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



## CORPORATE RESOLUTION

I, Manish K. Gupta, do hereby certify that I am the Secretary of the GM2 Associates, Inc. having its corporate location at 115 Glastonbury Blvd, Glastonbury, CT 06033 organized and existing under the laws of the State of Connecticut, that I am keeper of the corporate records and seal. That the following is true and correct copy of resolutions duly adopted and ratified by the Board of Directors of the Corporation on January 12, 2017 in accordance with the constituent charter of the GM2 Associates, Inc.; and the same has not in any way been modified, repealed or rescinded, but is in full force and effect.

**RESOLVED**, that Madan M. Gupta of GM2 Associates, Inc. be and hereby is authorized to execute on behalf of the GM2 Associates, Inc.

BE IT FURTHER KNOWN that Madan M. Gupta was elected President and his term of office began on 3-10-1998 and will continue until resolved otherwise. As the President, Madan M. Gupta serves as the Chief Executive Officer for GM2 Associates, Inc. and is duly authorized to enter into agreement and sign contract for NHDOT Project 'Replacement of Route 4 Bridge over Bunker Creek, Durham under a Design-Build procurement method, Contract 16236, X-A001(202)' on behalf of the GM2 Associates, Inc.

Dated at Glastonbury, Connecticut this 30<sup>th</sup> day of May, 2017

A handwritten signature in black ink, appearing to read 'Manish K. Gupta'.

Manish K. Gupta  
Secretary

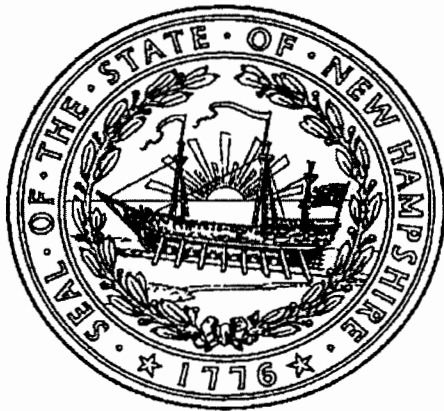
# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that GM2 ASSOCIATES, INC. is a Connecticut Profit Corporation registered to transact business in New Hampshire on May 04, 2000. 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: 346216



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 9th day of June A.D. 2017.

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

William M. Gardner  
Secretary of State

