



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

January 29, 2019

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

Requested Action

The Department of Safety, Division of Fire Standards & Training and Emergency Medical Services, requests authorization to amend the sole source contract with KFT Fire Trainer, LLC, 17 Philips Parkway, Montvale, New Jersey 07645 (VC#166651-B001) in the amount \$6,013.20, increasing the amount from \$39,663.00 to a total contract amount of \$45,676.20, for repair service on the T-2000 Live Fire Trainer. Effective upon Governor and Council approval through June 30, 2021. Funding source: 100% Revolving Funds-Fire and EMS Fund.


Funds are available in the SFY 2019 operating budget as follows:

02-23-23-237010-40650000	Dept. of Safety – FS&T & EMS – FS&T & EMS Admin	<u>SFY 2019</u>
103-500736	Contract Repairs; Bldg. Grounds	\$6,013.20
Activity Code: 2370		

Explanation

This amendment is sole source because the original contract, approved by Governor and Council on October 31, 2018, Item #80, is sole source as the training system's software and hardware is proprietary to this vendor. This amendment funds the needed replacement of two aging propane valves, discovered during routine annual maintenance on the T-2000 Live Fire Training system. The T-2000 Live Fire Training system is utilized to train firefighters during live fire evolutions on residential structures. The structural training system utilizes a concrete building in which firefighters can train on kitchen and bedroom fire evolutions.

Respectfully submitted,


John J. Barthelmes
Commissioner of Safety

Contract Amendment

Repair services to T-2000 Live Fire Trainer

KFT Fire Trainer, LLC (VC#166651)

It is hereby agreed that the initial contract, approved by Governor and Council on October 31, 2018, Item #80, between KFT Fire Trainer, LLC as "Contractor" and the Department of Safety, Division of Fire Standards & Training and Emergency Medical Services as "State," for a service contract on the T-2000 Live Fire Trainer, is amended as follows:

1. Both parties agree to amend the agreement approved by Governor and Council to add \$6,013.20 to Fiscal Year 2019 for repair services to supply and install two motorized propane valves, and all miscellaneous hardware and supplies related to repair the T-2000 Live Fire Trainer.
2. This amends the contract from \$39,663.00 to \$45,676.20.
3. All other provisions of that certain service shall remain in full force and effect.



 (Contractor)

By: William R. Lane

Title: President & CEO

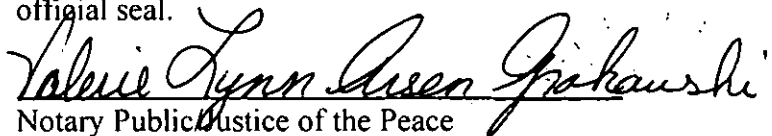
Company: KFT Fire Trainer, LLC

State of: New Jersey

County of: Bergen

On the 15 day of January, 2019, there appeared before me in the state and county foresaid, a person who satisfactorily identified himself as William R. Lane and acknowledged that he executed this document.

In witness whereof, I hereunto set my hand and official seal.



 Notary Public Justice of the Peace

My Commission Expires: 11/18/2020

(Affix Seal)

VALERIE LYNN ARSEN GROHOWSKI
 NOTARY PUBLIC OF NEW JERSEY
 ID # 2337261
 My Commission Expires 11/18/2020

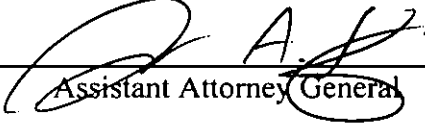
STATE OF NEW HAMPSHIRE

By: 

Title: Steven R. Lavoie, Dir. of Administration

The foregoing contract, having been reviewed by this office, is approved as to form, substance and execution

OFFICE OF THE ATTORNEY GENERAL

By: 
Assistant Attorney General

On: February 11, 2019

Governor and Council of New Hampshire

On: _____, _____

Signed: _____

Title: _____

State of New Hampshire

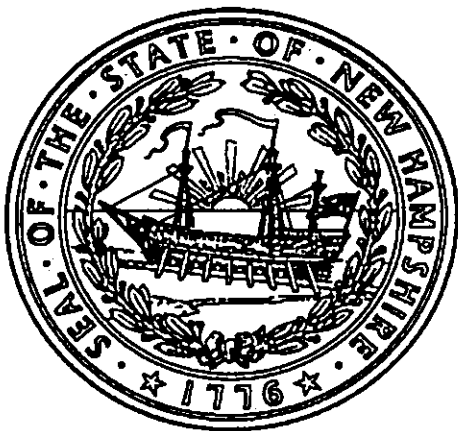
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that KFT FIRE TRAINER, LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on May 27, 2014. 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: 709143

Certificate Number: 0004189806



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 26th day of September A.D. 2018.

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State



KFT Fire Trainer, LLC.
17 Philips Parkway
Montvale, NJ, 07645-1810, USA
Tel. +1 201 300 8100
Fax +1 201 300 8101
info-us@kft.firetrainer.com
kft.firetrainer.com

15 January 2019

NH Fire Academy
33 Hazen Drive
Concord, NH 03305

Attention: Heather Clough
Administrative Supervisor

Subject: New Hampshire Agreement dated 15 January 2019 Consent to Sign

Dear Ms. Clough,

As General Counsel and Executive Vice President for KFT Fire Trainer, LLC (formerly known as Kidde Fire Trainers, LLC), I confirm by this letter that the consents dated 20 March 2014 and 13 May 2014 are still in effect and have not been repealed or revoked. Mr. William Lane has the authority to sign the Agreement dated 15 January 2019 and continues to have signature authority.

We are also providing the Consent in Lieu of a Special Meeting of the Board of Managers dated January 14, 2016 to show company new name change.

Please contact me with any questions at (201) 300-8109, or by e-mail at lucy.mathews@kft.firetrainer.com.

Very truly yours,

Lucille Mathews
General Counsel and Executive Vice President
KFT Fire Trainer, LLC

Sworn to and subscribed
before me this
15 day of January 2019

VALERIE LYNN ARSEN GROCHOWSKI
NOTARY PUBLIC OF NEW JERSEY
ID # 2337261
My Commission Expires 11/18/2020

KIDDE FIRE TRAINERS, LLC

**CONSENT IN LIEU OF A SPECIAL MEETING
OF THE BOARD OF MANAGERS**

MARCH 20, 2014

The undersigned, being all of the members of the Board of Mangers of Kidde Fire Trainers, LLC, a Delaware limited liability company (the "Company"), in lieu of holding a special meeting of the Board of Managers of the Company, hereby take the following actions and adopt the following resolutions by written consent pursuant to the Limited Liability Company Agreement of the Company and Section 18-404 of the Limited Liability Company Act of the State of Delaware:

ELECTION OF OFFICER

RESOLVED, that the following individual is hereby appointed as an officer of the Company in the capacity set forth opposite his name until his successor will be duly elected and qualified or until his earlier death, resignation or removal immediately after the closing of the transactions contemplated by that certain Stock Purchase Agreement, as amended, by and between UTC Fire & Security Corporation and Kidde Fire Trainer Holdings, LLC dated December 16, 2013:

William R. Lane	President
-----------------	-----------

RATIFICATION OF OFFICERS

RESOLVED, that the Board of Managers of the Company hereby affirms that the following individuals are all of the officers of the Company:

David A. Greer	Chairman
William R. Lane	President
Kent P. Dauten	Vice President
Scott L. Gwilliam	Vice President
Jason S. Van Zant	Vice President
Dennis J. Howe	Vice President
Brian C. Chung	CFO, Controller, Treasurer and Secretary

RATIFICATION

RESOLVED, that all acts and deeds heretofore done or actions taken by the Board of Managers, officers or any agent of the Company, for and on behalf of the Company, in entering into, executing, acknowledging or attesting to any


arrangements, agreements, instruments or documents in carrying out the terms and intentions of the foregoing resolutions be, and each of them are, hereby in all respects ratified, approved and confirmed.

The actions taken by this consent shall have the same force and effect as if taken at a special meeting of the Board of Managers of the Company duly called and constituted pursuant to the Limited Liability Company Agreement of the Company and the laws of the State of Delaware.

This consent may be executed in two or more counterparts, each of which, shall be deemed an original and for all purposes, and together shall constitute one and the same consent.

* * * * *

IN WITNESS WHEREOF, the undersigned have executed this consent as of the
date first written above.



Kent P. Dauten

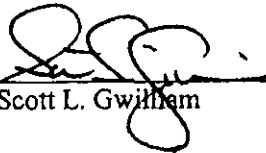
Scott L. Gwilliam

David A. Greer

William R. Lane

IN WITNESS WHEREOF, the undersigned have executed this consent as of the
date first written above.

Kent P. Dauten



Scott L. Gwilliam

David A. Greer

William R. Lane

IN WITNESS WHEREOF, the undersigned have executed this consent as of the
date first written above.

Kent P. Dauten

Scott L. Gwilliam

David A. Greer

William R. Lane

IN WITNESS WHEREOF, the undersigned have executed this consent as of the date first written above.

Kent P. Dauten

Scott L. Gwilliam

David A. Greer



William R. Lane

KIDDE FIRE TRAINERS, LLC

**CONSENT IN LIEU OF A SPECIAL MEETING
OF THE BOARD OF MANAGERS**

The undersigned, being members of the Board of Managers of Kidde Fire Trainers, LLC, a Delaware limited liability company (the "Company"), in lieu of holding a special meeting of the Board of Managers of the Company, hereby take the following actions and adopt the following resolutions by written consent pursuant to the Limited Liability Company Agreement of the Company and Section 18-404 of the Limited Liability Company Act of the State of Delaware:

ELECTION OF OFFICER

RESOLVED, that effective immediately the following individual is hereby appointed as an officer of the Company in the capacity set forth opposite his/her name, until his/her successor will be duly elected and qualified or until his/her earlier death, resignation or removal:

Lucy Mathews General Counsel, Executive Vice President and Secretary

RATIFICATION OF OFFICERS

RESOLVED, that the Board of Managers of the Company hereby affirms that the following individuals are all officers of the Company:

David A. Greer	Chairman
William R. Lane	President
Kent P. Dauten	Vice President
Scott L. Gwilliam	Vice President
Jason S. Van Zant	Vice President
Dennis J. Howe	Vice President
Brian C. Chung	CFO, Controller and Treasurer
Lucy Mathews	General Counsel, Executive Vice President and Secretary

AUTHORIZED OFFICER

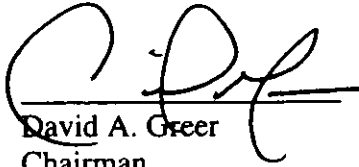
RESOLVED, that effective immediately that Lucy Mathews in her capacity as General Counsel, Executive Vice President and Secretary is hereby authorized to execute all documents and other legal instruments on behalf of the Company.

PROCEDURAL RATIFICATION

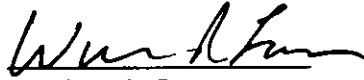
RESOLVED, that this consent may be executed in counter-part originals and an electronic copy of this consent shall be deemed to be an original.

RESOLVED, that this consent be filed with the minutes of the Company.


IN WITNESS WHEREOF, the undersigned, hereby consent to, ratify, approve and confirm the foregoing actions taken as of this May 13, 2014.



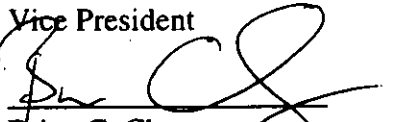
David A. Greer
Chairman




William R. Lane
President



Dennis J. Howe
Vice President



Brian C. Chung
CFO, Controller and Treasurer



Lucy Mathews
Secretary

KIDDE FIRE TRAINERS, LLC

CONSENT IN LIEU OF A SPECIAL MEETING
OF THE BOARD OF MANAGERS

JANUARY 14, 2016

The undersigned, being all of the members of the Board of Managers of Kidde Fire Trainers, LLC, a Delaware limited liability company (the "Company"), in lieu of holding a special meeting of the Board of Managers of the Company (the "Board of Managers"), hereby take the following actions and adopt the following resolutions by written consent pursuant to the Limited Liability Company Agreement of the Company (the "Operating Agreement") and Section 18-404 of the Limited Liability Company Act of the State of Delaware:

CHANGE OF REGISTERED AGENT

RESOLVED, that the registered agent of the Company on file with the Secretary of State of the State of Delaware shall be deleted in its entirety and the new registered agent shall be The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, and further resolved, that the President, Chairman, Vice President, Treasurer and Secretary, and such other officers as may be designated by the President (the "Authorized Officers") be, and hereby are, authorized, empowered and directed, acting alone or with one or more other Authorized Officers, to execute and deliver the Certificate of Change of Registered Agent and cause the same to be filed with the Secretary of State of the State of Delaware in the name and on behalf of the Company.

CERTIFICATE OF AMENDMENT TO CERTIFICATE OF FORMATION

WHEREAS, in accordance with Article 1.2 of the Operating Agreement, the Board of Managers has deemed it desirable to change the name of the Company.

NOW, THEREFORE, BE IT RESOLVED, that the FIRST article of the Certificate of Formation of the Company is hereby deleted in its entirety and amended to read in full as follows:

1. Name:. The name of the limited liability company is KFT Fire Trainer, LLC.

FURTHER RESOLVED, that the Authorized Officers, be, and each of them hereby is, authorized, empowered and directed, acting alone or with one or more other Authorized Officers, to execute and deliver the Certificate of Amendment to the Certificate of Formation of the Company (the "Certificate") in the name and on

behalf of the Company, and to cause the Certificate to be filed in the office of the Secretary of State of the State of Delaware, and to execute and deliver any and all documents and to cause the filing of any and all documents they may deem necessary and appropriate to effect the name change of the Company.

GENERAL


FURTHER RESOLVED, that in order to fully carry out the intent and effectuate the purposes of the foregoing resolutions, any Authorized Officer, be, and hereby is, authorized and directed to take all such further action and to execute and deliver all such further instruments and documents, in the name and on behalf of the Company, and to pay all such fees and expenses, which shall in their judgment be necessary, proper or advisable.

The actions taken by this consent shall have the same force and effect as if taken at a special meeting of the Board of Managers of the Company duly called and constituted pursuant to the Limited Liability Company Agreement and the laws of the State of Delaware.

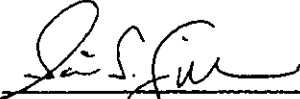
This consent may be executed in two or more counterparts, each of which shall be deemed an original for all purposes and together shall constitute one and the same consent.

* * * * *

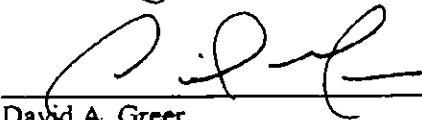
IN WITNESS WHEREOF, the undersigned have executed this consent as of the
date first written above.




Kent P. Dauten



Scott L. Gwilliam



David A. Greer



William R. Lane



CERTIFICATE OF LIABILITY INSURANCE

3/18/2019

DATE (MM/DD/YYYY)

3/20/2017

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 Lockton Companies Three City Place Drive, Suite 900 St. Louis MO 63141-7081 (314) 432-0500	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED KFT Fire Trainer, LLC 1378691 17 Philips Parkway Montvale NJ 70645	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Evcrest National Insurance Company	NAIC # 10120
	INSURER B : Travelers Property Casualty Co of America	25674
	INSURER C : The Phoenix Insurance Company	25623
	INSURER D :	
INSURER E :		
INSURER F :		

COVERAGES KIDFI CERTIFICATE NUMBER: 12857204 REVISION NUMBER: XXXXXXX

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 INSR	SUBR 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 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	N	N	RC8GL00033-181	3/18/2018	3/18/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
C	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	BA8D00601718CAG	3/18/2018	3/18/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	N	N	ZUP-71M7533718-NF	3/18/2018	3/18/2019	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB-0K729916	3/18/2018	3/18/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

CERTIFICATE HOLDER 12857204 STATE OF NEW HAMPSHIRE - DEPT OF SAFETY DIVISION OF FIRE STANDARDS AND TRAINING AND EMERGENCY MEDICAL SERVICES 33 HAZEN DRIVE CONCORD NH 03305	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 

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State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

RQ# 189192

JOHN J. BARTHELMES
COMMISSIONER

GC#80
10-31-2018

September 26, 2018

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

Requested Action

Authorize the Department of Safety, Division of Fire Standards & Training and Emergency Medical Services, to enter into a retroactive sole source maintenance service contract with KFT Fire Trainer, LLC (VC#166651-B001), 17 Philips Parkway, Montvale, New Jersey 07645 in the amount \$39,663.00 for service on the T-2000 Live Fire Trainer. Effective upon Governor and Council approval for the period of July 1, 2018 through June 30, 2021. Funding source: 100% Revolving Funds-Fire and EMS Fund.

Funds are available in the SFY 2019 operating budget and contingent upon availability and continued appropriations in SFY2020 and SFY2021 with the authority to adjust between fiscal years through the Budget Office if needed and justified.

02-23-23-231010-40650000 Dept. of Safety – FSTEMS – FSTEMS Admin	<u>SFY2019</u>	<u>SFY2020</u>	<u>SFY2021</u>	<u>Total</u>
103-500736 Contracts for OP Services – Contract Repairs; Bldg. Grounds	\$13,221.00	\$13,221.00	\$13,221.00	\$39,663.00
Activity Code: 2370				

Explanation

The contract is sole source because the software and hardware are proprietary to this vendor; therefore, only KFT Fire Trainer, LLC can maintain the T-2000 Live Fire Training System. This request is retroactive due to a miscommunication with the vendor regarding the expiration of the previous contract. The Division is now implementing control measures to ensure annual contracts do not lapse.

This contract provides for the annual maintenance of the T-2000 Live Fire Training Systems used for training at the Fire Academy. The annual maintenance is required in order to maintain the systems' optimum performance and efficiency. The T-2000 Live Fire Training system is utilized to train firefighters during live fire evolutions on residential structures. The structural training system utilizes a concrete building in which firefighters can train on kitchen and bedroom fire evolutions.

Respectfully submitted,

John J. Barthelmes
Commissioner of Safety



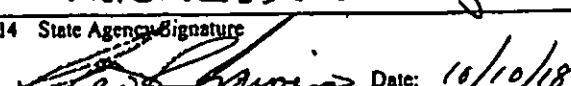

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

I. IDENTIFICATION.

1.1 State Agency Name Dept of Safety-Div. of Fire Standards & Training and EMS		1.2 State Agency Address 33 Hazen Drive, Concord, NH 03305	
1.3 Contractor Name KFT Fire Trainer, LLC		1.4 Contractor Address 17 Phillips Parkway, Montvale, NJ 07645-1810	
1.5 Contractor Phone Number 201-300-8100	1.6 Account Number 02-23-23-237010-4065-103	1.7 Completion Date June 30, 2021	1.8 Price Limitation \$39,663.00
1.9 Contracting Officer for State Agency Deborah A. Pendergast, Director		1.10 State Agency Telephone Number 603-223-4200	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory William R. Lane, President & CEO	
1.13 Acknowledgement: State of <u>NJ</u> , County of <u>Bergen</u> On <u>27 Sept 2018</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven 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  [Seal]		VALERIE LYNN ARSEN GROHOWSKI NOTARY PUBLIC OF NEW JERSEY ID # 2337281 My Commission Expires 11/18/2020	
1.13.2 Name and Title of Notary or Justice of the Peace Valerie L. Arsen Grohowski Notary			
1.14 State Agency Signature  Date: <u>10/10/18</u>		1.15 Name and Title of State Agency Signatory Steven R. Lavoie, Dir. of Administration	
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>10/17/18</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-e 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

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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, formulas, 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.

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

2. EMPLOYMENT OF CONTRACTOR: SERVICES TO BE PERFORMED.

KFT Fire Trainer, LLC shall provide maintenance services to the Fire Trainer T-2000 Live Fire Training System located at the New Hampshire Fire Academy as requested by the Division of Fire Standards and Training & Emergency Medical Services per the attached proposal # P18001-VA-18-0423 dated September 14, 2018.

The time frame for this contract is to start effective July 1, 2018 until June 30, 2021 .

EXHIBIT B

5. CONTRACT PRICE: LIMITATION ON PRICE: PAYMENT.

The total cost of this agreement is \$39,663.00 and broken out by fiscal year as follows:

FY2019	\$13,221.00
FY2020	\$13,221.00
FY2021	<u>\$13,221.00</u>
Total	\$39,663.00

Invoices shall be submitted to:

New Hampshire Department of Safety
Division of Fire Standards & Training and Emergency Medical Services
33 Hazen Drive
Concord, NH 03305

EXHIBIT C

There are no modifications, additions, and/or deletions to the Form P-37.

Contractor Initials mm
Date 9/27/14