

126 [Signature]



State of New Hampshire

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

JOHN J. BARTHELMES
COMMISSIONER

May 16, 2017

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

Requested Action

Authorize the Department of Safety, Division of State Police, to exercise the two-year renewal option of the contract with Warren D. Fitzgerald, Ph.D. and Associates, P.A. (VC #155516-B001), 54 South State Street, Concord, NH in an amount not to exceed \$75,000.00, increasing the total contract amount from \$47,000.00 to \$122,000.00, for the provision of pre-employment psychological exams of law enforcement personnel. This contract will be effective upon Governor and Council approval through June 30, 2019. Funding source: 40% Other (Watercraft Safety), 28% General, 13% Highway, 12% Turnpike, 7% Transfer from Other Agencies.

Funds are anticipated to be available in the SFY 2018 and SFY 2019 operating budget as follows contingent upon continued appropriations with authority to adjust encumbrances between state fiscal years through the Budget Office if needed and justified.

	<u>FY 2018</u>	<u>FY 2019</u>
02-23-23-234015-40030000 Dept of Safety – Division of State Police – Traffic Bureau 020-500271 Current Expenses – Other Medical Services	\$20,000.00	\$20,000.00
02-23-23-234010-42150000 Dept. of Safety – Division of State Police – NHH Security 020-500271 Current Expenses – Other Medical Services	\$ 2,500.00	\$ 2,500.00
02-23-23-234010-50010000 Dept. of Safety – Division of State Police – Watercraft Safety 020-500271 Current Expenses – Other Medical Services	<u>\$15,000.00</u> \$37,500.00	<u>\$15,000.00</u> \$37,500.00
TOTAL		\$75,000.00

Explanation

This contract will provide pre-employment psychological exams of law enforcement candidates that certify for full-time State Police Probationary Troopers, New Hampshire Hospital Campus Security Officers, as well as full-time and part-time Marine Patrol Officers, as required for all applicants by *New Hampshire Police Standards Training Council's Recommended Guidelines for Recruit Academy Psychological Screening (Pol. 301.07, copy attached)*. The examinations performed remain at the current price of \$500.00 per exam; however, the number of exams increased due to the addition of Marine Patrol Officer candidates.

Respectfully submitted,

John J. Barthelmes
Commissioner of Safety

Pol 301.07 Psychological Screening Test. Each applicant shall meet the following requirements relative to the applicant's psychological screening:

(a) All uncertified police officers, correctional officers, and probation/parole officers employed by the state of New Hampshire, full-time or part-time, and all police officers, full-time or part-time who are employed by local units of government who have accepted this requirement by approving the necessary funding shall, prior to hiring, successfully pass a psychological screening test battery administered under the direction of a licensed psychologist or psychiatrist.

(b) Such test battery shall be normed for law enforcement occupations and shall be designed to detect both mental illness and behavioral traits that could adversely affect the person's ability to successfully perform the essential functions of a law enforcement, corrections or probation/parole officer.

(c) Such an examination shall be valid for a period of 12 months from the date of administration for purposes of application for such employment, and a valid test given by one department within such time frame may be used by another agency if the second agency has access to the test results.

(d) For the purpose of this section, "administered under the direction of a licensed psychologist or psychiatrist" shall include a test battery of the type herein prescribed that the hiring authority procured from a person, firm or corporation where the scoring and reporting of the results is done by a psychologist or psychiatrist who currently holds a valid license under the laws of any state.

(e) No person shall be hired as a police, corrections or probation/parole officer if the results of the psychological test battery indicate that the candidate is currently suffering from a diagnosable mental illness or exhibits behavioral traits that, in the opinion of the psychologist or psychiatrist, could adversely affect such person's ability to perform the essential functions of a law enforcement officer, or, who, in the opinion of the psychologist or psychiatrist or the hiring authority exhibits a psychological profile that is incompatible with that which is required for law enforcement duties.

(f) Examples of an incompatible profile shall include but not be limited to:

- (1) A lack of impulse control;
- (2) A lack of anger management;
- (3) A propensity for assaultive behavior; and
- (4) A propensity for illegal sexual behavior.

(g) No person shall be denied employment as the result of such a testing process unless they have been given the opportunity for a personal interview with a licensed psychologist or psychiatrist employed by the agency.

Source. #4437, eff 6-22-88; ss by #5836, eff 6-15-94; ss by #7302, eff 6-8-00; ss by #9168, INTERIM, eff 6-3-08, EXPIRES: 11-30-08; ss by #9224, eff 8-1-08; ss by #9400, eff 2-27-09 (from Pol 301.08)

Amendment

This agreement, (hereinafter called the "Amendment") by and between the New Hampshire Department of Safety, Division of State Police (hereinafter referred to as the "State"), and Warren D. Fitzgerald, (hereinafter referred to as the "Contractor").

Whereas pursuant to an agreement (hereinafter referred to as the "Contract"), in the amount of \$47,000.00, the contractor agreed to perform certain services upon the terms and conditions specified in the contract and consideration of payment by the New Hampshire Department of Safety of certain sums therein.

Whereas the contractor and the state have agreed to amend the contract in certain aspects;

Now therefore, the parties hereto do hereby agree as follows:

1. Amendment and Modification
The contract is hereby amended as follows:
Section 1.7 Completion Date is changed from June 30, 2017 to June 30, 2019.
2. Section 1.8 Price Limitation is increased by \$75,000.00, changing the total contract amount from \$47,000.00 to \$122,000.00 for the provision of State Police pre-employment psychological exams.
3. Effective Date and Continuance
The amendment is effective upon Governor and Council approval. All other terms and conditions remain the same.

IN WITNESS WHEREOF, the parties set their hands as of the day and year written below.

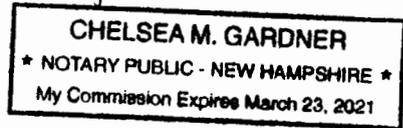
Warren D. Fitzgerald, Ph.D.
Warren D. Fitzgerald, Ph.D. and Associates, P.A.

On 4/28, 2017 personally appeared before me Warren Fitzgerald Ph.D., whose identity I verified on the basis of photo ID, to be the signer of the above and he/she acknowledged that he/she signed it. Executed the foregoing instrument for the purposes therein contained.

IN WITNESS THEREOF, I hereunto set my hand and official seal.

Chelsea Gardner
Notary Public
My Commission expires:

Chelsea Gardner, Notary Public
Name and Title of Notary Public



Steven R. Lavoie
Steven R. Lavoie, Director of Administration
N.H. Department of Safety

Approved by the Attorney General this 15 day of May, 2017.

[Signature]
Assistant Attorney General

Approved by the Governor and Council _____

Deputy Secretary of State

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 WARREN D. FITZGERALD, PH.D. AND ASSOCIATES P.A. is a New Hampshire Professional Profit Corporation registered to transact business in New Hampshire on November 19, 1981. 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: 47229



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 28th day of April A.D. 2017.

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

William M. Gardner
Secretary of State

WARREN D. FITZGERALD, Ph.D. & ASSOCIATES, P.A.

Psychological Services Since 1976

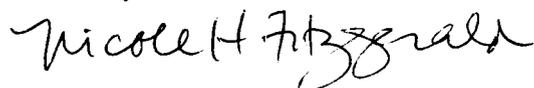
April 26, 2017

Ms. Jeannette Patten
Purchasing Assistant
NH Department of Safety
Support Services Bureau
33 Hazen Drive
Concord, NH 03301

Dear Ms. Patten,

Dr. Warren D. Fitzgerald is the sole shareholder in his professional corporation,
Warren D. Fitzgerald, Ph.D. and Associates, P.A.

Sincerely,



Nicole H. Fitzgerald
Office Manager

Account Number: NH WARR 5400

Date: 3/28/17 Initials: LPD

CERTIFICATE OF INSURANCE

ALLIED WORLD INSURANCE COMPANY
C/O: American Professional Agency, Inc.
95 Broadway, Amityville, NY 11701
800-421-6694

This is to certify that the insurance policies specified below have been issued by the company indicated above to the insured named herein and that, subject to their provisions and conditions, such policies afford the coverages indicated insofar as such coverages apply to the occupation or business of the Named Insured(s) as stated.

THIS CERTIFICATE OF INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE, TERMS, EXCLUSIONS, AND CONDITIONS AFFORDED BY THE POLICY OR POLICIES REFERENCED HEREIN.

Name and Address of Named Insured:

WARREN D. FITZGERALD, PH.D.
AND ASSOCIATES, P.A.
54 SOUTH STATE ST
CONCORD NH 03301

Additional Named Insureds:

WARREN D. FITZGERALD

Type of Work Covered: PROFESSIONAL PSYCHOLOGIST

Location of Operations:

(If different than address listed above)

Claim History:

Retroactive date is 06/01/1992

Coverages	Policy Number	Effective Date	Expiration Date	Limits of Liability
PROFESSIONAL/ LIABILITY	5011-5874	6/01/17	6/01/18	1,000,000 3,000,000

NOTICE OF CANCELLATION WILL ONLY BE GIVEN TO THE FIRST NAMED INSURED, WHO SHALL ACT ON BEHALF OF ALL INSURED WITH RESPECT TO GIVING OR RECEIVING NOTICE OF CANCELLATION.

Comments: Defense Reimbursement Proceedings Limit is \$5,000.

This Certificate Issued to:

Name: WARREN D. FITZGERALD, PH.D.
AND ASSOCIATES, P.A.

Address: 54 SOUTH STATE ST


Authorized Representative

SP 55-08-2015-02



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER

33 HAZEN DR. CONCORD, NH 03305
603/271-2791

RQ# 159350

JOHN J. BARTHELMES
COMMISSIONER

September 8, 2015

GTC#64
10-07-2015

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

Requested Action

Authorize the Department of Safety, Division of State Police, to enter into a two-year contract with Warren D. Fitzgerald, Ph.D. and Associates, P.A. (VC #155516-B001) in an amount not to exceed \$47,000.00, for the provision of pre-employment psychological exams of law enforcement personnel. This contract will be effective upon Governor and Council approval through June 30, 2017 and may be extended for one two-year term. Funding source: 16% Turnpike, 69% Highway, 11% Transfer from Other Agencies, 4% Navigational Safety.

Funds are anticipated to be available in the SFY 2016 and SFY 2017 operating budget as follows contingent upon availability and continued appropriations with authority to adjust encumbrances in each of the state fiscal years through the Budget Office if needed and justified:

	<u>FY 2016</u>	<u>FY 2017</u>
02-23-23-234015-40030000 Dept of Safety – Division of State Police – Traffic Bureau		
020-500271- Current Expenses – Other Medical Services	\$20,000.00	\$20,000.00
02-23-23-234010-42150000 Dept. of Safety – Division of State Police – NHH Security		
020-500271 - Current Expenses – Other Medical Services	2,500.00	2,500.00
02-23-23-234010-50010000 Dept. of Safety – Division of State Police – Watercraft Safety		
020-500271 - Current Expenses – Other Medical Services	<u>1,000.00</u>	<u>1,000.00</u>
	\$23,500.00	\$23,500.00
	TOTAL	\$47,000.00

Explanation

This contract will provide pre-employment psychological exams for full-time State Police Probationary Trooper, Marine Patrol Officer and New Hampshire Hospital Campus Security Security Officer candidates, as required for all applicants by *New Hampshire Police Standards Training Council's Recommended Guidelines for Recruit Academy Psychological Screening* (Pol. 301.07, copy attached).

An advertisement for requests for proposals was placed on the Administrative Services website as well as in the Manchester *Union Leader* for May 28, 29 and 31, 2015, pursuant to MOP 1600. Proposals were received from Dr. Fitzgerald, Psychotherapy Associates, Inc. and Nicole L. Sawyer, Psy.D., PLLC, with Dr. Fitzgerald submitting the qualified low bid.

Respectfully submitted,

John J. Barthelmes
Commissioner of Safety

Pol 301.07 Psychological Screening Test. Each applicant shall meet the following requirements relative to the applicant's psychological screening:

(a) All uncertified police officers, correctional officers, and probation/parole officers employed by the state of New Hampshire, full-time or part-time, and all police officers, full-time or part-time who are employed by local units of government who have accepted this requirement by approving the necessary funding shall, prior to hiring, successfully pass a psychological screening test battery administered under the direction of a licensed psychologist or psychiatrist.

(b) Such test battery shall be normed for law enforcement occupations and shall be designed to detect both mental illness and behavioral traits that could adversely affect the person's ability to successfully perform the essential functions of a law enforcement, corrections or probation/parole officer.

(c) Such an examination shall be valid for a period of 12 months from the date of administration for purposes of application for such employment, and a valid test given by one department within such time frame may be used by another agency if the second agency has access to the test results.

(d) For the purpose of this section, "administered under the direction of a licensed psychologist or psychiatrist" shall include a test battery of the type herein prescribed that the hiring authority procured from a person, firm or corporation where the scoring and reporting of the results is done by a psychologist or psychiatrist who currently holds a valid license under the laws of any state.

(e) No person shall be hired as a police, corrections or probation/parole officer if the results of the psychological test battery indicate that the candidate is currently suffering from a diagnosable mental illness or exhibits behavioral traits that, in the opinion of the psychologist or psychiatrist, could adversely affect such person's ability to perform the essential functions of a law enforcement officer, or, who, in the opinion of the psychologist or psychiatrist or the hiring authority exhibits a psychological profile that is incompatible with that which is required for law enforcement duties.

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- (3) A propensity for assaultive behavior; and
- (4) A propensity for illegal sexual behavior.

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Source. #4437, eff 6-22-88; ss by #5836, eff 6-15-94; ss by #7302, eff 6-8-00; ss by #9168, INTERIM, eff 6-3-08, EXPIRES: 11-30-08; ss by #9224, eff 8-1-08; ss by #9400, eff 2-27-09 (from Pol 301.08)



Recruitment and Training Unit



Pre-Employment Psychological Exams – Vendor Submission Criteria

(RC) Russell Conte, Major – Administrative Major (JM) John Marasco, Lt. – Recruitment and Training Unit
(SB) Stephanie Bosch – Recruitment and Training Unit

VENDOR: Warren D. Fitzgerald, Ph.D. and Associates, P.A.		RC	JM	SB			AVG.
A. Experience and reputation in field	30	30	30	30			30
B. Qualifications and experience (CV)	30	30	30	30			30
C. Price proposal	40	40	30	30			33.33
Criteria Score	100	100	90	90			93.33

VENDOR: Psychotherapy Associates, Inc.		RC	JM	SB			AVG.
A. Experience and reputation in field	30	25	20	10			18.33
B. Qualifications and experience (CV)	30	25	15	10			16.66
C. Price proposal	40	30	40	30			33.33
Criteria Score	100	80	75	50			68.33

VENDOR: Nicole L. Sawyer, Psy.D., PLLC		RC	JM	SB			AVG.
A. Experience and reputation in field	30	25	30	30			28.33
B. Qualifications and experience (CV)	30	30	30	30			30
C. Price proposal	40	25	10	10			15
Criteria Score	100	80	70	70			73.33

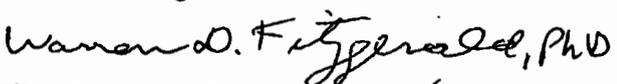
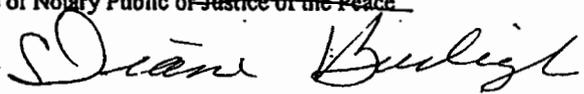
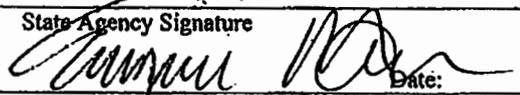
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Safety, Division of State Police		1.2 State Agency Address 33 Hazen Drive, Concord, NH 03305	
1.3 Contractor Name Warren D. Fitzgerald, Ph.D. and Associates, P.A.		1.4 Contractor Address 54 South State Street, Concord, NH 03301	
1.5 Contractor Phone Number (603) 224-5140	1.6 Account Number Please see Exhibit B	1.7 Completion Date June 30, 2017	1.8 Price Limitation Not to exceed \$47,000.00
1.9 Contracting Officer for State Agency Colonel Robert L. Quinn		1.10 State Agency Telephone Number (603) 223-3863	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory	
1.13 Acknowledgement: State of New Hampshire County of Merrimack On <u>July 31, 2015</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 she executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Diane Burleigh Customer Service Rep.</u> DIANE T. BURLEIGH, Notary Public My Commission Expires April 13, 2016			
1.14 State Agency Signature  Date:		1.15 Name and Title of State Agency Signatory Director of Administration	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>Sara J. Hurlingham</u> Director, On: <u>9/23/15</u>			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>[Signature]</u> On: <u>9/21/15</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

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

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

Agreement. This provision shall survive termination of this Agreement.

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

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or
8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

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

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

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.

Contractor Initials WOLF
Date 7/31/15

STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY
DIVISION OF STATE POLICE

EXHIBIT A

Warren D. Fitzgerald, Ph.D. and Associates, P.A. of Concord, NH is being contracted by the Department of Safety, Division of State Police to provide psychological pre-employment psychological screening exams as required by *New Hampshire Police Standards and Training Council's Recommended Guidelines for Recruit Academy Psychological Examinations (Pol 301.07)*. These services concern the pre-employment psychological screening under the direction of a licensed psychologist or psychiatrist according to protocols developed by the council and designed to detect both mental illness and behavioral traits that could adversely affect the person's ability to perform the essential functions of a law enforcement officer.

The vendor shall provide scheduling and completion of structured 30 to 60 minute clinical interviews for confirmation or ruling out psychological characteristics identified on written tests.

The candidate shall arrive 90 minutes prior to their appointment time to complete additional questionnaires. The vendor will review all testing results and meet with each candidate before completing a written evaluation

The vendor will provide a seven (7) day turnaround between testing and evaluation of a candidate and the submission of an evaluation to the State. Categories of suitability shall be mutually agreed "Recommended with Confidence", "Recommended", "Recommended with Reservation", or "Not Recommended."

Unless it is an emergency, if an appointment for a candidate is canceled within 24 hours of their appointment time, a cancellation fee of an amount to be agreed upon between the vendor and State shall be payable.

The contract will become effective upon Governor and Council approval through June 30, 2017. The contract may be extended for one (1) two (2)-year term with no more than a three (3) percent increase.

EXHIBIT B

The Contractor agrees to invoice the Department of Safety for examinations performed (\$500.00) for the Division of State Police for each individual candidate after each has been processed completely. The Contractor further agrees not to exceed the quoted price. The State of New Hampshire agrees to make payment within 30 days of receipt of such invoices.

The appropriate account numbers for the P-37 form, section 1.6 are listed below:

		<u>FY 2016</u>	<u>FY 2017</u>
02-23-23-234015-4003 020-500271	Dept. of Safety – Division of State Police – Traffic Bureau	\$20,000.00	\$20,000.00
Current Expenses – Other Medical Services			
02-23-23-234010-4215 020-200271	Dept. of Safety – Division of State Police – NHH Security	\$ 2,500.00	\$ 2,500.00
02-23-23-234010-5001 020-200271	Dept. of Safety – Division of State Police – Watercraft Safety	<u>\$ 1,000.00</u>	<u>\$ 1,000.00</u>
	Total	\$23,500.00	\$23,500.00

EXHIBIT C

Both parties agree to amending section 14 of the P-37 amount of insurance to agree with the vendor's coverage of comprehensive general liability of \$1,000,000.00 for each incident. The insurance coverage is adequate for the provision of pre-employment psychological exams.