



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

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August 24, 2020

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

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to amend the contracts with the following entities, by extending the completion date to December 14, 2020 from September 14, 2020 so that surficial geologic mapping of the identified quadrangles can be completed. No additional funding is involved in this time extension. The contracts were originally approved by Governor and Council on October 23, 2019 as Item #51. 100% Federal Funds.

Vendor Name	Location	Vendor #	PO #	Quadrangle
Brian K. Fowler	Grantham, NH	228775	1070816	Mount Carrigain
Woodrow B. Thompson	Wayne, ME	257993	1070818	Berlin

EXPLANATION

This amendment to the contracts is being requested in order to provide Mr. Fowler and Dr. Thompson additional time in which to complete the agreed upon scope of services. A 90-day no-cost extension has been approved by the grantor, the US Geological Survey (USGS), under the STATEMAP 2019 cooperative geologic mapping program. Provisions were made by USGS for such an extension in recognition of unanticipated challenges that grantees have experienced in meeting deliverable deadlines as a result of the COVID-19 pandemic. Access to the respective field areas by the mapping contractors has been limited because of restrictions on travel and availability of lodging, causing unavoidable delays. As a non-resident traveling to New Hampshire from out-of-state, Dr. Thompson has been subject to requirements for self-quarantine.

All other conditions of the original agreement will remain in full effect. This agreement has been approved as to form, substance, and execution by the Office of the Attorney General. In the event that Federal funds become no longer available, General funds will not be requested to support this program.

We respectfully request your approval of this item.


Robert R. Scott, Commissioner

Agreement for Services with Brian K. Fowler
Amendment No. 1

This Agreement (hereinafter called "Amendment No. 1") dated this 6th day of August, 2020, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and Brian K. Fowler (hereinafter referred to as the "Contractor").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Executive Council on October 23, 2019, the Contractor agreed to perform certain services upon the terms and conditions specified in the Agreement, and in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, The Contractor and the State have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement, and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification of Agreement: The Agreement is hereby amended as follows:
 - (A) The Completion Date as set forth in sub-paragraph 1.7 of the Agreement shall be changed from September 14, 2020 to December 14, 2020.
2. Effective Date of Amendment: The Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
3. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Contractor Initials BKF
Date 8/6/20

IN WITNESS THEREOF, the parties have hereunto set their hands as of the day and year first above written.

By [Signature]
Brian K. Fowler

On this the 6th day of August, 2020, before the undersigned officer, personally appeared Brian K. Fowler who acknowledged himself to be the person who executed the foregoing instrument for the purpose therein contained.

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

[Signature]
Carol G. Shepherd

My Commission Expires: 1-08-2025

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

By [Signature]
Robert R. Scott, Commissioner

Approved by Attorney General this 25th day of August, 2020

OFFICE OF ATTORNEY GENERAL

By [Signature]

Contractor Initials BSKF
Date 8/6/20

Agreement for Services with Woodrow B. Thompson
Amendment No. 1

This Agreement (hereinafter called "Amendment No. 1") dated this 6th day of August, 2020, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and Woodrow B. Thompson (hereinafter referred to as the "Contractor").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Executive Council on October 23, 2019, the Contractor agreed to perform certain services upon the terms and conditions specified in the Agreement, and in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, The Contractor and the State have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement, and set forth herein, the parties hereto do hereby agree as follows:

1. **Amendment and Modification of Agreement:** The Agreement is hereby amended as follows:
 - (A) The Completion Date as set forth in sub-paragraph 1.7 of the Agreement shall be changed from September 14, 2020 to December 14, 2020.
2. **Effective Date of Amendment:** The Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
3. **Continuance of Agreement:** Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Contractor Initials

Date

W. B. J.
8/6/2020

IN WITNESS THEREOF, the parties have hereunto set their hands as of the day and year first above written.

By Woodrow B. Thompson
Woodrow B. Thompson

On this the 6th day of August, 2020, before the undersigned officer, personally appeared Woodrow B. Thompson who acknowledged himself to be the person who executed the foregoing instrument for the purpose therein contained.

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

Cathy Cook

My Commission Expires:

THE STATE OF NEW HAMPSHIRE
Department of Environmental Services

CATHY COOK
NOTARY PUBLIC
KENNEBEC COUNTY, MAINE
MY COMMISSION EXPIRES SEPTEMBER 16, 2025

By Robert R. Scott
Robert R. Scott, Commissioner

Approved by Attorney General this 25th day of August, 2020

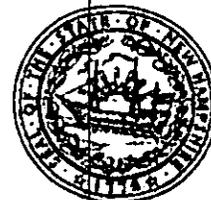
OFFICE OF ATTORNEY GENERAL

By John P. Deser

Contractor Initials W.B.J.
Date 8/6/2020



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

September 25, 2019

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

APPROVED G & C

DATE 23 Oct 19

ITEM # 51

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into **SOLE SOURCE** contracts with the following entities in the amount of \$44,636.00 for surficial and bedrock geologic mapping services effective upon Governor and Council approval through September 14, 2020. 100% Federal funds.

<u>Vendor Name</u>	<u>Location</u>	<u>Vendor #</u>	<u>Contract Amount</u>
Emery & Garrett Groundwater Investigations, LLC	Meredith, NH	156756	\$11,593.00
Brian K. Fowler	Grantham, NH	228775	\$10,725.00
J. Dykstra Eusden, Jr.	South Paris, ME	160229	\$11,593.00
Woodrow B. Thompson	Wayne, ME	257993	\$10,725.00
		Total	\$44,636.00

Funding is available in the account, as follows:

	<u>FY20</u>
03-44-44-44010-3852-0102-500731	\$44,636.00
Department of Environmental Services, State Mapping Program, Contract for Program Services	

EXPLANATION

The **SOLE SOURCE** contracts that are the subject of this request involve the state geological mapping program. The contractors listed in this request were specifically identified in the scope of work for the original grant proposal as required by the funding partner, the U.S. Geological Survey (USGS), under the STATEMAP Cooperative Geological Mapping Program. The qualifications of the contractors are rigorously evaluated by a USGS peer review panel which is convened annually in Washington, DC to make funding decisions for the program. The NH Geological Survey's mapping proposals routinely rate very high compared to all proposals submitted, largely due to the highly qualified contractors employed. Each of the contractors has previously produced high-quality maps that have been accepted by the USGS as deliverables for the STATEMAP program. Mapping contractors are subject to a pre-qualification process involving evaluation by the NH Geological Resource Advisory Committee (NHGRAC), based on a Statement of Qualifications (SOQ). Eligibility criteria

His Excellency, Governor Christopher T. Sununu

and The Honorable Council

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include: (1) personal education and experience in the discipline of field mapping, (2) recent successful geologic mapping experience, and (3) production of a geological map that has been accepted or published by the USGS in Reston, Virginia.

This STATEMAP program is designed to create or update geological maps in areas of the state where there is a critical need for geologic information. Geological map data are routinely used by hydrogeologic consultants, engineers, scientists, planners, and local officials as the basis for land-use master plans, groundwater availability assessments and groundwater protection initiatives, infrastructure expansion, and for evaluating geologic hazards. In addition, the mapping program contributes to our knowledge about an integral part of New Hampshire's natural history. The selection of areas for detailed mapping was reviewed and approved by NHGRAC, which consists of members from the consulting community, state and federal agencies, academia, industry, and the general public. The criteria used in their selection included 1) critical need, 2) contribution to the state's Geological Mapping Strategic Plan, and 3) return of information for the investment of public funds.

In summary, the New Hampshire STATEMAP program has been very successful using contractors who have performed the field mapping in the past. Contractors will work under the direction of the State Geologist, who will review and approve all work before making a payment recommendation to the Department.

The contracts have been approved by the Department of Justice as to form, content, and execution. In the event that the Federal funds become no longer available, General funds will not be requested to support this program.

We respectfully request your approval.



Robert R. Scott

Commissioner

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 New Hampshire Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095	
1.3 Contractor Name Woodrow B. Thompson		1.4 Contractor Address 171 Lord Rd Wayne, ME 04284-3226	
1.5 Contractor Phone Number 207-685-3647	1.6 Account Number 03-44-44-44010-3852-0102	1.7 Completion Date September 14, 2020	1.8 Price Limitation \$10,725.00
1.9 Contracting Officer for State Agency Frederick Chormann, Jr., State Geologist		1.10 State Agency Telephone Number 603-271-1975	
1.11 Contractor Signature <i>Woodrow B. Thompson</i>		1.12 Name and Title of Contractor Signatory Woodrow B. Thompson, Professional Geologist	
1.13 Acknowledgement: State of <i>Maine</i> , County of <i>Kennebec</i> On <i>9-13-2019</i> , 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] <i>Dawna Gardner</i>		<div style="border: 1px solid black; padding: 2px; text-align: center;"> DAWNA GARDNER NOTARY PUBLIC KENNEBEC COUNTY <small>MAINE</small> MY COMMISSION EXPIRES DECEMBER 3, 2020 </div>	
1.13.2 Name and Title of Notary or Justice of the Peace <i>DAWNA GARDNER (NOTARY)</i>			
1.14 State Agency Signature <i>[Signature]</i>	Date: <i>10/9/19</i>	1.15 Name and Title of State Agency Signatory <i>Robert R. Scott Commissioner NHDES</i>	
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: <i>[Signature]</i> On: <i>10/7/2019</i>			
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 80:7c 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 91A 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.

Requested Action #1
Woodrow B. Thompson

EXHIBIT A

Scope of Services

SURFICIAL GEOLOGIC MAPPING OF SOUTHERN HALF OF THE BERLIN 7.5-MINUTE QUADRANGLE, NEW HAMPSHIRE

Scope of work:

Surficial mapping of the southern half of the Berlin 7.5-minute (1:24,000-scale) Quadrangle will include delineation of all surficial materials following the patterns, symbols, and cartography of United States Geological Survey (USGS)-published quadrangles of Nashua North, Kingston, and Rochester, New Hampshire, and previously submitted maps funded by the cooperative STATEMAP program. This includes delineating the till, glaciofluvial deposits, glaciolacustrine deposits, freshwater wetlands, bedrock exposures, shallow bedrock, alluvium, and other materials particular to the area. Symbols should conform to the Federal Geographic Data Committee digital cartographic standards of August 2006. The map shall also include pertinent scientific observations and annotations related to the glacial history of the map area, such as interpreted ice margin positions and locations of meltwater channels, as well as an overlay of four categories of material textures (gravel, mixed sand and gravel, sand with minor silt, and silt and clay with minor sand). The Contractor will incorporate existing geological information, and subsurface information provided by the NH Geological Survey (NHGS), a bureau of the NH Department of Environmental Services (DES), to support their geological interpretations and map products. All map units within the southern half of the Berlin Quadrangle must be reconciled with the mapped surficial geology of the Mount Crescent Quadrangle to the west, Carter Dome Quadrangle to the south, and the Mount Washington Quadrangle to the southwest, so that a seamless coverage can be created for the entire area of the adjoining quadrangles. High-quality photographs of significant geologic features shall be provided to NHGS, either as digital image files or minimum 4" x 6" color prints, and accompanied by descriptive captions and cross-referenced to actual localities indicated on the map. The Contractor shall also provide a concise legend containing a detailed description of each map unit and an approximately one-page narrative description of the glacial history of the quadrangle. A version of each of these documents shall be submitted in an electronic text-based format, preferably as separate Microsoft Word documents. Additionally, the Contractor shall submit a copy of observation data to NHGS. Acceptable formats for the submission of these field data include copies of field notes, electronically tabularized data (preferably in Microsoft Excel format) or all site-specific observations and measurements recorded on a base map. Upon completion of the map, the Contractor shall consult with the NHGS during the automation of the data into a series of digital data captured in an ArcGIS geodatabase.

The Contractor shall be available for a day-long field check of the mapped quadrangle. This event shall be arranged at the mutual convenience of the NHGS staff and the Contractor and should be performed toward the end of the contract period.

A map of the southern half of the Berlin Quadrangle shall be prepared on a base with content equivalent to that of the most recent USGS 7.5-minute series topographic map for the quadrangle area, and which reproduces this content without distortions in scale. The map shall include: (1) scale and contour interval, (2) north arrow and magnetic declination, (3) title, authorship,

Contractor Initials W. B. T.
Date 9/13/2019

publisher, and date, (4) location index map, (5) field data or field data stations, (6) description of map units, (7) explanation of map symbols, (8) unit symbols on map, and (9) an acknowledgment that reads "This geologic map (or report) was funded in part by the USGS National Cooperative Geologic Mapping Program under StateMap award number GXXACXXXXX, 20XX." [Include award number and year funded]. The Contractor shall deliver this map to the State Geologist for scientific review at least five (5) working days prior to the September 14, 2020 contract completion date. The Contractor shall submit a final, scale stable, reproducible color copy of the southern half of the Berlin Quadrangle, consistent with USGS open-file release to the State Geologist to complete the contract.

The Contractor shall adhere to the specifications outlined by DES's Standard Operating Procedures (DES-SOP #101) for accessing private lands. This includes providing NHGS with a copy of all logs indicating dates and times of contact with land owners. Guidance and assistance for operating within the SOP will be provided by NHGS.

The milestone schedule to complete the work described above shall be as follows (renegotiable at the discretion of the State Geologist):

Schedule:

<u>Surficial Mapping Activity</u>	<u>Working Days upon Approval by Governor & Council</u>
1) Field Work	200 days
2) Preparation of manuscript map	220 days
3) Scientific review of manuscript map	240 days
4) Compilation of materials for open file publication	250 days

EXHIBIT B

Contract Price and Method of Payment

The total contract price shall be \$10,725.00. This amount will be charged for mapping the southern half of the Berlin Quadrangle, and billed as the percentage of work is completed. Detailed invoices will be required for all payments.

EXHIBIT C

Special Provisions

Paragraph 14 of the General Provisions of the standard state agreement is expressly waived. This provision is being waived because this is an individual and carrying this general liability insurance would be cost prohibitive.

Contractor Initials W. B. J.
Date 9/13/2019

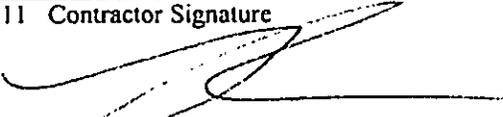
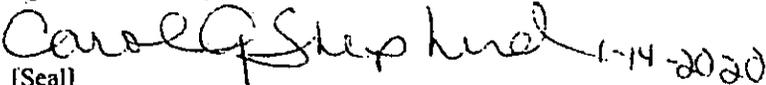
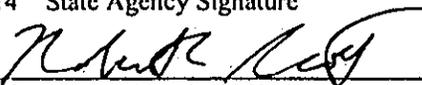
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name New Hampshire Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095	
1.3 Contractor Name Brian K. Fowler.		1.4 Contractor Address P.O. Box 1286, Grantham, NH 03753-1286	
1.5 Contractor Phone Number 603-730-7210	1.6 Account Number 03-44-44-440010-3852-102	1.7 Completion Date September 14, 2020	1.8 Price Limitation \$10,725
1.9 Contracting Officer for State Agency Frederick Chormann, Jr., State Geologist		1.10 State Agency Telephone Number 603-271-1975	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Brian K. Fowler.	
1.13 Acknowledgement: State of NH, County of Sullivan On 14 th September 2019, 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] 1-14-2020			
1.13.2 Name and Title of Notary or Justice of the Peace Carol G Shepherd			
1.14 State Agency Signature  Date: 10/3/19		1.15 Name and Title of State Agency Signatory Robert R. Scott, Commissioner, NHDES	
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: 10/7/2019			
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.

Requested Action #1
Brian K. Fowler

EXHIBIT A

Scope of Services

**SURFICIAL GEOLOGIC MAPPING OF THE MOUNT CARRIGAIN 7.5-MINUTE
QUADRANGLE, NEW HAMPSHIRE**

Scope of work:

Surficial mapping of the Mount Carrigain 7.5-minute (1:24,000-scale) Quadrangle will include delineation of all surficial materials following the patterns, symbols, and cartography of United States Geological Survey (USGS)-published quadrangles of Nashua North, Kingston, and Rochester, New Hampshire, and previously submitted maps funded by the cooperative STATEMAP program. This includes delineating the till, glaciofluvial deposits, glaciolacustrine deposits, freshwater wetlands, bedrock exposures, shallow bedrock, alluvium, and other materials particular to the area. Symbols should conform to the Federal Geographic Data Committee digital cartographic standards of August 2006. The map shall also include pertinent scientific observations and annotations related to the glacial history of the map area, such as interpreted ice margin positions and locations of meltwater channels, as well as an overlay of four categories of material textures (gravel, mixed sand and gravel, sand with minor silt, and silt and clay with minor sand). The Contractor will incorporate existing geological information, and subsurface information provided by the NH Geological Survey (NHGS), a bureau of the NH Department of Environmental Services (DES), to support their geological interpretations and map products. All map units within the Mount Carrigain Quadrangle must be reconciled with the mapped surficial geology of the Crawford Notch Quadrangle to the north, the Stairs Mountain Quadrangle to the northeast, the Bartlett Quadrangle to the east, the Mount Chocorua Quadrangle to the southeast, and the Waterville Valley Quadrangle to the southwest, so that a seamless coverage can be created for the entire area of the adjoining quadrangles. High-quality photographs of significant geologic features shall be provided to NHGS, either as digital image files or minimum 4" x 6" color prints, and accompanied by descriptive captions and cross-referenced to actual localities indicated on the map. The Contractor shall also provide a concise legend containing a detailed description of each map unit and an approximately one-page narrative description of the glacial history of the quadrangle. A version of each of these documents shall be submitted in an electronic text-based format, preferably as separate Microsoft Word documents. Additionally, the Contractor shall submit a copy of observation data to NHGS. Acceptable formats for the submission of these field data include copies of field notes, electronically tabularized data (preferably in Microsoft Excel format) or all site-specific observations and measurements recorded on a base map. Upon completion of the map, the Contractor shall consult with the NHGS during the automation of the data into a series of digital data captured in an ArcGIS geodatabase.

The Contractor shall be available for a day-long field check of the mapped quadrangle. This event shall be arranged at the mutual convenience of the NHGS staff and the Contractor and should be performed toward the end of the contract period.

A map of the Mount Carrigain Quadrangle shall be prepared on a base with content equivalent to that of the most recent USGS 7.5-minute series topographic map for the quadrangle area, and which reproduces this content without distortions in scale. The Contractor shall make this map available to the State Geologist for scientific review at least one week prior to the September 14, 2020 contract completion date. The Contractor shall submit a final, scale stable, reproducible color copy of the

Mount Carrigain Quadrangle, consistent with USGS open-file release to the State Geologist to complete the contract.

The Contractor shall adhere to the specifications outlined by DES's Standard Operating Procedures (DES-SOP #101) for accessing private lands. This includes providing NHGS with a copy of all logs indicating dates and times of contact with land owners. Guidance and assistance for operating within the SOP will be provided by NHGS.

The milestone schedule to complete the work described above shall be as follows (renegotiable at the discretion of the State Geologist):

Schedule:

<u>Surficial Mapping Activity</u>	<u>Working Days upon Approval by Governor & Council</u>
1) Field Work	200 days
2) Preparation of manuscript map	220 days
3) Scientific review of manuscript map	240 days
4) Compilation of materials for open file publication	250 days

EXHIBIT B

Contract Price and Method of Payment

The total contract price shall be \$10,725.00. This amount will be charged for mapping the Mount Carrigain Quadrangle, and billed as the percentage of work is completed. Detailed invoices will be required for all payments.

EXHIBIT C

Special Provisions

Paragraph 14 of the General Provisions of the standard state agreement is expressly waived. This provision is being waived because this is an individual and carrying this general liability insurance would be cost prohibitive.