

ATTACHMENT 3: DRAFT CONTRACTUAL SERVICE AGREEMENT**1. Scope of Agreement.**

Town agrees to retain Contractor, and Contractor agrees to provide all Services as described in the Contractor's response to the Request for Proposals, as modified by agreements between the Town and Contractor (Exhibit "A").

2. Term.

The contract term is for a one (1) year period with options for extension. In the event that the Town exercises its option to extend the Agreement, the Town shall provide written notice no later than thirty (30) days prior to the end of the initial term. The Town's decision to exercise its option will be based upon past performance being satisfactory to the Town of Milford.

3. Time for Completion.

The time for completion of the Services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the work of this Agreement according to reasonable schedules established by the Town and the Contractor. Contractor shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Contractor.

4. Compensation.

- A. Town shall pay Contractor total compensation for Services in accordance with Exhibit "A" attached hereto and by reference made a part of this Agreement.
- B. Total compensation shall not exceed \$270,000 unless approved by the Town Administrator.
- C. Contractor shall submit detailed invoices, based upon the actual work performed, accompanied by backup documentation as requested by Town.
- D. Progress payments for work completed shall be paid by Town as the work progresses within thirty (30) days of the date of Contractor's invoice.
- E. Contractor shall provide Town with a monthly itemization of all work performed, and the fees accrued thereon, in complete and sufficient detail to fully apprise Town thereof.

5. Termination.

Either party may terminate this Agreement at any time, without cause, upon giving the other party thirty (30) days' written notice. In the event of such termination, Contractor shall be entitled to compensation for work performed through and including the effective date of termination.

6. Legal Relationship Between the Parties.

- A. The legal status of the Contractor with the Town is that of an Independent Contractor, and nothing herein shall be deemed to make Contractor a Town employee. During the performance of this Agreement, Contractor and its officers, employees, agents, and sub-contractors shall act in an independent capacity and shall not act as Town officers, employees, or agents. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither Town nor any of its officers, employees, agents, or subcontractors shall have control over the conduct of Contractor or any of its officers, employees, or agents, except as set forth in this Agreement. Contractor, its officers, employees, agents, or subcontractors shall not maintain an office or any other type of fixed business location at Town's offices.
- B. Contractor shall not incur or have the power to incur any debt, obligation, or liability against Town, or bind Town in any manner.
- C. No Town benefits shall be available to Contractor, its officers, employees, agents, or subcontractors in connection with any performance under this Agreement. Except for fees paid to Contractor as provided for in this Agreement, Town shall not pay salaries, wages, or other compensation to Contractor for the performance of Services under this Agreement. Town shall not be liable for compensation or indemnification to Contractor, its officers, employees, agents, or sub-contractors for injury or sickness arising out of performing Services hereunder.

7. Insurance.

- A. Contractor shall procure and maintain the insurance described herein for the duration of this Agreement against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, or employees. Insurance required herein shall be provided by Admitted Insurers in good standing with the State of New Hampshire and having a minimum Best's Guide Rating of A-, Class VII or better. Town will require Contractor to substitute any insurer whose rating drops below the levels specified herein. Such substitution shall occur within twenty (20) days of written notice to Contractor by Town. Insurance policies shall be written on an "occurrence" basis, not on a "claims made" basis.
- B. Evidence of such insurance shall be delivered to Town on or before the effective date of this Agreement.
- C. The Certificate of Insurance shall specifically identify this Agreement and shall contain express conditions that Town is to be given at least thirty (30) days advance written notice of any material modification in or at least ten (10) days advance written notice of termination of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by Town, and shall name Town, and its officers, agents, officials, employees and volunteers as additional insureds by endorsement to the insurance policies. All insurance shall be on an occurrence basis.
 - 1. Comprehensive General Liability. Throughout the term of this Agreement, Contractor shall maintain in full force and effect Comprehensive General Liability insurance with other combined single limit of not less than two million dollars (\$2,000,000.00) per occurrence, for bodily injury, death and property damage; or two million dollars (\$2,000,000.00) per

occurrence with two million dollars (\$2,000,000.00) aggregate for bodily injury, death and property damage; or two million dollars (\$2,000,000.00) aggregate, separate for this project for bodily injury, death and property damage.

2. Comprehensive Automobile Liability. Throughout the term of this Agreement, Contractor shall maintain in full force and effect Comprehensive Automobile Liability insurance covering owned and non-owned vehicles with a combined single limit of not less than two million dollars (\$2,000,000.00) per occurrence.
3. Worker's Compensation. Contractor shall obtain and maintain, during the term of this Agreement, Worker's Compensation Employer's Liability Insurance in at least the minimum statutory amounts as required by state law.

8. Indemnity.

To the fullest extent allowed by law, Contractor agrees to save, indemnify, and keep Town, its officers, officials, agents, employees, and volunteers, harmless against any and all liability, claims, judgments, costs, and demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation arising through the sole negligence or sole willful misconduct of Town and will make good to and reimburse Town for any expenditures, including reasonable attorneys' fees, Town may incur by reason of such matters, and if requested by Town, will defend any such suits at the sole cost and expense of Contractor.

In the event Contractor or its insurer refuses or fails to provide a legal defense to Town after receiving written notice of the legal action and a tender and demand for defense, Town shall have the right to select counsel of its own choice to represent all the Town's interests. Contractor agrees that the amount of legal costs and expenses including attorneys' fees may be withheld by Town from any Agreement amounts due and owing to Contractor until such time as a final determination is made as to the responsibility for payment of the fees and costs.

9. Compliance with Law.

Contractor certifies by the execution of this Agreement the following: that it pays employees not less than the minimum wage as defined by law and that it does not discriminate in its employment with regard to race, color, religion, sex, or national origin; that Contractor is in compliance with all federal, state, local directives, and executive orders regarding non-discrimination in employment; and that Contractor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

10. Notices.

All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by electronic transmission, and shall be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by

messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications shall be addressed as follows:

*Town of Milford
Department of Public Works
289 South Street
Milford, NH 03055
Attention: Director*

Either Party may, by written notice to the other, designate a different address, which shall be substituted for that specified above.

11. Licenses and Qualifications.

Contractor represents and warrants to Town that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. Contractor represents and warrants to Town that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit or approval which is legally required for Contractor to perform its professional duties under this Agreement.

12. Agreement Execution Authorization.

Each of the persons executing this Agreement represent and warrant that they are authorized to sign this Agreement on behalf of the entity for which he/she is signing and empowered to bind such entity.

13. Jurisdiction.

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of New Hampshire. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

14. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which he may be entitled.

15. Waiver.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, and term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

16. Modifications and Amendments to Agreement.

No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in writing signed by duly authorized representatives of both Parties.

17. Successors in Interest.

This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

18. Assignments.

No assignment by Contractor of this Agreement or any part hereof, or of funds to be received hereunder, will be recognized by Town unless such assignment has had prior written approval and consent of Town, which consent will not be unreasonably withheld.

19. Entire Agreement.

This Agreement and its Exhibits constitutes the entire understanding and agreement of the Parties hereto and supersedes all previous negotiations, discussions, and agreements between the Parties with respect to the subject matter hereof. No parol evidence shall be permitted to contradict or vary the terms of this Agreement.

20. Severability.

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement.

21. Recitals.

The Recitals above are hereby incorporated into this section as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

22. Conflicts.

To the extent that there is any conflict between the provisions of this Agreement and the Contractor's proposal for services, the terms and conditions of this Agreement shall govern.

IN WITNESS WHEREOF, this Agreement has been executed in the name of Town by its officers thereunto duly authorized, and Contractor as of the day and year first above written.

"TOWN"

TOWN OF MILFORD,

By:_____

Town Administrator

ATTEST:

By_____

Town Clerk

"CONTRACTOR"

By:_____

Signature

Print Name and Title

By:_____

Signature

Print Name and Title