



CITY OF DOVER

288 CENTRAL AVENUE
DOVER, NH 03820
WWW.DOVER.NH.GOV
603.516.6000

AGREEMENT

THE CITY OF DOVER, a municipal corporation, 288 Central Avenue, Dover, New Hampshire 03820 and _____, (the “Vendor”), a New Hampshire corporation, _____ who on this ____ day of _____, 20__, for valuable consideration agree as follows (the “Agreement”):

1. **Purpose.** This Agreement refers to and incorporates the provisions of a Request for Proposal RFP #B_____ entitled “_____” issued by the City of Dover. Specifically, this Agreement is for _____.
2. **Agreement Documents.** The Agreement shall include and consist of the following documents (the “Agreement Documents”):
 - a. Agreement (5 pages)
 - b. RFP #B_____ issued by the City of Dover on _____ (___ pages) including:
 - Attachment A, Terms and Conditions (10 pages)
 - Attachment __, _____ (___ pages)
 - Attachment __, _____ (___ pages)
 - [List out all attachments and addenda, except sample City agreement]
 - Any other City-issued addenda, attachments or schedules to the foregoing (except the City’s Sample Agreement).
 - c. Reply of Vendor dated _____ (_____ pages)
3. **Scope of Services.** The Vendor shall perform all work specified and required by the Agreement Documents listed in Section 2 above. Should there be inconsistencies between the terms of any of the Agreement Documents, precedence shall be as follows: 1) the Agreement; 2) the terms of RFP #_____ and its attachments; and 3) Reply of Vendor.
4. **Changes in the Cost of the Work and the Scope of Services.** Changes to the cost of the work and the Scope of Services shall be made in writing by mutual agreement prior to the performance of the work. In case of as-needed quantity agreements, a quote, scope of work, or statement of work signed/issued by the Vendor and countersigned by the City’s designated contracting officer (see Dover Code § 5-35) prior to the commencement of work shall operate to supplement and be subject to this Agreement. In submitting any future invoice, quote, scope of work, or statement of work in connection with this Agreement, the Vendor shall not include, attach, or hyperlink to standardized terms and conditions that purport to modify any term of this Agreement except for the cost of work, the scope of work, and the time for performance. The parties

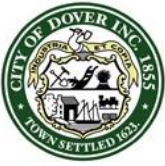


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agree that any future invoice, quote, scope of work, or statement of work issued by the Vendor in relation to this Agreement that includes or hyperlinks to any term or condition other than the cost of work, the scope of work, or the time for performance, shall be null and void and of no effect, even if the City administratively approves and/or pays same.

5. **Term.** The Vendor shall commence work upon the execution of this Agreement and issuance of a Purchase Order by the City of Dover. All services to be performed under this Agreement shall become effective upon the signing of the Agreement and completed by _____.
6. **Cost, Payment, Invoicing.** The City of Dover shall pay the Vendor an amount not to exceed _____ (\$00) DOLLARS for services within the Scope of Services. Vendor's invoices shall reference the RFP/RFQ number designated by the City as well as the City's Purchase Order number. The City of Dover shall pay the Vendor within thirty (30) days upon performance and presentation of an invoice supplied by the Vendor detailing the work performed and supply all other information required of said invoice.
7. **Insurance.**
 - a. The Vendor shall secure and maintain for the duration of this Agreement a General Liability Insurance policy or policies at no cost to the City of Dover. The coverage of said insurance policy shall be in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. The Vendor shall take all actions necessary to cause the City to be listed as additional insured on the aforesaid General Liability Insurance policy, by way of endorsement or prescribed insurance policy provisions. An insurance certificate shall be supplied to the City of Dover by the Vendor, as well as (if requested by the City) proof of an endorsement or policy additional insured provisions confirming the City of Dover's additional insured status. The City of Dover shall be named as an additional insured on the Vendor's general liability insurance policy, which coverage shall apply on a primary and noncontributory basis, and, subject to the dollar amounts specified above, cover the City of Dover with the same scope of coverage provided to the Vendor under the general liability policy without subjecting the City of Dover to any different or additional terms, conditions, limitations or exclusions. A condition of the insurance coverage shall be thirty (30) days' notice to the City of Dover prior to cancellation of the policy. The Vendor shall also provide the City of Dover certificates of renewal and, if requested, proof of an endorsement or policy additional insured provisions for any applicable insurance policy no later than ten (10) business days prior to the expiration of said policy.
 - b. The Vendor shall secure and maintain for the duration of this Agreement a Professional Liability Insurance policy or policies at no cost to the City of Dover. The coverage of said insurance policy shall be in an amount of not less than One



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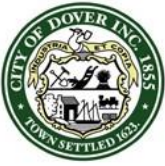
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Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) in the aggregate. An insurance certificate shall be supplied to the City of Dover by the Vendor. The Vendor or its insurer shall provide the City of Dover thirty (30) days' notice prior to cancellation of the policy. The Vendor shall also provide the City of Dover certificates of renewal for any applicable insurance policy no later than ten (10) business days prior to the expiration of said policy.

- c. The Vendor shall secure and maintain for the duration of this Agreement Automobile Liability Insurance covering the operation of all motor vehicles, including those hired and borrowed, used by the Vendor in connection with this Agreement at no cost to the City of Dover. The coverage of said insurance policy shall be in the amount of not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total limit of at least One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident or occurrence. An insurance certificate shall be supplied to the City of Dover by the Vendor. The Vendor shall also provide the City of Dover certificates of renewal for any applicable insurance policy no later than ten (10) business days prior to the expiration of said policy.
- d. By signing this Agreement, the Vendor agrees, certifies, and warrants that the Vendor is in compliance with, or exempt from, the requirements of New Hampshire RSA Chapter 281-A, regarding workers' compensation insurance. The Vendor shall maintain statutory workers' compensation insurance coverage for all of its employees as required by said law.

8. **Indemnification.** To the fullest extent permitted by law, the Vendor agrees to defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Dover from and against any claims, losses, damages or expense (including reasonable attorneys' fees) arising out of the death, injury or injuries, or damages to any person, or damage or destruction of any property (including but not limited to City property and/or third-party property), in connection with or in relation to the Vendor's services, in whole or in part, under this Agreement to the extent caused by, and/or alleging, the strictly liable, negligent and/or otherwise tortious acts, errors, or omissions of the Vendor or its officers, directors, employees, agents or independent professional associates, or any of them. This covenant shall survive the termination of this Agreement.

9. **Performance/Payment Bonds.** The Vendor shall provide the City with acceptable surety bonds guaranteeing the performance of the work (the performance bond) and the payment of all legal debts that may be incurred by reason of the Vendor's performance of the work (the payment bond). The aforesaid performance and payment bonds shall each be in the sum equal to the maximum amount of this Agreement (\$_____). Such performance and payment bonds shall remain in full force and effect until expiration of this Agreement, including any renewal or extension periods. The aforesaid performance and

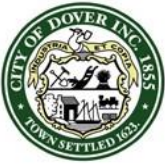


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payment bonds shall also include any additions to or modifications of this Agreement and the contract amount.

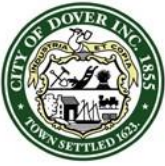
10. **Warranty:** The Vendor shall perform the work within the Scope of Services commensurate with the standard of the profession/trade/industry involved in the performance of this Agreement. A minimum one-year warranty period shall apply to all labor and parts provided by the Vendor in performing the Agreement, commencing with the date of substantial completion. Such warranty period shall be cumulative of all other rights and remedies of the City, and shall not supplant or otherwise limit the City's rights and remedies. In connection with the performance of the Scope of Services, the Vendor shall comply with all statutes, laws, regulations, and applicable orders, whether federal, state, or local, the most stringent law(s) taking precedence in the event multiple laws apply. Vendor hereby irrevocably assigns all manufacturer warranties in connection with this Agreement to the City.
11. **Ownership of documents.** The City of Dover shall retain ownership of the documents and designs, if any, prepared for the City of Dover by the Vendor pursuant to the provisions of this Agreement to the extent the Vendor has been paid for the services to prepare the documents and designs. No files or documents of the Vendor relating to services or work performed pursuant to this Agreement may be destroyed without prior notification to and written permission of the City of Dover's Municipal Records Committee or designee.
12. **Dispute resolution.** Both parties are entitled to all available legal and equitable remedies within the jurisdiction of the courts of the State of New Hampshire. All parties consent to venue and personal jurisdiction in the State of New Hampshire. Venue shall be Strafford County.
13. **Termination.** The City of Dover may terminate this Agreement without cause upon thirty (30) days written notice subject to an obligation to pay for services satisfactorily rendered. Warranties shall not be subject to termination.
14. **Binding.** This Agreement shall be binding upon all parties, their heirs, executors, administrators, successors and assigns.
15. **Waiver of breach.** No failure by the City of Dover to enforce any provisions of this Agreement shall be deemed a waiver of its rights under this Agreement.
16. **Applicable law.** This Agreement shall be deemed to have been entered into in the State of New Hampshire and shall be construed in accordance with the laws of the State of New Hampshire.



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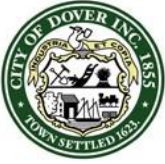
17. **Third parties.** Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City of Dover and the Vendor any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises and agreements in this Agreement contained by or on behalf of the City of Dover or the Vendor shall be for the sole and exclusive benefit of the City of Dover and the Vendor.
18. **Review.** The parties to this Agreement acknowledge that they enter into this Agreement voluntarily and have had the opportunity to review this Agreement with legal counsel prior to signing.
19. **Personnel.** The Vendor shall at its own expense provide all personnel necessary to perform the work under this Agreement. The Vendor warrants that all personnel shall be qualified to perform the work under the Scope of Services and shall be properly licensed and otherwise authorized to do so under all applicable laws.
20. **Assignment/Delegation/Subcontracts.** The Vendor shall not assign, or otherwise transfer, any interest in this Agreement without the prior written consent of the City of Dover. None of the services shall be subcontracted by the Vendor without the prior written consent of the City of Dover.
21. **Contractor's Relation to the City of Dover.** In the performance of this Agreement the Vendor is in all respects an independent contractor and is neither an agent, joint venture, partner, nor employee of the City of Dover. Entities must be in good standing with the Secretary of State's Office in the state of incorporation and registered to conduct business in the State of New Hampshire to the extent required by law.
22. **Confidentiality.** Confidentiality of any and all information/data held by the City of Dover under or related to this Agreement shall be governed by New Hampshire RSA Chapter 91-A.
23. **Recordkeeping.** The Vendor shall maintain records (physical and electronic) arising out of or in relation to this Agreement. The Vendor shall not destroy any records arising out of or related to this Agreement unless and until the City of Dover's Municipal Records Committee or designee has given written permission in writing. If a retention period applies pursuant to applicable law, such retention period (the longer period, if multiple laws apply) shall be controlling. The Vendor shall make all records relating to performance of this Agreement available to the City of Dover when requested and/or in connection with any audit or review of the Vendor's activities and financial records.
24. **Amendment.** This Agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties hereto.



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25. **Construction and Headings.** 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. The headings throughout this Agreement are for reference purposes only, and the words contained therein shall in no way be used to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
26. **Notice.** Any notice by a party hereto to the other party to this Agreement shall be provided as follows:
- | | |
|----------------------------------|---------------|
| <u>City of Dover</u> | <u>Vendor</u> |
| Michael Joyal, Jr., City Manager | |
| 288 Central Avenue | |
| Dover, NH 03820 | |
27. **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 shall remain in full force and effect. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid enforceable provision that comes as close as possible to the intention of the stricken provision.
28. **Appropriations:** Continuation of the Agreement is contingent upon the appropriation of funds. All obligations of the City of Dover stated in this agreement, including, but not limited to, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds by the Dover City Council and in no event will the City of Dover be liable for any payments or obligation hereunder in excess of such appropriated funds. The City of Dover shall not be required to transfer funds from any other account to satisfy payments hereunder. Vendor will have the right to terminate this agreement immediately upon receiving notice of such termination due to the non-appropriation of funds.
29. **Immunity:** Nothing within this Agreement shall be deemed to constitute a waiver of any immunity of the City of Dover, which immunities are hereby reserved to the City of Dover. This covenant shall survive the termination of this contract's conclusion.
30. **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.



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VENDOR

Duly Authorized

Date

CITY OF DOVER

J. Michael Joyal, Jr., City Manager

Date