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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF COMMUNITY BASED CARE SERVICES

Nicholas A. Toumpas  
Commissioner

Nancy L. Rollins  
Associate Commissioner

BUREAU OF DEVELOPMENTAL SERVICES

105 PLEASANT STREET, CONCORD, NH 03301  
603-271-5034 1-800-852-3345 Ext. 5034  
Fax: 603-271-5166 TDD Access: 1-800-735-2964

Approved by G!C  
Date 10/7/09  
Page -  
Item No. I

September 14, 2009

His Excellency, Governor John H. Lynch  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

**Requested Action**

1. Authorize the Department of Health and Human Services, Division of Community Based Care Services, Bureau of Developmental Services to enter into an Agreement with Easter Seals New Hampshire, Inc., 555 Auburn Stree Manchester, NH 03103, vendor code 177204-B005, to provide administrative support, under the supervision of the Bureau of Developmental Services, for management and distribution of Part C/IDEA ARRA Funds for services to Infants and Toddlers with Disabilities, not to exceed \$2,395,896.00. Effective for the period retroactive to September 1,2009 through September 30, 2011. Funds are available for SFY 2010 and 2011 in the following accounts according to State Fiscal Year with authority to adjust amounts if needed and justified between State Fiscal Years and are anticipated to be available in SFY 2012 based upon continued appropriations.

**05-95-93-930010-0816 DEPT OF HEALTH AND HUMAN SVCS, HHS: DEVELOPMENTAL SERV-DIV OF, DIV OF DEVELOPMENTAL SVCS., SERVICES FOR INFANTS & TODDLERS WITH DISABILITIES**

Fiscal Year	Class/Object	Class Title	Amount
SFY 2010	102-500731	Contracts for Program Services	\$ 700,000.00
SFY 2011	102-500731	Contracts for Program Services	\$1,634,993.00
SFY 2012	102-500731	Contracts for Program Services	\$ <u>60,903.00</u>

**Total \$2,395,896.00**

2. Contingent upon the approval of Requested Action 1, further authorize the Department of Health and Human Services, Division of Community Based Care Services, Bureau of Developmental Services to make a minimum advance payment up to a maximum of one-third of the contract price limitation effective for the period retroactive to September 1, 2009 through September 30, 2011 for the purpose of assuring expedient utilization of ARRA Stimulus funds within the federally prescribed expenditure timelines.

**Explanation**

The purpose of this request is to contract with Easter Seals New Hampshire as an Administrative Subcontract Agency to ensure the Bureau's capacity to administer funds made available to New Hampshire's Part C Program for Infants and Toddlers with Disabilities under the American Recovery and Reinvestment Act of 2009, section 807 (ARRA IDEA Part C funds). Approval for the retroactive period is requested as the contractor needed to engage in preliminary activities during the early part of the fiscal year to ensure timely utilization of the ARRA funding.

The purpose of the requested arrangement with Easter Seals New Hampshire is to allow the Bureau of Developmental Services to efficiently and expeditiously allocate and fully expend the Part C ARRA stimulus funds awarded to New Hampshire's program for Infants and Toddlers with Disabilities within the federally prescribed ARRA timeline.

Easter Seals New Hampshire, as the Administrative Subcontract Agency, will be responsible for the following activities, under the supervision and oversight of the New Hampshire Bureau of Developmental Services:

- (1) Receipt of and financial accounting for the Part C ARRA funds grant award according to guidelines set forth by the State of NH; management and payment of invoices related to projects funded under Part C ARRA funds, monthly financial reports to BDS and quarterly narrative and financial reports regarding utilization of Part C ARRA funds.
- (2) Management of project proposals submitted for consideration/funding under Part C ARRA funds, including: receipt of project proposals, organization of project proposals, coordination of project proposal review committee meetings and any other meetings or activities associated with the Part C ARRA project.
- (3) Compliance with state and federal ARRA requirements, including those outlined in the attached document entitled: EXHIBIT C TO P-37 (ARRA PROVISIONS).
- (4) Assure that the Administrative Subcontract Agency will promptly refer to an appropriate inspector general any credible evidence that a person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Part C ARRA funds;
- (5) Ensure that "NH Recovery" is utilized in the title of all documents related to the use of ARRA funds.
- (6) Ensure that all ARRA Part C projects are completed and invoices for all projects are appropriately processed no later than September 30, 2011.

A legal notice seeking proposals to administer funds was published on the Department of Health and Human Services website from July 2, 2009 to July 29, 2009. Two agencies responded to this notice: Community Support Network Incorporated and Easter Seals New Hampshire. Both proposals were comprehensive and in accordance with the requirements of the request for proposals. Staff from the Department of Health and Human Services reviewed and scored the requests for proposals and, after a thorough review, Easter Seals of New Hampshire was awarded the proposal to act as the Administrative Subcontract Agency for administration of Part C IDEA ARRA Stimulus Funds.

Area served: Statewide.

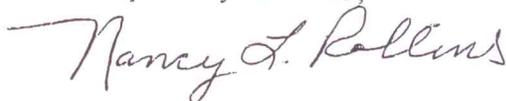
His Excellency, Governor John H. Lynch  
and the Honorable Executive Council  
Page 3

The source of funds for appropriation is 100% federal funds.

In the event that federal funds are no longer available, general funds will not be requested to support this program.

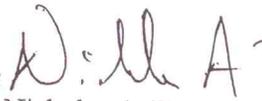
Your approval of this request will be greatly appreciated.

Respectfully submitted,

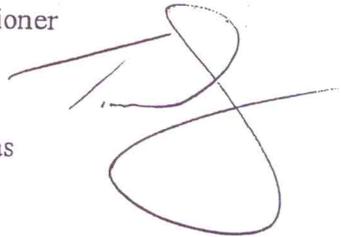


Nancy L. Rollins  
Associate Commissioner

Approved by:



Nicholas A. Toumpas  
Commissioner



SCORING SUMMARY SHEET

REQUEST FOR PROPOSALS  
FOR MANAGEMENT AND DISTRIBUTION OF PART C/IDEA ARRA FUNDS FOR  
SERVICES TO INFANTS AND TODDLERS WITH DISABILITIES

Applicant: Easter Seals New Hampshire, Inc.

1. Individual/Agency Capacity	(40 points)	<u>35</u>
2. Program Structure/Plan of Operation	(45 points)	<u>40</u>
3. Budget and Justification	(10 points)	<u>10</u>
4. Format	( 5 points)	<u>5</u>
Total Points / Score:	(100 points)	<u>90</u>

Scored by Kenneth R. Nielsen, Esq., Attorney III, Office of Client and Legal Services,  
Dept. of Health & Human Services

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1. Individual/Agency Capacity	(40 points)	<u>30</u>
2. Program Structure/Plan of Operation	(45 points)	<u>40</u>
3. Budget and Justification	(10 points)	<u>10</u>
4. Format	( 5 points)	<u>5</u>
Total Points / Score:	(100 points)	<u>85</u>

Scored by Jane Hybsch, Administrator IV, Medicaid Administration, Dept. of Health &  
Human Services

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1. Individual/Agency Capacity	(40 points)	<u>38</u>
2. Program Structure/Plan of Operation	(45 points)	<u>42</u>
3. Budget and Justification	(10 points)	<u>6</u>
4. Format	( 5 points)	<u>5</u>
Total Points / Score:	(100 points)	<u>91</u>

Scored by Patricia Tilley, Administrator II, Bureau of Maternal & Child Health, Division  
of Public Health Services, Dept. of Health & Human Services

**Total Aggregate Score: 89**

SCORING SUMMARY SHEET

REQUEST FOR PROPOSALS  
FOR MANAGEMENT AND DISTRIBUTION OF PART C/IDEA ARRA FUNDS FOR  
SERVICES TO INFANTS AND TODDLERS WITH DISABILITIES

Applicant: Community Support Network, Inc. (CSNI)

1. Individual/Agency Capacity	(40 points)	<u>40</u>	
2. Program Structure/Plan of Operation	(45 points)	<u>35</u>	
3. Budget and Justification	(10 points)	<u>5</u>	
4. Format	( 5 points)	<u>5</u>	
Total Points / Score:	(100 points)		<u>85</u>

Scored by Kenneth R. Nielsen, Esq., Attorney III, Office of Client and Legal Services,  
Dept. of Health & Human Services

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1. Individual/Agency Capacity	(40 points)	<u>20</u>	
2. Program Structure/Plan of Operation	(45 points)	<u>30</u>	
3. Budget and Justification	(10 points)	<u>0</u>	
4. Format	( 5 points)	<u>5</u>	
Total Points / Score:	(100 points)		<u>55</u>

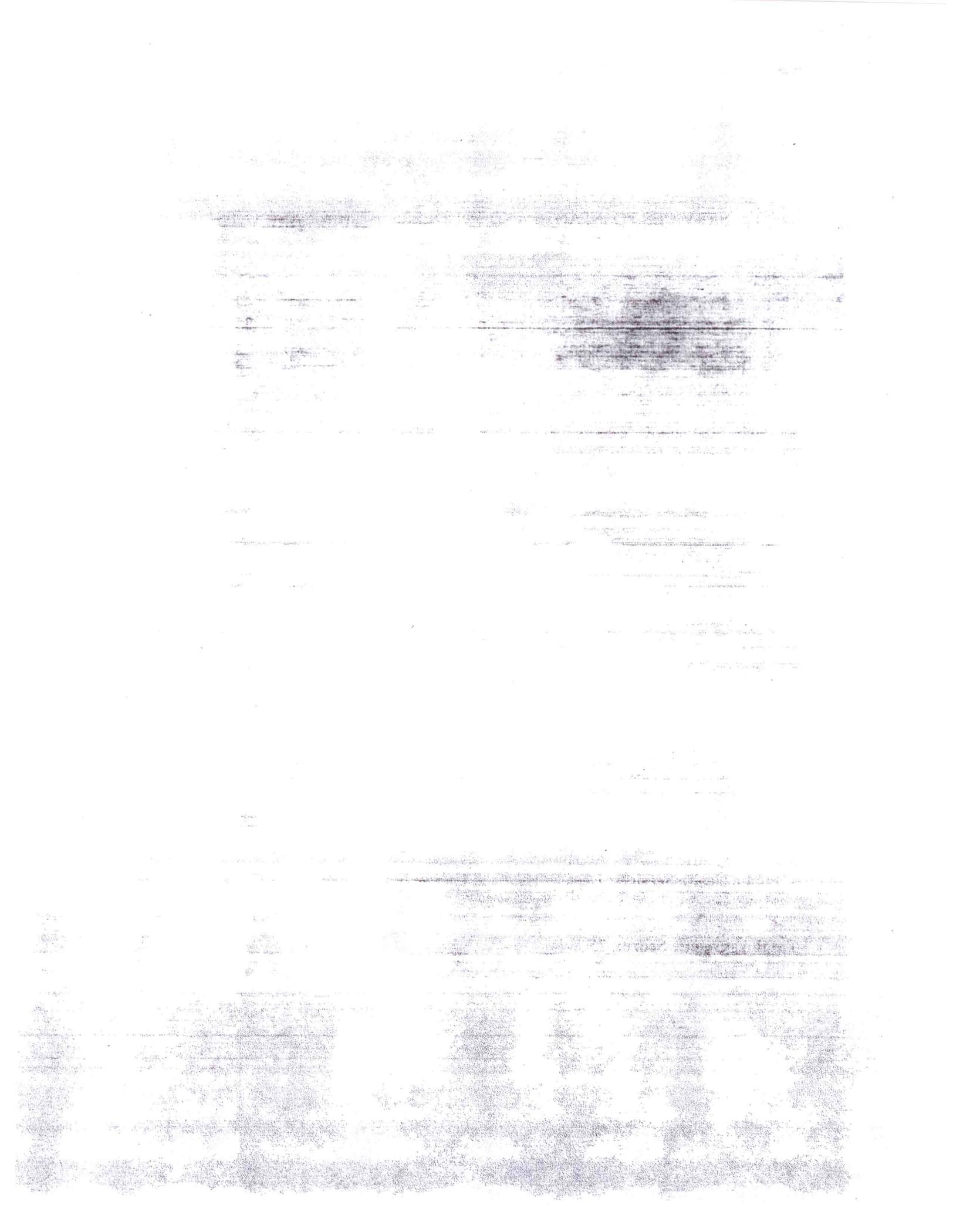
Scored by Jane Hybsch, Administrator IV, Medicaid Administration, Dept. of Health &  
Human Services

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1. Individual/Agency Capacity	(40 points)	<u>35</u>	
2. Program Structure/Plan of Operation	(45 points)	<u>40</u>	
3. Budget and Justification	(10 points)	<u>5</u>	
4. Format	( 5 points)	<u>5</u>	
Total Points / Score:	(100 points)		<u>85</u>

Scored by Patricia Tilley, Administrator II, Bureau of Maternal & Child Health, Division  
of Public Health Services, Dept. of Health & Human Services

Total Aggregate Score: 75



Subject: Disabilities

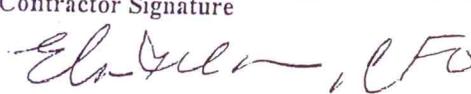
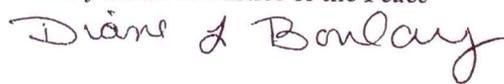
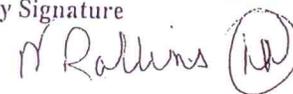
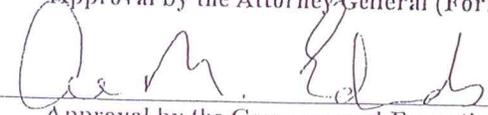
For Management and Distribution of Part C/IDEA ARRA Funds for services to Infants and Toddlers with

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name Division of Community Based Care Services Bureau of Developmental Services		1.2 State Agency Address 105 Pleasant Street Concord, NH 03301	
1.3 Contractor Name Easter Seals New Hampshire, Inc.		1.4 Contractor Address 555 Auburn Street Manchester, NH 03103	
1.5 Contractor Phone Number (603) 623-8863	1.6 Account Number 010-093-0816-102-0731	1.7 Completion Date September 30, 2011	1.8 Price Limitation \$2,395,896.00
1.9 Contracting Officer for State Agency Matthew Ertas, Bureau Administrator		1.10 State Agency Telephone Number 603-271-5034	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Elin Treanor, Chief Financial Officer	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Hillsborough</u> On <u>9/14/09</u> before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or <del>Justice of the Peace</del>  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace DIANE L. BOULAY, Notary Public My Commission Expires September 3, 2013			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Nancy L. Rollins, Associate Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>NIA</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>9/22/09</u>			
1.18 Approval by the Governor and Executive Council 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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("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. 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 consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written 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 \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance 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 fifteen (15) 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 endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) 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.

**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.