

# GENERAL TERMS AND CONDITIONS

## 1. DEFINITIONS:

The term “contract” shall also mean agreement.

The term “quotation” shall also mean Quotation, bid, offer and qualification/experience statement.

The term “Service Provider” shall include all proposers, offerors, bidders, suppliers, vendors and contractors, and shall include their successors, transferees and assignees. Unless otherwise required by the context, “Service Provider” includes any of the Service Provider’s consultants, sub consultants, contractors, and subcontractors.

## 2. PREPARATION OF QUALIFICATIONS AND EXPERIENCE STATEMENTS:

Statements shall be submitted on the forms provided and must be signed by the Service Provider or the Service Provider’s authorized representative. The person signing the Statement shall initial any corrections to entries made on the Quotation forms.

Alternative statements will not be considered; however, additional supporting information/documents may be submitted in response to this RFQ&E.

Unless otherwise stated in the Request for Qualifications and Experience (RFQ&E), the Service Provider agrees that the Statement shall be deemed open for acceptance for sixty (60) calendar days subsequent to submittal to the City of Concord or as modified by addendum.

Any questions or inquiries must be submitted in writing, and must be received by the Purchasing Manager no later than seven (7) calendar days before the Request for Qualifications & Experience due date to be considered. Any changes to the RFQ&E will be provided to all Service Providers of record.

The Service Provider shall not divulge, discuss or compare this Quotation with other Service Providers and shall not collude with any other Service Provider or parties to a Quotation whatsoever. (Note: No premiums, rebates or gratuities permitted either with, prior to, or after any delivery materials are allowed. Any such violation will result in the cancellation and/or return of materials, as applicable, and the removal from Quotation List).

## 3. TAX:

The City is exempt from all sales, use and federal excise taxes. The City’s tax exemption certificate will be provided to the successful Service Provider upon request. Quotation prices shall not include these taxes.

#### **4. PRICING:**

Unless otherwise specified all prices listed are firm for the term of the contract. All prices should include all labor, material and transportation costs, and any discounts offered. No fuel surcharges shall be allowed at any time.

#### **5. STANDARD OF CARE, GUARANTEES & WARRANTY:**

Service Provider shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Service Provider warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Service Provider to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements.

All parts and labor related to contracts must be guaranteed and include a warranty. If any work is unable to be guaranteed, the contractor must inform the City, in writing, prior to the delivery of an item or any work being performed. Non-guaranteed work must be offered at a discount rate from the Quotation prices. Inspection, testing and final determination of non-warranty work shall be performed at no cost to the City.

#### **6. ENERGY STAR® COMPLIANCE**

The Service Provider shall provide products that earn the Energy Star® and meet the Energy Star® specifications for energy efficiency. The Service Provider is encouraged to visit [www.energystar.gov](http://www.energystar.gov) for complete product specifications and updated lists of qualifying products.

#### **7. DISADVANTAGED BUSINESS ENTERPRISES**

The City hereby notifies all Service Providers that it will affirmatively insure that in any contract entered into pursuant to this Request for Qualifications & Experience, disadvantaged business enterprises will be afforded full opportunity to submit Statements in response to this request and will not be discriminated against on the grounds of race, color, national origin, religion, sex, age or disability in consideration for an award.

#### **8. ELECTION DAY CONSTRUCTION POLICY**

Unless otherwise approved by the City, all City contracts that entail any element of construction in the public right of way shall prohibit work during the hours in which Concord is holding a primary, general or special election as determined by the Concord City Clerk. A copy of the complete Election Day Construction Policy can be viewed on-line at [www.concordnh.gov/Purchasing](http://www.concordnh.gov/Purchasing).

#### **9. SUBMISSION OF STATEMENTS:**

Statements must be submitted as directed in the RFQ&E&E documents, and on the forms provided unless otherwise specified. Statements must be typewritten or printed in ink. Statements must be mailed or delivered in person. Documents that are faxed or e-mailed will not be accepted.

## **10. PROHIBITED INTERESTS**

By submitting a Statement, the Service Provider certifies that:

- (a) no officer, agent, or employee of the City who has participated in contract document negotiations on the part of the City has a pecuniary interest in the Statement;
- (b) no gratuities including, but not limited to, entertainment or gifts were offered or given by Service Provider to any officer or employee of the City of Concord with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract;
- (c) the Statement is made in good faith without fraud, collusion, or connection of any kind with any other prospective Service Provider for the same Request for Qualifications & Experience;
- (d) the Service Provider is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm; and
- (e) the Service Provider presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract, and that no person having such an interest shall be employed in the performance of this contract.

If any prohibited interests come to the attention of Service Provider at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Concord. If City of Concord determines that a conflict exists and was not disclosed to the City of Concord, it may terminate the contract at will or for cause.

The rights and remedies of this section shall in no way be considered for be construed as a waiver of any other rights or remedies available to the City Concord under this contract or at law.

## **11. WITHDRAWAL OF STATEMENTS:**

Qualification statements may be withdrawn prior to the opening date and time upon written, faxed, e-mailed or telegraphic request of the VENDOR to the Purchasing Manager. Negligence on the part of the Manager in preparing a statement shall not constitute a right to withdraw a statement subsequent to the statement opening. Statements may not be withdrawn for the period as indicated in the Preparation of Qualifications and Experience Statements.

## **12. SERVICE PROVIDERS INTERESTED IN MORE THAN ONE STATEMENT:**

If more than one Statement is offered by any one party, or by any person or persons representing a party, all such Statements shall be rejected.

**13. RECEIPT AND OPENING OF QUALIFICATIONS & EXPERIENCE STATEMENTS:**

Qualification & Experience Statements shall be submitted prior to the time fixed in the RFQ&E. Statements received after the time so indicated shall be returned unopened.

It is the Service Provider's responsibility to take all necessary measures to ensure that the Statement is received by the deadline and in accordance with the City of Concord's requirements regardless of extreme weather or other extenuating circumstances. The Service Provider is required to ensure enough time is allowed for the Statement to be received. If the City of Concord's Offices are closed on the due date of a Request for Qualifications & Experience, the deadline will automatically change to the next business date that the municipal offices are open.

**14. STATEMENTS RESULTS:**

All Statements received shall be considered confidential and not available for public review until after a Service Provider has been selected for participation in Phase 2.

**NO TELEPHONE REQUESTS FOR RESULTS WILL BE ACCEPTED OR GIVEN.**

**15. LIMITATIONS:**

An RFQ&E does not commit the City to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for services, supplies or equipment. The City reserves the right to accept or reject any or all Statements received as a result of this request, or to cancel in part or in its entirety a RFQ&E, if it is in the best interest of the City to do so.

**16. QUALIFICATIONS & EXPERIENCE STATEMENT EVALUATION:**

In an attempt to determine if a Service Provider is responsible, the City, at its discretion, may obtain technical support from outside sources. Each Service Provider will agree to fully cooperate with the personnel of such organizations.

**17. AWARD OF CONTRACT:**

The City shall issue a Notice of Award to the selected Service Provider and shall send such Notice of Award to all other non-selected Service Providers.

The contract entered into by the City shall be in response to the RFQ&E and subsequent discussions.

It is the policy of the City that contracts are awarded, among other considerations, only to responsive and responsible Service Providers. In order to qualify as responsive and responsible, a prospective Service Provider must meet the following standards as they relate to a request:

- Have adequate financial resources for performance or have the ability to obtain such resources as required during performance;
- Have the necessary experience, organization, technical and professional qualifications, skills and facilities;

- Be able to comply with the proposed or required time of completion or performance schedule;
- Have a demonstrated satisfactory record of performance; and
- Adhere to the specifications of the Quotation and provide all documentation required of the Quotation

The City reserves the right to refuse to issue an award to any Service Provider that has defaulted upon a contract with the City, the State of New Hampshire, or the Federal Government, or turned such a project over to its surety for completion within the past five (5) years. Awards will not be made to any principal owner or officers that have a 10% or greater interest in a firm or corporation that has defaulted upon a contract with the City, the State of New Hampshire, or the Federal Government within the past five (5) years. Corporations must currently be in good standing with the Secretary of State's Office in the state of incorporation.

The contract will be awarded to a responsive and responsible Service Provider based on the evaluation criteria detailed in the Request for Qualifications and their demonstrated ability to provide the technical services and support requested, and with an agreed upon timeframe and schedule. The selected Service Provider selected will be the most qualified for the services requested.

**18. DISQUALIFICATION:**

In the event Service Provider (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, the City of Concord may terminate the contract at will or for cause. Upon termination, Service Provider shall refund to the City of Concord any profits realized under this contract, and Service Provider shall be liable to the City of Concord for any costs incurred by the City of Concord in completing the work described in this contract. At the discretion of the City of Concord, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

**19. PROTESTS:**

This Section sets forth the exclusive protest remedies with respect to the Request for Qualifications & Experience and any award issued thereunder. Each Service Provider, by submitting its Statement, expressly: (1) recognizes the limitation on its right to protest contained herein; (2) waives all other rights and remedies; and (3) agrees that the decision on any protest, as provided herein, shall be final. These provisions are included in the Request for Qualifications expressly in consideration for such waiver and agreement by the Service Providers. Such waiver and agreement by each Service Provider are also consideration to each other Service Provider for making the same waiver and agreement.

All protests shall be made by filing, in- hand, or first-class mail to the City's Purchasing Manager at 311 North State Street, Concord, New Hampshire, with the protest document received on or before 5:00pm on the date due for such protest.

**A. PROTESTS REGARDING THE REQUEST FOR QUALIFICATIONS:**

Service Providers may protest the terms of the Request for Quotations on the grounds that any aspect of the procurement process described herein is contrary to legal requirements applicable to the procurement. Protests regarding the Request for Quotations shall state the grounds for the protest and shall include all factual and legal documentation to establish the merits of the protest. Protests regarding the Request for Quotations shall be filed as soon as the basis for protest is known to the Service Provider, but in no event later than fifteen (15) calendar days before the Quotation due date, provided that protests regarding any Addendum shall be filed no later than five (5) business days after the Addendum is issued.

The City will distribute copies of the protest to other Service Providers, and may, in its sole discretion, request other Service Providers to submit statements or arguments regarding the protest, and may, in its sole discretion, discuss the protest with the Service Provider. No hearing will be held on the protest. The City will issue a decision and deliver it to all Service Providers. The City's decision shall be final and binding on all Service Providers. The City may correct any error, omission or ambiguity identified in the protest and make appropriate revisions to the Request for Quotations by issuing Addenda. The failure of a Service Provider to raise a ground for a protest regarding the Request for Quotations shall preclude consideration of that ground in any protest of an award unless such ground was not and could not have been known to the Service Provider in time to protest prior to the final date for such protests. The City may extend the Quotation due date, if necessary, to address any such protest issues.

**B. PROTESTS REGARDING THE AWARD**

Protests regarding the Notice of Award must be received by the City within seven (7) calendar days after the City's issuance of the Notice of Award. Such protest shall state the grounds for the protest and shall include all factual and legal documentation to establish the merits of the protest. The Service Provider shall concurrently file a copy of the protest with the other Service Providers.

Other Service Providers may file, by hand-delivery or first-class mail to the City's Purchasing Manager at 311 North State Street, Concord, New Hampshire 03301, statements in support of or in opposition to the protest within seven (7) calendar days of the filing of the detailed statement of protest.

All protests regarding an award shall be resolved in accordance with the City's Contract Award Protest Policy and Procedure, which may be retrieved on-line at [www.concordnh.gov/Purchasing](http://www.concordnh.gov/Purchasing), or otherwise upon request to the City's Purchasing Manager.

The City shall issue a written decision regarding the protest within thirty (30) calendar days after the protest filing. No evidentiary hearing or oral argument shall be provided except in the sole discretion of the City. The City's decision shall be final and binding on all Service Providers.

**20. CANCELLATION OF AWARD:**

The City reserves the right to cancel the award without liability to the selected Service Provider, at any time before a contract has been fully executed by all parties.

**21. AMENDMENTS:**

A contract may be amended only in writing signed by the selected Service Provider and the City.

**22. CONTRACT:**

Any contract between the City and the selected Service Provider shall include: (1) Request for Qualifications & Experience and any amendments and addenda thereto; (2) all Statement documents; (3) all contract documents; and (4) the selected Service Provider's Statement in response to the RFQ&E, and any written clarification to the Statement response. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and referenced in the RFQ&E and contract documents shall govern.

**23. EXECUTION OF CONTRACT:**

The selected Service Provider shall sign (execute) the contract documents and shall satisfy all conditions set forth in the Request for Qualifications to enter into the contract and return such signed documents to the City within ten (10) calendar days from the date mailed or otherwise delivered to the successful Service Provider, or as otherwise extended in writing by the City.

Failure of the successful Service Provider to execute the contract within ten (10) calendar days from the date mailed or otherwise delivered to the successful Service Provider shall be just cause for cancellation of the award.

**24. APPROVAL OF CONTRACT:**

Upon receipt of the contract and surety bonds that have been fully executed by the selected Service Provider, the City shall complete the execution of the contract in accordance with local laws or ordinances and return a copy of the fully executed contract to the selected Service Provider. Delivery of the fully executed contract, along with a Notice to Proceed to the selected Service Provider shall constitute the City's approval of the contract with the selected Service Provider.

The contract shall become effective on the date the contract is signed by the City and the selected Service Provider ("Effective Date"). If the selected Service Provider commences any services prior to the Effective Date, all services performed by the selected Service Provider prior to the Effective Date shall be performed at the sole risk of the selected Service Provider, and in the event that the contract does not become effective, the City shall have no liability to the selected Service Provider, including without limitation, any obligation to pay the selected Service Provider for any costs incurred or services performed.

**25. INSURANCE:**

The successful Service Provider shall procure and maintain insurance, in the amounts and coverage as set forth in a Request for Quotations, or otherwise required by the City, at the Service Provider's sole expense, with City approved insurance companies, insuring against any and all public liability, including injuries or death to persons and damage to property, arising out of or related to the goods or Service Provider's performance hereunder.

The City shall be named as an additional insured, as determined by the City, in said policy or policies, and the successful Service Provider shall furnish to the City original Certificate(s) of Insurance evidencing the required coverage to be in force on the date of this Agreement and renewal Certificates of Insurance if coverage has an expiration or renewal date occurring during the term of this Agreement.

In addition to the certificate(s) of insurance, the successful Service Provider shall also provide, as required by the City, an additional insured endorsement. If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the requirement for an endorsement may be fulfilled by submitting that document along with a signed declaration page referencing the blanket endorsement or policy form. The successful Service Provider shall ensure that all insurance coverage maintained or procured pursuant to this agreement shall be endorsed, as required by the City, to waive subrogation against the City, however this waiver of subrogation requirement shall not apply to any policy that includes a condition that specifically prohibits such an endorsement or voids coverage should the successful Service Provider enter into such an agreement on a pre-loss basis. All certificates shall provide that the City be given thirty (30) days written notice prior to any change, substitution, or cancellation before the stated expiration date.

The City's examination of, or failure to request or demand, any evidence of insurance hereunder, shall not constitute a waiver of any requirement and the existence of any insurance shall not limit the Service Provider's obligation under any provision hereof.

Except to the extent of comparable insurance acceptable to, or express waiver by the City, the Service Provider shall, or shall cause any carrier engaged by the Service Provider, to insure all shipments of goods for full value.

If the contract with the Service Provider involves the performance of work by the Service Provider's employees at property owned or leased by the City, the Service Provider shall furnish such additional insurance as the City may request in respect thereof, but in any event and without such request, workers' compensation insurance and unemployment compensation insurance as required by laws of the State of New Hampshire and public and automotive liability and property damage insurance. In no event shall such employees of the Service Provider be deemed to be the employees of, or under the direction or control of the City for any purpose whatsoever.

## **26. DELIVERY:**

Deliveries are to be made only to the City as set forth on the purchase order and in accordance with accepted commercial practices, without extra charge for packing or containers.

Deliveries that do not conform to the specifications or are not in good condition upon receipt shall be replaced promptly. Deliveries shall be inside the building, and accepted weekdays between the hours of 8:30 AM and 3:30 PM unless otherwise stated. Delivery arrangements must be made with requesting department prior to delivery.

## **27. INVOICING:**

Invoices are to be submitted in duplicate upon delivery or pick-up to the user department or division. The invoice must include an itemization of all items, supplies, services, equipment or labor furnished; including unit list price, net price, extensions and total amount due. In addition,

on projects that will involve partial/progress payments and/or retainage a summary statement in the following format will be provided with each invoice:

|                                  |                  |
|----------------------------------|------------------|
| Original Contract Amount         | \$\$\$\$\$\$\$\$ |
| Plus/minus Change Orders         | \$\$\$\$\$\$\$\$ |
| Total Adjusted Contract Amount   | \$\$\$\$\$\$\$\$ |
| Work Completed to Date           | \$\$\$\$\$\$\$\$ |
| Less Previous Invoices           | \$\$\$\$\$\$\$\$ |
| Less Retainage (if any)          | \$\$\$\$\$\$\$\$ |
| Equals: Balance due this Invoice | \$\$\$\$\$\$\$\$ |
| Balance Remaining on Contract    | \$\$\$\$\$\$\$\$ |

**All invoices must reference a valid City of Concord Purchase Order Number.**

**28. PAYMENT:**

Unless otherwise stated, payment will be made within thirty (30) days of the completion of the service, in an acceptable fashion, to the City and receipt of invoice, whichever is later.

**29. AUDIT:**

For a period of at least three (3) years after completion of any contract, it is the responsibility of the Service Provider to make available at the Service Provider's place of business, upon demand, all price lists, documents, financial records and other records pertaining to purchases made and/or work performed under contract for the purposes of audit by the City of Concord.

**30. INSPECTION & EVALUATION:**

The City of Concord reserves the right to inspect the Service Provider's facilities during operating hours to determine that the level of inventory is adequate for the City's needs. The conditions and operations of the facility shall be taken into consideration in making the award of this contract.

**31. COMPLIANCE WITH LAWS:**

**(A) RSA CHAPTER 281-A, WORKER'S COMPENSATION**

The selected Service Provider shall comply with the requirements of RSA chapter 281-A, Workers' Compensation Law.

**(B) RSA CHAPTER 277-A, SAFETY DATA SHEETS:**

To the extent applicable, the selected Service Provider agrees to comply with RSA chapter 277-A.

The selected Service Provider shall submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to RSA 277-A when

deliveries are made. The selected Service Provider shall deliver all containers properly labeled pursuant to RSA chapter 277-A.

Failure to submit an MSDS and/or label on each container shall constitute a violation of the contract and render Service Provider liable for any damages. Failure to submit MSDS and/or labels on each container may further result in civil or criminal penalties, including debarment and action to prevent the Service Provider from selling said substances, or mixtures containing said substances within the City. All Service Providers furnishing substances or mixtures subject to RSA chapter 277-A are cautioned to obtain and read the law referenced above.

**(C) RSA CHAPTER 277:5-a, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION CERTIFICATION:**

All Service Provider signing a contract to work on a construction, reconstruction, alteration, remodeling, installation, demolition, maintenance, or repair of any public work or building for the City with a total project cost of \$100,000 or more shall comply with the requirements of RSA chapter 277:5-a.

**(D) RSA CHAPTER 282-A, WARRANTY OF TITLE AND AGAINST INFRINGEMENT (UCC):**

The successful Service Provider agrees to indemnify and defend the City of Concord from all claims and losses resulting from alleged and actual patent infringements and further agrees to hold the City of Concord harmless from any liability arising under the Uniform Commercial Code, RSA chapter 382-A, 2-312 (3).

**(E) CITY OF CONCORD'S ORDINANCES, FUGITIVE DUST AND NOISE ORDINANCES**

All work shall be conducted in conformance with the City's Code of Ordinances, Title I, General Code including but not limited to:

1. Chapter 11, Public Nuisances, Article 11-3 (Fugitive Dust); and
2. Chapter 13, Public Health, Article 13-6 (Noise).

The City's Code of Ordinances can be viewed at [www.concordnh.gov](http://www.concordnh.gov).

**(F) NON-DISCRIMINATION**

In connection with the performance of the Services, the selected Service Provider shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the selected Service Provider, 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 selected Service Provider. In addition, the selected Service Provider shall comply with all applicable copyright laws. During the term of this contract, the selected Service Provider shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, physical or mental handicap, marital status, sexual orientation, gender identity, gender expression or national origin and will take affirmative action to prevent such discrimination. If this Agreement is funded in any part by monies of the United States, the

Service Provider 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 Selected Service Provider further agrees to permit the State or United States access to any of the Service Provider’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.

**(G) OTHER LAWS AND REGULATIONS**

In addition to the laws and regulations set forth herein, the Service Provider shall keep fully informed of all state and national laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction authority over the same. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contract for the work in relation to any such laws, specifications or contract for the work in relation to any such laws, ordinances, regulations, orders or decrees, the Service Provider shall forthwith report the same to the City’s Project Manager in writing.

The Service Provider shall at all times observe and comply with such laws and ordinances and shall cause all agents and employees to observe and comply with such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the City and its officers, agents and servants against any claim or liability arising from or based on the violation of any such laws, ordinances, regulations, order or decrees, whether by the Service Provider or the Service Provider’s employees or subcontractors.

**32. PCI-DSS: PAYMENT CARD INDUSTRY STANDARD SECURITY STANDARD:**

To the extent applicable, Service Provider is responsible for the security of cardholder data which Service Provider possesses or otherwise stores, processes, or transmits on behalf of the City of Concord. Service Provider shall abide by the rules and regulations set forth in the PCI-DSS.

**33. DEFAULT, TERMINATION OF CONTRACT FOR CAUSE AND REMEDIES:**

Any one or more of the following acts or omissions of the selected Service Provider shall constitute an event of default hereunder (“Event of Default”): (a) failure to perform the services satisfactorily or on schedule; (b) failure to submit any report required hereunder; and/or (c) failure to perform any other covenant, term or condition of this contract.

In the Event of a Default, the City shall have the right to terminate the contract. To terminate the contract, the City shall provide written notice to the Service Provider of such termination. Such written notice shall state the contract violation(s) and be delivered to the Service Provider’s address as identified in the contract documents. This notice shall provide the Service Provider with fifteen (15) calendar days from the date of delivery, to correct the violation(s) to the City’s satisfaction. Should the Service Provider fail to satisfactorily correct all violations within (15) fifteen calendar days, the City may terminate the contract immediately upon delivery of a Notice of Termination to the contractor. Such termination shall become effective immediately or as otherwise determined by the City.

Notwithstanding the above, the Service Provider shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of any contract, and the City may withhold any payments until such time as the exact amount of damages due the City is determined.

In the event of termination for cause, all finished or unfinished work, services, documents and materials prepared by the Service Provider under the contract shall become the City's property.

The City may also terminate this contract in accordance with any other applicable contract provision.

#### **34. TERMINATION FOR THE CONVENIENCE OF THE CITY:**

The City may terminate any contract at any time by giving written notice to the Service Provider of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.

If the contract is terminated by the City as provided herein, the Service Provider shall receive all amounts due and not previously paid in accordance with the contract prior to the date of the written notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

In the event of termination for convenience, all finished or unfinished work, services, documents and materials prepared by the Service Provider under the contract shall become the City's property.

#### **35. SELECTED SERVICE PROVIDER'S RELATION TO THE CITY:**

In the performance of the awarded contract the selected Service Provider is in all respects an independent contractor and is neither an agent nor an employee of the City. Neither the selected Service Provider nor any of its officers, employees, agents or members shall have authority to bind the City or receive any benefits, workers' compensation or other emoluments provided by the City to its employees.

#### **36. OWNERSHIP OF QUOTATIONS AND REPORTS:**

The Statement and all materials and other documents submitted with such Statement and all supplementary materials submitted in connection with any clarification of any submitted Statement and in connection with the negotiation of any Statement with the City (collectively, "Statement Materials") shall upon submittal become the absolute property of the City and may be used by the City in connection with the Request for Qualifications and for such other purposes as the City may choose without engaging the Service Provider and without any compensation therefore being paid to the Service Provider.

The Service Providers understand that in submitting its Statement Materials to the City, Service Providers are delivering all such materials to the City in consideration of a potential award of a contract. Service Providers in doing so agree that it has received such consideration and other good and valuable consideration sufficient to transfer all right, title and interest in and to the Statement Materials to the City who shall have and retain all copyright, trademark, other

intellectual property and other intangible rights, and all ownership, right, title and interest in and to the Statement Materials.

In addition, all data, materials, plans, reports and documentation prepared pursuant to any contract between the City of Concord and the successful Service Provider shall belong exclusively to the City.

**37. ANTI-TRUST PROVISION:**

The selected Service Provider hereby agrees that it will assign to the City all cause of action that it may acquire under the anti-trust laws of the State of New Hampshire and the United States as the result of conspiracies or combination of contracts in restraint of trade which affect the price of goods or services obtained by the City under any contract if so requested by the City.

**38. FORCE MAJEURE:**

To the extent that the selected Service Provider is prevented by Force Majeure from carrying out, in whole or part, its obligations under this contract and the selected Service Provider gives notice and details of the Force Majeure to the City as soon as practicable (and in any event within five (5) business days after becoming aware of the Force Majeure event or circumstance), then the applicable deadlines in effect at the time of the Force Majeure may be extended up to (60) calendar days or as otherwise determined by the City at its sole discretion. The selected Service Provider shall use commercially reasonable and diligent efforts to eliminate or avoid the Force Majeure and, thereafter, promptly and diligently resume performing its obligations under this contract. As used herein, "Force Majeure" shall mean any event or circumstance that prevents either Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the fault or negligence, of the Party claiming Force Majeure, and (ii) by the exercise of reasonable due diligence, the Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on economic or financial hardship. In addition, a delay or inability to perform substantially attributable to a Party's failure to timely take the actions necessary to obtain and maintain all necessary permits, a failure to satisfy contractual conditions or commitments (unless otherwise caused by an event of Force Majeure), or lack of or deficiency in funding or other resources, shall each not constitute a Force Majeure. Force Majeure shall include, without limitation, events such as: fires; floods; lightning strikes; ground sliding; and earthquakes.

**39. ACCESS TO PUBLIC MEETINGS**

All City of Concord public meetings are accessible for persons with disabilities. Any person who feels that he or she may be unable to participate in a City of Concord public meeting due to a disability should, to the extent possible, call (603) 225-8570 at least 48 hours prior to the meeting so that a reasonable accommodation can be arranged.

For meetings held in the City Council Chambers, any person who is unable to access the upper level of the Council Chambers to address the City Council or any other public body may use the podium and/or microphone located at the lower level of the Council Chambers. Other reasonable accommodations may be available upon request.

**40. NON-APPROPRIATIONS:**

The City of Concord's obligations to pay any amount due under a contract are contingent upon availability and continuation of funds for the purpose. The City may terminate the contract at any time, due to the non-appropriation of funds, and all future payment obligations of the City cease on the date of termination.

**41. ASSIGNMENT OR SUB-CONTRACTING:**

None of the work or services covered by the contract shall be assigned in full or in part, or sub-contracted without the prior written approval of the City.

**42. EXCLUSIVITY:**

This contract will be for the goods/services described herein; however, this contract should not be considered exclusive. As deemed necessary, the City reserves the right to obtain these goods/services from any other Service Provider.

**43. NOTICES:**

Any notice under this contract shall be made to the addresses and persons specified in the contract. All notices, requests, statements or payments shall be made in writing. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, or email. Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, unless confirmation of successful transmission is received, including by way of a reply to the e-mail by the receiving Party. A Party may change its address and contact information by providing notice of the same in accordance with the provisions of this Article.

**44. PROVISION REQUIRED BY LAW DEEM INSERTED:**

Each and every provision and clause required by law to be inserted in this Request for Qualifications and any subsequent contract shall be deemed to be inserted herein and this Request for Qualifications and contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Request for Qualifications and/or contract shall forthwith be physically amended to make such insertion or correction.

**45. SEVERABILITY:**

In the event any of the provisions of this Request for Qualifications or contract are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Request for Qualifications or contract will remain in full force and effect.

**46. CHOICE OF LAW AND VENUE:**

All disagreements and disputes, if any, arising under the terms of any contract, either by law, in equity, or by arbitration, shall be resolved pursuant to the laws and procedures of the State of New Hampshire, in which State any contract shall be deemed to have been executed. No action

at law, or equity, or by arbitration shall be commenced to resolve any disagreements or disputes under the terms of any contract, in any jurisdiction whatsoever other than the State of New Hampshire and Merrimack County.

The Service Provider agrees that it consents to the jurisdiction of the courts of the State of New Hampshire and, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts for the purpose of any suit, action or other proceeding arising out of any of their obligations hereunder or with respect to the transactions contemplated hereby, and expressly waives any and all objections it may have to venue in any such courts.

*FAILURE TO ACKNOWLEDGE THIS REQUEST FOR QUALIFICATIONS MAY RESULT IN WITHDRAWAL FROM THE STATEMENT LIST FOR THIS COMMODITY OR SERVICE.*

*FAILURE TO COMPLY WITH THESE REQUIREMENTS COULD RESULT IN THE CANCELLATION OF AN ORDER OR CONTRACT.*