

Select Board  
Town of Bethlehem  
2155 Main Street, PO Box 189  
Bethlehem, NH 03574

January 9, 2023  
File No. 5655.00

Re: RFP: Conceptual Drawing and Cost Estimate for Bethlehem Transfer Station  
Town of Bethlehem, New Hampshire

Dear Town of Bethlehem Select Board:

Sanborn, Head & Associates, Inc. (Sanborn Head) appreciates the opportunity to submit our proposal to provide professional engineering design services to the Town of Bethlehem, NH (Town) for the Conceptual Design of a Transfer Station. This proposal was prepared to respond to the Town's December 15, 2022 email inquiry, which included a DRAFT Request for Proposal (RFP), and a follow up email on December 23, 2022 with additional information.

We understand that the Town is being proactive in planning for the eventual termination of the North Country Environmental Services, Inc. Trudeau Road Transfer Station. At this time, the Town is considering permitting a new transfer station on 64 acres of Town-owned property on the west side of Route 116, about 0.6 miles north of Wing Road where a Town transfer station operated on about 3 acres of land from September 1, 2011 through February 18, 2012. We understand that the Town had plans to further develop this site in accordance with a June 2010 design. The June 2010 design is to be used as a basis for the conceptual design, which is the focus of this proposal.

Approximately 41 acres of the 64-acre property are under a Conservation Easement held by the Ammonoosuc Conservation Trust. At present, the approximately 3-acre site is used as a training facility for regional police departments, and this use would continue after the transfer station is developed. Also, the site is not serviced by utilities (water, sewer, nor electric). Three-phase power is available along Route 116.

We further understand that the Town generates about 500 tons of municipal solid waste (MSW) annually and expects that when a pay-as-you-throw (PAYT) system is introduced, the annual MSW will drop significantly. Additionally, in 2021 the Town recycled approximately:

- 283 tons of zero-sort recyclable material;
- 6.5 tons of electronic waste;
- 17 tons of tires;
- 57 tons of scrap metal from appliances; and
- 15 tons of yard waste for compost.

The remainder of this proposal addresses the information requested in the RFP.

**Name of Engineering/Design Firm**

Sanborn, Head & Associates, Inc.  
20 Foundry Street, Concord, NH 03301  
Principal-in-Charge: Eric S. Steinhauer, PE, CPESC, CPSWQ  
Phone: 603-415-6138  
Email: [esteinhauer@sanbornhead.com](mailto:esteinhauer@sanbornhead.com)  
Project Manager: Ronald (Ron) G. St. Michel, PE  
Phone: 978-577-1014  
Email: [rstmichel@sanbornhead.com](mailto:rstmichel@sanbornhead.com)

**OBJECTIVE**

The objective of this project is to prepare a concept design and associated opinion of probable construction cost to develop a Town-owned and operated transfer station that:

- Meets or exceeds the State of New Hampshire's solid waste reduction goals, set forth in 149-M:2; and
- Allows the Town to increase its recycling potential and diversion of non-MSW items and materials from landfilling.

**SCOPE OF SERVICES**

Sanborn Head's scope of services, prepared to address each item in Scope of Work section of the RFP, is presented below.

**Task 1 – Site Assessment**

Sanborn Head representatives will visit the proposed transfer station site (former transfer station site) to observe and assess the current landscaping, grading, and stormwater drainage of the site and its applicability to a new transfer station. Our assessment will include documentation of our observations and recommendations for further site work needed to develop the site as a transfer station. See Task 3 for opinion of probable construction costs scope.

**Task 2 – Concept Design**

Sanborn Head will prepare a concept design drawing that incorporates aspects of the original design plan, to the extent practicable, our assessment from Task 1, that would be relevant to the construction and operation of a new transfer station. We recommend having a planning meeting with the Town to discuss project goals, material storage considerations, material logistics, etc. prior to developing a concept design. The concept design will depict the access road, traffic pattern, buildings, grade separation retaining walls, storage containers, collection containers, etc., as appropriate. The concept design drawing will include suggested site improvements/changes to achieve the Town's objectives.



Sanborn Head will prepare a Concept Design memorandum that will include a summary of the Site Assessment (Task 1), the concept design drawing, and the opinion of probable construction costs (Task 3).

Sanborn Head will use available information to create a base plan for this project that will include property boundaries, wetland boundaries, and topography created from LiDAR data, obtained from the NH GRANIT geodata portal. We will digitize the interior lot line (not available from online GIS sources) and wetland boundaries shown on the plan prepared by Kellogg Surveying & Mapping, Inc. titled "Survey Showing Conservation Easement for Town of Bethlehem," dated April 2010. We will digitize site features such as the tree line and limit of gravel from an aerial image. All site features shown on the base plan would be considered approximate based on the methods proposed to create it, and the accuracy will not be suitable for permitting, final design nor construction purposes.

### **Task 3 – Opinion of Probable Construction Cost**

#### ***Task 3.1 – Baseline Costs***

Under this task, Sanborn Head will prepare an opinion of probable construction cost for the project as depicted on the concept drawing (baseline costs). The baseline opinion of probable construction cost will be itemized to identify and include specific project elements such as individual pieces of equipment, structures, utilities, land preparation, and a contingency factor.

Sanborn will include two (2) optional site features:

- A secured container to collect food waste, which would be distributed to local farms and/or other entities for off-site composting and/or anaerobic digestion; and
- An enclosed swap shop, which could either be a freestanding structure or part of an office/storage structure.

These features will be depicted on the concept design drawing and added to the baseline opinion of probable construction cost as separate line items.

Sanborn Head will include a 20% contingency factor for all costs to account for reasonable unknowns and preliminary nature of the concept design.

#### ***Task 3.2 – Supplemental Elements***

In addition to the baseline opinion of probable construction cost developed under Task 3.1, Sanborn Head will develop supplemental opinion of probable construction costs for the following optional items, which may be pursued by the Town either as part of the initial transfer station implementation or at a later date:

- (a) A used compactor truck that accommodates at least 6 tons of MSW, to be owned and operated by the Town, in lieu of having a compactor and roll-off bins for MSW. The net construction/equipment cost savings or increase of this option will be highlighted. We understand that when not located at the transfer station site for collection hours, the compactor truck would likely be stored/garaged at the Town Highway Department.
- (b) A solar power system that could provide for the transfer station's power needs.



- (c) A designated area for on-site composting, including protection from wildlife, for collected food waste, brush, and yard waste.
- (d) A scale system.

Sanborn Head will include a 20% contingency factor to account for reasonable unknowns.

## **OPTIONAL TASKS**

### **Optional Task 1 – Planning**

In order to understand the Town's disposal trends, Sanborn Head will review the Town's solid waste and recycling tonnage data recorded during the previous five (5) years (from the facility's New Hampshire Department of Environmental Services (NHDES) Annual Facility Reports and/or other compiled data, if available). The data review will focus on solid waste quantities processed through the building and household glass, metal, plastic, and paper recycling quantities.

One focus of our review will be difficult to manage wastes, such as construction and demolition debris (CDD) and other segregated materials (bulky metals, precious metals, TVs/CRTs, tires, rubble, yard waste, etc.).

Sanborn Head will estimate projected waste and recycling volumes for a 30-year period. The projections will be based on the Town's projected population growth and the Town's current trash and recycling per capita generation rate. We will develop a modified generation rate that reflects the trends observed from our review of the past 5 years of data, the Town's recycling goals, and the recycling goals published in the 2022 New Hampshire Solid Waste Management Plan.

The projected waste estimates will be used to estimate future waste throughput and recyclable material storage (individual bunker bay loose storage and bale storage) requirements. The data review and future projections will also be used to identify other material storage capacity needs that may be appropriate for the future CDD, bulky waste, and metals drop-off areas. The waste stream volume, solid waste projections, loose material storage volumes and bale storage volume data, calculations and results will be summarized in Microsoft (MS) Excel spreadsheets and/or MS Word tables.

### **Optional Task 2 – Presentation to Town Board/Public**

Sanborn Head will present the concept design and opinions of probable construction costs at a Town Select Board meeting.

### **Optional Task 3 – Preferred Concept Design Drawing**

For the project record, Sanborn Head will prepare a preferred Concept Design Drawing that will incorporate Town comments of the concept design and serve as the basis for a future final design phase.



**Fee Estimate and Basis of Billings**

Our fee was calculated based on our understanding of the effort needed to provide the aforementioned services and our 2023 Schedule of Fees (enclosed). We will invoice monthly on an accrued time and expenses basis. We will not perform services beyond those defined above without your approval. Our fee is summarized below on a task level.

Task 1 – Site Assessment .....	\$7,000
Task 2 – Concept Design .....	\$14,300
Task 3 – Opinion of Probable Construction Costs .....	\$7,600
<b>Total.....</b>	<b>\$28,900</b>

**Optional Tasks**

Task 1 – Planning .....	\$10,900
Task 2 – Presentation to Town Board/Public .....	\$2,900
Task 3 – Preferred Concept Design Drawing .....	\$3,000
<b>Total Optional Tasks .....</b>	<b>\$16,800</b>

**Total All Tasks .....** **\$45,700**

**Assumptions**

- Our proposed fee is valid for 45 days from the date of this proposal.
- Project deliverables will be issued as pdf files. No paper copies will be produced.
- Professional fees are based on the scope of services and assumptions made herein and are subject to change based on direction given by the Town.

**SCHEDULE**

Provided that the Town issues Sanborn Head a notice to proceed no later than January 17, 2023, then we will complete the above scope of services prior to April 1, 2023.

**TERMS OF ENGAGEMENT**

The terms of engagement are described in the attached statement of Terms and Conditions.

**ACCEPTANCE**

Please signify your acceptance of this proposal by signing in the appropriate spaces below and returning a copy to Sanborn Head. This Contract for Services and the above-referenced Terms and Conditions shall constitute the entire agreement between the Town of Bethlehem, New Hampshire and Sanborn, Head & Associates, Inc. This executed Contract for Services must be received by Sanborn Head prior to our initiation of the work described above.



**CLOSING**

Thank you for the opportunity to submit our proposal for this project. We look forward to the next phase in the selection process and having the opportunity to share with you our thoughts regarding our proposed approach, timeline, and design ideas.

Please contact us should you require additional information or wish to discuss this proposal. Our contract information is provided below.

Ronald (Ron) St. Michel – 978-577-1014, or [rstmichel@sanbornhead.com](mailto:rstmichel@sanbornhead.com)  
Eric Steinhauser – 603-415-6138 or [esteinhauser@sanbornhead.com](mailto:esteinhauser@sanbornhead.com)

Very truly yours,  
SANBORN, HEAD & ASSOCIATES, INC.



Ronald G. St. Michel, PE  
Senior Project Manager



Eric S. Steinhauser, PE, CPESC, CPSWQ  
Senior Vice President and Principal

ESS/RSM:ess/rsm

Enclosures: Schedule of Fees  
Terms and Conditions

This proposal for services and the attached Terms and Conditions are hereby accepted and executed by a duly authorized signatory who, by execution hereof, warrants that he or she has full authority to act for, in the name, and on behalf of the Town of Bethlehem, New Hampshire.

By: \_\_\_\_\_ Title: \_\_\_\_\_  
for the Town of Bethlehem, New Hampshire

\_\_\_\_\_  
Typed/Printed Name

Date: \_\_\_\_\_





**SANBORN, HEAD & ASSOCIATES, INC.  
2023 Schedule of Fees**

Senior Vice President	\$266
Vice President	\$254
Project Director	\$240
Senior Project Manager	\$205
Project Manager	\$192
Senior Project Coordinator	\$170
Senior Project Engineer/Geologist	\$167
Project Engineer/Geologist	\$158
Project Coordinator	\$150
Engineer/Geologist	\$145
Supervising Technician	\$128
Senior Engineering Technician	\$116
Engineering Technician	\$109
Support Staff	\$87
Subcontractors, Materials, and Outside Services	List Price plus 15%
Other Direct Expenses	Direct Cost plus 15%

Hourly rates will be charged for time worked on the project and for the time required for travel between the office and the meeting or project site. Local travel will be at IRS allowed rates.

Overtime hours will be charged using the hourly rates listed above.

Hourly rates for expert witness testimony, including preparation time, and other special services such as corporate acquisition due diligence studies that generally require a dedicated commitment of senior staff, will be provided upon request.

Sanborn, Head & Associates, Inc. reserves the right to revise this Schedule of Fees annually.

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## SANBORN, HEAD & ASSOCIATES, INC.

### TERMS AND CONDITIONS

#### 1.0 AGREEMENT

The Agreement consists of the Proposal that is signed and dated by **Sanborn, Head & Associates, Inc.** acting through its officers and employees (Consultant) and **Town of Bethlehem, New Hampshire**, 2155 Main Street, Bethlehem, NH 03574 (Client) and these Terms and Conditions which are appended and incorporated by reference (Agreement). It is the mutual intention of the parties that, to the maximum extent permitted by applicable law, Consultant's services under this Agreement shall not subject any individual employee, officer, director or shareholder of the Consultant to any personal liability or exposure for matters arising under, or with respect to, this Agreement or the underlying project. Accordingly, notwithstanding anything to the contrary contained herein, Client agrees that Client's sole and exclusive recourse for all purposes of this Agreement shall be against the corporate entity, Sanborn, Head & Associates, Inc., and no claims, demands, suits or other actions of any kind or nature shall be asserted against any of Consultant's employees, officers, directors or shareholders individually. Services performed under this Agreement will be for Client's exclusive use. Consultant's services address current conditions; any delayed use of the results of the services will require updating the services to reflect current conditions. Neither party may assign this Agreement or any rights, claims, or liabilities arising out of this Agreement to any other person or entity without the express written consent of the other party. Any such impermissible assignment shall be void and of no effect.

#### 2.0 PAYMENT

Client agrees to pay Consultant for services rendered in accordance with the payment terms provided in the Agreement. Invoices will be submitted at the completion of services or on a two-week or four-week basis, at the discretion of Consultant. Payment is due upon receipt of invoice. Amounts unpaid thirty (30) days after the due date shall bear interest at the lesser rate of eighteen percent (18%) per annum from the date of invoice or the maximum interest rate allowed by law. Client shall pay all expenses incurred by Consultant associated with placing a lien or otherwise incurred in collecting any delinquent amount, including, without limitation, attorney and filing fees. Client shall pay all costs of Consultant in enforcing its rights hereunder, including, without limitation, attorneys' and filing fees and expenses.

#### 3.0 INSURANCE

Consultant maintains Worker's Compensation Insurance, Comprehensive General Liability Insurance, Automobile Liability Insurance, and Professional Liability Insurance. Consultant will furnish certificates of insurance upon request subsequent to execution of this Agreement.

#### 4.0 LIMITATION OF LIABILITY

**Client and Consultant agree to allocate certain risks so that, to the fullest extent permitted by law, Consultant's total aggregate liability to Client and anyone claiming by, through, or under the Client, is limited to the greater of \$50,000 or Consultant's fees actually paid with respect to this Agreement, for any and all of Client's injuries, damages, claims, losses, expenses, costs, or claim expenses (including reasonable attorney's and expert witness' fees) arising out of this Agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of express or implied warranty, contractual or common law indemnification, negligent misrepresentation, or other acts giving rise to liability based upon contract, tort, or statute. This provision takes precedence over any conflicting provisions of this Agreement.**

#### 5.0 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES AND SUBROGATION

Neither party shall be liable to the other for any consequential damages arising out of or related to the services or this Agreement incurred by either due to the fault of the other, regardless of: the nature of this fault; or whether it was committed by Client or Consultant, their employees, agents, or subcontractors; or whether such liability arises in breach of contract or warranty, tort (including negligence), statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use, loss of profit, and loss of anticipated revenue and income.

The Client and Consultant, further and separately, waive all claims and rights against each other arising out of damages, costs, losses, or expenses of any kind to the extent that such damages, costs, losses, or expenses are compensated by the proceeds of any insurance policy.

## **6.0 RIGHT OF ENTRY AND NORMAL DISTURBANCE**

Client agrees to furnish Consultant with right of entry upon the site so that Consultant and Consultant's subcontractors can perform the services identified in the Agreement. If the site is not owned by Client, Client warrants that permission has been granted to make site reconnaissance, surveys, borings and other explorations pursuant to the scope of services in the Agreement.

Client acknowledges that equipment used in performing the services will, to some degree, affect, alter or damage the site surfaces, buildings, structures, vegetation, facilities and subsurface installations and accepts such risks. Consultant will take reasonable precautions to limit such damage, but has not included in the fee the cost for restoration of damage that may result from Consultant's operations, unless specifically stated in the Agreement.

## **7.0 UNDERGROUND STRUCTURES**

Client shall identify for Consultant locations of buried utilities and other underground structures in the area of subsurface exploration. Consultant will take reasonable precautions to avoid damage to the buried utilities or other underground structures noted. If locations are not known or cannot be confirmed by Client, there will be some degree of risk to Client associated with conducting the exploration. Client agrees to accept the risks of damage and expense associated with repair or restoration of any buried utilities or underground structures resulting from the exploration work. Client also agrees to waive all claims against and defend, hold harmless and indemnify Consultant for any damages to buried utilities and underground structures, notwithstanding Section 5.0 above, this includes all consequential damages, arising from inaccurate or insufficient information provided by Client to Consultant regarding locations of buried utilities or other underground structures.

## **8.0 OWNERSHIP OF DOCUMENTS**

All reports, design drawings, field data and notes, calculations, estimates and other documents prepared by Consultant are instruments of professional service and shall be and remain Consultant's property. Client agrees that Consultant's services are on behalf of and for the exclusive use of Client and that all reports or other documents furnished to Client or its agents shall be utilized solely for this Agreement. If Client seeks to reuse anything prepared by Consultant, or if others seek to use such documents, it will be at Client's, and such other user's, sole risk without liability to Consultant. In case of such unauthorized re-use, Client will waive all claims against and defend, indemnify and hold Consultant harmless from all claims, losses, liabilities and damages arising therefrom. Consultant will retain pertinent records relating to the services performed for a period of five (5) years following submission of our report or other documents.

## **9.0 CONSTRUCTION-OBSERVATION SERVICES**

If construction-observation services are included as part of Consultant's scope of services in the Agreement, Consultant will provide personnel to observe the portions of the construction specified in the Agreement to ascertain that the work is being performed, in general, in accordance with the plans and specifications. Client is responsible for requesting services, and notifying Consultant so Consultant can perform these services.

Consultant cannot provide its opinion about the suitability of any work performed unless measurements and observations of that part of the construction are made by Consultant's personnel. Consultant's services do not make Consultant a guarantor of the contractor's work, and the contractor will continue to be responsible for the accuracy and adequacy of all construction activities performed by the contractor. The contractor will remain solely and completely responsible for enforcement by it and its subcontractors for safety requirements for all site working conditions, and safety requirements, day and night, for both persons and property. These include all OSHA, NIOSH, USEPA and any other applicable regulations imposed by the government or by contract. Consultant's observation and monitoring services do not include review of the sufficiency of the contractor's health and safety measures at or near the site.

Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions or programs, in connection with the project, nor for any contractor's failure to construct the work in accordance with the applicable plans and specifications.

Should Consultant not be retained to provide construction-observation during the implementation of Consultant's plans, specifications, and confirmation-dependent recommendations, or should Client unduly restrict Consultant's assignment of observation personnel, Client shall, to the extent permitted by law, waive any claim against Consultant, and indemnify, defend, and hold Consultant harmless from any claim or liability for injury or loss arising from field problems

allegedly caused or aggravated by findings, conclusions, recommendations, plans, or specifications developed by Consultant.

#### **10.0 UNANTICIPATED HAZARDOUS MATERIALS**

- A. Hazardous Materials are contaminants regulated by a public authority, typically because they are known or suspected to jeopardize human health and safety, through exposure of some kind, e.g., contact, inhalation, ingestion, absorption, or radiation. Such materials are listed in various federal, state, and local statutes and regulations.
- B. If a Hazardous Material or condition is discovered by Consultant that had not been disclosed to Consultant prior to preparation of the Proposal, then, upon notification, Client and Consultant shall seek to determine an equitable adjustment (if any is possible) to be made to this Agreement. If the parties are unable to agree, this Agreement may be terminated with respect to the project in accordance with the termination provisions set forth herein.
- C. In the event that Hazardous Materials at the project site are discovered to be nonconforming to conditions expressly contemplated in writing for the scope of the Consultant's services, the Proposal will be modified in a manner to be agreed upon by Consultant and the Client, or, if modification acceptable to Consultant is not executed by Client, Consultant shall not be obligated to perform the services set forth in the Proposal with respect to such nonconforming materials. Hazardous Materials shall be considered nonconforming for the purposes of this Agreement if one or combinations of the following situations occur:
  - i. if the Hazardous Materials are not anticipated to exist at the site;
  - ii. if the Hazardous Materials are present in quantities not disclosed in, or anticipated by Consultant from, available information;
  - iii. if the Hazardous Materials have characteristics or properties not disclosed in, or anticipated by Consultant from, such information;
  - iv. if such undisclosed or unanticipated constituents, characteristics, properties, or quantities increase the risk of hazard to human health or the environment involved in the performance of the services under this Agreement.

The Client agrees to notify Consultant immediately if it becomes aware of any Hazardous Materials at the project site which are nonconforming.

- D. The Client shall pay Consultant on a time and materials basis for its efforts to aid the Client dealing with nonconforming materials which are outside the scope of services set forth in the Proposal.

#### **11.0 INDEMNIFICATION FOR HAZARDOUS MATERIALS**

Client agrees that Consultant has not contributed to the presence of hazardous wastes, oils, asbestos or other Hazardous Materials that may exist or be discovered in the future at the site and that Consultant does not assume any liability for the known or unknown presence of such materials.

In acknowledgment of the imbalance between Consultant's and Client's relative benefits and risks in connection with the project and the services, Client shall to the fullest extent permitted by law defend, indemnify, and hold harmless Consultant, its subconsultants, subcontractors, agents, and employees from and against any and all claims, damages, losses and expenses, including court costs and attorney's fees that result from the presence, failure to detect or from the actual, alleged, or threatened release, discharge, dispersal or escape of any solid, liquid, gaseous or thermal irritant, asbestos in any form, or contaminants including smoke, vapor, soot, fumes, acids, alkalies, chemicals, waste oils or other Hazardous Materials, including nonconforming Hazardous Materials. Client shall be liable for claims, damages, losses, and expenses including defense costs and attorney's fees, unless such claims, damages, losses and expenses are caused by Consultant's sole negligence.

#### **12.0 DISPOSAL OF SAMPLES AND HAZARDOUS MATERIALS**

Soil, water, rock and/or other samples obtained from the project site are the property of Client. Consultant may, at its own discretion, discard the samples thirty (30) days after completion of its initial report. Should any samples be found to be contaminated by Hazardous Materials, it is Client's responsibility to arrange and pay for lawful disposal. If Client

provides written instructions to retain such samples beyond the thirty (30) days, Consultant will arrange to store them. Client agrees to pay for storage and transport at Consultant's standard rate.

Consultant will not undertake any responsibility or liability for transport or disposal of hazardous or toxic substances either in samples obtained from the site, or in material generated during other site activities such as testing or remediation. Consultant will not, under any circumstances, sign manifests for such substances. Client agrees that Consultant is not a handler, generator, operator, treater, storer, transporter or disposer of toxic or hazardous substances found or identified at the site. Any manifests required for transport, treatment, storage and disposal of such substances will be signed by others in their own name.

### **13.0 STANDARD OF CARE**

Consultant shall, in performing its services, exercise the same degree of skill and care ordinarily exercised under similar circumstances and conditions by practicing professionals undertaking similar services in the same locality at the same time. Subsequent standards will not be applied in judging Consultant's services. Client agrees that the services provided will be rendered without any warranty or guarantee, whether expressed or implied. Consultant will not be liable for the interpretation by others of data or information Consultant develops.

### **14.0 SUSPENSION OF WORK**

Client may, at any time, by ten (10) days written notice, suspend further work by Consultant. Client shall remain fully liable for and shall promptly pay Consultant the full amount for services rendered to the effective date of suspension of services plus suspension charges. Suspension charges include the cost of putting documents and analyses in order, personnel and equipment rescheduling and assignment adjustments, and all other costs and charges directly attributable to suspension.

If payment of invoices by Client is not maintained on a thirty (30) day current basis, Consultant may, by providing a ten (10) day written notice to Client, suspend further work until payments are restored to a current basis. In the event that Consultant retains counsel to enforce overdue payments, the Client shall reimburse Consultant for all reasonable attorney's fees and court costs related to the enforcement of overdue payments. Client waives all claims against and shall indemnify and save Consultant harmless from any claim or liability resulting from suspension of the work due to non current payments.

### **15.0 DISPUTE RESOLUTION AND STATUTE OF LIMITATIONS**

Client and Consultant shall endeavor to negotiate all claims, disputes, and other matters in controversy between Consultant and Client arising out of or in any way related to this Agreement in good faith for a period of 30 days from the date of notice, prior to exercising their rights at law. If the parties fail to resolve the dispute within 30 days, all claims, disputes, and other matters will be submitted to non-binding mediation before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to the services provided under this Agreement and that dispute requires litigation, then: (a) Client assents to personal jurisdiction in the State of New Hampshire; and (b) The claim will be brought and tried in judicial jurisdiction of the court of Merrimack County and Client waives the right to remove the action to any other county or judicial jurisdiction.

Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project.

### **16.0 PUBLIC RESPONSIBILITY**

Client acknowledges that Client or the site owner, as the case may be, is now and shall remain in control of the site for all purposes at all times. Except as required by law, Consultant does not undertake to report to any federal, state, county, or local public agencies having jurisdiction over the subject matter any conditions existing at the site from time to time that may present a potential danger to public health, safety, and the environment. Client agrees to notify each appropriate federal, state, county, and local public agency, as they may require, of the existence of any condition at the site that may present a potential danger to public health, safety, or the environment.

Notwithstanding the provisions of the foregoing, Consultant will, to the best of its knowledge, information, and belief, comply with subpoenas, judicial orders or government directives, and federal, state, county, and local laws, regulations and ordinances, and applicable codes regarding the reporting to the appropriate agencies of the findings with respect to potential dangers to public health, safety and the environment. Consultant shall have no liability or responsibility to Client or to any other person or entity for reports or disclosures made in accordance with such statutory or other lawful requirements. Client shall defend, indemnify, and hold Consultant harmless from and against any and all claims, demands, liabilities, and expense, including reasonable attorney's fees incurred by Consultant and arising directly or indirectly out of Consultant's reporting of such information under a bona fide belief or upon advice of counsel that such reporting or disclosure is required by law, except to the extent of Consultant's sole negligence.

**17.0 FORCE MAJEURE**

Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of government authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

**18.0 SEVERABILITY AND SURVIVAL**

Any element of this Agreement later held to violate a law shall be deemed void, and all remaining provisions shall continue in force. However, Client and Consultant will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision. All terms and conditions of this Agreement allocating liability between Client and Consultant shall survive the completion of the services hereunder and the termination of this Agreement.

**19.0 ASSIGNMENT**

This Agreement, made up of Consultant's Proposal and these Terms and Conditions, cannot be modified orally, or by any course of conduct, and shall control over any inconsistent or contrary provisions in any proposal, contract form, purchase order or other document issued by Client. These Terms and Conditions shall survive the completion, or termination, of our services for this project. Consultant shall not delegate any duties, nor assign any rights or claims under this Agreement nor subcontract any part of the services authorized, without prior written consent of Client. Likewise, any assignment of Client's rights or claims under this Agreement requires Consultant's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

**20.0 GOVERNING LAW**

This Agreement is to be governed and enforced in accordance with the laws of the State of New Hampshire.