

SERVICES AGREEMENT

THIS AGREEMENT IS MADE THIS ____ day of _____, _____, by and between the City of Sanford, a municipal corporation existing under the laws of the State of Maine and located in the County of York, State of Maine (hereinafter "OWNER") and _____ with its main office located in _____, _____ (hereinafter referred to as "CONTRACTOR"),

WITNESSETH:

In consideration of the mutual covenants and conditions contained herein, the OWNER and the CONTRACTOR agree as follows:

SCOPE OF WORK

1. The CONTRACTOR shall furnish all of the services, materials and perform all of the work as described in the specifications entitled: _____. Bid Specifications issued under date of _____ by Alex Hammerle, Director of Facilities, and in accordance with the Contractor's Proposal dated _____ which specifications and proposal are attached hereto and made a part hereof, and the CONTRACTOR covenants that it shall do everything required by this Agreement, the conditions of the Agreement (General, Supplementary and other Conditions, if any), the Specifications, the Drawings and the Proposal in return for payment as provided herein.

2. A. The CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all analyses, reports, and other services furnished by the CONTRACTOR under this Agreement. The CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in their analysis, reports, and other services. Deficiencies are defined as willful or negligent acts that distort or falsify the state of the art of resource recovery technologies and/or the products and services developed and provided hereunder, willful or negligent non-assignment of personnel, or assignment of unqualified personnel to perform the duties hereunder.

B. Approval by OWNER of analyses, reports and other services furnished hereunder shall not in any way relieve the CONTRACTOR of responsibility for the technical adequacy of the work. Neither Owner's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement, and the CONTRACTOR shall remain liable in accordance with applicable law for all damages to OWNER caused by the CONTRACTOR'S willfully negligent performance of any of the services furnished under this Agreement.

COMPLETION DATE

3. The work to be performed under this Agreement shall be commenced by as agreed to by the Contractor and the Facilities Director and substantially completed at a date to be determined by the Facilities Director. Due to the difficulty of calculating damages for late completion, liquidated damages in the amount of \$100 per day for late completion after the date for substantial completion shall be awarded to the OWNER for delay in substantial completion not otherwise excused or permitted under this Agreement.

CONTRACT PRICE

4. The OWNER shall pay the CONTRACTOR for the performance of the Agreement the sum of (please see the attached page for pricing) or less as appropriate.

GUARANTEE

5. A. To the extent construction or materials are provided, the CONTRACTOR and the subcontractors, if any, shall guarantee their work against any defects in workmanship and materials for a period of one year from the date of the OWNER'S written acceptance of this project, and agrees to repair or replace at no cost or expense to the OWNER all work, materials and fixtures at any time during said one year period.

B. The CONTRACTOR represents that in the performance of its obligations hereunder, it will perform in accordance with applicable standards of conduct for professionals in the field. Where an engineer's stamp or seal is required in the conduct of such work, the work shall be stamped by a professional engineer licensed in the State of Maine.

PERMITS AND LICENSES

6. Permits and licenses necessary for the prosecution of the work shall be secured and paid by the CONTRACTOR.

OWNER'S RIGHT TO TERMINATE CONTRACT

7. Without prejudice to any other right to remedy, the OWNER may terminate this Agreement for cause by providing the CONTRACTOR and its surety with seven (7) days' written notice of termination. For purposes of this Agreement, cause includes, but is not limited to: the adjudication of the CONTRACTOR as a bankrupt; the making of a general assignment by the CONTRACTOR for the benefit of its creditors; the appointment of a receiver because of the CONTRACTOR'S insolvency; the CONTRACTOR'S persistent or repeated refusal or failure, except for cases in which extension of time is provided, to supply enough properly skilled workers or proper materials; the CONTRACTOR'S persistent disregard of Federal, State or local statutes, laws, codes, rules, regulations, orders, or ordinances; and the CONTRACTOR'S substantial violation of any provisions of this Agreement.

In the event of a termination for cause, the OWNER may take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Agreement price shall exceed the expense of finishing the work, including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the CONTRACTOR. If such expense shall exceed such unpaid balance, the CONTRACTOR shall pay the difference to the OWNER. Further, the OWNER may terminate this Agreement for convenience upon thirty (30) days' written notice to the CONTRACTOR, in which case, the OWNER shall pay the CONTRACTOR for all work satisfactorily performed and materials purchased up to the date of receipt of such notice by the CONTRACTOR. In the event that the OWNER terminates this Agreement for cause and it subsequently is determined that cause did not exist, such termination shall be deemed to be for convenience.

INSURANCE

8. Except as otherwise provided by this Agreement, the CONTRACTOR and its subcontractors and consultants shall obtain and maintain throughout the term of this Agreement at no expense to the OWNER the following insurance coverage:

A. **Public Liability Insurance** in the amount of not less than One Million Dollars (\$1,000,000.00) or such other amount as may be required by the Maine Tort Claims Act (14 M.R.S.A. section 8101 et. seq.) as amended from time to time, combined single limit, to protect the CONTRACTOR, any subcontractor performing work covered by this Agreement, and the OWNER from claims and damages that may arise from operations under this Agreement, whether such operations be by CONTRACTOR or by a subcontractor or by anyone directly or indirectly employed by them.

B. **Automobile Liability Insurance** in the amount of not less than One Million Dollars (\$1,000,000.00) or such other amount as may be required by the Maine Tort Claims Act (14 M.R.S.A. section 8101 et. m.) as amended from time to time, combined single limit, to protect the CONTRACTOR, any subcontractor performing work covered by this Agreement, and the OWNER from claims and damages that may arise from operations under this Agreement, whether such operations be by CONTRACTOR or by a subcontractor or by anyone directly or indirectly employed by them.

C. **Workers' Compensation Insurance** in amounts required by Maine Law and Employer's Liability Insurance, as necessary, as required by Maine Law. In case any class of employees engaged in hazardous work under this Agreement is not protected under the Workers' Compensation Act, the CONTRACTOR shall provide for the protection of its employees not otherwise protected.

D. (For professional services contracts) Professional Liability Insurance in the amount of One Million Dollars (\$ 1,000,000.00) for this project alone to protect the CONTRACTOR, any subcontractor performing work covered by this Agreement and the OWNER from claims and damages that may arise from the errors, omissions or negligence of the CONTRACTOR or its subcontractors, if any, in the performance of work under this Agreement. The deductible for such insurance shall not exceed _____ Dollars (\$ _____) without the OWNER'S prior written consent (for architects' or engineers' professional services contracts). The provisions of this Article shall not be construed as providing a shorter limitation for claims against design professionals than that established by 14 M.R.S.A. Section 752-A as it may be amended from time to time. A Performance Bond will be required for the term of this contract.

E. All such insurance policies shall name the OWNER and its officers, agents, and employees as additional insured, except that for purposes of workers' compensation insurance, the CONTRACTOR and its subcontractors instead may provide a written waiver of subrogation rights against OWNER. The CONTRACTOR, prior to commencement of work under this Agreement, and any of its subcontractors, prior to commencement of work under any subcontract, shall deliver to the OWNER certificates satisfactory to the OWNER evidencing such insurance coverage, which certificates shall state that the CONTRACTOR and its subcontractors must provide written notice to the OWNER. Should any of the above described policies be cancelled before the expiration date thereof, notice delivered in accordance with the policy provision. Replacement certificates shall be delivered to the OWNER prior to the effective date of cancellation, termination, material modification or expiration of any such insurance policy. The CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance coverage required under this subparagraph and such insurance policies have been approved by the OWNER, nor shall the CONTRACTOR allow any of its subcontractors to commence work on any subcontract until all such insurance policies have been obtained by the subcontractor and approved by the OWNER. All such insurance policies shall have a retroactive date which is the earlier of the date of this Agreement between the parties or the CONTRACTOR'S Commencement of services thereunder.

INDEMNIFICATION

9. The CONTRACTOR agrees to defend, indemnify, and hold harmless the OWNER, its officers, agents and employees against any and all liabilities, cause of action, judgments, claims or demands, including attorney's fees and costs, for personal injury (including death) or property damage arising out of or caused by the performance of work under this Agreement by CONTRACTOR, its subcontractors, agents or employees.

LIENS

10. Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR, if required, shall deliver to the OWNER a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as it has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed, but the CONTRACTOR may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the OWNER to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to the OWNER all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

ASSIGNMENT

11. Neither party to the Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any prior moneys due or to become due to it hereunder, without the previous written consent of the OWNER.

SUBCONTRACTS

12. The CONTRACTOR shall not sublet any part of this Agreement without the prior written permission of the OWNER. The CONTRACTOR agrees that it is fully responsible to the OWNER for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

USE OF PREMISES

13. The CONTRACTOR shall confine its apparatus, the storage of materials and the operations of its workers to limits indicated by law, ordinances and permits and shall not otherwise unreasonably encumber the premises with its materials. If any part of the project is completed and ready for use, the OWNER may, by written and mutual consent, without prejudice to any of its rights or the rights of the CONTRACTOR, enter in and make use of such completed parts of the project. Such use or occupancy shall in no case be construed as an acceptance of any work or materials.

CLEANING UP

14. The CONTRACTOR shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees or work, and at the completion of the work it shall remove all its rubbish from and about the project, and all its tools, scaffolding and surplus materials and shall leave its work "broom-clean" or its equivalent, unless more exactly specified. In case of dispute, the OWNER may remove the rubbish and charge the costs to the CONTRACTOR.

FINAL PAYMENT

16. Final payment, constituting the entire unpaid balance for the Contract Sum, shall be paid by the OWNER to the CONTRACTOR when the work has been completed, the Contract fully performed, and, if applicable, a final Certificate for Payment has been issued by the Architect.

OWNERSHIP OF DOCUMENTS

17. All drawings, notes, documents, plans, and specifications or other material to be developed under this Agreement shall become the property of the OWNER and be promptly delivered to the OWNER upon the completion of work under this Agreement or sooner upon Owner's request. The CONTRACTOR shall be responsible for the protection and/or replacement of any work or materials in its possession, including work or materials provided to the CONTRACTOR by the OWNER. The OWNER agrees that it will not use the construction plans and specifications developed under this Agreement for any project other than the project specified herein without the written consent of the CONTRACTOR, which consent shall not be unreasonably withheld.

DISCLAIMER

18. The CONTRACTOR has inspected the conditions of the premises and with full knowledge thereof agrees to take them as is, with no warranties express or implied excepting those express statements in this Agreement.

FORCE MAJEURE

19. Provided such party gives written notice to the other of such event, a party shall not be liable for its failure to perform its respective obligations under this Agreement, if prevented from so doing by any cause beyond the reasonable control of such party such as, but not limited, to strikes, lockouts, or failure of supply or inability by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to perform such obligations, or because of war or other emergency. The time within which such obligations shall be performed shall be extended for a period of time equivalent to delay from such cause.

NON-WAIVER

20. Except as expressly provided in this Agreement, the failure or waiver, or successive failures or waivers on the part of either party hereto, in the enforcement of any paragraph or provision of this Agreement shall not render the same invalid nor impair the right of either party hereto, its successors or permitted assigns, to enforce the same in the event of any subsequent breach thereof.

NOTICES

21. Notices hereunder shall be deemed sufficient if sent by U.S. Certified mail as follows:

TO OWNER:

Facilities Director
City of Sanford
919 Main Street
Sanford, Maine 04073

TO CONTRACTOR:

REMEDIES

22. Except as otherwise agreed by the parties in writing, all disputes, claims, counterclaims and other matters in question between the OWNER and the CONTRACTOR arising out of or relating to this Agreement shall be decided by a Maine court of competent jurisdiction. This Agreement is made and shall be construed under the laws of the State of Maine. Except as otherwise expressly agreed by the parties in writing, exclusive venue for any such civil action shall be in Maine.

COMPLIANCE WITH APPLICABLE LAWS

23. The CONTRACTOR agrees that it and its subcontractors, if any, shall comply with all applicable Federal, State and local statutes, laws, rules, regulations, codes, ordinances, orders, and resolutions in the performance of work under this agreement.

RELEASE OF INFORMATION

24. During the performance of the work, any material prepared or assembled by the CONTRACTOR under this Agreement shall not be made available to any individual or organization by the CONTRACTOR other than as called for herein without prior written authorization from the OWNER.

EXTENT OF AGREEMENT

25. This Agreement (and the sheets attached hereto and hereby incorporated into this Agreement) represent(s) the entire and integrated Agreement between OWNER and the CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both OWNER and the CONTRACTOR.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

OWNER

By: _____

Alex Hammerle

Director of Facilities

CONTRACTOR

By: _____

Title: _____