

**PROFESSIONAL SERVICES AGREEMENT  
CITY OF PORTSMOUTH, NEW HAMPSHIRE**

**THIS AGREEMENT MADE THIS** 6 **day of November, 2017 by and between the CITY OF PORTSMOUTH,** a body politic and corporate located in the County of Rockingham, State of New Hampshire (hereinafter referred to as "City"), and

**ABRAMSON & ASSOCIATES, INC.**

(Registered by New Hampshire Dept. of State as doing business under the trade name  
**Abramson & Associates of Massachusetts**)

**THE PARTIES.** The parties to this agreement are the City of Portsmouth, 1 Junkins Avenue, Portsmouth, NH 03801 and ("**Contractor**") of 113 Chestnut Street, Newton, MA 02465.

**PURPOSE.** The purpose of this agreement is to secure professional consulting services to assist the City in evaluation of proposals and selection of developer for redevelopment of the McIntyre Property. Consulting services are further detailed in Exhibit A.

WITNESSETH

**WHEREAS,** the City desires to engage Contractor to render certain services;

**NOW, THEREFORE,** the City and Abramson & Associates, Inc. do mutually agree as follows:

**A. DESCRIPTION OF SERVICES**

This Agreement establishes the scope of services, schedule of work and fees for professional services to assist City in evaluation of proposals and selection of developer for redevelopment of the McIntyre Property. The project scope will, subject to ongoing direction by City, include the work outlined in **Exhibit A**.

City of Portsmouth Responsibilities:

Nancy Colbert Puff, Deputy City Manager - or other designee of the City Manager - will be responsible for administering the project and overseeing the consultant's work on this project. City staff will provide the consultant with available municipal reports and other information.

**B. PROJECT SCHEDULE.** Contractor's performance of this Agreement shall commence immediately following the signing of this Agreement. It is anticipated that Contractor shall substantially complete its work by December 31, 2017 and shall complete all work in its entirety by January 31, 2017 unless such date is extended by City.

**C. PROJECT TEAM.** The project work will be completed by Barry Abramson, President of Abramson & Associates, Inc., who will attend meetings with City staff and facilitate all public meetings identified in **Exhibit A**. Substitution of project personnel shall only be permitted through express written permission from the City. Contractor shall be responsible for all payments to any subcontractor and shall certify at the end of the



project that all payments due to any subcontractor or supplier as a consequence of this Agreement, have been made in full before final payment is released by the City.

- D. PROJECT BUDGET.** Work shall be compensated on a time and expense basis with Mr. Abramson's time charged at the hourly rate of \$250. Travel time shall be charged at half that rate. It is expressly understood and agreed that in no event will the total amount to be paid by the City to Contractor under this Agreement exceed *Twenty-five thousand dollars (\$25,000)*, unless extended by City. Contractor shall, in accordance with applicable standards of care, complete all tasks set forth in **Exhibit A**. Mileage, presentation graphics, and other direct expenses such as copying, printing travel materials, faxes, phone calls, meals, transportation and the like are reimbursable expenses.

If the City authorizes additional meetings, site visits or work beyond those specified in the scope of services in **Exhibit A**, costs will be billed at the above-specified hourly rate. Direct costs incurred as a result of additional work agreed to under this provision shall be at cost, with no mark-up.

- E. PAYMENT PLAN.** Contractor shall submit twice-monthly invoices detailing work performed and estimated percentage of task completion for City approval. Such invoices shall be payable net 30 days from time of approval.
- F. OPERATING PROCEDURES.** Contractor agrees to comply in all respects with all of the duties, responsibilities and requirements imposed by this Agreement, and by the City. This shall include adherence to a communications plan for the project
- G. CONFLICT OF INTEREST.** No officer, employee or agent of the City, or any other person who exercises any functions or responsibilities in connection with the City, shall have any personal or financial interest, direct or indirect, in this Agreement; and **Contractor** shall take appropriate steps to assure compliance.
- H. GOVERNING LAW.** The terms of this Agreement shall be governed by the laws of the State of New Hampshire. Jurisdiction and venue shall lie in Rockingham County Superior Court.
- I. INDEMNIFICATION.** Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City of Portsmouth against damages, liabilities and costs arising from the negligent acts of Contractor in the performance of professional services under this Agreement, to the extent that Contractor is responsible for such damages, liabilities and costs on a comparative basis of fault between Contractor and the City of Portsmouth. Contractor shall not be obligated to indemnify City of Portsmouth for the City's negligence or for the negligence of others.

For purposes of this Agreement, any officers, employees, agents, applicants or beneficiaries of Contractor act in an independent capacity and are not officers or employees or agents of the City.



**J. TERMINATION OF AGREEMENT**

1. Termination of Agreement for Cause. If through any cause, Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement; or, if Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to Contractor of such termination and specify the effective date of such termination. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to the date of termination. Notwithstanding the above, Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by Contractor, and the City may withhold any payments to until such time as the exact amount of damages to the City from Contractor is determined.

2. Termination for the Convenience of the City. The City may terminate this Agreement at any time for any reason by giving notice in writing to Contractor . If the Agreement is terminated by the City for its convenience, the City shall pay Contractor for all work satisfactorily completed up to the date of termination and any agreed upon additional time to prepare and provide information requested by City.

**K. AMENDMENTS.** This Agreement may be amended only by written agreement executed by both parties.

**L. SEVERABILITY.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in force.

**M. OWNERSHIP OF INFORMATION.** All information, data, documents, photos, computer records, and other materials of any kind acquired or developed by Contractor pursuant to this Agreement shall be the property of the City with the exception that: (1) Contractor's computer models utilized and refined for use in this project are proprietary and such information shall be provided to the City in PDF or within word documents rather than in Excel format; and (2) information acquired by Contractor in its research that has been provided to Contractor on a confidential basis shall be presented to the City only in a manner and to the extent such provision does not breach the confidentiality with which it was provided to Contractor.

The City acknowledges that such documents are not intended or represented to be suitable for reuse by the City or others on extensions of this project or on any other project. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended shall be at the City's sole risk.

**N. INDEPENDENT CONTRACTOR.** The City and the Contractor intend that the relationship established between them pursuant to this Contract shall be that of client and independent contractor. No agent, employee, or servant of the Contractor shall be or shall be deemed to be an employee, agent or servant of the City. The City shall not provide insurance coverage or any other type of benefit to the Contractor.

- O. LIMITATION OF CONSEQUENTIAL DAMAGES.** The parties' liabilities to each other with respect to any claims arising out of this Contract, shall be limited to direct damages arising out of the services, there being no liability for any consequential loss, injury or damage incurred, including but not limited to, claims for loss of use, loss of profits and loss of markets.
- P. PROJECT COMMUNICATIONS.** All contact with the press, the public, and other third parties shall be coordinated with the City of Portsmouth. Press inquiries should be directed to the Assistant City Manager unless direction is given otherwise. Communications to the public shall be reviewed and approved by the City of Portsmouth.

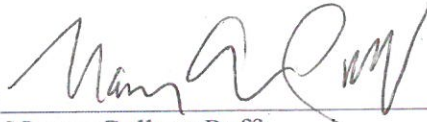
Marketing and promotional materials developed by Contractor and any sub-consultants related to this project and products delivered under this contract shall be developed with the City of Portsmouth and express permission granted for reuse of images, plans, and other specific work products resulting from this project. This obligation shall survive the termination and or completion of this agreement.

IN WITNESS WHEREOF, the City and **Contractor** have executed this Agreement as of the date first above written.

ATTEST:

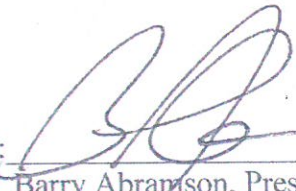
CITY OF PORTSMOUTH

DATE 11/6/11

BY:   
Nancy Colbert Puff  
Acting City Manager, City of Portsmouth

ABRAMSON & ASSOCIATES, INC.

DATE \_\_\_\_\_

BY:   
Barry Abramson, President  
Abramson & Associates, Inc.



## EXHIBIT A

### PROJECT WORK PLAN AND SCHEDULE

#### Scope of Work:

Generally, provide assistance to enable the City to understand the capacities, financial and other benefits, costs, risks, and the likelihood, timing, and prerequisites for implementation presented by alternative developers, project concepts, contracting arrangements, and financial and other terms, providing a sound basis for selection and negotiation. Specifically:

- Test proposed programming, market, cost, operational, and scheduling assumptions for feasibility based on focused research and analysis relative to the particulars of the proposals
- Evaluate the nature and likelihood of proposed disposition proceeds on a risk-adjusted basis, as would real estate tax and other relevant key public benefits or costs
- Identify opportunities for improvement in terms
- Consider general implications for proposals' ability to impact the downtown and City real estate market and economy
- Identify issues of public versus private control and risk indicated by proposed transaction terms
- Provide input, as requested, with regard to the relative qualifications of the proposers to develop and operate their proposed projects in a manner conducive to the City's objectives to supplement City's review of qualifications conducted in prior RFP stage
- Prepare evaluation matrices and memoranda
- Prepare interview questions and coordination with proposers to clarify proposals
- Participate in team meetings, developer interviews, and presentations to elected officials, boards, and/or the community
- Other coordination and such other services as may be agreed to be appropriate to perform the work

