

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

**THIS AGREEMENT MADE THIS** 10 day of January, 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

**ALISA MCCANN**

**THE PARTIES.** The parties to this agreement are the City of Portsmouth, 1 Junkins Avenue, Portsmouth, NH 03801 and **Alisa McCann ("Contractor")** of 214 Hampden Avenue Narberth, PA 19072.

**PURPOSE.** The purpose of this agreement is to secure professional consulting services to assist the City in the preparation of an "Application for Obtaining Real Property for Historic Monument Purposes," for submission to the National Park Service, in response to the "Notice of Surplus Determination" issued by the General Services Administration (GSA) on December 12, 2016. Consulting services are further detailed in Exhibit A.

WITNESSETH

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

**NOW, THEREFORE**, the City and **Alisa McCann** 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 complete an application to the Historic Monument Program. The project scope will include, at a minimum, 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.** **Alisa McCann** 's performance of this Agreement shall commence immediately following the signing of this Agreement. **Alisa McCann** shall complete all work in its entirety by May 30, 2017.
- C. PROJECT TEAM.** The project work will be completed by Alisa McCann, 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. **Alisa McCann** 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.** It is expressly understood and agreed that in no event will the total amount to be paid by the City to **Alisa McCann** under this Agreement exceed **\$20,000**. **Alisa McCann** 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 \$175/hour. 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.** **Alisa McCann** shall submit 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.** **Alisa McCann** 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 **Alisa McCann** 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.** **Alisa McCann** 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 **Alisa McCann** in the performance of professional services under this Agreement, to the extent that **Alisa McCann** is responsible for such damages, liabilities and costs on a comparative basis of fault between **Alisa McCann** and the City of Portsmouth. **Alisa McCann** 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 **Alisa McCann** 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, **Alisa McCann** shall fail to fulfill in a timely and proper manner its obligations under this Agreement; or, if **Alisa McCann** 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 **Alisa McCann** of such termination and specify the effective date of such termination. **Alisa McCann** shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to the date of termination. Notwithstanding the above, **Alisa McCann** shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by **Alisa McCann**, and the City may withhold any payments to until such time as the exact amount of damages to the City from **Alisa McCann** is determined.

2. Termination for the Convenience of the City. The City may terminate this Agreement at any time for any reason by giving at least thirty (30) days notice in writing to **Alisa McCann** . If the Agreement is terminated by the City for its convenience, the City shall pay **Alisa McCann** for all work satisfactorily completed up to the date of termination.

**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 **Alisa McCann** pursuant to this Agreement shall be the property of the City.

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.

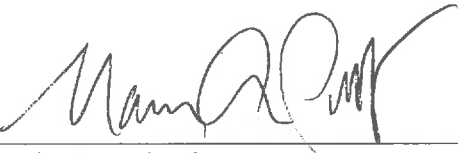
Marketing and promotional materials developed by Alisa McCann and any sub-consultants related to this project and products delivered under this contract shall be developed with the City of Portsmouth and express permission granted for reuse of images, plans, and other specific work products resulting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

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

**ATTEST:**


**CITY OF PORTSMOUTH**

DATE 1/10/17

BY:   
John P. Bohenko  
City Manager, City of Portsmouth

**ALISA MCCANN**

DATE January 4, 2017

BY:   
Alisa McCann

## EXHIBIT A

### PROJECT WORK PLAN AND SCHEDULE

#### Scope of Work:

- Make site visit and photograph interior and exterior of building.
- Conduct research for any historic photos of the building.
- Meet with City staff to conduct interviews and discuss City's plans for property (at least twice). Also conduct interviews with City staff and gather information by phone.
- Meet with/conduct phone call with City's Historic Commission as appropriate.
- Meet with NH State Historic Preservation Office (SHPO) to discuss application, City's plans for property, solicit input on proposals, and to integrate their reviews into application process (at least once, possibly twice). Work with City to provide appropriate information to SHPO.
- Attend any public meetings as requested by the City.
- Provide City with informed suggestions on how to present proposed reuse of building and site and how to address concerns/potential concerns of NPS, GSA and SHPO in the Application.
- With input and information provided by the City, complete Sections 1 through 9 of the Program of Preservation and Utilization section of the Application (City will complete Section 9, Financial Plan and Section 10, Capability).

#### Schedule:

The project scheduled is flexible, and must be determined in response to input received from the GSA, and NH State Historic Preservation Office, and other project participants as necessary.

Assistance with Letter of Interest	January 30, 2017
50% Draft Application	February 28, 2017
75 % Draft Application	No more than fifteen business days from the Contractor receiving the City's and the NH SHPO's comments on the 50% draft.
Final Application	No more than fifteen business days from the Contractor receiving the City's and the NH SHPO's comments on the 75% draft.

The Contractor will make any revisions to the Application requested by the National Park Service after their review and will provide the revised Application no more than ten business days from the Contractor receiving those comments.

The Application will be provided to the City in electronic form as a Microsoft Word document.

The City shall provide:

- Information relative to building and proposed plans for the building and site, including maps, zoning information, etc. The City shall provide the any requested information in a timely manner, usually within three business days, depending on the nature of the request.
- Duplication and printing services for photographs and Application (one original and three copies).

**EXHIBIT A – AMENDMENT #1 – MARCH 1, 2017**

**PROJECT WORK PLAN AND SCHEDULE**

Whereas the City submitted a letter of interest on January 25, 2017 to the GSA for acquisition of the McIntyre property via the Historic Monument Program; and

Whereas the City has not yet received a response from the GSA inviting the City to apply to the Historic Monument Program; and

Whereas the City is not in possession of detailed property information from the GSA which will be required in order to make successful application to the program; and

Whereas the City and Alisa McCann have been in communication and have made a verbal agreement to extend the project schedule due to circumstances outlined above; and

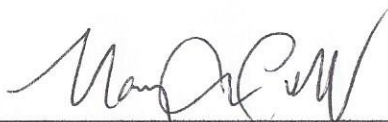
Now therefore the parties mutually agree to extend the February 28, 2017 scheduled deadline for receipt of a 50% draft application to a date to be determined in the future.

**IN WITNESS WHEREOF**, the City and **Alisa McCann** have executed this Amendment as of the date first above written.

**ATTEST:**

**CITY OF PORTSMOUTH**

DATE 3/2/17

BY:   
\_\_\_\_\_  
John P. Bohenko  
City Manager, City of Portsmouth

**ALISA MCCANN**

DATE March 1, 2017

BY: 