

EXHIBIT D REQUIRED FORMS

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**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
MEMORIAL BRIDGE REPLACEMENT PROJECT
INSTRUCTIONS TO PROPOSERS—Form A**

PROPOSAL LETTER

PROPOSER: _____

Proposal Date: _____, 20__

New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03302
Attn: Craig A. Green, PE, Assistant Director of Project Development

The undersigned (“Proposer”) submits this proposal (this “Proposal”) in response to that certain Request for Proposals (as amended, the “RFP”) issued by the New Hampshire Department of Transportation (“NHDOT”) dated as of _____, 2011, to design and construct the Memorial Bridge Replacement Project (the “Project”), as more specifically described herein and in the documents provided with the RFP (as amended, the “RFP Documents”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

In consideration for NHDOT supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] *[if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words “jointly and severally” and delete the brackets; otherwise delete the entire phrase]*:

- a) To keep this Proposal open for acceptance initially for 180 days after the Proposal Due Date, and if requested by NHDOT within such 180-day period, for an additional 90 days, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of NHDOT, in NHDOT’s sole discretion; and
- b) If this Proposal is accepted, to provide security (including bonds, insurance and letters of credit) for the due performance of the Design-Build Contract (“Contract”) as stipulated in the Contract Documents and the RFP.

If selected by NHDOT, Proposer agrees to do the following: (a) enter into the Contract Documents without varying or amending its terms and satisfy all other conditions to award of the Contract Documents; and (b) perform its obligations as set forth in the ITP

and the Contract Documents, including compliance with all commitments contained in this Proposal.

The following individual is designated as the Proposer Authorized Representative in accordance with Section 2.2.2 of the ITP: _____

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Executive Summary
- Technical Proposal, including Proposer Information, Certifications and Documents, Proposal Security and Escrow Agreement
- Price Proposal

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

Addendum _ issued _____

Responses issued _____

[list any other addenda to the RFP and sets of questions and answers by dates and numbers]

Proposer represents and warrants that it has read the RFP Documents and agrees to abide by the contents and terms of the RFP Documents.

Proposer certifies the following: the Proposal is submitted without reservation, limitation, qualification, assumptions or conditions; Proposer has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the secure file transfer site for the Project, the Addenda and NHDOT's responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the Design-Builder and do not contain internal inconsistencies; Proposer has carefully checked all the words, figures and statements in the Proposal; Proposer has conducted such other field investigations and additional design development which are prudent and reasonable in preparing the Proposal; and that Proposer has notified NHDOT in writing of any Errors, deficiencies, ambiguities and inconsistencies in or omissions from any RFP Documents or other documents provided by NHDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the Statement of Qualifications (SOQ) previously delivered to NHDOT (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal

and Proposal forms. Proposer agrees that such SOQ, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer understands that NHDOT is not bound to accept any Proposal or the Proposal offering the lowest price to NHDOT or any Proposal NHDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the Project procurement process will be borne solely by the Proposer, except to the extent of any payment made by NHDOT following pre-qualification determination, as described in Section 6.3 of the ITP.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any payment for work product that may be paid in accordance with the RFP.

Proposer consents to NHDOT's disclosure of its Proposal pursuant to Government Code sections 2250 *et seq.*, to any Persons in NHDOT's sole discretion after award and execution of the Contract by NHDOT. Proposer acknowledges and agrees to the disclosure terms of the ITP. Proposer expressly waives any right to contest such disclosures.

Proposer agrees that NHDOT will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Proposal.

Proposer acknowledges the procurement protest procedures set forth in Section 7.9 of the ITP and agrees that if it files a protest of this procurement or award of a Contract hereunder and that protest is denied, Proposer shall be liable to NHDOT for NHDOT's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by NHDOT as a consequence of the protest.

This Proposal shall be governed by and construed in all respects according to the laws of the State of New Hampshire.

Proposer's business address:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

[insert appropriate signature block from following pages]

1. Sample signature block for corporation or limited liability company:

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

3. Sample signature block for attorney in fact:

[Insert the proposer's name]

By: _____

Print Name: _____

Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

- A. If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation. If the Proposer is a limited liability company, enter the state or country of organization.
- B. Describe in detail the legal structure of the Proposer and Equity Participants.
1. If the Proposer or any Equity Participant is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for Proposer/Equity Participant and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 2. If the Proposer or any Equity Participant is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 3. If the Proposer or any Equity Participant is a joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer//Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 4. If the Proposer or any Equity Participant is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement

for a limited liability company and joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that this information will be provided prior to award.

Attach evidence to the Proposal and to each letter that the person signing has authority to do so.

- B. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.
- C. The Proposer's partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to NHDOT, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners or members, as applicable, no joint venture member, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers should submit the applicable agreement to NHDOT and identify on a cover page where in the agreement the provision can be found. If the Proposer is not yet formed, provide draft organizational documents and indicate where the provision is found.

IDENTIFICATION OF PROPOSER AND EQUITY PARTICIPANTS —Form B-1

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, e-mail)	Role in Organization	New Hampshire Contractor License and License Limit (if applicable)	Description of Work/Services To Be Performed By Entity (if applicable)

The above information is true, correct and accurate.

[Insert the Proposer's name]

By: _____
Name: _____
Title: _____

INFORMATION ABOUT PROPOSER ORGANIZATION—Form B-2

- 1.0 Name of Proposer: _____
- 2.0 Type of entity: _____
- 3.0 Proposer's address: _____

Telephone Facsimile

4.0 How many years has the Proposer and each Equity Participant been in its current line of business, and how many years has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name

5.0 Under what other or former names have the Proposer and Equity Participants operated?

Proposer: _____

_____ :

_____ :

_____ :

_____ :

6.0 The Proposer shall review its SOQ previously submitted to NHDOT and list below any Key Personnel and other key staff members and their relevant experience that have been approved by NHDOT since the submission of the SOQ. Except as updated by the following information, the Proposer's SOQ is hereby incorporated as if set forth in full and the Proposer represents and warrants to NHDOT that the information set forth in the SOQ, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information. Attach separate sheets if necessary.

7.0 List all New Hampshire licenses held by the Proposer and any Equity Participants. Attach copies of all New Hampshire licenses. Attach a separate sheet if necessary.

8.0 The Proposal shall include the following information regarding the Surety(ies) committing to provide the bonds in accordance with Section 8 of the Contract:

- (a) Name(s), address(es) and phone numbers of the Surety(ies) that will provide the above-referenced bonds (must be rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company), and the name(s), address(es) and phone number(s) of the designated agent(s).

- (b) Whether or not each listed Surety has defaulted on any obligation within the past ten years, and, if so, a description of the circumstances and the outcome of such default.

STATE OF _____)

COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this ___ day of _____, 20__.

 Notary Public in and for
 said County and State

[Seal]

My commission expires: _____

INFORMATION ABOUT MAJOR PARTICIPANTS, MAJOR PROFESSIONAL SERVICES FIRMS AND LISTED SUBCONTRACTORS—Form B-3

[This form will be used to provide information about any Major Participants (excluding Equity Participants that do not fall into categories (a) through (d) of the definition of Major Participants) and Major Professional Services Firms and any other Subcontractors that have been listed as of the Proposal Due Date.]

Proposer Name _____

Entity Name / Contact	Address of Head Office	Telephone / Fax	Specialty / Assignment

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants and/or Major Professional Services Firms resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above. The Proposer agrees that it will follow applicable Contract requirements with respect to Subcontractors.

I declare under penalty of perjury under the laws of the State of New Hampshire that the foregoing declaration is true and correct.

Executed: _____, 20__.

(Signature)

(Name printed)

(Title)

(Proposer)

STATE OF _____)
)
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the Proposer identified in the foregoing questionnaire, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

RESPONSIBLE PROPOSER QUESTIONNAIRE—Form C

PROPOSER'S NAME: _____

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: _____

1. Questions

The Proposer/Equity Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. The Proposer/Equity Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection. If this form is provided only for the Proposer, the term "**affiliate**" shall mean Proposer, any Equity Participant, or any entity which owns a substantial interest in or is owned in common with the Proposer or any Equity Participant, or any such entity in which the Proposer or any Equity Participant owns a substantial interest. If this form is provided by the Proposer and the individual Equity Participants, the term "**affiliate**" shall mean the entity signing the form, any entity which owns a substantial interest in or is owned in common with the entity signing the form, or any entity in which the entity signing the form owns a substantial interest.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

- a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

-
- c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes ___ No ___

- e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable New Hampshire governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000(e) etseq.); the Equal Pay Act (29 U.S.C. Section 206(d); Executive Order 11246; the New Hampshire Fair Employment and Housing Act (Government Code 12940 et seq.); or any applicable or similar New Hampshire law?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the New Hampshire Department of Industrial Relations (or its equivalent), federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- g) Been issued a "Notice of Payment Due" by the Labor Commissioner, State of New Hampshire, Department of Industrial Relations, Division of Labor Standards Enforcement, or been the subject of a "Stop Notice" or "Notice to Withhold" in connection with the performance of any public works contract with any public entity?

If yes, please explain the circumstances, including the terms and any settlements entered into. If no, so state.

Yes ___ No ___

- h) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

- i) Been assessed liquidated or other damages for failure to complete any contract on time?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ___

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of New Hampshire that the foregoing declaration is true, correct and accurate to the best of my knowledge following due inquiry. Executed _____, 20__.

(Signature)

(Name Printed)

(Title)

(Name of Organization)

PERSONNEL WORK ASSIGNMENT FORM—Form E

See Section 2.11 of the ITP for Requirements Related to NHDOT Approval of Key Personnel

Name of Proposer: _____

Key Personnel Assignment	Name of Individual Assigned
Project Manager	_____
Construction Manager	_____
Design Manager	_____
Movable Bridge Engineer	_____
Movable Bridge Mechanical Engineer	_____
Movable Bridge Electrical Engineer	_____
Safety Manager	_____
Quality Control Administrator	_____
Design Quality Control Manager	_____
Construction Quality Control Manager	_____
Environmental Compliance Manager	_____
Permitting Coordinator	_____
Public Relations Officer	_____
Project Control Manager	_____
Project Schedule Manager	_____
Document Control Manager	_____

Note to Proposers – All proposed Key Personnel listed above must be approved by NHDOT pursuant to Section 3.2.5 of Exhibit B to the ITP.

NON-COLLUSION AFFIDAVIT—Form F

STATE OF _____)
)ss:
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that:

- A. _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal.

- B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against NHDOT or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

- C. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Contract or rejection of all Proposals and cancellation of the RFP.

_____ (Signature)	_____ (Signature)
_____ (Name Printed)	_____ (Name Printed)
_____ (Title)	_____ (Title)

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public in and for
said County and State

[Seal]
My commission expires: _____.

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of the entity(ies) making the Proposal.]

BUY AMERICA CERTIFICATION—Form G

(To be signed by authorized signatory(ies) of Proposer)

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) the following:

- a. Proposer shall comply with the Federal Highway Administration (“FHWA”) Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the design-build contract price.
- b. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Contract be investigated, Proposer has the burden of proof to establish that it is in compliance.
- c. At Proposer’s request, NHDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by NHDOT.

Date: _____

Signature: _____

Title: _____

Proposer’s Name: _____

DBE CERTIFICATION—Form H

Control _____

Project _____

Highway _____

County _____

**DISADVANTAGED BUSINESS ENTERPRISES
REQUIREMENTS**

The following goal for participation by Disadvantaged Business Enterprises is established for professional services and construction work under the Contract:

DBE Goal

4.0%

DBE Certification

By signing the Proposal, the Proposer certifies that (1) the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that Proposer will provide a good faith effort to substantiate the attempt to meet the goal; and (2) if awarded the Contract, Proposer will submit a DBE Performance Plan meeting the requirements set forth in the DBE Special Provisions attached as Appendix 14 to the Contract.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Bond provided by the Proposer will become property of NHDOT and the Proposer and Equity Participants will be precluded from participating in any reprocurement of the Contract for the Project.

[name]

[title]

CONFLICT OF INTEREST DISCLOSURE STATEMENT—Form J

Proposer’s attention is directed to ITP Section 2.10.2 regarding Organizational Conflicts of Interest and the restrictions applicable to such conflicts. Proposers are advised that certain firms will not be allowed to participate on any Proposer’s team for the Project because of their work with NHDOT in connection with the Project procurement. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the ITP within the Request for Proposals for the Memorial Bridge Replacement Project.

1. Required Disclosure of Conflicts

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer’s team (including the Proposer, Equity Members, Major Non-Equity Members, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and other key personnel for the project) which may result, or could be viewed as, an Organizational Conflict of Interest in connection with this RFP.

Proposer should disclose (a) any current contractual relationships with NHDOT, (b) any past, present, or planned contractual or employment relationships with any officer or employee of NHDOT, and (c) any other circumstances that might be considered to create a financial interest in the contract by any NHDOT member, officer or employee if Proposer is awarded the Contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the individuals or entities involved in preparing the RFP. Proposer should also disclose contractual relationships (i.e. joint ventures) with any of the individuals or entities involved in preparing the RFP, as well as relationships wherein such individual or entity is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer’s team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps the Proposer or other entities have taken or will take to avoid, neutralize, or mitigate any Organizational Conflicts of Interest described herein.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

_____, 20____
Date

PROPOSAL SECURITY—Form K

(Separate Documents)

PROPOSAL BOND—Form K-1

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the _____ **[NOTE: insert name of Proposer as the Principal and delete this bracketed text]**, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of New Hampshire, are hereby jointly and severally held and firmly bound unto the New Hampshire Department of Transportation (“NHDOT”), in the sum of \$_____ **[NOTE: insert amount and delete this bracketed text – amount must be equal to or greater than 10% of the Price Proposal if a single bond is provided; multiple bonds in lesser amounts may be provided if the sum is equal or greater than 10% of the Proposal Price]**(the “Bonded Sum”).

WHEREAS, the Principal is herewith submitting its Proposal to design and construct the Memorial Bridge Replacement Project through a Design-Build Contract (“Contract”), which Proposal is incorporated herein by this reference and has been submitted pursuant to NHDOT’s Request for Proposals dated as of _____, 20__ (as amended or supplemented, the “RFP”) in accordance with the Instructions to Proposers, as amended (“ITP”) included in the RFP;

NOW, THEREFORE,

1. The condition of this Proposal Bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to NHDOT as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the "Co-Sureties") of notice of such forfeiture from NHDOT:
 - (a) Principal's receipt of written notice from NHDOT that either (i) no Contract for the Project will be awarded by NHDOT pursuant to the RFP, or (ii) NHDOT has awarded a Contract for the Project, has received the executed Contract and other required documents, and does not intend to award the contract to the Principal;
 - (b) Except as expressly provided otherwise in the RFP and/or agreed to by NHDOT in writing, Principal’s performance of its obligations to provide the Proposal Security meeting the requirements of the RFP for the period of extension up to 270 days beyond the Proposal Due Date; or

- (c) If NHDOT has not previously delivered notice of forfeiture hereunder, failure of NHDOT to conditionally award the Contract to Principal within 180 days after the Proposal Due Date.
2. The Principal and the Surety or Co-Sureties hereby agree to pay to NHDOT the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after occurrence of any of the following events:
- (a) Principal withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal prior to the time allowed for execution of the Contract under the ITP, as such time may be extended pursuant to ITP Section 3.5.2, without NHDOT's consent; or
 - (b) Principal is selected for negotiations and fails to engage in good faith negotiations with NHDOT as set forth in ITP Section 4.11;
 - (c) Principal is the apparent best value Proposer and fails to provide the documents required under ITP Section 5.1.

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate NHDOT for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of NHDOT's transportation improvement program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that NHDOT would incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this Proposal Bond:

- (a) This Proposal Bond shall not be subject to forfeiture in the event that NHDOT disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.
- (b) If suit is brought on this Proposal Bond by NHDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by NHDOT in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.
- (c) Any extension(s) of the time for award of the Contract that Principal may grant in accordance with the Contract or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.
- d) Correspondence or claims relating to this Proposal Bond should be sent to Surety at the following address:

SIGNED and SEALED this _____ day of _____, 20__

Principal

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

[Add Appropriate Surety Acknowledgments]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

FORM OF LETTER OF CREDIT (PROPOSAL)–Form K-2

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

PLACE FOR PRESENTATION OF DRAFT: (Name and Address of Bank/Branch)

APPLICANT:

BENEFICIARY: NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
7 Hazen Drive
Concord, New Hampshire 03302

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT: \$_____ *[NOTE: insert amount and delete this bracketed text – amount must be equal to or greater than 10% of the Price Proposal.]*

STATED EXPIRATION DATE: _____ *[Note: Insert date that is [180] days after the Proposal Due Date and delete this bracketed text]*

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of NHDOT, for the amount of [_____ United States Dollars (\$_____)], available by draft at sight drawn on the Issuer. Any draft under this Credit shall be in the amount of [_____ United States Dollars (\$_____)] and shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. Be accompanied by the Beneficiary's signed and dated statement stating one of the following:
 - (a) "This drawing is due to _____'s withdrawal, repudiation, change, or other indication in writing that it will not meet all or any part of its commitments made in its Proposal prior to the time allowed for execution of the Contract under the ITP, as such time may be extended pursuant to ITP Section 4.5.2, without NHDOT's consent."

Or

- (b) "This drawing is due to _____'s failure to engage in good faith negotiations with NHDOT as set forth in ITP Section 5.11.1."

Or

- (c) "This drawing is due to _____'s failure to provide the documents required under ITP Section 6.1.

Or

- (d) "This drawing is due to _____'s failure to satisfy any other conditions to award of the Contract as required under ITP Section 4.6.

All drafts will be honored if presented to _____ (Bank/Branch - Name & Address) _____ on or before the Stated Expiration Date described above.

If a Demand for Payment is made by you hereunder at or prior to 10:00 a.m., eastern time, on any weekday (i.e., Monday through Friday, excluding New Hampshire state holidays and U.S. federal holidays) (a "Business Day"), and provided that such Demand for Payment conforms to the terms and conditions hereof, payment shall be made by us to you in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party (subject to any court order or judgment), to the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment on the next Business Day after demand is made. If a Demand for Payment is made by you hereunder after 10:00 a.m., eastern time, on a Business Day, and provided that such Demand for Payment conforms to the terms and conditions hereof, such payment shall be made no later than our close of business, local time of the location of the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution: _____

Routing Number: _____

Account Name: _____

Account Number to Credit: _____

Reference: _____

Attention: _____

All bank charges and commissions incurred in connection with the issuance, administration, advisement, confirmation, negotiation or any other fees associated with this Letter of Credit (including any drawings hereunder) shall be for the account of the applicant.

Except so far as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590 (the "Uniform Customs"), which shall in all respects be deemed a part hereof as fully as if incorporated herein except as modified hereby.

This Letter of Credit is issued under the laws of the State of New Hampshire and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of New Hampshire, without regard to principles of conflicts of law.

Any failure by you to draw upon this Letter of Credit as permitted hereunder shall not cause this Letter of Credit to be unavailable for any future drawing, provided that this Letter of Credit has not expired prior to such future drawing and that all requirements of this Letter of Credit are independently satisfied with respect to any such future drawing.

If legal proceedings are initiated by any party with respect to payment of the Letter of Credit, we agree that such proceeding shall be subject to New Hampshire courts and law.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at _____,
Attention: _____, specifically referring to the number of this Letter of Credit.

Issuer:

By: _____ (Authorized Signature of Issuer)

ESCROW AGREEMENT—Form L
MEMORIAL BRIDGE REPLACEMENT PROJECT

THIS ESCROW AGREEMENT (this “**Agreement**”) is made and entered into as of this _____, 20__, by and between _____, a _____ (“**Proposer**”), and _____ (“**Escrow Agent**”), to and for the benefit of the New Hampshire Department of Transportation (“**NHDOT**”), a metropolitan planning organization, with reference to the following facts:

- A. NHDOT has issued a Request for Proposals dated _____, 20__, as amended (the “**RFP**”) for the Memorial Bridge Replacement Project (the “**Project**”). Initially capitalized terms not defined herein shall have the meanings set forth in the RFP.
- B. Proposer wishes to submit to NHDOT a proposal (the “**Proposal**”) in response to the RFP.
- C. In accordance with Section 4.3.2 of the Instructions to Proposers, as amended (“**ITP**”), Proposer is submitting certain materials (the “**Escrowed Materials**”) to the Escrow Agent to be held in a secure location and available for review by NHDOT as specified herein.
- D. Proposer wishes to employ the services of Escrow Agent to act as the escrow holder with regard to the Escrowed Materials for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Proposer hereby irrevocably provides the following escrow instructions to Escrow Agent. These Escrow Instructions, although provided unilaterally, are specifically for the benefit of NHDOT as an intended third party beneficiary and may not be revised, supplemented, waived or withdrawn without the prior written consent of NHDOT’s authorized representative.

- 1. Designation of Authorized Representatives. Proposer hereby designates _____ as its authorized representative. NHDOT may designate an authorized representative by written notice to Proposer and Escrow Agent and change its authorized representative at any time by providing written notice to Proposer and Escrow Agent. Proposer may change its authorized representative at any time by providing written notice to NHDOT and Escrow Agent.
- 2. Deposit. Proposer anticipates depositing with Escrow Agent the Escrowed Materials, consisting of separately sealed boxes labeled “[Proposer Name]: Escrowed Materials for the NHDOT Memorial Bridge Replacement Project.” Upon deposit, Escrow Agent shall provide NHDOT and Proposer with written

acknowledgement of receipt of the Escrowed Materials, and agrees to hold the Escrowed Materials in safekeeping under the terms and conditions of this Agreement.

3. Manner of Holding of Escrowed Materials. Escrow Agent shall hold the Escrowed Materials in a designated area on the premises of Escrow Holder located at _____, New Hampshire as is specified to NHDOT and the Proposer in writing not later than fifteen (15) days prior to the time such Escrowed Materials are to be relocated to such new location. The Escrowed Materials shall be stored in an area that is locked at all times. **[if applicable:** During the term hereof, Escrow Agent shall allow access to the Escrowed Materials only to those individuals identified by NHDOT's authorized representative as having need for access. Such access shall include the ready ability of NHDOT to temporarily install and run computerized programs, applications, data and electronic files that are included in the Escrowed Materials on a stand-alone secure personal computer. NHDOT shall provide notice to Escrow Agent at least one business day in advance of its planned review of Escrowed Materials during the Escrow Agent's normal business hours of 8:00 a.m. – 5:00 p.m., Concord, New Hampshire time, Monday through Friday, or on a weekday night and at least two business days in advance of its planned review of Escrowed Materials on a weekend. During the term hereof, Escrow Agent shall provide reasonable access for NHDOT reviews beyond Escrow Agent's regular business hours. NHDOT agrees that access to the Escrowed Materials shall be subject to compliance with the procedures of the Escrow Agent described herein, which are designed to maintain proper control over access to the Escrow Agent's office and any confidential or proprietary information of the Escrow Agent or its customers. In particular, the Escrow Agent may require that two employees of the Escrow Agent (one of which will be an officer) shall be present at all times that Escrowed Materials are being reviewed on its premises. In addition, reviewers will be required to sign-in and sign-out when reviewing Escrowed Materials. No access shall be given to any representative of Proposer unless NHDOT agrees to such access in writing. No third party, including the employees of Escrow Agent, shall be allowed access to the Escrowed Materials, although this shall not preclude employees of Escrow Agent from having access to the locked area for other purposes.]

4. Release of Escrowed Materials.

- (a) Escrow Agent shall release the Escrowed Materials deposited hereunder only upon receipt by Escrow Agent of (i) a certificate signed by NHDOT's authorized representative, certifying that NHDOT has determined not to enter into a contract with Proposer and has executed a Design-Build Contract ("Contract") with another party, in which event the Escrowed Materials shall be released as directed by Proposer; or (ii) a certificate signed by NHDOT's authorized representative, certifying that NHDOT has decided to terminate the procurement, in which event the Escrowed Materials shall be released as

-
- directed by Proposer; or (iii) joint instructions from the authorized representatives of Proposer and NHDOT directing release of the Escrowed Materials, in which event the Escrowed Materials shall be released as provided therein.
- (b) If NHDOT and the Proposer enter into a Contract, the Escrowed Materials shall be transferred to the NHDOT project office and maintained in accordance with the terms and conditions set forth in the Contract.
5. Rights of Escrow Agent. If conflicting demands are made or notices serviced upon Escrow Agent with respect to this Agreement, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:
- (a) Withhold and stop all further proceedings in, and performance of this Agreement;
 - (b) File a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves; or
 - (c) Deliver all Escrowed Materials with seals intact to another location meeting the requirements of Section 3, to be selected by Proposer within 30 days after Escrow Agent delivers notice thereof to NHDOT.
6. Fees. Proposer shall pay all fees and expenses in connection with Escrow Agent's obligations under this Agreement, as set forth on Exhibit A attached hereto.
7. Notices. Any communication, notice or demand of any kind whatsoever under this Agreement shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by facsimile or electronic-mail (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Proposer:

Attention: _____
Telephone: () _____
Facsimile: () _____

If to NHDOT:

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
7 Hazen Drive
Concord, NH 03302
Attention: Craig A. Green, PE,
Assistant Director of Project Development
Telephone: **603.271.1486**
Facsimile: **603.271.3914**

If to the Escrow Agent:

Attention: _____
Telephone: (____) _____
Facsimile: (____) _____

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 7 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

- 8. Representations. Proposer represents and warrants that neither the Proposer nor any member of its team has a financial or other interest in, or relation with, the Escrow Agent or its principals or officers, except that Escrow Agent may be the depository for accounts or escrowed documents maintained by such entities. Escrow Agent represents and warrants that it does not have a financial or other interest in, or relationship with, the Proposer, the Proposer's team members identified to Escrow Agent, or their principals or officers, except as a depository for accounts or escrowed documents, and further represents, warrants and covenants that the employees of Escrow Agent who have access to the Escrowed Materials also have no such interest or relationship with such entities.
- 9. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.
- 10. Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.
- 11. Governing Law. The laws of the State of New Hampshire shall govern this Agreement.

12. Liability of Escrow Agent.

- (a) The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Agreement or any other person. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document, including without limitation any Proposal or the Contract. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.
- (b) The Escrow Agent shall have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any notices, requests, securities, checks, or other documents or instruments submitted to it in connection with its duties hereunder. The Escrow Agent shall be entitled to deem the signatories of any documents or instruments submitted to it hereunder as being those purported to be authorized to sign such documents or instruments on behalf of the parties hereto, and shall be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind.
- (c) The Escrow Agent shall place the Escrowed Materials in a vault or such other secure location so as to satisfy the requirements of Section 3 above. The Escrow Agent, however, does not insure that the Escrowed Materials will not be damaged or destroyed due to temperature, humidity, fire, smoke, electrical interference or other environmental factors, and the Escrow Agent is only required to take the same precautions to control the environment in which the Escrowed Materials will be stored as it would normally take in the storage of paper documentation.

13. Indemnification of Escrow Agent. The Escrow Agent shall be, and hereby is, indemnified and saved harmless by the Proposer from and against any and all losses, liabilities, damages, costs and expenses, including without limitation attorney fees and expenses, which may be incurred by it as a result of its acceptance of the Escrowed Materials or arising from the performance of its duties hereunder, unless such losses, liabilities, damages, costs and expenses shall have been finally adjudicated to have primarily resulted from the bad faith or gross negligence of the Escrow Agent, and such indemnification shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement.

14. Assignment. No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be delivered to and acknowledged by the Escrow Agent.
15. Advice of Counsel. The Escrow Agent shall have the right, but not the obligation, to consult with counsel of choice and shall not be liable for action taken or omitted to be taken by Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to the Escrow Agent. The Escrow Agent shall have the right to perform any of its duties hereunder through its agents, attorneys, custodians or nominees.
16. Resignation of Escrow Agent. The Escrow Agent may resign as such following the giving of ninety (90) calendar days prior written notice to the Proposer and NHDOT. In such event, the duties of the Escrow Agent shall terminate ninety (90) days after receipt of such notice (or as of such earlier date as may be mutually agreeable); and the Escrow Agent shall then deliver the balance of the Escrowed Materials then in its possession to a successor escrow agent as shall be appointed by the Proposer and acceptable to NHDOT as evidenced by a written notice filed with the Escrow Agent. If the Proposer has failed to appoint a successor prior to the expiration of ninety (90) calendar days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.
17. Successor Escrow Agent Entity. Any banking association or corporation into which the Escrow Agent may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent shall be sold or otherwise transferred, shall succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

18. Court Orders. In the event that any Escrowed Materials is attached, garnished or levied upon by any court order, or the delivery thereof is stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrowed Materials deposited under this Agreement, the Escrow Agent shall provide NHDOT and Proposer with written notice within 10 days after the occurrence of such event. The Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ order or decree it shall not be liable to any of the parties hereto or to any other person, firm of corporation, by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

PROPOSER

By: _____
Name: _____
Title: _____

The escrow provided for in this Agreement is hereby accepted by Escrow Agent.

By: _____
Title: _____

OPINION OF COUNSEL—Form M

[LETTERHEAD OF INDEPENDENT LAW FIRM OR IN-HOUSE COUNSEL – SEE SECTION 5.1.2(e) OF THE ITP FOR LEGAL COUNSEL REQUIREMENTS]

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
7 Hazen Drive
Concord, NH 03302

Re: Design-Build Contract (“Contract”) for the Memorial Bridge Replacement Project dated as of _____, 20__, by and between New Hampshire Department of Transportation, and _____ (the “Design-Builder”)

Ladies and Gentlemen:

[Describe relationship to Design-Builder and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize delivery of the proposal and execution of the Contract.] This letter is provided to you pursuant to Section 5.1.2 of the Instructions to Proposers of that certain Request for Proposals issued by the New Hampshire Department of Transportation (“NHDOT”) on _____, 20__, as amended.

In giving this opinion, we have examined _____. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable. ***[if certificate used/obtained from Design-Builder, such certificate should also run in favor of NHDOT and should be attached to opinion]***

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding organization/formation and existence of Design-Builder and that Design-Builder has corporate power to own its properties and assets, carry on its business, make the Proposal, enter into the Contract and to perform its obligations under the Contract Documents] ***[if Design-Builder is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]***
2. [opinion regarding good standing and qualification to do business in State of New Hampshire for Design-Builder] ***[if Design-Builder is a partnership/joint venture,***

these opinions are also required for each of its joint venture members and general partners]

3. [opinion that Proposal and the Contract have been duly authorized by all necessary corporate action on the part of the Design-Builder and the Proposal and Contract have been duly executed and delivered by Design-Builder] ***[if Design-Builder is a partnership/joint venture, add: “and its joint venture members/general partners” after the first and second “Design-Builder”]***
4. [opinion that the Contract constitutes a legal, valid and binding obligation of the Design-Builder enforceable against the Design-Builder in accordance with its terms] ***[if Design-Builder is a partnership/joint venture, add: “and its joint venture members/general partners” after the second “Design-Builder”]***
5. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Proposal and the Contract; and that neither the Proposal nor the Contract conflicts with any agreements to which Design-Builder is a party ***[if Design-Builder is a partnership/joint venture, add: “and its joint venture members/general partners are a party”]*** or with any orders, judgments or decrees by which Design-Builder is bound ***[if Design-Builder is a partnership/joint venture, add: “and its joint venture members/general partners are bound”]***
6. [opinion that execution, delivery and performance of all obligations by Design-Builder under the Proposal and the Contract do not conflict with, and are authorized by, the articles of incorporation and bylaws of Design-Builder ***[if Design-Builder is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if Design-Builder is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Design-Builder is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation]***
7. [opinion that execution and delivery by the Design-Builder of the Proposal and the Contract do not, and the Design-Builder’s performance of its obligations under the Proposal and the Contract will not, violate any current statute, rule or regulation applicable to the Design-Builder or to transactions of the type contemplated by the Proposal or the Contract]

Note to Proposers – NHDOT reserves the right to request additional legal opinions should the project financing and/or the Proposer’s form of organization, organizational documents or Proposal warrant, as the same shall be determined by NHDOT, in its sole discretion

CONTRACT PRICE —Form N-1

(provided separately)

**CASH FLOW ADJUSTMENT TABLE/PAYMENT CURVE– Form N-2
MEMORIAL BRIDGE REPLACEMENT PROJECT**

(provided separately)

PROPOSAL PRICE VALUE– Form O

Proposer Name: _____

1	Contract Amount (amount from Box A on Form N-1)	\$ _____	
2	Schedule Adjustment		
2a	Number of days to achieve Substantial Completion (from Form P)	—	
2b	Schedule Adjustment Factor (per day)	\$25,000	
2c	Schedule Adjustment Amount (line 2a x line 2b)		\$ _____
3	PRICE VALUE (line 1 + line 2c)		\$ _____

COMPLETION DEADLINES– Form P

Milestone Schedules

NHDOT Last Allowable Dates:

Description	Commencement of Work	Substantial Completion Date
NHDOT Last Allowable Date for Substantial Completion	NTP1 (assumed to be December 16, 2011)	NTP1 + 889 days = <u>May 23, 2014</u>

Proposal Commitment Dates:

Description	Commencement of Work	Substantial Completion Date
Proposal Commitment Date for Substantial Completion	NTP1 (assumed to be December 16, 2011)	NTP1 + ___ days

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION – Form Q

THE FOLLOWING CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS SHALL BE EXECUTED BY THE PROPOSER, MAJOR PARTICIPANT AND EACH NON-EXEMPT SUBCONTRACTOR.

The undersigned Proposer ____ Major Participant ____ proposed Subcontractor ____ hereby certifies that it has ____ has not ____ participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114 or 11246, and that, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

(Company)

By:

(Title)

Date: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29
DEBARMENT AND SUSPENSION CERTIFICATION – Form R**

The undersigned Proposer certifies on behalf of itself and all Equity Members, Major Non-Equity Members and Contractors the following:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, State or local) terminated for cause or default.

Where the Proposer is unable to certify to any of the statements in this certification, it shall attach a certification to its proposal or bid stating that it is unable to provide the certification and explaining the reasons for such inability.

Note: Providing false information may result in criminal prosecution or administrative sanctions.

Date: _____

Proposer: _____

Signature: _____

Title: _____

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of all partners, members or joint venturers of the Proposer and all other Major Participants.]

**CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING—
Form S**

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "**Disclosure Form to Report Lobbying**," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

Date: _____, 20__

Signature

Title

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of all partners, members or joint venturers of the Proposer and all other Major Participant]