

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

This Agreement is by and between the City of Portsmouth of 1 Junkins Avenue, Portsmouth, NH 03801 ("City"), and **Cumming Management Group, Inc.** ("Consultant") with a principal place of business at 900 Third Avenue, 6<sup>th</sup> floor, New York, NY 10022 entered into on **1/18/2023**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**A. DESCRIPTION OF SERVICES**

This Agreement establishes the scope of services, schedule of work, and fees for professional construction estimating services for the McIntyre Property at 62 Daniel Street, Portsmouth, NH, (the "Project"). The detailed project understanding, scope of services and fees are more fully set forth in Exhibit A, a letter from Consultant to City dated January 9, 2023, attached and incorporated hereto.

**B. STANDARD OF CARE**

In performing the Scope of Services, Consultant will exercise that degree of care and skill ordinarily practiced under similar circumstances by consultants in the Portsmouth, NH area providing similar services.

**C. PROJECT SCHEDULE**

Consultant's performance of this Agreement shall commence immediately following the signing of this Agreement and be substantially completed by January 30, 2023.

**D. PROJECT BUDGET**

The Consultant will provide the services described in this Scope of Services for the costs set forth in Exhibit A.

**E. PAYMENT**

Consultant shall submit monthly invoices detailing work performed and payment based on the percentage of work completed. Invoices shall be payable net 30 days from time of submission to the City.

**F. CITY'S RESPONSIBILITIES**

Nicholas Cracknell, Principal Planner, will be responsible for administering the project and overseeing Consultant's work on the Project and will be Consultant's principal point of contact. City staff will provide Consultant with available municipal information necessary for the project and supplementary information that may be requested by Consultant from time-to-time during the course of the Project.

**G. OWNERSHIP AND CONFIDENTIALITY OF INFORMATION**

All information, data, documents, photos, reports, computer records, and other materials of any kind acquired or developed by Consultant pursuant to the Agreement and delivered to the City of

Portsmouth shall be property of the City. All work product shall be kept strictly confidential by the consultant and not released to the public or any third party without the City's express written consent. 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 Consultant for the specific purpose intended shall be at the City's sole risk.

#### **H. INDEMNIFICATION**

Consultant 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 Consultant in the performance of professional services under this Agreement, to the extent that Consultant is responsible for such damages, liabilities and costs on a comparative basis of fault between Consultant and the City, Consultant shall not be obligated to indemnify the City for the City's negligence or for the negligence of others.

#### **I. TERMINATION OF AGREEMENT**

1. Termination of Agreement for Cause. If through any cause, Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, the City shall have the right to terminate this Agreement by giving written notice to Consultant of such termination and specify the effective date of such termination. Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to the date of termination. Notwithstanding the above, Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by Consultant, and the City may withhold any payments until such time as the exact amount of damages to the City from Consultant is determined.
2. Termination for the Convenience of the City. The City may terminate or suspend this Agreement at any time for any reason by giving at least five (5) days-notice writing to Consultant. If the Agreement is terminated or suspended by the City for its convenience, the City shall pay Consultant for all work and expenses satisfactorily completed up to the date of termination.

#### **J. INSURANCE REQUIREMENTS**

1. Consultant shall carry: Commercial General Liability insurance with combined single limits not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage and \$2,000,000 for general aggregate; Professional Liability Insurance in an amount of not less than \$1,000,000 in the aggregate, covering acts, errors, or omissions related to the Scope of Professional Services to be rendered under this Contract and workers compensation coverage for all employees in the amounts required by law. Coverage amounts can be met through umbrella/excess policies.
2. The City of Portsmouth shall be named as an additional insurance on the Commercial Liability Policy as follows: City of Portsmouth, Attn: Legal Department, 1 Junkins Avenue, Portsmouth, NH 03801.
3. Coverages shall remain in effect for a period consistent with the Statutes of Limitations under the Law of New Hampshire.

**K. PROJECT COMMUNICATIONS.** All contact with the press, the public, and other third parties shall be coordinated with the City. Press inquiries should be directed to the City's representative as described in Paragraph F above unless direction is given otherwise. Communications to the public shall be reviewed and approved by the City.

Marketing and promotional material developed by Consultant related to this Project and products delivered under this Agreement shall be developed with the City 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.

**L. CHANGES TO THE SCOPE OF WORK AND ADDITIONAL SERVICES**

Any change to the professional services described in this Agreement shall not be authorized unless documented in writing by an appropriate Change Order. A Change Order is a written instrument duly signed by authorized representatives of both the Consultant and Client, in which both parties agree to: (1) Change the Scope of Services; (2) Adjust the total fees, if any; and/or (3) Change the schedule, as appropriate.

**M. DELAY OR PREVENTION OF SERVICES DUE TO FORCE MAJEURE**

A party will not be considered in breach of or in default because of, and will not be liable to the other party for, any delay or failure to perform its obligations under this agreement by reason of fire, earthquake, flood, explosion, strike, riot, war, terrorism, pandemic, or similar event beyond that party's reasonable control (each a "Force Majeure Event"). However, if a Force Majeure Event occurs, the affected party shall, as soon as practicable notify the other party of the Force Majeure Event and its impact on performance under this agreement and use reasonable efforts to resolve any issues resulting from the Force Majeure Event and perform its obligations under this agreement.

**N. MISCELLANEOUS PROVISIONS**

1. The City and the Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives of the other party to the Agreement and to the partners, successors, assigns, and legal representatives of the City with respect to all covenants of the Agreement. Neither the City nor the Consultant shall assign the Agreement without the written consent of the other.
2. The Agreement represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements either written or oral. The Agreement may only be amended in writing, signed by both the City and the Consultant.
3. For purposes of this Agreement, any officers, employees, agents, applicants, or beneficiaries of Consultant act in an independent capacity and are not officers or employees or agents of the City.
4. Nothing contained in the Agreements shall create a contractual relationship and/or a third party beneficiary relationship with a third party.

5. 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. Consultant shall take appropriate steps to assure compliance.
6. No waiver or breach of any provision of the Agreement shall constitute a waiver of any subsequent breach of the same or any provision hereof, and no waiver shall be effective unless made in writing.
7. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in force.
8. The terms of this Agreement shall be covered by the laws of the State of New Hampshire. Jurisdiction and venue shall lie in Rockingham County Superior Court.
9. All notices and communications given pursuant to the Agreement shall be in writing and delivered by email, personal service, or by registered mail to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served or received; or, if by mail, on the fifth day after being post-marked or the date of the actual receipt, whichever is earlier.

**CITY:**

City of Portsmouth, NH  
Attention: Nicholas Cracknell  
Title: Principal Planner  
1 Junkins Ave  
Portsmouth, NH 03801  
[Njcracknell@cityofportsmouth.com](mailto:Njcracknell@cityofportsmouth.com)

**CONSULTANT:**

**Cumming Management Group, Inc.**  
Attention: Mohamed Shehata, Vice President  
900 Third Avenue 6th Floor,  
New York, NY 10022  
[mshahata@cumming-group.com](mailto:mshahata@cumming-group.com)


With a copy to:

City Attorney Susan G. Morrell  
1 Junkins Ave  
Portsmouth, NH 03801  
[sgmorrell@cityofportsmouth.com](mailto:sgmorrell@cityofportsmouth.com)

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

**CITY OF PORTSMOUTH**

DATE 11/8/2023

BY:   
Karen Conard, City Manager

**Cumming Management Group, Inc.**

DATE \_\_\_\_\_

BY:   
Mohamed Shehata, Vice President

January 9<sup>th</sup>, 2023

**Nicholas J. Cracknell**  
Principal Planner  
**Planning Department,**  
City of Portsmouth, NH  
[njcracknell@cityofportsmouth.com](mailto:njcracknell@cityofportsmouth.com)

**RE: Review of Developer's Preliminary Pro Forma - Federal McIntyre Project, Portsmouth, NH  
Fee Proposal for a 50% SD Estimate**

Dear Nicholas,

Thank you for contacting Cumming regarding the above project. As discussed, we are pleased to submit the following fee proposal for cost estimating assistance for your **Federal McIntyre Project** which is located in Portsmouth, NH.

The purpose of this agreement is for Cumming to assist the City and its development partner in producing a mutually acceptable application to the National Park Service under which the McIntyre Federal Building may be acquired under the Federal Monument Program and redeveloped into the Community Plan as previously approved by the City and its development partner.

#### **PROJECT UNDERSTANDING**

The proposed redevelopment of the Thomas J. McIntyre Federal Property, aka "The McIntyre," is located at 80 Daniel Street in Portsmouth, New Hampshire. It is our understanding that the 122,760-sf project consists of a) 65,860 sf of adaptive reuse of the existing McIntyre building; b) 56,900 sf of new construction, and c) an additional 2.2 acres of open space and streetscape to enhance the project's frontages on Daniel, Penhallow, and Bow Streets as well as creating a new mid-block access lane that would run parallel to Chapel Street to the east of the property.

#### **ESTIMATING SCOPE OF SERVICES**

Cumming will only provide the following estimating scope of services:

- Meeting with City of Portsmouth and design team to kick-off the project
  - Detailed review and analysis of the 50% Schematic Design set of architectural, structural, and civil drawings, including a site survey, specification outline, utility and infrastructure narrative, and landscape narrative
  - Preparation an independent, Hard Construction cost estimate including:
    - Core and shell (for New Construction)
    - Interior Finishes and Fit out (for adaptive reuse and new construction)
    - Mechanical, Electrical and Plumbing building services
    - Sitework
    - Contractor indirect costs
  - Produce a 50% SD estimate which is both in an agreed Work/Cost Breakdown Structure (WBS) format (Master Format, Uniformat, Elemental) and Rate per sqft formats
  - Develop a Basis of Estimate detailing Assumptions, Clarifications, Allowances and Exclusions
  - Identification of key cost drivers
  - Confirmation of escalation and market conditions
  - QA/QC and review of draft estimate with City of Portsmouth and design team
  - Updated issue of estimate incorporating comments from design team review
  - Perform a peer review of the three (3) cost estimates provided to the City by the Development Partner, and interview the three (3) contractors who provided the estimates to understand their methodology, scope assumptions, inclusions, exclusions, and the overall basis of developing the estimates.
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### FEE PROPOSAL FOR ESTIMATING

For the above outlined scope of services, we are proposing a **lumpsum amount of \$27,000.**

### EXCLUSIONS FROM FEE PROPOSAL

The below services are excluded from our fee proposal; however, they can be provided if requested at an additional fee:

- Reimbursable expenses (at cost)
- Procurement of Construction Manager / General Contractor (*i.e. bid leveling, negotiations, award, etc.*)
- Post contract and/or Construction administrative services (*i.e. Payment requisitions, financial controls and reporting, change orders review, etc.*)
- Soft cost estimating and/or budget tracking/ cost reporting (hard costs included only)
- Any other services not listed under "Estimating Scope of Services" as per Page 1 of this proposal.

### OPTIONAL SCOPE: VALUE ENGINEERING

We are proposing a **Not to Exceed** allowance of \$20,000 for value engineering, using an hourly rate of \$175/hr.

We look forward to collaborating with you and the rest of the design team on this project. Should you have any questions or comments about any aspect of the proposal, please do not hesitate to contact me.

Sincerely yours,

**CUMMING:**



Mohamed Shehata, FRICS, FCI Arb  
**Vice President**

Accepted by: \_\_\_\_\_

Signature: \_\_\_\_\_

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January 9<sup>th</sup>, 2023

**Nicholas J. Cracknell**  
Principal Planner  
**Planning Department,**  
City of Portsmouth, NH  
[nicracknell@cityofportsmouth.com](mailto:nicracknell@cityofportsmouth.com)

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