

FINANCE COMMITTEE

JULY 6, 2016

7:00 PM

Aldermanic Chamber

ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

- From: Dan Kooken, Purchasing Manager
Re: HVAC Preventative Maintenance Agreement (Value: \$14,541); Department: 152, Fire
Fund: General Fund; Account Classification: 54 Property Services
- From: Dan Kooken, Purchasing Manager
Re: Purchase of Access Control and Camera System for Riverside Building (Value: \$24,989)
Department: 156 Emergency Management; Fund: 2014 State Homeland Security Program (SHSP)
Grant; Activity: Security Equipment At Riverside
- From: Dan Kooken, Purchasing Manager
Re: CodeRED Contract (Value: \$22,000); Department: 156 Emergency Management
Fund: General; Accounting Category: 54 Property Services
- From: Dan Kooken, Purchasing Manager
Re: Broad Street Parkway Bridge LED Lighting (Value \$149,979); Department: 181 Community
Development; Fund: Capital Project; Account Classification: 54 Property Services
- From: Dan Kooken, Purchasing Manager
Re: Parking John Deere Gator Utility Vehicle (Value \$20,700); Department: 166 Parking
Fund: General Fund; Account Classification: 54 Property Services
- From: Dan Kooken, Purchasing Manager
Re: Engineering Services for Park and Ride at 25 Crown Street (Value \$198,275)
Department: 181 Community Development; Fund: New Hampshire DOT, Congestion
Mitigation and Air Quality Program; Account Classification: 53 Professional Services
- From: Dan Kooken, Purchasing Manager
Re: FY17 Bio-Diesel Fuel Contract for Nashua Transit (Value \$1.8457 per Gallon)
Department: 186 Nashua Transit; Fund: Grant Funds; Account Classification: 61 Fuel
- From: Dan Kooken, Purchasing Manager
Re: Approval of Agreement to Additional Requirements for Technologies other than High Pressure
Sodium or Metal Halide Lighting (Value: \$0.00); Department: 126 Financial Services
- From: Dan Kooken, Purchasing Manager
Re: Main Street Sidewalk Improvements – Block 3 & 4 Installation of Brick Crosswalks (Value: \$17,765)
Department: 161 Streets; Fund: General; Activity Description: Main Street
- From: Dan Kooken, Purchasing Manager
Re: Main Street Sidewalk Improvements – Block 3 & 4 Granite Curbing at Crosswalks and Median
Islands (Value: \$16,120); Department: 161 Streets; Fund: General; Activity Description: Main Street
- From: Dan Kooken, Purchasing Manager
Re: Amendment #1 to Contract with Stantec – Pavement Management (Value: \$12,000)
Department: 161 Streets; Fund: Prior Year Escrow; Account Category: 53 – Professional Services

From: Dan Kooken, Purchasing Manager
Re: Purchase of Various Chemicals for the Wastewater Treatment Facility (Value: \$571,000)
Department: 169 Wastewater; Fund: Wastewater; Accounting Classification: 61 Supplies & Materials

From: Dan Kooken, Purchasing Manager
Re: Waukesha Generator Maintenance (Value: Not-to- Exceed \$30,000); Department: 169 Wastewater
Fund: Wastewater; Account Classification: 54 Property Services

From: Dan Kooken, Purchasing Manager
Re: Analytical Testing Services (Value: Not-to-Exceed \$15,000); Department: 169 Wastewater
Fund: Wastewater; Accounting Classification: 53 Professional & Technical Services

From: Dan Kooken, Purchasing Manager
Re: NWTF Capacity Analysis Study Update (Value: \$19,898); Department: 169 Wastewater
Fund: Wastewater; Account Classification: 53 – Professional & Technical Services

From: Dan Kooken, Purchasing Manager
Re: Sewer and Drain Pipe and Structure Inspection (Value: \$113,423); Department: 169
Wastewater Fund: Wastewater; Activity Description: Sewer Rehab

From: Dan Kooken, Purchasing Manager
Re: Contract Award for Renewal of USDA Wildlife Management Service Agreement
(Value: Not-to-Exceed \$67,696); Department: 168 Solid Waste; Fund: Solid Waste
Account Classification: 53 Professional & Technical Services

UNFINISHED BUSINESS – None

NEW BUSINESS – RESOLUTIONS

R-16-039

Endorsers: Mayor Jim Donchess
Alderman Mary Ann Melizzi-Golja
Alderman Tom Lopez
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Don LeBrun
Alderman-at-Large Lori Wilshire

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO CONTRACTS WITH NASHUA COMMUNITY COLLEGE, RIVIER UNIVERSITY, DANIEL WEBSTER COLLEGE, TOWN OF HUDSON, TOWN OF MERRIMACK, SOUHEGAN VALLEY TRANSPORTATION COLLABORATIVE, AND THE PLUS COMPANY FOR TRANSIT SERVICES

NEW BUSINESS – ORDINANCES- None

DISCUSSION

RECORD OF EXPENDITURES

PUBLIC COMMENT

NON-PUBLIC SESSION

ADJOURNMENT



THE CITY OF NASHUA

*Financial Services
Purchasing Department*

"The Gate City"

June 30, 2016
Memo #17-002

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: HVAC PREVENTATIVE MAINTENANCE AGREEMENT (VALUE: \$14,541)
DEPARTMENT: 152 FIRE; FUND: GENERAL FUND
ACCOUNT CLASSIFICATION: 54 PROPERTY SERVICES

Please see the attached communication from Assistant Fire Chief Brian Rhodes to John Griffin, CFO/Comptroller dated June 17, 2016 for information related to this request.

Pursuant to **§ 5-78 Major purchases (greater than \$10,000)** A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

Nashua Fire Rescue and the Purchasing Department recommend the award of this contract to **AE Mechanical Inc. of Salem, NH** in the amount of **\$14,541**.

Respectfully,

Dan Kooker
Purchasing Manager

Cc: S. Galipeau B. Rhodes J. Graziano



Nashua Fire Rescue
Administrative Office
70 East Hollis Street, Nashua, NH 03060
www.nashuafire.com

Brian D. Rhodes
Assistant Chief
(603) 594-3651
FAX (603) 594-3654
RhodesB@NashuaNH.gov

June 17, 2016

John Griffin
CFO/Comptroller

SUBJECT: Fire HVAC Contract

Nashua Fire Rescue Administration is constantly searching out cost saving measures and increased efficiencies throughout our entire budget. With that being said, we determined that a review of our HVAC contract was in order. RFP 0292-052016 was prepared and publicly offered on April 29, 2016 and closed on May 20, 2016. Seven companies came to the pre-bid walk thru while only four companies submitted competitive proposals. The proposals received are as follows:

AE Mechanical	Salem, NH \$14,541
J Lawrence Hall	Nashua, NH \$15,795
Controlled System HVAC, Inc.	Salem, NH \$17,500
Granite State P & H	Weare, NH \$22,426

Upon thorough review of the submitted proposals with Purchasing Mgr. Kooken, NFR Administration recommends the contract be awarded to AE Mechanical of Salem, NH in the amount of \$14,541.

Respectfully submitted,

Brian D. Rhodes
Assistant Fire Chief



City of Nashua Request for Proposal: RFP0292-052016

PREVENTATIVE MAINTENANCE AGREEMENT

for

CITY OF NASHUA FIRE RESCUE

Equipment Location

- **Air Port Station**
- **East Hollis**
- **177 Lake Street**
- **38 Lake Street**
- **Spit Brook Road**
- **Conant Street**
- **Amherst Street**

Schedule A

Standard Pricing Form

	YEAR 1	YEAR 2	YEAR 3
Annual Maintenance Plan [One-time fee]	\$14,541.00		
Preventative Maintenance: [Annual fees]			
- Labor:	\$13,320.00	\$13,320.00	\$13,320.00
- Materials:	\$ 1,221.00	\$ 1,221.00	\$ 1,221.00
Repair Labor during regular hours, including travel expense [Hourly rates]	\$ 95.00	\$ 95.00	\$ 95.00
- Supervisor	For All Trades	For All Trades	For All Trades
- Mechanic			
- Electrician			
- Plumber			
Repair Labor during overtime hours, including travel expense [Hourly rates]	\$ 142.50	\$ 142.50	\$142.50
- Supervisor	For All Trades	For All Trades	For All Trades
- Mechanic			
- Electrician			
- Plumber			
Repair Materials [Mark-up %]	15%	15%	15%
Emergency Service			
- Visit fee (regular)	\$ 95.00	\$ 95.00	\$ 95.00
- Visit fee (overtime)	\$ 142.50	\$ 142.50	\$ 142.50



THE CITY OF NASHUA

Financial Services
Purchasing Department

"The Gate City"

June 30, 2016
Memo #17-010

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: PURCHASE OF ACCESS CONTROL AND CAMERA SYSTEM FOR RIVERSIDE
BUILDING (VALUE: \$24,989)
DEPARTMENT: 156 EMERGENCY MANAGEMENT
FUND: 2014 STATE HOMELAND SECURITY PROGRAM (SHSP) GRANT
ACTIVITY: SECURITY EQUIPMENT AT RIVERSIDE

Please see the attached communication from Justin Kates, Director of Emergency Management information related to this purchase.

Pursuant to **§ 5-84 Special purchase procedures A. (5)** Purchases from a sole manufacturer, where it is determined to be more efficient and economical to reduce costs of maintenance of additional repair parts, supplies or services.

The Director of Emergency Management and the Purchasing Department recommend awarding this purchase in an amount of **\$24,989** to **Tyco Integrated Security of Nashua, NH.**

Respectfully,

Dan Kooker

Purchasing Manager

Cc: B. Codagnone N. Miseirvitch C. O'Connor L. Fauteux D. Simmons



City of Nashua
Office of Emergency Management
229 Main Street
Nashua, New Hampshire 03060

Justin Kates, Director
603.589.3260
katesj@nashuanh.gov

TO: Dan Kooken
Purchasing Manager

SUBJECT: Purchase of Access Control and Camera System For Riverside Building (Value: \$24,988.68)
Fund: 2015 State Homeland Security Program (SHSP) Grant \$24,988.68

This project will update access control on doors to the building, as well install as CCTV cameras to monitor the grounds around the building. This request will improve the security to the Riverside facility. Previous DHS assessments have identified the lack of access control and the lack of CCTV as critical gaps in the security of the facility.

Pursuant to NRO § 5-84 (A) (5), these items will be purchased from Tyco Integrated Security who is currently the provider of access security for the Transit Building, Parking Garages, Wastewater Treatment Facility, and City Hall. Continuing our build out of this integrated access control system will ensure full interoperability with current and future buildings.

Funding for this project will come from a Department of Homeland Security Grant accepted by the Board of Aldermen on February 23rd, 2016. No local match is required.

The Information Technology Division and this Office recommend the award of this purchase in the amount of **\$24,988.68** to Tyco Integrated Security, Nashua, NH.

Thank You,

Justin Kates
Director of Emergency Management

Cc: B. Codagnone N. Mlseirvitch J. Graziano S. Marchant L. Fauteux



**Proposal for
City of Nashua
11 Riverside St
Nashua, NH 03062
04/05/2016**

This Tyco Integrated Security Proposal (the "Proposal") contains Tyco proprietary and business confidential information and may not be shared with third parties without the prior written consent of Tyco. Tyco's provision of the equipment, systems, and/or services described in this Proposal is expressly conditioned upon Company's acceptance of the terms and conditions of the standard Tyco Integrated Security "AGREEMENT" COMMERCIAL TERMS AND CONDITIONS posted on <http://www.tycois.com/standardtandc>. The system design and specified equipment are subject to final approval by your local fire department or other authority having jurisdiction. This Proposal is valid for a period of sixty (60) days from the above date and any deletions or additions to this Proposal may result in changes to the pricing and/or terms and conditions.

Inquiries regarding this proposal may be directed to:

Tyler Devoe
Tyco Integrated Security
Cell Phone #: 603.706.0534
Email: tylerdevoe@tyco.com



City of Nashua
11 Riverside St
Nashua, NH 03062
Estimate Name: City of Nashua DPW Admin CCTV 4-5-16

DATE 04/05/2016

DEAR Nick Miseirvitch:

Thank you for allowing Tyco Integrated Security (Tyco) the opportunity to provide City of Nashua with our proposal for City of Nashua DPW Admin CCTV 4-5-16.

As an industry leader, Tyco's desire is to bring experience, industry insight and value to our customers by providing solutions that deliver lasting results while help keeping risk to a minimum. Your business is our business and helping to reduce your losses while improving operations means Tyco is consistently evaluating your issues and needs.

Tyco provides integrated security solutions to businesses like yours throughout the world. In North America, Tyco maintains over 200 full-service brick and mortar offices, staffed by more than 10,000 company-trained employees, including over 3,700 service personnel. With unparalleled presence across the U.S., Tyco service and installation teams are specially trained and focused on our technology offerings.

We are proud of our history, financial strength and depth and breadth of services we offer and I look forward to discussing our proposal with you and showing you why Tyco is the premier leader in the electronic security industry.

I offer you my personal commitment to help ensure Tyco meets your business needs.

Sincerely,

Tyler Devoe
Commercial Business Solutions

License Information: AL 2014/15-1498,1499,1500,1501,1502,1542,594,595 The Security Industry is governed by the rules and regulations of the Alabama Electronic Security Board of Licensure. If you would like information on these rules and regulations or would like to register a complaint you can contact the Board at: AESBL 7956 Vaughn Rd., Montgomery 36116, (334) 264-9388 Fax: 334-264-9332 AK 38381, 5430 Fairbanks Street, Suite 8 Anchorage, AK 99507 AR 0030740116, 003587, Regulated by Arkansas Bd. of Private Investigators & Private Security Agencies, #1 State Police Plaza Dr., Little Rock 72209, (501) 618-8600 AZ ROC281489 CA ACO7207, 977249; alarm company operators are licensed and regulated by the Bureau of Security & Investigative Services, Dept. of Consumer Affairs, Sacramento, CA 95814 DC ECS1327 FL EF20000413, EF20000890, EF20000341, EF0000478 GA LVA002833, LVA205386, LVA204776, LVA205526, LVU001160, LVU004635 HI CT-32427 IL 127001526 MA 45-C MI 3601206461, 5103373, 6060 Torrey Rd. Suite F Flint, MI 48504; MN TS651063 MS 15024088 NC 846-CSA, 4901 Glenwood Ave., Suite 200, Raleigh, NC 27612, (919) 788-5320 NM 375283 NV 0077542 NY 12000305846, Licensed by NYS Dept. of State OH E16782, 50-18-1052, 50-25-1050, 50-29-0003, 50-48-1032, 50-57-1119, 53-31-1582 OK 67 OR CLE322, 197010; PA Pennsylvania Home Improvement Contractor Registration Number; PA010083 RI 18004, TSC2726, AF-09170 TN C-1704,-1705,-1706,-1707,-1708,-1709,-1710,-1711 TX B00536, 4200 Buckingham Road Ste 150, Ft. Worth, TX 76115 -Dept of Public Safety, Private Security 5805 N. Lamar Blvd, Austin 78752 UT 8390557-6501 VA 11-7587, 11-7580, 11-7575, 11-7591, 11-7589, 11-7578, 2705147765A WA TYCOIS88600,11824 N Creek Pkwy, #105, Bothell, WA 98011 WV 050291.

Mississippi: MS 15024088. See a comprehensive list of licenses on www.tycois.com/about-us/legal. **California Customers Only:** Upon completion of the installation of the alarm system, the alarm company shall thoroughly instruct the purchaser in the proper use of the alarm system. Failure by the licensee, without legal excuse, to substantially commence work within 20 days from the approximate date specified in the agreement when the work will begin is a violation of the Alarm Company Act.

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City of Nashua
11 Riverside St
Nashua, NH 03062
Estimate Name: City of Nashua DPW Admin CCTV 4-5-16

SCOPE OF WORK FOR City of Nashua

This proposal presented by Tyco is being provided at the request of City of Nashua to successfully meet the specifications of the City of Nashua DPW Admin CCTV 4-5-16 Project at the 11 Riverside St, Nashua, NH 03062 location.

We propose to install and maintain a Video system which will consist of the following:

Contact Information:

Please contact Nick Miseirvitch at (603) 589-3305 or at

MiseirvitchN@nashuanh.gov

System Operation:

Tyco Integrated Security shall:

IMPORTANT NOTE: This proposal is contingent upon the Tyco technicians being able to utilize the crawlspace upstairs to run wiring. If the Tyco technician cannot run wiring through the crawlspace and must utilize conduit instead, a change order will be presented to the end-user.

1. Install (1) American Dynamics Video Edge NVR with 4TB HDD that can handle (32) IP cameras. The NVR will record the (5) attached cameras on motion detection at 12 FPS for approximately (50) days before overwriting, depending on % motion activation. The NVR will be located in the Server Room and will be tied into the local area network. A 17" LCD monitor will also be provided for the NVR.

2. Install (5) Illustra Pro 3 Megapixel Outdoor Dome Cameras on the exterior of the building per drawings

3. Install (1) Transition SM24TAT4XA-NA 24-Port GB PoE Switch in the server room

4. Install (1) American Dynamics 750 Series Dome Camera with Wide Dynamic Range and Infrared Night Vision on the exterior of the building per the drawings. This camera will be connected to the Transit DVR.

5. Program system

6. Train end-user on basic use of the system after installation

See System Operation

Programming Info:

TYCO INTEGRATED SECURITY CONFIDENTIAL AND PROPRIETARY BUSINESS INFORMATION

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City of Nashua
11 Riverside St
Nashua, NH 03062

Estimate Name: City of Nashua DPW Admin CCTV 4-5-16

Site Conditions:	Existing site with hard ceiling and crawlspace on the second floor for running wire, see drawings
Customer Expectations:	Installation shall take place Monday - Friday between 8am and 5pm
Training Expectations:	Tyco technician shall train end-user on basic use of the system after installation is complete
Customer Responsibilities / Tyco Exclusions:	City of Nashua is responsible for the following: <ol style="list-style-type: none">1. Provide (3) 120V electrical outlets in close proximity to the NVR for the NVR, Monitor and PoE switch.2. Provide network connection at the location of the NVR. If remote viewing is desired, please provide a Static IP address before installation begins.3. Provide access to all areas required for installation Monday - Friday between 8am and 5pm4. Be available during the camera sight-in phase of the project to ensure camera views are satisfactory5. Be available at the end of the installation for end-user training with the Tyco technician
Documentation Needs:	Drawings



City of Nashua
 11 Riverside St
 Nashua, NH 03062
 Estimate Name: City of Nashua DPW Admin CCTV 4-5-16

BILL OF MATERIALS FOR City of Nashua

City of Nashua DPW Admin CCTV 4-5-16 System

QTY	PRODUCT CODE	DESCRIPTION	LOCATION
1	ADVED04N0N4B	VE NVR DESKTOP WITH 4 IP CAMERA LICENSE AND 4TB STORAGE	
1	ADVEC01-ICF	VE NVR Camera License w/purchase of Illustra Camera	
5	IPS03D2OCBIT	ILLUSTRATE PRO 3MP MINIDOME, 3-9MM, OUTDOOR, VANDAL, CLEAR, BLACK, TDN W/IR, TWDR	
5	ADCIM6WALLBK	Illustra 600 wall mount indoor outdoor black adapter Kit	
1	TRANSITION SM24TAT4XA-NA 24-Port GB PoE Switch	TRANSITION SM24TAT4XA-NA 24-Port GB PoE Switch	
1	ADLCD17GB	17" LCD 1280x1024 Resolution, DVI-D, VGA, Audio	
1	7153650BL	RJ45 CAT 5e Booted Patch 24/4pr, SOL, Unshielded, CMP, Plenum, Blue, 50' Patch Cable	
1	ADCA75DBOC4RN	DISCOVER 750, 700TVL, OUTDOOR DOME, BLACK, TDN, WDR, CLEAR BUBBLE, 2.8 - 10MM VF	
1	ADCBMWALL	MOUNT, DISCOVER, WALL W/ PENDANT CAP, BLACK	

TYCO INTEGRATED SECURITY CONFIDENTIAL AND PROPRIETARY BUSINESS INFORMATION

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**Proposal for
City of Nashua
11 Riverside St
Nashua, NH 03062
03/31/2016**

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Inquiries regarding this proposal may be directed to:

Tyler Devoe
Tyco Integrated Security
Cell Phone #: 603.706.0534
Email: tylerdevoe@tyco.com



City of Nashua
11 Riverside St
Nashua, NH 03062

Estimate Name: City of Nashua DPW Access Upgrade 3-10-15

DATE 03/31/2016

DEAR Nick Miseirvitch:

Thank you for allowing Tyco Integrated Security (Tyco) the opportunity to provide City of Nashua with our proposal for City of Nashua DPW Access Upgrade 3-10-15.

As an industry leader, Tyco's desire is to bring experience, industry insight and value to our customers by providing solutions that deliver lasting results while help keeping risk to a minimum. Your business is our business and helping to reduce your losses while improving operations means Tyco is consistently evaluating your issues and needs.

Tyco provides integrated security solutions to businesses like yours throughout the world. In North America, Tyco maintains over 200 full-service brick and mortar offices, staffed by more than 10,000 company-trained employees, including over 3,700 service personnel. With unparalleled presence across the U.S., Tyco service and installation teams are specially trained and focused on our technology offerings.

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I offer you my personal commitment to help ensure Tyco meets your business needs.

Sincerely,

Tyler Devoe
Commercial Business Solutions

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City of Nashua
11 Riverside St
Nashua, NH 03062
Estimate Name: City of Nashua DPW Access Upgrade 3-10-15

PAYMENT OPTIONS

Outright Sale Option

Provides your business with ownership of the electronic security equipment upon purchase.

Installation Investment Package:	\$7896.29
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City of Nashua
11 Riverside St
Nashua, NH 03062
Estimate Name: City of Nashua DPW Access Upgrade 3-10-15

SCOPE OF WORK FOR City of Nashua

This proposal presented by Tyco is being provided at the request of City of Nashua to successfully meet the specifications of the City of Nashua DPW Access Upgrade 3-10-15 Project at the 11 Riverside St, Nashua, NH 03062 location.

We propose to install and maintain a Access system which will consist of the following:

Contact Information:

Please contact Nick Miseirvitch at
603-589-3305 or at

MiseirvitchN@nashuanh.gov

System Operation:

Tyco Integrated Security shall:

IMPORTANT NOTE: This proposal is contingent upon re-using existing wiring and end-devices. If the Tyco technician determines that the existing wiring or end-devices cannot be re-used a change order will be presented to the end-user.

1. Replace existing control panel in the server room with (2) KT-400 control panels. The KT-400 panels will be connected to the LAN with a patch cable and will be tied into the Kantech software at City Hall.

2. Swap out existing keypad readers with new proximity readers with keypads:

- Server Room
- Main Entrance Door
- Internal Office Entry Door
- Side Exit Door
- From Kitchen Door
- Emergency Exit Door

3. Integrate new Kantech panels with the other wide network of Kantech panels across City of Nashua. Nashua IT will provide necessary network connections and IP addresses to ensure a seamless integration.

Programming Info:

Front door will be unlocked during business hours, all other doors will be locked 24/7 unless otherwise specified by City of

TYCO INTEGRATED SECURITY CONFIDENTIAL AND PROPRIETARY BUSINESS INFORMATION

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City of Nashua
11 Riverside St
Nashua, NH 03062

Estimate Name: City of Nashua DPW Access Upgrade 3-10-15

Site Conditions:	Nashua Existing office building with drop ceiling
Existing Equipment:	Existing access control system with (6) doors on it
Customer Expectations:	Installation shall take place Monday - Friday between 8am and 5pm
Customer Responsibilities / Tyco Exclusions:	City of Nashua is responsible for: <ol style="list-style-type: none">1. Permanent 120V power at the location of the control panels2. Network connection and necessary static IP address for new KT-400 control panels so that they can be networked with existing Kantech panels across Nashua.3. Provide IT support when networking panels at City Hall4. Provide access to all areas required for installation Monday - Friday between 8am and 5pm
Documentation Needs:	Drawing (to be completed upon signed contract)



City of Nashua
 11 Riverside St
 Nashua, NH 03062
 Estimate Name: City of Nashua DPW Access Upgrade 3-10-15

BILL OF MATERIALS FOR City of Nashua

City of Nashua DPW Access Upgrade 3-10-15 System

QTY	PRODUCT CODE	DESCRIPTION	LOCATION
2	KT-400	4-Door Controller, iP Ready, Accessory Kit, Metal Cabinet w/ Lock	
6	5355AGK14	ProxPro Wiegand, Gray, Keypad, 26 bit keypad output	
1	7153650BL	RJ45 CAT 5e Booted Patch 24/4pr, SOL, Unshielded, CMP, Plenum, Blue, 50' Patch Cable	
2	TR1675	Transformer for KT-400, wire-in, 120 VAC/16.5 VAC (75 VA), UL approved	
2	477967	Battery, Sealed Lead-Acid, 12 Volt, 7.0Ah	

TYCO INTEGRATED SECURITY CONFIDENTIAL AND PROPRIETARY BUSINESS INFORMATION

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THE CITY OF NASHUA

Financial Services
Purchasing Department

"The Gate City"

June 30, 2016
Memo #17-011

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CodeRED CONTRACT (VALUE: \$22,000)
DEPARTMENT: 156 EMERGENCY MANAGEMENT; FUND: GENERAL
ACCOUNTING CATEGORY: 54 PROPERTY SERVICES

Please see the attached communication from Justin Kates, Director of Emergency Management, for information related to this purchase.

Pursuant to **§ 5-84. Special purchase procedures. A.** The competitive bidding process shall not apply to the following special purchase. (3) Purchases which can be procured through cooperative intergovernmental purchase agreements with other government jurisdictions.

This is a three (3) year contract and all three (3) years will be funded as a budgeted item in Department 156 Emergency Management.

The Director of Emergency Management and the Purchasing Department recommend awarding this purchase in an amount of **\$22,000** to **Emergency Communications Network of Ormond Beach, FL.**

Respectfully,



Dan Kooker

Purchasing Manager

Cc: J. Kates J. Graziano



City of Nashua
Office of Emergency Management
229 Main Street
Nashua, New Hampshire 03060

Justin Kates, Director
603.722.0288
katesj@nashuanh.gov

June 22, 2016

TO: DAN KOOKEN
PURCHASING MANAGER

SUBJECT: CONTRACT AWARD FOR EMERGENCY NOTIFICATION SYSTEM
(VALUE: \$66,000)
DEPARTMENT: 156 EMERGENCY MANAGEMENT; FUND: GENERAL
ACCOUNTING CATEGORY: 54 PROPERTY SERVICES

The City has a need to provide notification services to citizens and businesses during emergency and non-emergency situations. Notification by phone, text message, e-mail, and social media can be widely utilized across all departments in the City. Experience during the past few emergencies in Nashua have demonstrated the need for this capability.

An Emergency Notification Committee, including representatives of Emergency Management, Police, Fire, Public Works, Public Health, Community Development, School District, Information Technology, GIS, and Pennichuck Water met frequently throughout 2016 to review the City's existing service for emergency and non-emergency notifications, provided by CodeRED. After comparing many vendors in the field of notification systems and recognizing the value of retaining our existing caller database that has grown over the past three years, the committee determined the CodeRED notification system by Emergency Communications Network, LLC provided the best value, and best service for an unlimited access contract. The contract has been reviewed by our Legal Department.

Pursuant to NRO § 5-84 (A)(3), the new service will contain pricing and be purchased based on co-operative General Services Administration (GSA) Contract Schedule 70, Contract #GS-35F-0253W, Special Item Number 132-32. Additionally, other supplier pricing was investigated prior to determining this to be best value for the city. The Emergency Management Director was able to negotiate the standard GSA pricing down over 65 percent to a final cost of \$22,000 per year for a three year net contract totaling \$66,000. In addition, we were able to include unlimited service for Pennichuck Water for their entire service area.

Pursuant to NRO § 5-74 (B) which states that a contract that extends from the current fiscal year into succeeding fiscal year(s) in which no funds have been appropriated nor otherwise designated for this purpose shall be approved by the full Board of Aldermen before the contract shall become binding on the City.

All three years will be funded by as a budgeted item in Department 156 Emergency Management.

Two additional contract addendums are included to provide local access to FEMA's Integrated Public Alert & Warning System (IPAWS) and CodeRED's Weather Warning functionality at no cost for as long as the State of NH retains a contract for these features as part of their NH Alerts service. These are some of the many benefits to

having a fully interoperable notification service with both the State of NH and the City of Nashua, both utilizing the CodeRED infrastructure.

The Emergency Management Director and the Emergency Notification Committee recommend awarding the contract in the amount of **\$66,000** to **Emergency Communications Network, Ormond Beach, FL**.

Thank You,

A handwritten signature in black ink, appearing to read 'Justin Kates', with a stylized flourish at the end.

Justin Kates

CC: J. Griffin J. Graziano

AUTHORIZED
INFORMATION TECHNOLOGY SCHEDULE PRICELIST
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY
EQUIPMENT, SOFTWARE AND SERVICES

The web-based CodeRED® service, from Emergency Communications Network LLC (ECN), was designed specifically to enable local government officials to record, send and track personalized voice, email and text messages to thousands of citizens in minutes, as well as to staff members, students or other internal notification uses. The proprietary mapping technology and patented delivery methods employed by ECN add to the value of this affordable, high-speed notification system that has been in operation since 1998 and is currently used every day by clients from coast to coast.

SPECIAL ITEM NUMBER 132-32 - TERM SOFTWARE LICENSES

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

FSC CLASS 7030 - INFORMATION TECHNOLOGY SOFTWARE

Large Scale Computers

- Operating System Software
- Application Software
- Electronic Commerce (EC) Software
- Utility Software
- Communications Software
- Core Financial Management Software
- Ancillary Financial Systems Software
- Special Physical, Visual, Speech, and Hearing Aid Software

Microcomputers

- Operating System Software
- Application Software
- Electronic Commerce (EC) Software
- Utility Software
- Communications Software
- Core Financial Management Software
- Ancillary Financial Systems Software
- Special Physical, Visual, Speech, and Hearing Aid Software

General Services Administration
Federal Acquisition Service

Pricelist current through Modification # _____, dated _____.

Products and ordering information in this Authorized FSS Information Technology Schedule Pricelist are also available on the GSA Advantage! System (<http://www.gsadvantage.gov>).

Emergency Communications Network, LLC
780 West Granada Blvd
Ormond Beach, FL 32174
866-939-0911
ECNetwork.com

Contract Number: GS-35F-0253W

Period Covered by Contract: 2/17/2010 – 2/16/2020

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**INFORMATION FOR ORDERING ACTIVITIES
APPLICABLE TO ALL SPECIAL ITEM NUMBERS**

SPECIAL NOTICE TO AGENCIES: Small Business Participation

SBA strongly supports the participation of small business concerns in the Federal Acquisition Service. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service (www.gsadvantage.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Acquisition Service Home Page (www.fss.gsa.gov) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

1. GEOGRAPHIC SCOPE OF CONTRACT:

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

Offerors are requested to check one of the following boxes:

- The Geographic Scope of Contract will be domestic and overseas delivery.
- The Geographic Scope of Contract will be overseas delivery only.
- The Geographic Scope of Contract will be domestic delivery only.

2. CONTRACTOR'S ORDERING ADDRESS AND PAYMENT INFORMATION:

**Emergency Communications Network, LLC
780 West Granada Blvd
Ormond Beach, FL 32174
866-939-0911
ECNetwork.com**

Contractor must accept the credit card for payments equal to or less than the micro-purchase for oral or written orders under this contract. The Contractor and the ordering agency will use the credit card for dollar amounts over the micro-purchase threshold (See GSAR 552.232-79 Payment by Credit Card). In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number(s) can be used by ordering activities to obtain technical and/or ordering assistance:

866 939 0911

3. LIABILITY FOR INJURY OR DAMAGE

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

4. STATISTICAL DATA FOR GOVERNMENT ORDERING OFFICE COMPLETION OF STANDARD FORM 279:

Block 9: G. Order/Modification Under Federal Schedule
Block 16: Data Universal Numbering System (DUNS) Number: 80-123-7293
Block 30: Type of Contractor – B: Other Small Business
Block 31: Woman-Owned Small Business - NO
Block 36: Contractor's Taxpayer Identification Number (TIN): 59-3579383

- 4a. CAGE Code: 4TVW4
- 4b. Contractor has registered with the Central Contractor Registration Database.

5. FOB: DESTINATION

6. DELIVERY SCHEDULE

- a. **TIME OF DELIVERY:** The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

SPECIAL ITEM NUMBER	DELIVERY TIME (Days ARO)
132-32	30 Days

b. **URGENT REQUIREMENTS:** When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

- 7. **DISCOUNTS:** Prices shown are NET Prices; Basic Discounts have been deducted.
 - a. Prompt Payment: 0% - 30 days from receipt of invoice or date of acceptance, whichever is later.
 - b. Quantity 10% additional discount for quantities in excess of 5 licenses
 - c. Dollar Volume None
 - d. Government Educational Institutions Government Educational Institutions are offered the same discounts as all other Government customers.*
 - e. Other. None

8. TRADE AGREEMENTS ACT OF 1979, as amended:

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

9. STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING: None

10. Small Requirements: The minimum dollar value of orders to be issued is \$100.

11. MAXIMUM ORDER (All dollar amounts are exclusive of any discount for prompt payment.)

- a. The Maximum Order value for the following Special Item Numbers (SINs) is \$500,000:

Special Item Number 132-32 - Term Software Licenses

12. ORDERING PROCEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACTS

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

- a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

13. FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS REQUIREMENTS: ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

13.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS): Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

13.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS): Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Acquisition Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.

14. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2003)

- (a) **Security Clearances:** The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.
- (b) **Travel:** The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- (c) **Certifications, Licenses and Accreditations:** As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.
- (d) **Insurance:** As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.
- (e) **Personnel:** The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.

- (f) **Organizational Conflicts of Interest:** Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.
- (g) **Documentation/Standards:** The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.
- (h) **Data/Deliverable Requirements:** Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.
- (i) **Government-Furnished Property:** As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.
- (j) **Availability of Funds:** Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.
- (k) **Overtime:** For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

15. CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES: Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See 52.212-4)

16. GSA ADVANTAGE!

GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:

- (1) Manufacturer;
- (2) Manufacturer's Part Number; and
- (3) Product categories.

Agencies can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is <http://www.gsadvantage.gov>

17. PURCHASE OF OPEN MARKET ITEMS

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. ODCs (Other Direct Costs) are not part of this contract and should be treated as open market purchases. Ordering Activities procuring open market items must follow FAR 8.402(f).

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if-**

- (1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));
- (2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;
- (3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and
- (4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

- (1) Time of delivery/installation quotations for individual orders;
- (2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/service/software package submitted in response to requirements which result in orders under this schedule contract.
- (3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.

19. OVERSEAS ACTIVITIES

The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated below:

None

Upon request of the Contractor, the ordering activity may provide the Contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

20. BLANKET PURCHASE AGREEMENTS (BPAs)

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

21. CONTRACTOR TEAM ARRANGEMENTS

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

22. INSTALLATION, DEINSTALLATION, REINSTALLATION

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8 or 132-9.

23. SECTION 508 COMPLIANCE.

If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following:

<http://www.ECNetwork.com/>

The EIT standard can be found at: www.Section508.gov/.

24. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order –

(a) A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and

(b) The following statement:

This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

25. INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

26. SOFTWARE INTEROPERABILITY.

Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.

27. ADVANCE PAYMENTS

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324)

TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE AS A SERVICE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. GUARANTEE/WARRANTY

a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

Emergency Communications Network, LLC, warrants and implies that the services provided hereunder are merchantable and fit for use for the particular purpose described in this contract. (note: as a web based solution 7X24X365 service and support is included in the license pricing)

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

3. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number (866) 939-0911 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 9 AM to 6PM M-F Eastern Time, excluding holidays.

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number (800) 336-3410 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available hours other than 9 AM to 6PM, M-F Eastern Time excluding holidays

4. SOFTWARE MAINTENANCE

a. Software maintenance as it is defined: (select software maintenance type) :

 X 1. Software Maintenance as a Product (SIN 132-32 or SIN 132-33)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Emergency Communications Network, LLC includes software maintenance with license.

Software maintenance as a product does **NOT** include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

2. Software Maintenance as a Service (SIN 132-34)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

5. PERIODS OF TERM LICENSES (SIN 132-32) AND MAINTENANCE (SIN 132-34)

a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.

b. Term licenses may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c. Annual Funding. When annually appropriated funds are cited on an order for term licenses, the period of the term licenses shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses orders citing the new appropriation shall be required, if the term licenses is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses is to be terminated at that time. Orders for the continuation of term licenses will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

6. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE - NOT APPLICABLE. Emergency Communications Network, LLC does not offer a Perpetual License.

a. The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.

b. Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.

c. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.

d. The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to _____% of all term license payments during the period that the software was under a term license within the ordering activity.

7. TERM LICENSE CESSATION NOT APPLICABLE. Emergency Communications Network, LLC does not offer a Perpetual License.

a. After a software product has been on a continuous term license for a period of _____ * months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software

be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.

b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the prices and terms of Special Item Number 132-34, if the licensee elects to order such services. Title to the software shall remain with the Contractor.

8. UTILIZATION LIMITATIONS - (SIN 132-32, SIN 132-33, AND SIN 132-34)

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

(2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

9. SOFTWARE CONVERSIONS - (SIN 132-32 AND SIN 132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license (132-32), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

10. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

11. RIGHT-TO-COPY PRICING

The Contractor shall insert the discounted pricing for right-to-copy licenses. NOT APPLICABLE. Emergency Communications Network, LLC does not offer right-to-copy licenses.

**USA COMMITMENT TO PROMOTE
SMALL BUSINESS PARTICIPATION
PROCUREMENT PROGRAMS**

PREAMBLE

EMERGENCY COMMUNICATIONS NETWORK, LLC provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

COMMITMENT

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts. To accelerate potential opportunities please contact (Michael Staley, 866 939 0911, mstaley@ECNetwork.com, fax 386-676-1127.)

Population	Standard License Pricing
0-999	\$2,380.22
1000-4999	\$4,760.44
5000-7499	\$7,140.66
7500-9999	\$7,140.66
10000-12499	\$7,140.66
12500-15000	\$7,140.66
15000-17500	\$7,140.66
17500-19999	\$9,520.88
20000 - 22499	\$9,520.88
22500 - 24999	\$11,901.09
25000 - 27499	\$11,901.09
27500 - 29999	\$14,281.31
30000 - 32499	\$14,281.31
32500 - 34499	\$14,281.31
35000 - 37499	\$14,281.31
37500 - 39999	\$16,661.53
40000 - 42499	\$16,661.53
42500 - 44999	\$16,661.53
45000 - 47499	\$16,661.53
47500 - 49999	\$16,661.53
50000 - 52499	\$19,041.75
52500 - 54999	\$19,041.75
55000 - 57499	\$19,041.75
57500 - 59999	\$19,041.75
60000 - 62499	\$19,041.75
62500 - 64999	\$21,421.97
65000 - 67499	\$21,421.97
67500 - 69999	\$21,421.97
70000 - 72499	\$21,421.97
72500 - 74999	\$21,421.97
75000 - 77499	\$23,802.19

Population	Standard License Pricing
77500 - 79999	\$23,802.19
80000 - 82499	\$23,802.19
82500 - 84999	\$23,802.19
85000 - 87499	\$23,802.19
87500 - 89999	\$26,182.41
90000 - 92499	\$26,182.41
92500 - 94999	\$26,182.41
95000 - 97499	\$26,182.41
97500 - 99999	\$26,182.41
100000 - 104999	\$29,752.73
105000 - 109999	\$29,752.73
110000 - 114999	\$29,752.73
115000 - 119999	\$32,728.01
120000 - 124999	\$32,728.01
125000 - 129999	\$35,703.28
130000 - 134999	\$35,703.28
135000 - 139999	\$35,703.28
140000 - 144999	\$35,703.28
145000 - 149999	\$35,703.28
150000 - 199999	\$35,703.28
200000-249999	\$40,463.72

Population	Unlimited Emergency Usage License Pricing
0-999	\$2,380.22
1000-4999	\$2,380.22
5000-7499	\$2,380.22
7500-9999	\$2,380.22
10000-12499	\$2,380.22
12500-15000	\$2,380.22
15000-17500	\$2,380.22
17500-19999	\$2,380.22
20000 - 22499	\$2,380.22
22500 - 24999	\$2,380.22
25000 - 27499	\$2,380.22

Population	Unlimited Emergency Usage License Pricing
27500 - 29999	\$17,089.97
30000 - 32499	\$17,994.45
32500 - 34499	\$18,898.94
35000 - 37499	\$19,803.42
37500 - 39999	\$21,898.01
40000 - 42499	\$22,802.50
42500 - 44999	\$23,706.98
45000 - 47499	\$24,611.46
47500 - 49999	\$25,515.95
50000 - 52499	\$27,610.54
52500 - 54999	\$28,515.02
55000 - 57499	\$29,419.50
57500 - 59999	\$30,323.99
60000 - 62499	\$31,228.47
62500 - 64999	\$33,323.06
65000 - 67499	\$34,227.55
67500 - 69999	\$35,132.03
70000 - 72499	\$36,036.51
72500 - 74999	\$36,941.00
75000 - 77499	\$39,035.59
77500 - 79999	\$39,940.07
80000 - 82499	\$40,844.55
82500 - 84999	\$41,749.04
85000 - 87499	\$42,653.52
87500 - 89999	\$44,748.11
90000 - 92499	\$45,652.60
92500 - 94999	\$46,557.08
95000 - 97499	\$47,461.56
97500 - 99999	\$48,366.05
100000 - 104999	\$51,055.69
105000 - 109999	\$52,864.66
110000 - 114999	\$54,673.62
115000 - 119999	\$57,970.23
120000 - 124999	\$59,779.19
125000 - 129999	\$63,075.80
130000 - 134999	\$64,884.76
135000 - 139999	\$66,693.73
140000 - 144999	\$71,406.56
145000 - 149999	\$71,406.56
150000 - 199999	\$71,406.56
200000-249999	\$80,927.44

Population	Unlimited Usage License Pricing
0-999	\$4,760.44
1000-4999	\$7,140.66
5000-7499	\$7,140.66
7500-9999	\$7,140.66
10000-12499	\$7,235.87
12500-15000	\$9,044.83
15000-17500	\$10,853.80
17500-19999	\$12,662.76
20000 - 22499	\$14,471.73
22500 - 24999	\$16,280.70
25000 - 27499	\$18,089.66
27500 - 29999	\$19,898.63
30000 - 32499	\$21,707.60
32500 - 34499	\$23,516.56
35000 - 37499	\$25,325.53
37500 - 39999	\$27,134.49
40000 - 42499	\$28,943.46
42500 - 44999	\$30,752.43
45000 - 47499	\$32,561.39
47500 - 49999	\$34,370.36
50000 - 52499	\$36,179.33
52500 - 54999	\$37,988.29
55000 - 57499	\$39,797.26
57500 - 59999	\$41,606.22
60000 - 62499	\$43,415.19
62500 - 64999	\$45,224.16
65000 - 67499	\$47,033.12
67500 - 69999	\$48,842.09
70000 - 72499	\$50,651.06
72500 - 74999	\$52,460.02
75000 - 77499	\$54,268.99

Population	Unlimited Usage License Pricing
77500 - 79999	\$56,077.95
80000 - 82499	\$57,886.92
82500 - 84999	\$59,695.89
85000 - 87499	\$61,504.85
87500 - 89999	\$63,313.82
90000 - 92499	\$65,122.79
92500 - 94999	\$66,931.75
95000 - 97499	\$68,740.72
97500 - 99999	\$70,549.68
100000 - 104999	\$72,358.65
105000 - 109999	\$75,976.58
110000 - 114999	\$79,594.52
115000 - 119999	\$83,212.45
120000 - 124999	\$86,830.38
125000 - 129999	\$90,448.31
130000 - 134999	\$94,066.25
135000 - 139999	\$97,684.18
140000 - 144999	\$101,302.11
145000 - 149999	\$104,920.04
150000 - 199999	\$107,109.84
200000-249999	\$121,391.16

Internal/ student /staff Population	CodeRED Internal/staff/school only usage license
0 - 999	\$6,187.14
1000 - 1999	\$7,615.27
2000 - 2999	\$9,043.40
3000 - 3999	\$10,471.53
4000 - 4999	\$11,899.67
5000 - 5999	\$13,327.80
6000 - 6999	\$14,755.93
7000 - 7999	\$16,184.06
8000 - 8999	\$17,612.19

<i>Internal/ student /staff Population</i>	<i>Internal/staff/school only usage license</i>
9000 - 9999	\$19,040.32
10000 - 10999	\$20,468.45
11000 - 11999	\$21,896.58
12000 - 12999	\$23,324.72
13000 - 13999	\$24,752.85
14000 - 14999	\$26,180.98
15000 - 15999	\$27,609.11
16000 - 16999	\$29,037.24
17000 - 17999	\$30,465.37
18000 - 18999	\$31,893.50
19000 - 19999	\$33,321.63
20000 - 20999	\$34,749.77
21000 - 21999	\$36,177.90
22000 - 22999	\$37,606.03
23000 - 23999	\$39,034.16
24000 - 24999	\$40,462.29
25000 - 25999	\$41,890.42
26000 - 26999	\$43,318.55
27000 - 27999	\$44,746.68
28000 - 28999	\$46,174.82
29000 - 29999	\$47,602.95
30000 - 30999	\$49,031.08
31000 - 31999	\$50,459.21
32000 - 32999	\$51,887.34
33000 - 33999	\$53,315.47
34000 - 34999	\$54,743.60
35000 - 35999	\$56,171.73
36000 - 36999	\$57,599.87
37000 - 37999	\$59,028.00
38000 - 38999	\$60,456.13
39000 - 39999	\$61,884.26
40000 - 40999	\$63,312.39
41000 - 41999	\$64,740.52
42000 - 42999	\$66,168.65
43000 - 43999	\$67,596.78
44000 - 44999	\$69,024.92
45000 - 45999	\$70,453.05
46000 - 46999	\$71,881.18
47000 - 47999	\$73,309.31
48000 - 48999	\$74,737.44
49000 - 49999	\$76,165.57

CodeRED Weather Warning® Service Addendum
Non-GSA Contract Item

This is an addendum (the "Addendum") to that certain CodeRED® NEXT Services Agreement effective **July 1, 2016** (the "Agreement") entered into by and between the **City of Nashua** (hereinafter "Licensee"), a body politic and corporate of the State of **New Hampshire** located at **229 Main Street, Nashua, NH 03061**, and Emergency Communications Network, LLC (hereinafter "Licensor"). This Addendum shall be effective as of the Effective Date of the Agreement.

1. Terms used herein which are not otherwise defined shall have the meanings given to them in the Agreement. The following terms shall be added to the Agreement:

CodeRED Weather Warning® Service: Licensor's CodeRED Weather Warning® Service ("CRWW") expands the benefits of the Service to include the automatic launching of prerecorded CRWW notifications to members of Licensee's Calling Area who opt-in to CRWW (each a "Subscriber" and collectively, the "Subscribers"). These automated notifications are initiated by the issuance of severe weather alerts by the National Weather Service ("NWS"), with no intervention on the part of Licensee or Licensor. Subscribers to be notified are determined by matching the geographic location associated with each Subscriber against the geographic polygon(s) associated with severe weather alerts issued by NWS. CRWW is available only as an add-on module for the Service. CRWW will not be provided under the terms of this Addendum unless the Agreement is in effect.

Subscribers: Severe weather events can occur at any time of day or night. Accordingly, CRWW notifications will automatically be launched in response to the issuance of NWS severe weather alerts at any time, 24 hours/day. CRWW will notify ONLY those Subscribers that have CHOSEN to participate through the opt-in process. CRWW will be limited to Subscribers located within the **City of Nashua, New Hampshire** who have added their name and geographic location to the CRWW Subscriber database via the Licensee's community notification enrollment site. This site is hosted by Licensor for the purpose of allowing Subscribers to add their contact information to both the CodeRED® database and the CRWW database via the Internet. Subscribers shall be subject to the terms and conditions for CRWW, which can be reviewed at: <http://ecnetwork.com/privacy-policy>. ONLY THOSE SUBSCRIBERS WHO OPT-IN TO CRWW WILL BE ELIGIBLE TO RECEIVE CRWW NOTIFICATIONS. LICENSEE MAY BE REQUIRED TO APPROVE SUBSCRIBER ENTRIES PRIOR TO THE SUBSCRIBERS BEING ACTIVATED AND ENTERED INTO THE DATABASE.

CodeRED® System Minutes: Notifications placed automatically via CRWW have no effect on the System Minutes associated with the Service.

Term: Based upon Licensor's current Emergency Notification Service Contract effective as of September 3, 2014 (the "NH Agreement") with the New Hampshire Department of Safety-Homeland Security and Emergency Management ("NH"), Licensor will include CRWW at **NO COST** for the initial term of this Addendum, which shall **commence as of the Effective Date and terminate at 12:01 a.m. on August 1, 2017**, unless earlier terminated by NH, Licensor or Licensee, or otherwise extended by NH under the NH Agreement.

Termination: Upon termination of the NH Agreement or the Agreement, access to CRWW will terminate and Licensor shall terminate all individual Subscriber accounts. In the event NH elects to terminate the NH Agreement, while the Agreement is still in effect, Licensee may purchase CRWW via separate, written addendum or agreement. Licensor, in its sole discretion, may also terminate this Addendum immediately, and without further notice, as a result of Licensee's breach of the Agreement or this Addendum, and in such case, no fees (if any) paid hereunder shall be refunded.

2. This Addendum shall not modify any terms and conditions of the Agreement, except as set forth herein.

Licensee:
City of Nashua, New Hampshire

Licensor:
Emergency Communications Network, LLC

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



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Contractor Information

(Vendors) [How to change your company information](#)

Contract #:	GS-35F-0253W	Socio-Economic :	Small business
Contractor:	EMERGENCY COMMUNICATIONS NETWORK, LLC	EPLS :	Contractor not found on the Excluded Parties List System
Address:	780 W GRANADA BLVD STE 200 ORMOND BEACH, FL 32174-2300	Govt. Point of Contact:	Tamika Larson
Phone:	(386)676-0294	Phone:	202-253-2365
E-Mail:	mstaley@ecnetwork.com	E-Mail:	tamika.larson@gsa.gov
Web Address:	http://www.ecnetwork.com	Contract Clauses/Exceptions:	View the specifics for this contract
DUNS:	801237293		
NAICS:	541519		

Source	Title	Contract Number	Contractor T&Cs /Pricelist	Contract End Date	Category	View Catalog
70	GENERAL PURPOSE INFORMATION TECHNOLOGY SOFTWARE, AND SERVICES	COMMERCIAL GS-35F-0253W		Feb 16, 2020	132 32	

IPAWS Addendum
Non-GSA Contract Item

This is an addendum (the "Addendum") to that certain CodeRED® NEXT Services Agreement, effective **July 1, 2016** (the "Agreement") entered into by and between the **City of Nashua** (hereinafter "Licensee") a body politic and corporate of the State of **New Hampshire** located at **229 Main Street, Nashua, NH 03061** and Emergency Communications Network, LLC (hereinafter "Licensor"). This Addendum shall be effective as of the Effective Date of the Agreement.

1. Terms used herein which are not otherwise defined shall have the meanings given to them in the Agreement. The following terms shall be added to the Agreement:

Integrated Public Alert Warning System ("IPAWS"): IPAWS is a public alert and warning system developed and maintained by the Federal Emergency Management Agency ("FEMA"), and is designed to provide integrated services and capabilities to local, state and federal authorities for the purpose of enabling them to alert and warn their respective communities via multiple communication methods. The Service has the ability to permit authorized IPAWS users to deliver messages to IPAWS through the Service using an IPAWS add-on module (the "IPAWS Submission App").

Authorization: Licensee represents and warrants to Licensor that Licensee, and any employees, agents, or representatives of Licensee that access the IPAWS Submission App (each a "User" and collectively the "Users"), are authorized by FEMA to use IPAWS and have completed IPAWS training as required by FEMA. Licensee shall contact Licensor immediately upon any change in Licensee's, or any User's, right to access IPAWS, including but not limited to any change in any User's employment status which may otherwise result in such User no longer being authorized to have access to IPAWS.

Licensee shall notify Licensor to designate which pass codes for the Service shall have the ability to view the IPAWS Submission App. Licensee understands and agrees that the IPAWS Submission App may only be accessed by Users with pass codes for the Service. Licensee further understands and agrees that access to the IPAWS Submission App shall require a separate pass code from that used to access the Service, that such pass code shall be established solely by the User, and that Licensor shall not have access to such pass code. Licensee shall assume full responsibility for maintaining the confidentiality of all pass codes used to access the IPAWS Submission App.

Digital Signature: Licensee represents and warrants that it has been granted a digital signature to access IPAWS (the "Signature") from FEMA. In order to use the IPAWS Submission App, Licensee agrees to provide Licensor with a copy of the Signature, Licensee's Application for IPAWS Public Alerting Authority, Licensee's keystore and pass codes for the Signature, along with any other information reasonably requested by Licensor to demonstrate Licensee's compliance with FEMA and right to access IPAWS through the IPAWS Submission App. **Licensee agrees that the Signature shall be submitted separately from any information disclosing its associated keystore and pass codes. The Signature may be sent to Licensor in hard copy and/or electronic format on CD or USB Drive, by mailing such information to Licensor, via certified mail or other nationally recognized overnight delivery carrier, delivery confirmation requested, at Emergency Communications Network, Attn: Director of Software Development, 780 W. Granada Boulevard, Suite 200, Ormond Beach, FL 32174.** All remaining items, including without limitation, Licensee's Application for IPAWS Public Alerting Authority, and Licensee's keystore and pass codes for the Signature, may be emailed to a designee of Licensor separately from the Signature. Licensee specifically authorizes Licensor to use and keep such information on Licensor's servers, including but not limited to the Signature, for the purpose of allowing Licensee and Licensor to access, use and test IPAWS through the IPAWS Submission App. Licensor and Licensee acknowledge and agree that, upon termination of this Addendum or the Agreement, the Signature shall be removed from the IPAWS Submission App. Licensee further agrees that Licensor shall in no way be liable for any transmission, copying, or security issues which arise from Licensee's transmission of confidential IPAWS information through non-secure means, including without limitation email. Licensee shall take steps to ensure that the transmission of such information is completed with best practices. Licensor shall not be deemed to be in receipt of any information absent delivery confirmation of same; Licensee shall be solely responsible for arranging, including but not limited to paying any costs associated with, delivery confirmation.

Functionality: Licensee acknowledges and agrees that: (a) the IPAWS Submission App permits Licensee to submit messages to IPAWS, however, the dissemination of messages through IPAWS, including but not limited to delivery through the Emergency Alert System ("EAS") or the Commercial Mobile Alert System ("CMAS"), is not guaranteed nor controlled by Licensor, and is the sole responsibility of FEMA and its associated agencies,

and Licensor shall not be responsible or liable for the failure of messages to be disseminated through IPAWS; (b) IPAWS may include additional features which are not supported through the IPAWS Submission App, including without limitation the receipt of messages, and Licensor shall not be required to provide such additional features to Licensee; and (c) Licensee shall be solely responsible for the content of all messages delivered to IPAWS through the IPAWS Submission App and for any and all claims, whether raised by FEMA or a third party, regarding messages sent by Licensee, or using Licensee's pass codes, through the IPAWS Submission App.

Integration into Service: All use of the IPAWS Submission App, including but not limited to unauthorized use or access to IPAWS through Licensee's account, shall be considered use of the Service and governed under the terms of the Agreement. The IPAWS Submission App is available only as an add-on module for the Service. The IPAWS Submission App will not be provided under the terms of this Addendum unless the Agreement is in effect.

Security: Licensor will use commercially reasonable practices and standards to secure and encrypt data transmissions sent using the IPAWS Submission App. Licensee understands and acknowledges that Licensor is providing the IPAWS Submission App on the World Wide Web through an "upstream" third party Internet Service Provider, utilizing public utility services which may not be secure. Licensee agrees that Licensor shall not be liable to Licensee for any compromise to, or interceptions of, messages sent through the IPAWS Submission App.

Term: Based upon Licensor's current CodeRED NEXT Master Services Agreement for IPAWS effective as of May 14, 2014 (the "NH IPAWS Agreement") with the New Hampshire Department of Safety-Division of Emergency Services ("NH"), Licensor will include the IPAWS Submission App at **NO COST** for the initial term of this Addendum, which shall **commence as of the Effective Date and terminate at 12:01 a.m. on May 14, 2017**, unless earlier terminated by NH, Licensor or Licensee, or otherwise extended by NH under the NH IPAWS Agreement. Licensee understands and agrees that access to the IPAWS Submission App shall be made available upon Licensor's receipt of all IPAWS information requested hereunder, and that the date of such receipt shall not otherwise affect the commencement of the term of this Addendum as of the Effective Date.

Termination: Upon termination of the NH IPAWS Agreement or the Agreement, access to the IPAWS Submission App will terminate. In the event NH elects to terminate the NH IPAWS Agreement, while the Agreement is still in effect, Licensee may purchase access to the IPAWS Submission App via separate, written addendum or agreement. In the event, the Agreement is terminated while the NH IPAWS Agreement is still in effect, Licensee may be provided with access to the IPAWS Submission App by signing a separate, written addendum or agreement to the NH IPAWS Agreement. Licensor, in its sole discretion, may also terminate this Addendum immediately, and without further notice, as a result of Licensee's breach of the Agreement or this Addendum or changes to IPAWS caused through no fault of Licensee or Licensor, and in such case, no fees (if any) paid hereunder shall be refunded. Licensee further understands and agrees that, in the event Licensor is required to remove the IPAWS Submission App as a result of Licensee's failure to comply with any IPAWS or FEMA regulations, Licensee shall forfeit all fees (if any) paid hereunder to Licensor.

2. This Addendum shall not modify any terms and conditions of the Agreement, except as set forth herein.

Licensee:
City of Nashua, New Hampshire

Licensor:
Emergency Communications Network, LLC

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



THE CITY OF NASHUA

Financial Services

Purchasing Department

"The Gate City"

June 30, 2016
Memo #17-008

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: BROAD STREET PARKWAY BRIDGE LED LIGHTING (VALUE \$149,979)
DEPARTMENT: 181 COMMUNITY DEVELOPMENT; FUND: CAPITAL PROJECT
ACCOUNT CLASSIFICATION: 54 PROPERTY SERVICES

Please see attached communication from Sarah Marchant, Community Development Division Director, dated June 10, 2016 for information related to this contract award.

Pursuant to § 5-78 Major purchases (greater than \$10,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

Sarah Marchant, Director of Community Development and the Purchasing Department recommend the award of this contract to **Port Lighting, Inc.** of **Seabrook, NH** in the amount of **\$149,979**.

Respectfully,

Dan Kookan
Purchasing Manager

Cc: S. Marchant J. Graziano



City of Nashua
Community Development Division
City Hall, 229 Main Street, PO Box 2019
Nashua, New Hampshire 03061-2019

Community Development 589-3095
Planning and Zoning 589-3090
Building 589-3080
Code Enforcement 589-3100
Urban Programs 589-3085
Economic Development 589-3070
Conservation Commission 589-3105
Transit Department 880-0100
www.gonashua.com

To: Dan Kookan, Purchasing Manager

From: Sarah Marchant, Division Director

Date: June 10, 2016

Re: Broad Street Parkway (BSP) Bridge LED Lighting Contract

The Board of Alderman accepted a \$150,000 gift from Mr. Richard Stahl in December 2015 for the express purpose of purchasing and installing LED dynamic lighting on the exterior of the BSP River Bridge via R-15-197.

Per R-15-197, the Community Development Department solicited proposals from qualified firms to design and install dynamic LED lighting for the Broad St Parkway River Bridge. The solicitation directed respondents to submit the best, most creative and durable system to be installed and operating for \$150,000 under RFP0609-050916 posted on the City website on (March 21, 2016). The following three (3) bids were received:

1. LighTec, Inc, Merrimack, NH
Track Option - \$149,993
Flood Option - \$125,806
2. Stellos, Nashua, NH
Flood Option - \$ 147,000
3. Port Lighting, Inc., Seabrook, NH
Flood Option - \$152,898

A team comprised of City staff participated in the evaluation of responses and interviews, which included Nick Miseirvitch (IT Infrastructure Team Leader), Amy Gill (Staff Engineer), James Vayo (Downtown Specialist) and Sarah Marchant (CDD Director).

From the three (3) firms interviewed, the team unanimously agreed that the Port Lighting, Inc. was the most qualified contractor based on the following:

1. Experience – they have experience in designing, installing, and maintaining BRIDGE lighting (only firm with Bridge lighting experience).
2. Presentation – they were well prepared; providing clear answers without an army of personnel.

3. Rendering – they were the only vendor to provide a rendering of what the bridge will look like when lighted, as well as future expansion options.
4. Installation – they proposed the fastest installation period (2 weeks) without the need to close any lanes or shift traffic on the bridge.
5. Disturbance – they proposed the least amount of disturbance to new landscaping along the parkway as there will be no trenching involved (only response with no trenching); all equipment will be on or under the bridge.
6. Change Orders – they fully accept there is no opportunity for change orders and any cost overruns will be absorbed by them.

Subsequently, the team entered into negotiations with Port Lighting, who submitted a best and final offer of \$149,978.70. The Community Development Division recommends that the Broad Street Parkway River Bridge LED Lighting contract be awarded to **Port Lighting, Inc, Seabrook, NH in the amount of \$149,979.**



port lighting
systems

A division of Lighthouse Productions, Inc.
24 London Lane Seabrook, NH 03874
Phone: (603) 474-2110 Fax: (603) 474-2227
www.portlighting.com

Exhibit B

Date: June 9, 2016
Project Name: Nashua Bridge

To: Sarah Marchant
Community Development Division Director
Nashua, NH

Page 1 of 3

QTY	Item	Description	Unit	Cost
Base Lighting System:				
8	123-000078-00	RGB ColorReach Compact		
4	106-000004-00	Data Enabler Pro		
8		Spread Lens for Reach Compact		
8	120-000187-01	Half Glare Shield		
8	108-000055-03	10' Leader cable		
1		Pharos LPC1 Lighting Control		
1		Cisco SG300-10pp		
3		Show DMX Vero Net Transceiver		
1		Ubiquiti M5 Nano Stations		
			Lighting System Subtotal:	\$30,589.20
Lighting Add alternate 1:				
8	123-	RGB ColorReach Compact		
8		Spread Lens for Reach Compact		
8	120-	Half Glare Shield		
8	108-	10' Leader cable		
			Lighting Add Alternate 1:	\$22,495.20
Lighting Add alternate 2:				
6	123-	RGB ColorReach Compact		
2	106-	Data Enabler Pro		
6		Spread Lens for Reach Compact		
6	120-	Half Glare Shield		
6	108-	10' Leader cable		
1		Add Alt 2 Electrical work on piers		
			Lighting Add Alternate 2:	\$26,817.45
Electrical Work:				
		Provide permit		
		• Provide ground level lift for under bridge work on North end of bridge		



port lighting
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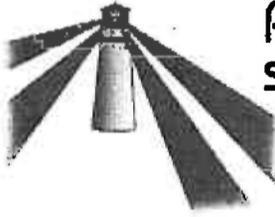
Exhibit B

Date: June 9, 2016
Project Name: Nashua Bridge

To: Sarah Marchant
Community Development Division Director
Nashua, NH

Page 2 of 3

QTY	Item	Description	Unit	Cost
		<ul style="list-style-type: none"> • Provide excavation, backfilling and reseeding of trench from existing man hole to the ALCC 		
		<ul style="list-style-type: none"> • Provide coring of holes for new conduits into the existing man hole • Extend (1) 30 amp 240/120 volt feed from the existing LC2 pedestal approx. 1,000'+ to the new ALCC • Provide new conductors in the existing 3" conduit from the LC2 to the existing man hole • Provide ALCC cabinet mounted on pressure traeted posts. No Stainless cabinet • Provide conduits from the ALCC to the underside of the bridge per drawings with power wires • Provide junction boxes and mount the power supplies per drawings • Provide stainless steel hardware per plans • Provide conduit from the junction boxes out to the side of the bridge to provide a path way for the LED lighting leader cable • Provide expansion fittings as indicated • Make power connections to each power supply (power supplies provided by Port Lighting) • All leader cables and Led lighting to be provided and installed by Port Lighting <p>Electrical price assumes reuse of exiting unistrut rack under the bridge. If new rack is required it can be added for a fee</p> <p style="text-align: right;">Electrical Work Subtotal:</p>		\$83,264.50
	Under Bridge Lift:	<p>Aspen Aerials A-30 Under Bridge Inspection Unit. Lift required for working under the bridge. Estimated at 1 week</p> <p style="text-align: right;">Under Bridge Lift Subtotal:</p>		\$11,000.00
	Police Detail for lane closures:			



**port lighting
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Exhibit B

Date: June 9, 2016
 Project Name: Nashua Bridge

To: Sarah Marchant
 Community Development Division Director
 Nashua, NH

QTY	Item	Description	Unit	Cost
		10 Hour Police Detail to include an officer and cruiser per Day. Estimated at 1 Week		
		Police Detail Subtotal:		\$5,725.00
		<p>Comcast network drop to Control Cabinet not included in this proposal but can be provided</p> <p>Police Details and required equipment for lane closures are estimated and subject to change based on the requirements from the city of Nahua or NH DOT. Overtime rates are not included</p> <p>Prevailing wage rates are not included in this quote!!!</p> <p>Electrical rate assumes using power in existing LC2 Cabinet!!!</p> <p>No bond costs have been included in this proposal</p> <p>Labor for Installation of Lighting System to include on site project management, low voltage termination, system commissioning, 1 days training, and one follow up visit within one year of system commissioning date</p>		\$18,900.00
		Miscellaneous Hardware		\$500.00
		Shipping and Taxes NOT included in quote		
		Quote valid for 30 days from date received	Total	\$149,978.70



CONTRACT FOR PROFESSIONAL SERVICES

TITLE:

A CONTRACT BETWEEN

THE CITY OF NASHUA, 229 MAIN STREET, NASHUA, NH 03061-2019

AND

LIGHTHOUSE PRODUCTIONS INC., DBA PORT LIGHTING SYSTEMS

NAME AND TITLE OF LIGHTING CONTRACTOR

24 LONDON LANE, SEABROOK, NH 03874

ADDRESS OF LIGHTING CONTRACTOR

WHEREAS, the City of Nashua, a political subdivision of the State of New Hampshire, from time to time requires the services of a Lighting Contractor ; and

WHEREAS, it is deemed that the services of a Lighting Contractor herein specified are both necessary and desirable and in the best interests of the City of Nashua; and

WHEREAS, Lighting Contractor represents they are duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. DOCUMENTS INCORPORATED. The following exhibits are by this reference incorporated herein and are made part of this contract:

- Exhibit A--General Conditions for Contracts;
- Exhibit B—Scope and Compensation of Services, Schedule;
- Exhibit C—~~Compensation for Services; Omitted~~
- Exhibit D—~~Schedule Omitted~~

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

In the event of a conflict between the terms of the Proposal and the terms of this Agreement, a written change order and/or fully executed City of Nashua Purchase Order, the terms of this

Agreement, the written change order or the fully executed City of Nashua Purchase Order shall control over the terms of the Proposal.

2. WORK TO BE PERFORMED Except as otherwise provided in this contract, Lighting Contractor shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described.

3. PERIOD OF PERFORMANCE. Lighting Contractor shall perform and complete all work within the time periods set forth and may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Lighting Contractor shall begin performance upon receipt of an Executed Contract and a valid Purchase Order issued from the City.

4. COMPENSATION. Lighting Contractor agrees to perform the work for a total cost not to exceed One Hundred Forty Nine Thousand Nine Hundred Seventy Eight Dollars, Seventy Cents Dollars (\$ 149,978.70)

which, unless otherwise provided in this contract, shall be paid in accordance with the provisions of Exhibit B or unless Lighting Contractor has received a written exemption from the City. Lighting Contractor shall submit monthly requests for payment for services performed under this agreement directly to

**City of Nashua
Attn: Accounts Payable
PO Box 2019
Nashua, NH 03061-2019
Atten:**

To facilitate the proper and timely payment of applications, the City of Nashua requires that all invoices contain a valid **PURCHASE ORDER NUMBER**.

Requests for payment shall be submitted no later than fifteen (15) days after the end of each month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Lighting Contractor agrees to provide the following with each request for payment:

1. Appropriate invoice forms. The forms shall include the project purchase order number, a listing of personnel hours and billing rates, and other expenditures for which payment is sought.
2. A progress report. The report shall include, for each monthly reporting period, a description of the work accomplished, problems experienced, upcoming work, any extra work carried out, and a schedule showing actual expenditures billed for the period, cumulative total expenditures billed and paid to date under the contract, and a comparison of cumulative total expenditures billed and paid to the approved budget.

The City will pay for work satisfactorily completed by Lighting Contractor. The City will pay Lighting Contractor within 30 days of approval by the City of the submitted invoice forms and

progress reports. The City will make no payments until the invoice forms and progress reports have been submitted and approved.

5. EFFECTIVE DATE OF CONTRACT. This contract shall not become effective until and unless approved by the City of Nashua.

6. NOTICES. All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:

CITY REPRESENTATIVE:

REPRESENTATIVE:

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City or Lighting Contractor may change the address or representative by giving written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

City of Nashua, NH (signature)

T. J. L. president

(signature)

James Donchess, Mayor
(Printed Name and Title)

Todd Gerrish president

(Printed Name and Title)

Date

6-9-16

Date

**EXHIBIT A
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GENERAL CONDITIONS**

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GENERAL CONDITIONS

1. **DEFINITIONS.** Unless otherwise required by the context, "Lighting Contractor" includes any of the Lighting Contractor's consultants, sub consultants, contractors, and subcontractors

2. **LIGHTING CONTRACTOR STATUS AND PROVISION OF WORKERS' COMPENSATION COVERAGE.** The parties agree that Lighting Contractor shall have the status of and shall perform all work under this contract as a Lighting Contractor, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City and Lighting Contractor, and nothing in this contract shall create any contractual relationship between the City and Lighting Contractor's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Lighting Contractor is not a City employee and that there shall be no:

- (1) Withholding of income taxes by the City;
- (2) Industrial insurance coverage provided by the City;
- (3) Participation in group insurance plans which may be available to employees of the City;
- (4) Participation or contributions by either the Lighting Contractor or the City to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the City;
- (6) Unemployment compensation coverage provided by the City.

Lighting Contractor agrees, if applicable and before commencing any work under the contract, to complete and to provide the following written request to its insurer:

(Company Name) has entered into a contract with the City of Nashua to perform work upon receipt of an **Executed Contract** and a **Valid Purchase Order issued from the City to Final Completion** and requests that the Insurer provide to the City of Nashua 1) a certificate of coverage, and 2) notice of any lapse in coverage or nonpayment of coverage that the Lighting Contractor is required to maintain. The certificate and notice should be mailed to:

Risk Management
City of Nashua
229 Main Street
Nashua, NH 03060

3. **STANDARD OF CARE.** Lighting Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Lighting Contractor warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Lighting Contractor to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City may have, Lighting Contractor shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Lighting Contractor's failure to perform in accordance with this standard of

T.G.

care. Any approval by the City of any products or services furnished or used by Lighting Contractor shall not in any way relieve Lighting Contractor of the responsibility for professional and technical accuracy and adequacy of its work. City review, approval, or acceptance of, or payment for any of Lighting Contractor's work under this contract shall not operate as a waiver of any of the City's rights or causes of action under this contract, and Lighting Contractor shall be and remain liable in accordance with the terms of the contract and applicable law.

Lighting Contractor shall furnish competent and skilled personnel to perform the work under this contract. The City reserves the right to approve key personnel assigned by Lighting Contractor to perform work under this contract. Approved key personnel shall not be taken off of the project by Lighting Contractor without the prior written approval of the City, except in the event of termination of employment. Lighting Contractor shall, if requested to do so by the City, remove from the job any personnel whom the City determines to be incompetent, dishonest, or uncooperative.

4. CITY REPRESENTATIVE. The City may designate a City representative for this contract. If designated, all notices, project materials, requests by Lighting Contractor, and any other communication about the contract shall be addressed or be delivered to the City Representative.

5. CHANGES TO SCOPE OF WORK. The City may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Lighting Contractor's performance under the contract. Lighting Contractor shall provide to the City within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Lighting Contractor should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Lighting Contractor's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Lighting Contractor for adjustment under this clause shall be asserted in writing within 30 days of the date the City notified Lighting Contractor of the change.

When Lighting Contractor seeks changes, Lighting Contractor shall, before any work commences, estimate their effect on the cost of the contract and on its schedule and notify the City in writing of the estimate. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Lighting Contractor should proceed with any or all of the proposed change.

Except as provided in this paragraph, Lighting Contractor shall implement no change unless the City in writing approves the change. Unless otherwise agreed to in writing, the provisions of this contract shall apply to all changes. The City may provide verbal approval of a change when the City, in its sole discretion, determines that time is critical or public health and safety are of concern. Any verbal approval shall be confirmed in writing as soon as practicable. Any change undertaken without prior City approval shall not be compensated and is, at the City's election, sufficient reason for contract termination.

6. CITY COOPERATION. The City agrees that its personnel will cooperate with Lighting Contractor in the performance of its work under this contract and that such personnel will be available to Lighting Contractor for consultation at reasonable times and after being given

T. G.

sufficient advance notice that will prevent conflict with their other responsibilities. The City also agrees to provide Lighting Contractor with access to City records in a reasonable time and manner and to schedule items that require action by the Board of Public Works and Finance Committee in a timely manner. The City and Lighting Contractor also agree to attend all meetings called by the City or Lighting Contractor to discuss the work under the Contract, and that Lighting Contractor may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City.

7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES. Lighting Contractor warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City in writing, and has concluded that the City's resolution of each matter is satisfactory to Lighting Contractor. All future questions Lighting Contractor may have concerning interpretation or clarification of this contract shall be submitted in writing to the City within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Lighting Contractor's question or position. The City representative shall render a decision within 15 calendar days. The City's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Lighting Contractor prior to having received the City's resolution shall be at Lighting Contractor's risk and expense. At all times, Lighting Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City. Lighting Contractor is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

8. TERMINATION OF CONTRACT

A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL. The City, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City chooses to terminate, abandon, or suspend all or part of the project, it shall provide Lighting Contractor 10 day's written notice of its intent to do so.

If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, Lighting Contractor shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the City with a list of all unperformed services.
3. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. ~~Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of all orders or subcontracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.~~
5. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City to resume performance.

In the event of a termination, abandonment, or suspension at will, Lighting Contractor shall receive all amounts due and not previously paid to Lighting Contractor for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

B. TERMINATION FOR CAUSE. This agreement may be terminated by the City on 10 calendar day's written notice to Lighting Contractor in the event of a failure by Lighting Contractor to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, pursue the project or to complete work in a timely and professional manner. Lighting Contractor shall be given an opportunity for consultation with the City prior to the effective date of the termination. Lighting Contractor may terminate the contract on 10 calendar days written notice if, through no fault of Lighting Contractor, the City fails to pay Lighting Contractor for 45 days after the date of approval of any submitted invoice forms and progress reports.

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the City with a list of all unperformed services.
3. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of all orders or subcontracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.
5. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City to resume performance.

In the event of a termination for cause, Lighting Contractor shall receive all amounts due and not previously paid to Lighting Contractor for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City by reasons of Lighting Contractor's failure. Lighting Contractor shall not be relieved of liability to the City for damages sustained from the failure, and the City may withhold any payment to the Lighting Contractor until such time as the exact amount of damages due to the City is determined. All claims for payment by the Lighting Contractor must be submitted to the City within 30 days of the effective date of the notice of termination.

If after termination for the failure of Lighting Contractor to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, pursue the project or to complete work in a timely and professional manner, it is determined that Lighting Contractor had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City shall, if necessary, make an adjustment in the compensation paid to Lighting Contractor such that Lighting Contractor receives total compensation in the same amount as it would have received in the event of a termination-at-will.

C. GENERAL PROVISIONS FOR TERMINATION. Upon termination of the contract, the City may take over the work and prosecute it to completion by agreement with another party

T.G.

or otherwise. In the event Lighting Contractor shall cease conducting business, the City shall have the right to solicit applications for employment from any employee of the Lighting Contractor assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Lighting Contractor's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Lighting Contractor's control.

9. DISPUTE RESOLUTION. Any dispute not within the scope of section 7 or section 8 shall be resolved under this paragraph. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City Representative and a Lighting Contractor representative. At all times, Lighting Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City. If the dispute is not resolved within 30 days, either party may request that the dispute be submitted to the Board of Public Works for final resolution. The decision of the Board of Public Works shall be final and binding on the parties. If either party is dissatisfied with the decision of the Board of Public Works, that party may immediately terminate the contract under this paragraph, with Lighting Contractor being entitled to compensation for work actually and satisfactorily performed up to the time of the termination and the City being entitled to all contract materials in accordance with paragraph 21, and compensation for any additional damages or expenses incurred in completing the work under the contract, including, without limitation, the costs of securing the services of other Lighting Contractors.

10. NO DAMAGES FOR DELAY. Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Lighting Contractor for damages because of hindrances or delays in the progress of the work from any cause, and Lighting Contractor agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City may provide.

11. INSURANCE. Lighting Contractor shall carry and maintain in effect during the performance of services under this contract:

- General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
- \$1,000,000 Combined-Single-Limit-Automobile-Liability;
***Coverage must include all owned, non-owned and hired vehicles.**
- \$1,000,000 Profession Liability;
- and Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

Lighting Contractor shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and

T.G.

limits to be maintained by Lighting Contractor are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Lighting Contractor under this contract. The City of Nashua shall not maintain any insurance on behalf of Lighting Contractor. Subcontractors are subject to the same insurance requirements as Lighting Contractor and it shall be the Lighting Contractor's responsibility to ensure compliance of this requirement.

Lighting Contractor will provide the City of Nashua with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the City issues the notice of award. The City of Nashua requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability, and Auto Liability policies must name the City of Nashua as an additional insured** and reflect on the certificate of insurance. Lighting Contractor is responsible for filing updated certificates of insurance with the City of Nashua's Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Lighting Contractor must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve Lighting Contractor of its responsibilities or limit the amount of its liability to the City or other persons, and Lighting Contractor is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Lighting Contractor is responsible for and required to remedy all damage or loss to any property, including property of the City, caused in whole or part by Lighting Contractor or anyone employed, directed, or supervised by Lighting Contractor.

12. **INDEMNIFICATION** Regardless of any coverage provided by any insurance, Lighting Contractor agrees to indemnify and shall defend and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Lighting Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Lighting Contractor's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

13. **FISCAL CONTINGENCY.** All payments under this contract are contingent upon the availability to the City of the necessary funds. This contract shall terminate and the City's obligations under it shall be extinguished at the end of any fiscal year in which the City fails to appropriate monies for the ensuing fiscal year sufficient for the performance of this contract.

Nothing in this contract shall be construed to provide Lighting Contractor with a right of payment over any other entity. Any funds obligated by the City under this contract that are not paid to Lighting Contractor shall automatically revert to the City's discretionary control upon the completion, termination, or cancellation of the agreement. The City shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Lighting Contractor. Lighting Contractor shall have no claim of any sort to the unexpended funds.

14. COMPENSATION. Review by the City of Lighting Contractor's submitted monthly invoice forms and progress reports for payment will be promptly accomplished by the City. If there is insufficient information, the City may require Lighting Contractor to submit additional information. Unless the City, in its sole discretion, decides otherwise, the City shall pay Lighting Contractor in full within 30 days of approval of the submitted monthly invoice forms and progress reports.

15. COMPLIANCE WITH APPLICABLE LAWS. Lighting Contractor, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Lighting Contractor shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

16. NONDISCRIMINATION. If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Lighting Contractor agrees to the following terms. Lighting Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Lighting Contractor agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

Without limitation of the foregoing, Lighting Contractor's attention is directed to 41 C.F.R. § 60-1.4, and the clause entitled "Equal Opportunity Clause" which, by reference, is incorporated into this contract, to 41 C.F.R. § 60-250 et seq. and the clause entitled "Affirmative Action Obligations of Lighting Contractors and Subcontractor for Disabled Veterans and Veterans of the Vietnam Era," which, by reference, is incorporated in this contract, and to 41 C.F.R. § 60-471 and the clause entitled "Affirmative Action Obligations of Lighting Contractors and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

Lighting Contractor agrees to assist disadvantaged business enterprises in obtaining business opportunities by identifying and encouraging disadvantaged suppliers, consultants, and sub consultants to participate to the extent possible, consistent with their qualification, quality of work, and obligation of Lighting Contractor under this contract.

In connection with the performance of work under this contract, Lighting Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or sexual orientation. This agreement includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Lighting Contractor agrees, if applicable, to insert these provisions in all subcontracts, except for subcontracts for standard commercial supplies or raw materials. Any violation of any applicable provision by Lighting Contractor shall constitute a material breach of the contract.

17. FEDERAL SUBCONTRACTING REQUIREMENTS. If Lighting Contractor awards a subcontract under this contract, Lighting Contractor, if applicable, shall use the following alternative steps:

- A. Using the services of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce, as appropriate; and
- B. Requiring the subcontractor, if it awards subcontracts, to take the affirmative steps set forth in paragraph A.

If applicable, Lighting Contractor agrees to complete and submit to the City a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization Report (Standard Form 334) within 30 days after the end of each fiscal quarter until the end of the contract.

18. ENDORSEMENT. Lighting Contractor shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Lighting Contractor or under its direction as required under the laws of the State of New Hampshire.

19. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING. Lighting Contractor shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City is void. Any consent of the City to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

~~20. CITY INSPECTION OF CONTRACT MATERIALS. The books, records, documents and accounting procedures and practices of Lighting Contractor related to this contract shall be subject to inspection, examination and audit by the City, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.~~

21. DISPOSITION OF CONTRACT MATERIALS. Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to

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those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Lighting Contractor in the performance of its obligations under this contract shall be the exclusive property of the City and all such materials shall be remitted and delivered, at Lighting Contractor's expense, by Lighting Contractor to the City upon completion, termination, or cancellation of this contract. Alternatively, if the City provides its written approval to Lighting Contractor, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Lighting Contractor in the performance of its obligations under this contract must be retained by Lighting Contractor for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City, in writing, requests any or all of the materials, then Lighting Contractor shall promptly remit and deliver the materials, at Lighting Contractor's expense, to the City. Lighting Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Lighting Contractor's obligations under this contract without the prior written consent of the City.

22. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS. Lighting Contractor expressly agrees that all documents ever submitted, filed, or deposited with the City by Lighting Contractor (including those remitted to the City by Lighting Contractor pursuant to paragraph 21), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Lighting Contractor in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Lighting Contractor. The City shall have the right to reproduce any such materials.

Lighting Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Lighting Contractor agrees to indemnify, to defend, and to hold harmless the City, its representatives, and employees from any claim or action seeking to impose liability, costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Lighting Contractor infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Lighting Contractor infringes any patent.

~~Lighting Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.~~

23. FINAL ACCEPTANCE. Upon completion of all work under the contract, Lighting Contractor shall notify the City in writing of the date of the completion of the work and request confirmation of the completion from the City. Upon receipt of the notice, the City shall confirm to Lighting Contractor in writing that the whole of the work was completed on the date indicated in the notice or provide Lighting Contractor with a written list of work not completed. With respect to work listed by the City as incomplete, Lighting Contractor shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.

24. TAXES. Lighting Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Lighting Contractor hereby indemnifies and holds harmless the City from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

25. NON-WAIVER OF TERMS AND CONDITIONS. None of the terms and conditions of this contract shall be considered waived by the City. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City in a written waiver.

26. RIGHTS AND REMEDIES. The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

27. PROHIBITED INTERESTS. Lighting Contractor shall not allow any officer or employee of the City to have any indirect or direct interest in this contract or the proceeds of this contract. Lighting Contractor warrants that no officer or employee of the City has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of Lighting Contractor. If any such interest comes to the attention of Lighting Contractor at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City. Lighting Contractor also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Lighting Contractor further warrants that no person having such an interest shall be employed in the performance of this contract. If City determines that a conflict exists and was not disclosed to the City, it may terminate the contract at will or for cause in accordance with paragraph 8.

In the event Lighting Contractor (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, City may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, ~~Lighting Contractor shall refund to the City any profits realized under this contract, and Lighting Contractor shall be liable to the City for any costs incurred by the City in completing the work described in this contract.~~ At the discretion of the City, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

Lighting Contractor warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Lighting Contractor to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or

amending or making of any determinations with respect to the performance of this contract. If City determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with paragraph 8.

The rights and remedies of this section shall in no way be considered for be construed as a waiver of any other rights or remedies available to the City under this contract or at law.

28. THIRD PARTY INTERESTS AND LIABILITIES. The City and Lighting Contractor, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City and Lighting Contractor.

29. SURVIVAL OF RIGHTS AND OBLIGATIONS. The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

30. SEVERABILITY. In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

31. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT. This contract constitutes the entire contract between the City and Lighting Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

32. CHOICE OF LAW AND VENUE. This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere.



THE CITY OF NASHUA

Financial Services
Purchasing Department

"The Gate City"

June 30, 2016
Memo #17-001

TO: MAYOR DONCHESS
FINANCE COMMITTEE

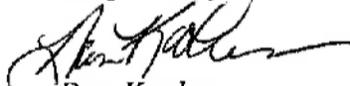
SUBJECT: PARKING JOHN DEERE GATOR UTILITY VEHICLE (VALUE \$20,700)
DEPARTMENT: 166 PARKING; FUND: GENERAL FUND
ACCOUNT CLASSIFICATION: 54 PROPERTY SERVICES

Please see attached communication from Sarah Marchant, Community Development Division Director, dated June 6, 2016 for information related to this purchase request.

Pursuant to § 5-78 Major purchases (greater than \$10,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

Sarah Marchant, Director of Community Development and the Purchasing Department recommend the award of this purchase in the amount of \$20,700 to **Nashua Outdoor Power Equipment** of Nashua, NH.

Respectfully,


Dan Kooker
Purchasing Manager

Cc: S. Marchant J. Graziano



City of Nashua
Community Development Division
City Hall, 229 Main Street, PO Box 2019
Nashua, New Hampshire 03061-2019

Community Development 589-3095
Planning and Zoning 589-3090
Building 589-3080
Code Enforcement 589-3100
Urban Programs 589-3085
Economic Development 589-3070
Conservation Commission 589-3105
Transit Department 880-0100
www.gonashua.com

To: Dan Kookan, Purchasing Manager

From: Sarah Marchant, Division Director

Date: June 6, 2016

Re: **FY16** John Deere Gator Utility Vehicle for Parking Maintenance

The Parking Department utilizes the current 2006 John Deere Gator on a daily basis for everything from collecting funds from the parking meters to assisting with winter maintenance activities. The Gator has substantial rust on both the bed and floor of the machine, which would need to be fixed or replaced in order to pass inspection. As such the Parking Department believes the Gator has reached the end of its useful life.

Nashua Parking Department solicited bids for a new John Deere Gator Utility Vehicle under IFB0535-060316 posted on the City website on May 25, 2016. The following four (4) bids were received:

1. North Country Tractor, Sanford, ME
\$24,353.61 including upgraded wheels and tires
2. North Country Tractor, Concord, NH
\$20,959 including upgraded wheels and tires
3. James R. Rosencrantz & Sons, Inc. East Kingston, NH
\$20,399 + \$862 for upgraded wheels and tires for a total of \$21,821
4. Nashua Outdoor Power Equipment, Nashua, NH
\$20,700 including upgraded wheels and tires

Nashua Outdoor Power Equipment was the low bidder at \$20,700. The Parking department currently uses this vendor for supplies and part purchases. They have provided us with the lowest price and are including upgraded wheels and tires. They are also a local vendor.

The Community Development Division recommends that the John Deere Gator Utility Vehicle contract be awarded to **Nashua Outdoor Power Equipment, Nashua, NH in the amount of \$20,700.**



THE CITY OF NASHUA

Financial Services

Purchasing Department

"The Gate City"

May 19, 2016

INVITATION FOR BID

John Deere Gator Utility Vehicle IFB0535-060316

The City of Nashua Transportation Department invites bids from qualified suppliers for one (1) new and unused, model year 2015 or 2016 John Deere Gator Utility Vehicle. There will not be any vehicle traded in.

INSTRUCTIONS TO BIDDERS:

Bids must be submitted on the Bid Form, in its entirety with **one (1) original and one (1) copy**, in a sealed envelope clearly marked "**John Deere Gator Utility Vehicle**" and must be received at the Central Purchasing Office, 229 Main Street, Room 128, Nashua, NH 03060 prior to **3:00 PM on Tuesday, May 31, 2016**. Postmarks or other timestamps will not be accepted in lieu of actual delivery. The contractor can use whatever delivery mechanism it chooses as long as it remains clear that the contractor is responsible for submissions prior to the date and time. Further details are available on the City's web site, www.nashuanh.gov, under Services, Current Bids, document **IFB0535-060316**.

Bids will be opened in public on the due date and time. Results of the bid opening will be posted on the City's web site, under Services, Bid Opportunities, Current Bids, document **IFB0535-060316** within twenty-four (24) hours of the opening. Bids must be submitted in the format provided and address the items specified in the bid package. The City of Nashua may reject any or all of the bids on any basis and without disclosure of a reason. The failure to make such a disclosure shall not result in accrual of any right, claim or cause of action by any unsuccessful bidder against the City of Nashua.

All bids are binding for sixty (60) days after bid opening. The City is exempt of all taxes. All bids must be FOB delivered, Nashua Transit System (NTS), 11 Riverside Street, Nashua, NH 03062.

Pursuant to NRO 5-71 (A), the City of Nashua supports the concept of purchasing products which are biodegradable, can be or have been recycled, or are environmentally sound. Due consideration will be given to the purchase of such products. If you are bidding on any such products which qualify, please so indicate in a cover sheet by item number and description.

Pursuant to NRO 5-78 (F), the purchasing manager shall not solicit a bid from a contractor who is in default on the payment of taxes, licenses or other monies due the city. Therefore, this bid request is void as to anyone who is in default on said payments.

Questions on this Invitation for Bid must be submitted **in writing** to:

Dan Kooken
City of Nashua Purchasing Manager
kookend@nashuanh.gov

Respectfully,

Dan Kooken
Purchasing Manager
City of Nashua
kookend@nashuanh.gov

IFB0535-060316 John Deere Utility Vehicle

229 Main Street • Nashua, New Hampshire 03061 • Phone (603) 589-3333 • Fax (603) 589-3344

BID SPECIFICATIONS
IFB0535-060316

TITLE: John Deere Gator Utility Vehicle
Quantity: 1
Nashua Transportation Department, 11 Riverside Street, Nashua, NH 03062

The City of Nashua Transportation Department invites bids from qualified suppliers for one (1) new and unused, model year 2015 or 2016 John Deere Gator Utility Vehicle XUV855D S4 with equipment as specified

List the exact manufacturer specifications for the vehicle you are bidding for in each of the categories listed. If any additional information is to be supplied regarding any item, please indicate beside the item and type the information on pages to be attached to the bid submittal. Failure to respond to any item may be cause for the bid to be rejected as "non-responsive".
Inclusion of manufacturer's specifications will *not* be considered as a substitute for filling in the specifications. It is encouraged that the bid be supplemented by the manufacturers printed literature.
You are encouraged to elaborate on any aspect of the vehicle not listed in the bid specifications but such explanations should be typed on supplemental bid paperwork. Equipment bid must be new and unused and model year 2015 or 2016.

All shipping costs must be included in the bid. The vehicle is to be delivered to:

Nashua Transportation Department
11 Riverside Street
Nashua NH 03062

The following specifications are minimum guidelines and, as noted above, must be filled in completely:

SPECIFICATIONS	MANUFACTURERS SPECIFICATIONS
2015 or 2016 XUV 855D S4 #5140M Gator	<u>2016 XUV 855D S4 #5140M</u>
Yellow Steel Wheels Ancia #1002	<u>Yellow Steel Wheels #1002</u>
Bench Seat Yellow #2006	<u>Bench SEAT #2006</u>
Green and Yellow #2500855ds4	<u>Green & Yellow #2500</u>
Deluxe Cargo Box with Paint and reflectors #3001	<u>Deluxe Box w/paint & Reflectors #3001</u>
OPS with nets #4000	<u>OPS w/Nets #4000</u>
Black roof and Rear Screen w/Headrests #4031	<u>Black Roof w/screen & Headrests #4031</u>
Manual Lift #4009	<u>MANUAL Lift #4009</u>
Less Rear Protection Package #4199	<u>Less Rear Protection Pkg #4199</u>
Less Front Brush Guard #4249	<u>Less Front Brush Guard #4249</u>

Less Front Hood Rack XUV #6309

Cab Heater #BM23608

Poly Cab Doors (S4) #BM24118

Brake/Tail Light Kit #BM24591

Cab Heater Conversion Kit #BM24597

Backup Alarm #BM24726

Cab Heater Fitting Kit #VGB10458

Less Front Hood Rack XUV #6309

Cab Heater #BM23608

Poly Cab Doors S4 #BM24118

Brake/Tail Light Kit #BM24591

Heater Conversion Kit #BM24597

Backup Alarm #BM24726

Heater Fitting Kit #VGB10458

* Additional Options:

Alloy wheels #1008

OPS Rear Panel #BM24561

Full Front Glass windshield #BM25345
w/wiper

OPS switch Bank #BM24089

IFB0535-060316
BID SUMMARY SHEET

TITLE: John Deer Gator Utility Vehicle XUV855D S4 with options as specified above.

QUANTITY: One (1)

Delivered to: Nashua Transportation Department, 11 Riverside Street, Nashua, NH 03062

Model year: 2015 or 2016

John Deer Gator Utility Vehicle \$19,000.⁰⁰ Delivered - without additional options.

Manufacturer's printed literature included. Yes ___ No - \$20,700.⁰⁰ with additional options.

Manufacturer's standard warranty included Yes ___ No

Delivery: 7-6-16 ^{or sooner} ARO

Please list and explain those Bid Specification items that you are not in compliance with:

For additional exceptions and/or comments, please attach additional paperwork to this bid submittal.

DEALERSHIP NAME & ADDRESS: Nashua Outdoor Power Equipment
337 Amherst St.
Nashua, NH 03064

PHONE: 603-598-4644 FAX: 603-836-3505

E-mail: mikerouleau@nashuapower.com

[Signature] 5/27/2016
(Manager's Signature) (Date)

John Myers
(Typed/Printed Name)



THE CITY OF NASHUA

*Financial Services
Purchasing Department*

"The Gate City"

June 30, 2016
Memo #17-009

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: ENGINEERING SERVICES FOR PARK AND RIDE AT 25 CROWN STREET
(VALUE \$198,275)
DEPARTMENT: 181 COMMUNITY DEVELOPMENT; FUND: NEW HAMPSHIRE DOT,
CONGESTION MITIGATION AND AIR QUALITY PROGRAM
ACCOUNT CLASSIFICATION: 53 PROFESSIONAL SERVICES

Please see attached communication from Sarah Marchant, Community Development Division Director, dated June 8, 2016 for information related to this contract award.

Pursuant to § 5-78 Major purchases (greater than \$10,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

Sarah Marchant, Director of Community Development and the Purchasing Department recommend the award of this contract to **McFarland Johnson of Concord, NH** in the amount of **\$198,275**.

Respectfully,

Dan Kookan
Purchasing Manager

Cc: S. Marchant J. Graziano



City of Nashua
Community Development Division
City Hall, 229 Main Street, PO Box 2019
Nashua, New Hampshire 03061-2019

Community Development 589-3095
Planning and Zoning 589-3090
Building Safety 589-3080
Code Enforcement 589-3100
Urban Programs 589-3085
Transportation Department 880-0100
Waterways 589-3092
FAX 589-3119
www.nashuanh.gov

Date: June 8, 2016

To: John Griffin, CFO; Daniel Kookan, Purchasing Manager

From: Sarah Marchant, Community Development Division Director

Re: Contract for Engineering Services for Park and Ride

The City of Nashua was awarded a NH Department of Transportation (NH DOT) Congestion Mitigation Air Quality (CMAQ) program grant in fiscal year 2012, to design and construct a new Park and Ride facility located at 25 Crown Street. This Park and Ride facility will allow for ride sharing and would also provide parking for a passenger rail station in the future. The City purchased the property at 25 Crown Street in 2012 using funds from this grant for the purpose of developing this Park and Ride facility.

In compliance with the NH DOT funding for this project, the selection of an engineering firm followed the Local Public Agency rules. A Request for Qualifications must be advertised and the selected firm must be based on qualifications and not cost. Fees and scope are discussed **after** the firm is selected. The Request for Qualifications for the feasibility and design phase engineering for this project was issued on April 8th and closed May 5th, 2016.

We received three (3) submissions and interviewed all three (3) firms. A team comprised of City staff participated in the evaluation of qualifications which included Sarah Marchant (CDD Director), Madeleine Mineau (Waterways Manager), Jeanne Walker (Deputy Manager of Engineering), and James Vayo (Downtown Specialist).

From the three (3) firms interviewed, the team unanimously agreed that the contract should be awarded to McFarland Johnson based on their qualifications, prior experience on similar projects, and familiarity with NH DOT processes. After this firm was approved by NH DOT, we entered into scope and fee negotiations. According to the terms of this NH DOT grant, all expenses are covered by the grant and NH State toll credits; therefore, no City funds are being spent. The Community Development Division recommends awarding the contract for Feasibility Study Phase Engineering to McFarland Johnson of Concord, NH in the amount of \$198,275.

**McFARLAND JOHNSON TEAM
COST SUMMARY**

**CROWN STREET PARK & RIDE PROJECT
NASHUA, NEW HAMPSHIRE
June 15, 2016**



FIRM	PHASE 1	PHASE 2	PHASE 3	TOTAL LABOR COST	DIRECT EXPENSES	TOTAL COST
McFARLAND JOHNSON	\$48,362.01	\$36,040.70	\$34,446.64	\$118,849.35	\$3,950.00	\$122,799.35
GM2 ASSOCIATES, INC.	\$33,564.88	-	-	\$33,564.88	\$40.00	\$33,604.88
GZA GEOENVIRONMENTAL, INC.	-	\$22,383.30	-	\$22,383.30	\$14,487.20	\$36,870.50
DESIGN WORKS	\$2,000.00	\$2,000.00	\$1,000.00	\$5,000.00	\$0.00	\$5,000.00
TOTAL	\$83,926.89	\$60,424.00	\$35,446.64	\$179,797.53	\$18,477.20	\$198,274.73
PROJECT TOTAL						\$198,274.73

Exhibit A
Nashua - Crown Street Park & Ride Project
Scope of Work and Task Descriptions
June 15, 2016

The following scope of work outlines the necessary tasks to be undertaken by McFarland-Johnson (MJ) and its sub-consultants to determine the solutions, prepare plans, obtain permits, and ultimately advertise the Crown Street Park and Ride project for construction. The project has been organized into three specific tasks to take the project from planning through to construction.

Task 1 – Engineering Study

- 1.1 Information Gathering
- 1.2 Detailed Survey
- 1.3 Resource Identification
- 1.4 Existing Structure Review
- 1.5 Public Involvement – Listening Session
- 1.6 Alternatives Development
- 1.7 Traffic Analysis
- 1.8 Public Involvement – Alternatives Workshop
- 1.9 Engineering Report

Task 2 – Preliminary Design

- 2.1 Preliminary Plans
- 2.2 Geotechnical Investigations

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- 3.2 Preliminary Plans, Specifications and Estimate (PS&E)
- 3.3 Final Plans/Contract Documents
- 3.4 Bid Services

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Nashua - Crown Street Park & Ride Project
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Task 1 – Engineering Study

Task 1.1 – Information Gathering

MJ will review previous studies and collect available data for the City-owned property at 25 Crown Street and a piece of City-owned property off Gillis Street. This will include the following:

- Traffic Count Data
- Phase I/II Environmental Site Assessment
- Existing utility information
- Crash history on roadways

Traffic Counts - Traffic count data will be required. Twelve hour weekday (6 AM to 7 PM) intersection turning movement counts will be conducted at the following intersections:

- Crown Street / Arlington Street
- Crown Street / Allds Street
- Arlington Street / East Hollis Street

Counts will include vehicle classification, pedestrians and bicycles.

MJ will coordinate with the nearby elementary school to understand the walking routes to school as well as the bus routes. The Nashua Transit System will also be contacted to determine local bus routes and how the transit system will interact with the proposed Park & Ride lot. MJ will also meet with the tenants of the existing building at 25 Crown Street to determine their operations and parking needs.

Task 1.2 – Detailed Survey

Detailed survey for the project will be conducted by GM2 Associates Inc. (GM2). The project site encompasses a total area of approximately 8.1 acres including the parcel at 25 Crown Street (6.8 acres) and the parcel off Gillis Street (1.3 acres).

Project Coordination – MJ will send notification to pertinent parties and the tenant at 25 Crown Street as to GM2 site presence. This notification is part of proper protocol toward accessing affected properties during the survey.

Research - Municipal and GIS research will be conducted to obtain abutter information to be included on the base plan. GM2 will also conduct boundary research associated with the subject parcels at the Hillsborough County Registry of Deeds and Railroad Authority. Utility information will be provided by Nashua Public Works and records will be sought from cooperating service providers.

Establishment of Control - Horizontal control will be established based on the NH State Plane Coordinate System, NAD 83. Vertical control will be established on NAVD 88 if a benchmark is within one half mile of the site. Otherwise, vertical datum will be based on RTK GPS and will be established on site.

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Detailed Existing Conditions Survey - A detailed survey will be conducted for the subject parcels of land containing 2 buildings and parking. The survey will include existing planimetric features such as buildings and pavement, utilities (including sewer, water, stormwater, gas, electric, cable and telephone) with pipe sizes, material and inverts, walks, fences, treelines, stone walls, head walls, swales, culverts, utility poles, wetland flagging and pertinent site features, excluding landscaping and cosmetic features within the project limits. The topographic mapping will extend 25' beyond boundary perimeter. No topographic information will be collected within the railroad right-of-way.

Existing Conditions Base Plan - All field survey data will be adjusted, plotted and drafted. Topographic mapping will be produced depicting contours at a one foot interval. GM2 will provide an electronic drawing in AutoCAD format and the appropriate existing ground DTM and Data files for design use.

Task 1.3 – Resource Identification

The MJ Team will confirm the resource identifications completed by the City as part of the NEPA process that concluded in 2013. Resources and related considerations to be identified or addressed include:

- Wetlands – The 2013 NEPA Document states that “it does not appear that there are wetlands onsite.” MJ will perform a review of the parcels to confirm this statement. Any wetlands found will be mapped based on a field delineation and survey within the project site. Wetland functions, values, and general characteristics will be described. For the purposes of this scope, it is assumed that no wetlands will be found onsite.
- Threatened/Endangered Species, Wildlife, and Fisheries Habitat – The NH Fish and Game Department and the NH Natural Heritage Bureau will be contacted to update the determinations regarding the existence of any threatened or endangered species or important habitat within the project vicinity. Fish and wildlife habitat will be identified using existing published information along with observations made during the wetland delineation work. Habitat areas will be described in general terms and no detailed studies or surveys will be required except for a survey for the presence of bats. Since the NEPA document was completed in 2013, northern long-eared bats have been added to the federal Threatened Species List. MJ will coordinate with the U.S. Fish & Wildlife Service regarding the potential for rare bats on site. It is assumed no forested habitat will be affected and that the existing warehouse building will need to be surveyed to determine if there is any bat activity associated with the building. This will involve a visual inspection of the building interior and exterior followed by a visual survey to determine whether bats are emerging from the building.
- Historic Resources – The 2013 NEPA document stated that “no impacts will occur to the buildings onsite” as part of the project. It is assumed that the warehouse building will be demolished as part of this project. Therefore, additional coordination with NHDHR will be required to revise and update the Environmental Document. It is anticipated that NHDHR will continue to find that the project will have no affect on historical or archaeological resources.
- Invasive Species –The types and extent of invasive species will be identified during field investigations and their locations will be shown on the construction plans. These species, if present, will be described in general terms.

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Since the NEPA process has been completed for this project, it is assumed that the project will not need to be presented at the monthly NHDOT Natural Resource or Cultural Resource meetings.

Task 1.4 – Existing Structure Review

MJ will investigate the existing warehouse building which will include observations of readily viewable structural conditions, no selective demolition will be performed. This investigation will be summarized in a report that will outline any major structural deficiencies and offer an opinion as to the overall structural condition of the building and the general feasibility of it being renovated for another use. The report will provide general structural capacities of existing vertical framing systems (assuming the framing is exposed and can be readily documented). Lateral systems will be identified. The report will discuss building code implications and requirements should the building be renovated. The report will also include generalized descriptions of the repair work needed along with conceptual level cost estimates to bring the building into compliance with current building codes for commercial use. No repair or reinforcing sketches of structural deficiencies or improvements will be prepared.

No additional investigations related to hazardous building materials or PCB testing will be conducted. This information is included in the report prepared by GZA entitled "Pre-Demolition Hazardous Building Materials Survey and PCB Testing" dated May 8, 2015.

Task 1.5 – Public Involvement – Listening Session

Public Involvement for the project will include public meetings to ensure all Interested parties have the opportunity to participate. Local organizations and citizens will be an integral part of the public involvement process. The historical organizations, Chamber of Commerce, property owners, business owners, and others will be encouraged to attend and participate at meetings.

The first meeting will be the Public Listening Session and will take place as early in the design process as possible. This meeting will be designed to gain an understanding of the public's views, opinions, desires, and goals for the project. A brief project overview will be presented. However, the majority of the meeting will be to gain public comment and information. A tour of the site will be offered immediately prior to the meeting to give the public an opportunity to see the site. It is assumed three (3) MJ staff members will attend this meeting. The information from this session will be used to develop the proposed alternatives for the project. The City will be responsible for notifications for the meeting. MJ will work with the City to develop a list of stakeholders that should be invited to the meeting.

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Task 1.6 – Alternatives Development

With consultation with the City, up to three (3) alternatives will be developed potentially including:

- 250 Space Park & Ride Lot assuming the existing warehouse building will remain
- 250 Space Park & Ride Lot assuming the existing warehouse building will be demolished
- 250 Space Park & Ride Lot assuming the existing warehouse building will be demolished along with a future expansion area.

These concepts will be schematic in nature with no detailed geometry and will account for a future rail platform. Cost estimates will be performed for each alternative. Landscaping concepts will be developed by Design Works sub-contractor for each alternative as well.

Task 1.7 – Traffic Analysis

Traffic analyses will be performed to determine the impact of additional traffic resulting from the proposed Park and Ride lot on the intersections of Crown Street and Arlington Street, Crown Street and Allds Street, and Arlington Street and East Hollis Street. Synchro software will be used to perform the evaluations. SimTraffic software will be utilized to present traffic simulations at each intersection. Evaluations will be conducted to determine if a traffic signal is warranted at the intersection of Crown Street and Arlington Street and if adjusted traffic signal timings will be needed at the intersection of Arlington Street and East Hollis Street. The evaluation will also look at the need for any improvements to the pedestrian accommodations and bus turning movements along the potential routes for transit buses accessing the Park & Ride lot.

Task 1.8 – Public Involvement – Alternatives Workshop

This workshop will take place after the alternatives have been developed for the project. For the purposes of this meeting, the alternatives will be presented on aerial photograph base maps. The public will be encouraged to evaluate and comment on each alternative developed. A comparison matrix of pertinent project elements will be presented. The objective of the meeting will be to reach a consensus on the preferred alternative. The City will be responsible for notifications for the meeting. It is assumed that a specific website will not be required for this project and that no dedicated presence on social media will be provided. MJ will supply the City with all presentations and graphics for use on the City website.

Task 1.9 – Engineering Report

After the Alternatives Workshop, MJ will work with City Staff on selecting the preferred alternative and will prepare an Engineering Study report to documenting the process that led to the selection of the preferred alternative. The report will include a description of the existing conditions, the purpose and need for the project, design criteria, description of the alternatives developed, cost estimates, environmental considerations, warehouse condition assessment, and a conclusion. This task includes additional public meetings with the Board of Alderman and Planning Board summarizing the project activities to date and presenting the preferred alternative for approval. Upon approval by the City, the Engineering Report will be submitted to NHDOT for review.

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Task 2 – Preliminary Design

For the purposes of this scope of work, MJ has assumed that the preferred alternative will include demolishing the existing warehouse building and constructing a 250 space Park & Ride lot. If a different preferred alternative is selected, the scope and fee will be re-evaluated.

Task 2.1 – Preliminary Plans

Preliminary Plans (60%) will be developed based on the selected alternative. These plans will include typical sections, general plan sheets (including existing topography, existing utilities, existing and proposed right-of-way information, and proposed improvements), grading, and landscaping plans. Preliminary quantities and an engineer's estimate will also be developed.

The Preliminary Plans will be developed to a 60% level. All plan sheets will be developed at a scale of 1"=20'.

1. **General Plans** –The plans will include existing and proposed features, including such items as parking space layout, curbing, drainage, and existing and proposed utilities. The plans will also include construction notes and proposed drainage. A Legends Sheet will be included as well.
2. **Typical Sections** – Typical sections of the proposed Park & Ride lot will be developed. These sheets will indicate curbing materials and pavement and base course depths.
3. **Grading** – Parking lot grading plans will be separate from the general plans and will include existing and proposed contours, as well as proposed spot elevations.
4. **Landscaping Plans** – The plans will include the placement and species of plantings to be used on the project. Other aesthetic streetscape elements will also be shown on these plans. Landscaping plan will be developed by Design Works sub-consultant.
5. **Cost Estimate** – An engineer's estimate of probable cost will be developed. The engineer's estimate will be developed based on pricing information gathered by MJ or provided by NHDOT cost summaries. The estimate, as with all estimates, should not be construed as an actual price for construction, but merely the best guess as to the probable cost of construction.
6. **Utility Design** – MJ will work with the City to identify any utility needs for the future rail platform, including, water, sewer, electric, gas, and telephone. It is assumed that the future rail platform will need utility services. These services will be shown on the General Plans and constructed as part of this project to avoid the need to disturb the parking lot when the rail platform is constructed.

In addition to the plans listed above, the following information will be provided.

- Description of existing drainage and proposed drainage design.
- Proposed Stormwater treatment will be presented.

The Preliminary Plans will be submitted to the City and NHDOT for review.

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Task 2.2 – Geotechnical Investigations

Project Coordination and Utility Clearance – GZA will review the proposed site development plans and make a site reconnaissance to observe existing site features. GZA will coordinate the subsurface exploration program with MJ and our test boring subcontractor, New England Boring Contractors, Inc. (NEBC) of Derry, New Hampshire. Test boring locations will be determined by GZA using tape ties from prominent site features and/or hand-held GPS which has a precision of +/- 10 feet. Dig Safe® utility clearance will be completed by NEBC. However, it should be noted that Dig Safe® will not mark utilities on private or restricted properties. Adjustments in locations will be made, as necessary, in the field by GZA to address access conditions encountered. GZA cannot be responsible for damage or repair to underground utilities unknown to us prior to the start of drilling. MJ will forward available utility information provided by MJ to NEBC for their use in utility clearance.

Subsurface Exploration Program - GZA will subcontract with NEBC to conduct a three-day subsurface exploration program. We anticipate drilling a total of up to ten to twelve test borings in that time.

The type and location of stormwater infiltration features has not been determined. Typically, at least one test boring with a monitoring well is required for each stormwater Best Management Practice (BMP) location. For the purposes of this budget we have assumed groundwater and infiltration rates will be required at four locations across the site. Accordingly, four test borings will be drilled to a depth of 25 feet below ground surface. Standard Penetration Testing will be performed continuously in the upper ten feet and at approximately five-foot intervals thereafter. A two-inch-diameter polyvinyl chloride (PVC) groundwater monitoring well will be installed at each of the four locations to approximately five feet below existing groundwater table elevation. For budgeting purposes, we have assumed that the wells will be installed up to 25 feet below existing ground surface.

It is assumed that development water will not be containerized and can be discharged directly onto the ground. Following development and stabilization, GZA will collect one round of groundwater level measurements and water quality samples from the four newly installed groundwater monitoring wells. GZA will also attempt to obtain groundwater depths from the five wells installed at the site in 2013. If still present, GZA will also collect one water quality sample from groundwater monitoring well GZ-1 for analysis.

The remaining six to eight test borings will be drilled to depths of 10 feet below ground surface. The borings will be drilled with a truck-mounted drill rig using either hollow stem augers or drive-and-wash cased drilling techniques through the overburden soils which are anticipated to consist of sand and gravel. Standard Penetration Testing will be performed continuously in the upper ten feet.

GZA will field screen soil samples for volatile organic compounds (VOCs) using a photoionization detector {PID} using a 10.6 eV lamp.

Based on subsurface conditions documented during the Phase II ESA at the site, we have assumed that bedrock will not be encountered to the maximum depths proposed in this subsurface

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exploration program. The test borings will be backfilled with the drill cuttings and sand fill, if needed.

A GZA engineer will coordinate and observe the drilling, classify soil samples, and prepare individual logs for each exploration. The as-drilled test boring locations will be determined by GZA using tape ties from prominent site features and/or hand-held GPS, which has a precision of +/- 10 feet.

In addition, it is noted that nearby State-listed properties included Asbestos Disposal Site (ADS) clusters such as 49, 51, and 55 Gillis Street, which abut the Site to the south, and 55-65 Crown Street, which abut the Site to the northeast. Historically asbestos was known to have been used as fill in the area and based on the proximity to these listed ADSs, there is a potential that asbestos-contaminated fill may have been used at the subject Site. Should asbestos-containing materials (ACMs) be encountered during the proposed subsurface exploration program, drilling will be stopped and GZA will submit a change order to properly address the encountered material, including the development of an Asbestos Investigation Work Plan.

Test Pit Observation and Reporting - A Certified Soil Scientist (CSS) will observe the excavation of four (4) test pits excavated in the vicinity of infiltration testing and newly installed groundwater monitoring wells and provide profile descriptions (test pit logs) written in accordance with the descriptive procedures, terminology and interpretations found in the Field Book for Describing and Sampling Soils, Version 2.0, USDA, NRCS, 2002. GZA assumes one day for a CSS to complete field observations and prepare test pit logs.

GZA will subcontract with NEBC to provide a backhoe and operator for one day for the excavation of the test pits.

Infiltration Testing

1. GZA will contract with NEBC to install borehole casings in order to perform borehole infiltration tests. This proposal assumes this work is performed in the same rig mobilization/demobilization with our test borings conducted for the Park & Ride in Task 2. We have assumed a 4-inch cased borings for the infiltration testing will be installed at four locations at the site indicated on the attached sketch;
2. MJ will provide the depths of testing. Borehole casings will be established within the proposed bio-retention basins or infiltration galleries. GZA assumes boring depths will not exceed 25 feet for the purposes of this proposal;
3. GZA will perform borehole infiltration tests in accordance with the protocol stipulated in Env-Wq 1504.14 (e)(4) to determine infiltration rates as follows:
 - a. Install a solid 4-inch diameter casing to a depth of 24 inches below the proposed bottom of the BMP;
 - b. Remove any smeared soil surfaces and provide a natural soil interface into which water can percolate;
 - c. Remove all loose material from inside the casing;

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- d. Fill the casing with water to a depth of 24 inches and allow to pre-soak for 24 hours;
- e. After pre-soaking, refill the casing with 24 inches of water and record the drop in water level from the top of the casing at the end of one hour;
- f. Divide the drop in water elevation by one hour to obtain the infiltration rate for the given observation;
- g. Repeat e. and f., above, at least three additional times, for a minimum of four observations in each location; and
- h. Use the lower of the average of the calculated infiltration rates or the last observation.

Laboratory Testing - GZA will conduct a geotechnical laboratory testing program including soil gradation analyses on up to four granular soil samples recovered during subsurface explorations. These tests will be used to confirm the field classifications of our field engineer and to estimate the engineering properties of the soils. Testing will be performed at Thielsch Engineering's Cranston, Rhode Island soils laboratory.

Based on apparent staining, odors, and/or PID measurements, GZA will submit up to four soil samples and one duplicate sample to ESS Laboratories (ESS) in Cranston, Rhode Island for analysis including: VOCs by EPA Method 8260B, polycyclic aromatic hydrocarbons (PAH) by EPA Method 8270D, total petroleum hydrocarbon (TPH) by EPA Method 8100, and the Resource Conservation and Recovery Act (RCRA) 8 metals by EPA Method 6010B. Soil analytical results will be compared to the soil remediation standards (SRS) included in Env-Or 600 - Contaminated Site Management (Env-Or 600).

Up to five groundwater samples and one duplicate sample will be submitted to ESS and analyzed for VOCs by EPA Method 8260B, PAHs by EPA Method 8270C, and the RCRA 8 metals by EPA Method 200.7/200.8/245.1. Groundwater data results will be compared against New Hampshire Ambient Groundwater Quality Standards included in Env-Or 600.

Engineering Analysis and Report Preparation - GZA will conduct engineering evaluations and develop geotechnical recommendations for design and construction of the Park and Ride. GZA will provide a geotechnical engineering report presenting the results of the subsurface investigations, laboratory testing, engineering evaluations, and geotechnical recommendations for design and construction. The report will include the following, where applicable:

- Summary of subsurface explorations and laboratory testing;
- Summary and interpretation of subsurface conditions;
- Summary of infiltration rates and observed depth to seasonal high groundwater table;
- Pavement design recommendations;
- Results of test pits for seasonal high groundwater and infiltration testing;
- Results of soil and groundwater sampling and environmental laboratory testing;
- Suitability of on-site soils for reuse during construction; and

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- Construction considerations including excavation, temporary support of excavation, dewatering, and removal of unsuitable materials.

We will prepare a geotechnical engineering report that describes the work performed, our findings, conclusions, and recommendations. Our report will include logs of the explorations, a plan indicating the locations of the explorations, and design details that may be necessary to supplement the text. An electronic PDF version of the report will be provided. Boring logs will also be provided electronically in DXF format to be included in the design plan set for the project.

Soil and Groundwater Management Plan - GZA will prepare a draft Soil Management Plan to govern activities that may involve the disturbance of urban fill and petroleum contaminated soils at the Site in consideration of the proposed site development, including:

- Development of a Site-Specific Health and Safety Plan;
- Development of a plan to manage the identification, stockpiling, and disposal of urban fill and petroleum-contaminated soils;
- Segregation of soils;
- Management of stockpiled soil, asphalt, debris, and/or concrete while awaiting waste characterization or reuse on-Site;
- Criteria for reuse and disposal of soil and any obstructions identified (i.e., foundations, demolition debris, etc.);
- Management of water collected by dewatering during construction; and
- Operation and maintenance of cover materials (i.e., clean fill, bituminous pavement, or concrete).

An electronic PDF version of the report will be provided.

Task 3 – Final Design

Task 3.1 - Environmental Permitting

The project will require an Alteration of Terrain permit because it proposes over 100,000 square feet of disturbance. MJ will prepare an Alteration of Terrain Site Specific permit application and related plans and drainage design information for submission to NHDES. The City will be responsible for any application fees. The site is located within a ¼ mile of a designated river, the Lower Merrimack River. A copy of the AoT permit will be submitted to the Local Advisory Committee (LAC) and a representative of MJ will attend a LAC meeting if requested to do so.

It is assumed no other environmental permits will be required for this project.

Task 3.2 – Preliminary Plans, Specifications and Estimates

The Preliminary Plans will be further developed based on comments received from the City and NHDOT. In addition to the plans developed under Task 2, the following drawings will be created. All plans will be completed to a 95% complete level.

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1. Demolition Plans – These plans will indicate what existing site elements will be removed or altered and what elements are to be retained.
2. Signing, Striping, and Lighting Plans – These plans will be copies of the general plans with many features removed in order to simplify the presentation and will provide the location and type of traffic signs, pavement markings, and site lighting. In addition, the plans will also provide photometric information for the proposed site lighting design. These plans will be produced at 1"=20' scale. As part of this effort, MJ will coordinate with the local power company to determine the service connection for the proposed site lighting.
3. Details – Detail sheets will be developed for landscaping, lighting, drainage, stormwater treatment, erosion control, and miscellaneous site elements. For the purposes of this scope, it is assumed that stormwater treatment will be accomplished through a combination of LID elements, including pervious pavement and underground infiltration chambers.
4. Specifications and Special Provisions – It is assumed the City will provide typical "front end" General Conditions for this project. It is further assumed that the NHDOT Standard Specifications will be used as a basis for material specifications for the Contract Documents. As needed, special provisions will be developed for incorporation into the project specifications.
5. Estimates and Quantity Tabulation – An engineer's opinion of probable cost will be provided. It is assumed that detailed quantity summary sheets (like those generally prepared for NHDOT) will not be provided. However, a tabulation of all bid items with the estimated probable unit cost for each item will be developed for use by the City. A bid form, in a format suitable to the City, will be provided as part of the Contract Documents for use by the City and its bidders. MJ will provide a copy of the quantity calculations with the final submission of Contract Drawings.

The Preliminary Plans, Specifications, and Estimate package will be submitted to the City and NHDOT for review.

Task 3.3 – Final Plans

The Preliminary Plans, Specifications, and Estimates package will be finalized based on comments received from the City and NHDOT. The final documents for construction will contain all plans, general conditions, special provisions, specifications, and estimates necessary to construct the project in its entirety. A complete set of stamped drawings in Adobe PDF format will be supplied to the City as well as Word and Excel files of all the other construction documents, including general conditions, specifications, special provisions, bid forms, and estimates. The City will be responsible for completing the forms required by NHDOT with information supplied by MJ. The Final Plans, Specifications, and Estimate package will be submitted to the City and NHDOT for review and authorization to advertise.

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Task 3.4 - Bid Services

Bidding phase services have been included to assist the City in advertising of the project with attendance at the pre-bid and the bid opening meetings. MJ will also review the bids received and provide a recommendation of award to the City. It is assumed that MJ will be required to prepare no more than two addenda during the bidding phase. MJ will perform the following Bid Phase support services:

1. MJ will provide the City with electronic versions of the plans and specifications to make available to prospective contractors. Paper copies of the plans and specifications will be sent to the City and two plan rooms. No paper copies will be made available to prospective contractors.
2. Attend the pre-bid meeting to assist the City with the presentation of the project to the bidders and respond to questions posed by the prospective bidders. Conduct a pre-bid walk-through of the project site as part of this pre-bid meeting.
3. Respond to bidders' questions from the pre-bid meeting and subsequent to the pre-bid meeting as part of any technical addenda necessary.
4. Review bids with a summary tabulation of the bids, analyze the bids and make a recommendation of award to the City.

It is assumed the City will perform the following during the bid phase of the project.

1. Prepare the bid advertisement and submit to two newspapers (one statewide and one local). Make the bid documents available on the City website and make plans and specifications available for review by prospective bidders.
2. After a recommendation has been reviewed, accepted and approved by the City, the City will prepare the necessary paperwork for submission to NHDOT for authorization to award the contract.

Assumptions

1. NHDOT Specifications, Standards, and nomenclature will be used for the construction documents.
2. A single construction contract will be used to complete the proposed work.
3. The City will arrange for meeting space for public meetings.
4. Coordination with existing utility companies regarding utility relocations is not anticipated and not included in this scope.
5. Coordination with the railroad is not anticipated and not included in this scope.
6. Permit fees will be paid for directly by the City and are not included in this scope of work.
7. It is assumed no wetland mitigation will be required.
8. It is assumed that no off-site improvements will be required.
9. The project is expected to advertise by March 2, 2017.



CONTRACT FOR PROFESSIONAL SERVICES

**TITLE:
FEASIBILITY STUDY PHASE ENGINEERING FOR PARK AND RIDE**

A CONTRACT BETWEEN

THE CITY OF NASHUA, 229 MAIN STREET, NASHUA, NH 03061-2019

AND

**McFARLAND JOHNSON, INC
53 REGIONAL DRIVE, CONCORD NH 03301**

WHEREAS, the City of Nashua, a political subdivision of the State of New Hampshire, from time to time requires the services of a Professional Engineer ; and

WHEREAS, it is deemed that the services of a Professional Engineer herein specified are both necessary and desirable and in the best interests of the City of Nashua; and

WHEREAS, Professional Engineer represents they are duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. DOCUMENTS INCORPORATED. The following exhibits are by this reference incorporated herein and are made part of this contract:

- Exhibit A--General Conditions for Contracts;
- Exhibit B--Scope of Services;
- Exhibit C--Compensation for Services;
- Exhibit D--Schedule

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

In the event of a conflict between the terms of the Proposal and the terms of this Agreement, a written change order and/or fully executed City of Nashua Purchase Order, the terms of this Agreement, the written change order or the fully executed City of Nashua Purchase Order shall control over the terms of the Proposal.

2. WORK TO BE PERFORMED Except as otherwise provided in this contract, Professional Engineer shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described.

3. PERIOD OF PERFORMANCE. Professional Engineer shall perform and complete all work within the time periods set forth and may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Professional Engineer shall begin performance upon receipt of an Executed Contract **and** a valid Purchase Order issued from the City.

4. COMPENSATION. Professional Engineer agrees to perform the work for a total cost not to exceed

One Hundred and Ninety-Eight Thousand, Two Hundred and Seventy-Five Dollars
(\$ 198,275)

which, unless otherwise provided in this contract, shall be paid in accordance with the provisions of Exhibit B or unless Professional Engineer has received a written exemption from the City. Professional Engineer shall submit monthly requests for payment for services performed under this agreement directly to

City of Nashua
Attn: Accounts Payable
PO Box 2019
Nashua, NH 03061-2019

To facilitate the proper and timely payment of applications, the City of Nashua requires that all invoices contain a valid **PURCHASE ORDER NUMBER**. The purchase order number for this contract will be _____.

Requests for payment shall be submitted no later than fifteen (15) days after the end of each month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Professional Engineer agrees to provide the following with each request for payment:

1. Appropriate invoice forms. The forms shall include the project purchase order number, a listing of personnel hours and billing rates, and other expenditures for which payment is sought.
2. A progress report. The report shall include, for each monthly reporting period, a description of the work accomplished, problems experienced, upcoming work, any extra work carried out, and a schedule showing actual expenditures billed for the period, cumulative total expenditures billed and paid to date under the contract, and a comparison of cumulative total expenditures billed and paid to the approved budget.

The City will pay for work satisfactorily completed by Professional Engineer. The City will pay Professional Engineer within **30** days of approval by the City of the submitted invoice forms and

progress reports. The City will make no payments until the invoice forms and progress reports have been submitted and approved.

5. EFFECTIVE DATE OF CONTRACT. This contract shall not become effective until and unless approved by the City of Nashua.

6. NOTICES. All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:

CITY REPRESENTATIVE:

Sarah Marchant
Director, Community Development Division
City Hall
229 Main St, PO Box 2019
Nashua, NH 03060

REPRESENTATIVE:

Brian Colburn
Project Manager
McFarland Johnson, Inc
53 Regional Drive
Concord, NH 03301

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City or Professional Engineer may change the address or representative by giving written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

City of Nashua, NH (signature)

(signature)

*James Donchess, Mayor
(Printed Name and Title)*

(Printed Name and Title)

Date

Date

**EXHIBIT A
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GENERAL CONDITIONS

1. **DEFINITIONS.** Unless otherwise required by the context, "Professional Engineer" includes any of the Professional Engineer's consultants, sub consultants, contractors, and subcontractors

2. **PROFESSIONAL ENGINEER STATUS AND PROVISION OF WORKERS' COMPENSATION COVERAGE.** The parties agree that Professional Engineer shall have the status of and shall perform all work under this contract as a Professional Engineer, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City and Professional Engineer, and nothing in this contract shall create any contractual relationship between the City and Professional Engineer's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Professional Engineer is not a City employee and that there shall be no:

- (1) Withholding of income taxes by the City;
- (2) Industrial insurance coverage provided by the City;
- (3) Participation in group insurance plans which may be available to employees of the City;
- (4) Participation or contributions by either the Professional Engineer or the City to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the City;
- (6) Unemployment compensation coverage provided by the City.

Professional Engineer agrees, before commencing any work under the contract, to complete and to provide the following written request to its insurer:

(Company Name) has entered into a contract with the City of Nashua to perform work upon receipt of an **Executed Contract** and a **Valid Purchase Order issued from the City to Final Completion** and requests that the Insurer provide to the City of Nashua 1) a certificate of coverage, and 2) notice of any lapse in coverage or nonpayment of coverage that the Professional Engineer is required to maintain. The certificate and notice should be mailed to:

Risk Management
City of Nashua
229 Main Street
Nashua, NH 03060

3. **STANDARD OF CARE.** Professional Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Professional Engineer warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Professional Engineer to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City may have, Professional Engineer shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Professional Engineer's failure to perform in accordance with this

standard of care. Any approval by the City of any products or services furnished or used by Professional Engineer shall not in any way relieve Professional Engineer of the responsibility for professional and technical accuracy and adequacy of its work. City review, approval, or acceptance of, or payment for any of Professional Engineer's work under this contract shall not operate as a waiver of any of the City's rights or causes of action under this contract, and Professional Engineer shall be and remain liable in accordance with the terms of the contract and applicable law.

Professional Engineer shall furnish competent and skilled personnel to perform the work under this contract. The City reserves the right to approve key personnel assigned by Professional Engineer to perform work under this contract. Approved key personnel shall not be taken off of the project by Professional Engineer without the prior written approval of the City, except in the event of termination of employment. Professional Engineer shall, if requested to do so by the City, remove from the job any personnel whom the City determines to be incompetent, dishonest, or uncooperative.

4. CITY REPRESENTATIVE. The City may designate a City representative for this contract. If designated, all notices, project materials, requests by Professional Engineer, and any other communication about the contract shall be addressed or be delivered to the City Representative.

5. CHANGES TO SCOPE OF WORK. The City may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Professional Engineer's performance under the contract. Professional Engineer shall provide to the City within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Professional Engineer should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Professional Engineer's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Professional Engineer for adjustment under this clause shall be asserted in writing within 30 days of the date the City notified Professional Engineer of the change and shall be consistent with the proposal for change provided in accordance with this section.

When Professional Engineer seeks changes, Professional Engineer shall, before any work commences, estimate their effect on the cost of the contract and on its schedule and notify the City in writing of the estimate. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Professional Engineer should proceed with any or all of the proposed change.

Except as provided in this paragraph, Professional Engineer shall implement no change unless the City in writing approves the change. Unless otherwise agreed to in writing, the provisions of this contract shall apply to all changes. The City may provide verbal approval of a change when the City, in its sole discretion, determines that time is critical or public health and safety are of concern. Any verbal approval shall be confirmed in writing as soon as practicable. Any change undertaken without prior City approval shall not be compensated and is, at the City's election, sufficient reason for contract termination.

6. CITY COOPERATION. The City agrees that its personnel will cooperate with Professional Engineer in the performance of its work under this contract and that such personnel will be available to Professional Engineer for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The City also agrees to provide Professional Engineer with access to City records in a reasonable time and manner and to schedule items that require action by the Board of Public Works and Finance Committee in a timely manner. The City and Professional Engineer also agree to attend all meetings called by the City or Professional Engineer to discuss the work under the Contract, and that Professional Engineer may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City.

7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES. Professional Engineer warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City in writing, and has concluded that the City's resolution of each matter is satisfactory to Professional Engineer. All future questions Professional Engineer may have concerning interpretation or clarification of this contract shall be submitted in writing to the City within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Professional Engineer's question or position. The City representative shall render a decision within 15 calendar days. The City's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Professional Engineer prior to having received the City's resolution shall be at Professional Engineer's risk and expense. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City. Professional Engineer is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

8. TERMINATION OF CONTRACT

A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL. The City, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City chooses to terminate, abandon, or suspend all or part of the project, it shall provide Professional Engineer 10 day's written notice of its intent to do so.

If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, Professional Engineer shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the City with a list of all unperformed services.
3. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of all orders or subcontracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.

5. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City to resume performance.

In the event of a termination, abandonment, or suspension at will, Professional Engineer shall receive all amounts due and not previously paid to Professional Engineer for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

B. TERMINATION FOR CAUSE. This agreement may be terminated by the City on 10 calendar day's written notice to Professional Engineer in the event of a failure by Professional Engineer to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, to complete or make sufficient progress on the work in a timely and professional manner. Professional Engineer shall be given an opportunity for consultation with the City prior to the effective date of the termination.

Upon receipt of notice of termination for cause, Professional Engineer shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the City with a list of all unperformed services.
3. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
5. Not resume work after the effective date of a notice of termination unless and until receipt of a written notice from the OWNER to resume performance.

In the event of a termination for cause, Professional Engineer shall receive all amounts due and not previously paid to Professional Engineer for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City by reasons of Professional Engineer's failure. Professional Engineer shall not be relieved of liability to the City for damages sustained from the failure, and the City may withhold any payment to the Professional Engineer until such time as the exact amount of damages due to the City is determined. All claims for payment by the Professional Engineer must be submitted to the City within 30 days of the effective date of the notice of termination.

If after termination for the failure of Professional Engineer to adhere to any of the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, to complete or make sufficient progress on the work in a timely and professional manner, it is determined that Professional Engineer had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City shall, if necessary, make an adjustment in the compensation paid to Professional Engineer such that Professional Engineer receives total compensation in the same amount as it would have received in the event of a termination-at-will.

C. GENERAL PROVISIONS FOR TERMINATION. Upon termination of the contract, the City may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Professional Engineer shall cease conducting business, the City shall

have the right to solicit applications for employment from any employee of the Professional Engineer assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Professional Engineer's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Engineer's control.

9. DISPUTE RESOLUTION. Any dispute not within the scope of section 7 or section 8 shall be resolved under this paragraph. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City Representative and a Professional Engineer representative. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City. If the dispute is not resolved within 30 days, either party may request that the dispute be submitted to the Board of Public Works for final resolution. The decision of the Board of Public Works shall be final and binding on the parties. If either party is dissatisfied with the decision of the Board of Public Works, that party may immediately terminate the contract under this paragraph, with Professional Engineer being entitled to compensation for work actually and satisfactorily performed up to the time of the termination and the City being entitled to all contract materials in accordance with paragraph 21, and compensation for any additional damages or expenses incurred in completing the work under the contract, including, without limitation, the costs of securing the services of other Professional Engineers.

10. NO DAMAGES FOR DELAY. Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Professional Engineer for damages because of hindrances or delays in the progress of the work from any cause, and Professional Engineer agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City may provide.

11. INSURANCE. Professional Engineer shall carry and maintain in effect during the performance of services under this contract:

- General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
- \$1,000,000 Combined Single Limit Automobile Liability;
***Coverage must include all owned, non-owned and hired vehicles.**
- \$1,000,000 Profession Liability;
- and Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

Professional Engineer shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Professional Engineer are intended to and shall not in any manner

limit or qualify the liabilities and obligations assumed by Professional Engineer under this contract. The City of Nashua shall not maintain any insurance on behalf of Professional Engineer. Subcontractors are subject to the same insurance requirements as Professional Engineer and it shall be the Professional Engineer's responsibility to ensure compliance of this requirement.

Professional Engineer will provide the City of Nashua with certificates of insurance for coverage as required herein and endorsements affecting coverage required by the contract within ten calendar days after the City issues the notice of award. Said certificates shall provide that the City shall receive thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability, and Auto Liability policies must name the City of Nashua as an additional insured** and reflect on the certificate of insurance. Professional Engineer is responsible for filing updated certificates of insurance with the City of Nashua's Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Professional Engineer must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve Professional Engineer of its responsibilities or limit the amount of its liability to the City or other persons, and Professional Engineer is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Professional Engineer is responsible for and required to remedy all damage or loss to any property, including property of the City, caused in whole or part by Professional Engineer or anyone employed, directed, or supervised by Professional Engineer.

12. INDEMNIFICATION Regardless of any coverage provided by any insurance, Professional Engineer agrees to indemnify and shall defend and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Professional Engineer or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Professional Engineer's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

13. FISCAL CONTINGENCY. All payments under this contract are contingent upon the availability to the City of the necessary funds. This contract shall terminate and the City's obligations under it shall be extinguished at the end of any fiscal year in which the City fails to appropriate monies for the ensuing fiscal year sufficient for the performance of this contract.

Nothing in this contract shall be construed to provide Professional Engineer with a right of payment over any other entity. Any funds obligated by the City under this contract that are not paid to Professional Engineer shall automatically revert to the City's discretionary control upon the completion, termination, or cancellation of the agreement. The City shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Professional Engineer. Professional Engineer shall have no claim of any sort to the unexpended funds.

14. COMPENSATION. Review by the City of Professional Engineer's submitted monthly invoice forms and progress reports for payment will be promptly accomplished by the City. If there is insufficient information, the City may require Professional Engineer to submit additional information. Unless the City, in its sole discretion, decides otherwise, the City shall pay Professional Engineer in full within **30 days of approval** of the submitted monthly invoice forms and progress reports.

15. COMPLIANCE WITH APPLICABLE LAWS. Professional Engineer, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Professional Engineer shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

16. NONDISCRIMINATION. If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Professional Engineer agrees to the following terms. Professional Engineer will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Professional Engineer agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

Without limitation of the foregoing, Professional Engineer's attention is directed to 41 C.F.R. § 60-1.4, and the clause entitled "Equal Opportunity Clause" which, by reference, is incorporated into this contract, to 41 C.F.R. § 60-250 et seq. and the clause entitled "Affirmative Action Obligations of Professional Engineers and Subcontractor for Disabled Veterans and Veterans of the Vietnam Era," which, by reference, is incorporated in this contract, and to 41 C.F.R. § 60-471 and the clause entitled "Affirmative Action Obligations of Professional Engineers and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

Professional Engineer agrees to assist disadvantaged business enterprises in obtaining business opportunities by identifying and encouraging disadvantaged suppliers, consultants, and sub consultants to participate to the extent possible, consistent with their qualification, quality of work, and obligation of Professional Engineer under this contract.

In connection with the performance of work under this contract, Professional Engineer agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or sexual orientation. This agreement includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Professional Engineer agrees, if applicable, to insert these provisions in all subcontracts, except for subcontracts for standard commercial supplies or raw materials. Any violation of any applicable provision by Professional Engineer shall constitute a material breach of the contract.

17. FEDERAL SUBCONTRACTING REQUIREMENTS. If Professional Engineer awards a subcontract under this contract, Professional Engineer, if applicable, shall use the following alternative steps:

- A. Using the services of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce, as appropriate; and
- B. Requiring the subcontractor, if it awards subcontracts, to take the affirmative steps set forth in paragraph A.

If applicable, Professional Engineer agrees to complete and submit to the City a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization Report (Standard Form 334) within 30 days after the end of each fiscal quarter until the end of the contract.

18. ENDORSEMENT. Professional Engineer shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Professional Engineer or under its direction as required under the laws of the State of New Hampshire.

19. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING. Professional Engineer shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City is void. Any consent of the City to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

20. CITY INSPECTION OF CONTRACT MATERIALS. The books, records, documents and accounting procedures and practices of Professional Engineer related to this contract shall be subject to inspection, examination and audit by the City, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

21. DISPOSITION OF CONTRACT MATERIALS. Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to

those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the exclusive property of the City and all such materials shall be remitted and delivered, at Professional Engineer's expense, by Professional Engineer to the City upon completion, termination, or cancellation of this contract. Alternatively, if the City provides its written approval to Professional Engineer, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract must be retained by Professional Engineer for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City, in writing, requests any or all of the materials, then Professional Engineer shall promptly remit and deliver the materials, at Professional Engineer's expense, to the City. Professional Engineer shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Professional Engineer's obligations under this contract without the prior written consent of the City.

22. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS. Professional Engineer expressly agrees that all documents ever submitted, filed, or deposited with the City by Professional Engineer (including those remitted to the City by Professional Engineer pursuant to paragraph 21), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Professional Engineer. The City shall have the right to reproduce any such materials.

Professional Engineer expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Professional Engineer agrees to indemnify, to defend, and to hold harmless the City, its representatives, and employees from any claim or action seeking to impose liability, costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Professional Engineer infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Professional Engineer infringes any patent.

Professional Engineer shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

23. FINAL ACCEPTANCE. Upon completion of all work under the contract, Professional Engineer shall notify the City in writing of the date of the completion of the work and request confirmation of the completion from the City. Upon receipt of the notice, the City shall confirm to Professional Engineer in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Engineer with a written list of work not completed. With respect to work listed by the City as incomplete, Professional Engineer shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.

24. TAXES. Professional Engineer shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Professional Engineer hereby indemnifies and holds harmless the City from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

25. NON-WAIVER OF TERMS AND CONDITIONS. None of the terms and conditions of this contract shall be considered waived by the City. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City in a written waiver.

26. RIGHTS AND REMEDIES. The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

27. PROHIBITED INTERESTS. Professional Engineer shall not allow any officer or employee of the City to have any indirect or direct interest in this contract or the proceeds of this contract. Professional Engineer warrants that no officer or employee of the City has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of Professional Engineer. If any such interest comes to the attention of Professional Engineer at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City. Professional Engineer also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Professional Engineer further warrants that no person having such an interest shall be employed in the performance of this contract. If City determines that a conflict exists and was not disclosed to the City, it may terminate the contract at will or for cause in accordance with paragraph 8.

In the event Professional Engineer (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, City may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, Professional Engineer shall refund to the City any profits realized under this contract, and Professional Engineer shall be liable to the City for any costs incurred by the City in completing the work described in this contract. At the discretion of the City, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

Professional Engineer warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Professional Engineer to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract. If City determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with paragraph 8.

The rights and remedies of this section shall in no way be considered for be construed as a waiver of any other rights or remedies available to the City under this contract or at law.

28. THIRD PARTY INTERESTS AND LIABILITIES. The City and Professional Engineer, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City and Professional Engineer.

29. SURVIVAL OF RIGHTS AND OBLIGATIONS. The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

30. SEVERABILITY. In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

31. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT. This contract constitutes the entire contract between the City and Professional Engineer. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

32. CHOICE OF LAW AND VENUE. This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere.



THE CITY OF NASHUA

Financial Services

Purchasing Department

"The Gate City"

June 30, 2016
Memo #17-012

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: FY17 BIO-DIESEL FUEL CONTRACT FOR NASHUA TRANSIT (VALUE \$1.8457 PER
GALLON)
DEPARTMENT: 186 NASHUA TRANSIT; FUND: GRANT FUNDS
ACCOUNT CLASSIFICATION: 61 FUEL

Please see attached communication from Sarah Marchant, Community Development Division Director, dated June 4, 2016 for information related to this contract award.

Pursuant to § 5-78 Major purchases (greater than \$10,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

Sarah Marchant, Director of Community Development and the Purchasing Department recommend the award of this contract to **East River Energy of Guilford, CT** in the amount of **\$1.8457 per gallon**.

Respectfully,

Dan Kooker
Purchasing Manager

Cc: S. Marchant J. Graziano



City of Nashua
Community Development Division
City Hall, 229 Main Street, PO Box 2019
Nashua, New Hampshire 03061-2019

Community Development 589-3095
Planning and Zoning 589-3090
Building 589-3080
Code Enforcement 589-3100
Urban Programs 589-3085
Economic Development 589-3070
Conservation Commission 589-3105
Transit Department 880-0100
www.gonashua.com

To: Dan Kookan, Purchasing Manager

From: Sarah Marchant, Division Director

Date: June 4, 2016

Re: **FY17 Bio-Diesel Fuel Contract for Nashua Transit**

For the past fiscal year (FY16), Nashua Transit had contracted with East River Energy at the fixed price of \$2.1873 per gallon.

For FY17 Nashua Transit went back out to bid to see what potential vendors could offer as a fixed rate price for B5 Rack Blend fuel. The RFP was posted on the City website under RFP0464-052616 and sent to 11 known biodiesel suppliers. Two (2) qualified bids were received as follows:

1. Dennis K. Burke – Rack Blend - Fixed Price \$1.9327
2. East River Energy – Rack Blend - Fixed Price \$1.8457

East River was the low bidder. East River Energy is a reputable and responsible company. They have given us the lowest price and also use the Rack Blend method of mixing the fuel that we had encouraged.

The Community Development Division recommends that the biodiesel contract be awarded to **East River Energy of Guilford, Connecticut**, for a period of twelve months expiring on June 30, 2017, with a one-year option to extend at the same price.

**B5 BIODIESEL AGREEMENT BETWEEN
THE CITY OF NASHUA, NH
AND
EAST RIVER ENERGY**

THIS AGREEMENT is made and entered into effective as of July 1, 2016 by and between the City of Nashua, located at 229 Main Street, Nashua, NH 03060 (the "CITY" or "Purchaser") and East River Energy, located at 401 Soundview Road, P.O. Box 388, Guilford, CT 06437-0388(the "CONTRACTOR").

WITNESSETH

WHEREAS, the CITY is desirous of obtaining B5 Biodiesel fuel blend for the Nashua Transit System. NOW, THEREFORE, in consideration of the foregoing recitals and covenants and agreements of each of the parties herein set forth, the parties do agree as follows:

1. CONTRACTOR SERVICES

The CITY does hereby engage and retain the CONTRACTOR to deliver BS-Bio-diesel fuel blend on a year-round basis. It is required that the B5 Biodiesel product being supplied is formulated utilizing "premium ultra-low sulfur #2" blend stock on a year-round basis.

CONTRACTOR will follow the guidelines listed below for the minimum protection cloud points required. All fuel as delivered shall meet or exceed the cloud point requirements as stated below unless superseded by requirements stated at time of order:

ADDITIVE WINTER PREMIUM DIESEL CLOUD POINT REQUIREMENTS

October 1st to December 14th - "B5 fuel delivered" with a required cloud point that meets or exceeds + 8° cloud point

December 15th to March 14th - "B5 fuel delivered" with a required cloud point that meets or exceeds -5° cloud point

March 15th to September 30th - "B5 fuel delivered" with a required cloud point that meets or exceeds + 20° cloud point

2. COMMENCEMENT AND TERM

Deliveries shall commence upon the full execution of this Agreement and shall proceed diligently and in good faith from July 1, 2016 through June 30, 2017, with a one year option to extend at the same price, which option shall be at the City's sole discretion.

- The CONTRACTOR will deliver quantities requested to 11 Riverside Street within a 24- hour time period. Friday requests will be delivered on Monday.

- The CONTRACTOR's drivers will take precautions to prevent spillage during deliveries. Driver will immediately notify CITY personnel of problems resulting from defective equipment at the 11 Riverside Street, Nashua NH facility. **The City of Nashua will not be responsible for spillage during deliveries.**
- Deliveries will be via tanker loads or small truckloads depending on order size. Orders are called in and most deliveries are in the 7,000-10,000 gallon range with the exception of fiscal year end when the CITY may request 1 or 2 deliveries in the area of 1,000 gallons each.
- Quantity stated is an estimate based on history and anticipated needs. The CITY shall not be bound to this specific quantity to fulfill the agreement.
- Deliveries must be made between 6:00am - 9:00pm EST.
- The bio-diesel component must meet ASTM-D-6751 code and the final blend must meet the requirements of the D975 code.
- The bio-diesel product must include a cold weather additive.
- An authorized CITY of Nashua employee must sign all delivery slips.
- All invoices must be forwarded to CITY of Nashua, c/o Accounts Payable, City Hall, 229 Main Street, PO Box 2019, Nashua NH 03061-2019. Invoices must identify the delivery point, date and quantity, and must include proof of delivery slip.
- Delivery price will be \$ 1.8457 per gallon for the duration of this agreement, including options.
- The CONTRACTOR's Certificate of Liability Insurance must be on file at the CITY's Purchasing Office and Risk Management Department. New certificates must be forwarded as coverage is renewed.
- No confirming purchase order will be mailed to the CONTRACTOR from the CITY.
- Nashua Transit, acting for the CITY, will issue draw-down orders to cover processing of invoices. However, no purchase order needs to be referenced on invoices. Location of delivery point is the critical data to identify the CITY of Nashua cost center.
- All requests for delivery will come from an authorized CITY employee.
- The CITY is utilizing funding from the Federal Transit Administration for this project. The federally required FTA clauses for this contract can be found in the attached document **Exhibit A- FTA Clauses which are incorporated herein by reference.**

3. INSURANCE REQUIREMENTS

CONTRACTOR shall carry and maintain in effect during the performance of services under this contract:

- General Liability **(which must include hazardous material/waste coverage):**
\$1,000,000 per Occurrence
\$2,000,000 Aggregate
(City of Nashua Additional Insured)

- Motor Vehicle Liability:
\$1,000,000 Combined Single Limit ***coverage must include all owned, non-owned and hired vehicles.**

(City of Nashua Additional Insured)

- Workers' Compensation Coverage according to Statute of the State of New Hampshire:
\$100,000 / \$500,000 / \$ 100,000
(Sole Proprietors not subject to Workers' Compensation requirements)

CONTRACTOR and subcontractors at every tier will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

CONTRACTOR shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by CONTRACTOR are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the contract. The CITY shall not maintain any insurance on behalf of CONTRACTOR. Subcontractors are subject to the same insurance requirements as the CONTRACTOR and it shall be the CONTRACTOR's responsibility to ensure compliance of this requirement.

The parties agree that CONTRACTOR shall have the status of and shall perform all work under this agreement as an independent contractor, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this agreement is between the CITY and CONTRACTOR, and nothing in this agreement shall create any contractual relationship between the CITY and CONTRACTOR's consultants, sub consultants, contractors. The parties also agree that CONTRACTOR is not a CITY employee and that there shall be no:

1. Withholding of income taxes by the CITY;
2. Industrial insurance coverage provided by the CITY;
3. Participation in group insurance plans which may be available to employees of the CITY;

4. Participation or contributions by either the CONTRACTOR or the CITY to the public employees retirement system;
5. Accumulation of vacation leave or sick leave provided by the CITY;
6. Unemployment compensation coverage provided by the CITY.

CONTRACTOR will provide the CITY with certificates of insurance for coverage, as listed, and endorsements affecting coverage required by the Agreement. The CITY requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability, Employers' Liability and Auto Liability policies must name the City of Nashua as an additional insured and reflect on the certificate of insurance.** CONTRACTOR is responsible for filing updated certificates of insurance with the **City of Nashua's Risk Management Department** during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, CONTRACTOR must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve CONTRACTOR of its responsibilities or limit the amount of its liability to the CITY or other persons, and CONTRACTOR is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by CITY shall be called upon to contribute to a loss.
- CONTRACTOR is responsible for and required to remedy all damage or loss to any property, including property of the CITY, caused in whole or part by CONTRACTOR or anyone employed, directed, or supervised by CONTRACTOR.

Regardless of any coverage provided by any insurance, CONTRACTOR agrees to indemnify and shall defend and hold harmless the CITY, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of CONTRACTOR or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. CONTRACTOR's indemnity, defense and hold harmless obligations, or portions

thereof, shall not apply to liability caused by the negligence or willful misconduct of the party indemnified or held harmless.

4. GOVERNING LAW AND VENUE

This Agreement shall be interpreted and enforced in accordance with the laws of the State of New Hampshire, excluding any choice of law or conflicts of law rules that would result in the application of the laws of a different jurisdiction, and any claim or action brought relating to this Agreement, the work or services performed or contracted to be performed thereunder, or referable in any way thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Sothern Judicial District or in the New Hampshire 9th Circuit Court- Nashua and not elsewhere..

5. SEVERABILITY

If any provision of this Agreement is determined to be void, unlawful, or otherwise unenforceable, that provision shall be severed from the remainder of this Agreement, and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible, or otherwise modified in such fashion as to preserve, to the maximum extent possible, the original intent of the Parties, and this Agreement, as so modified, shall continue to be in full force and effect.

6. AMENDMENT

No modification, amendment, or other change to this Agreement shall be effective unless agreed to in a writing signed by each of the Parties.

Any proposed modification to the Scope of Work, including schedule, shall be submitted in writing to the CITY with an explanation for the need to amend the Agreement and proposed adjustment.

7. NO WAIVER

Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies in that or any other instance. No Party shall be deemed to have waived any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

8. TERMINATION

This Agreement can be terminated, in its sole discretion, by the CITY at any time, and CONTRACTOR will be paid for all work performed up to the termination date. The CITY shall have the benefit of all work performed to the date of termination, and is entitled to all work, reports, drafts, notes, recommendations, etc. performed or prepared by CONTRACTOR up to the

termination date. For termination by default and other termination provisions, please refer to the FTA clauses located within Exhibit A.

9. ENTIRE AGREEMENT

This Agreement and any amendments to this Agreement contain the complete agreement between the Parties with respect to the subject matter of this Agreement and supersede all other agreements and understandings, whether written or oral, with respect to the matters contained in this Agreement, including any letters of intent, term sheets or similar proposals exchanged by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the

CITY OF NASHUA

By: James W. Donchess, Duly Authorized

Signature: _____

Title: Mayor

Date: _____

EAST RIVER ENERGY

By: _____, Duly Authorized

Signature: _____

Title: _____

Date: _____

Exhibit A:

FTA CLAUSES

No Government Obligation to Third Parties

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements and Related Acts

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Access to Records and Reports

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
3. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
4. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
5. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
6. FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between

Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Termination

49 U.S.C. Part 18 FTA Circular 4220.1F

- a. **Termination for Convenience (General Provision)** Purchaser, may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Purchaser, to be paid to the Contractor. If the Contractor has any property in its possession belonging to the Purchaser, the Contractor will account for the same, and dispose of it in the manner the Purchaser directs.
- b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Purchaser, may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Purchaser, that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Purchaser, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c. **Opportunity to Cure (General Provision)** Purchaser, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Purchaser's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from Purchaser, setting forth the nature of said breach or default, Purchaser, shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Purchaser, from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that Purchaser, elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Purchaser, shall not limit Purchaser, remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Purchaser, may terminate this contract for default. Purchaser, shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

Civil Rights Requirements

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Civil Rights - The following requirements apply to the underlying contract:

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:
 - a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - b. *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In

addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disadvantaged Business Enterprise(DBE)

49 CFR Part 26

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Purchaser's, overall goal for DBE participation is 1.4 %. A separate contract goal has not been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Purchaser, deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Purchaser. In addition, the contractor may not hold retainage from its subcontractors and is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed and is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Purchaser, and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- d. The contractor must promptly notify Purchaser, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Purchaser.

Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1F

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

Suspension and Debarment

**49 CFR Part 29
Executive Order 12549**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Purchaser. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Purchaser, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Breaches and Dispute Resolution

**49 CFR Part 18
FTA Circular 4220.1F**

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Lobbying

31 U.S.C. 1352
49 CFR Part 19

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.
Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]
- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.
Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.
- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, 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 an 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 making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--L.L.L., "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 (as amended by the Lobbying Disclosure Act of 1995). 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.

[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 such expenditure or failure.]

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Clean Air

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Water Requirements

33 U.S.C. 1251

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Energy Conservation Requirements

40 U.S.C. 3141 et seq.

49 CFR Part 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

AMERICANS WITH DISABILITIES ACT (ADA)

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.



THE CITY OF NASHUA

"The Gate City"
Financial Services
Purchasing Department

May 4, 2016

EXHIBIT C - ADDITIONAL TERMS TO SALES AGREEMENT CONFIRMATION – IFB0464-052616

Date: _____

Vendor Name: _____

Vendor address: _____

Vendor address: _____

Attention: _____

Following are the agreed-upon details of the agreement between the City of Nashua NH and ("The Contractor") as they pertain to providing B5 to the specified location within the City of Nashua.

1. Agreement will run from July 1, 2016 through June 30, 2017, with an option to extend for up to one (1) year.
2. ("The Contractor") will deliver quantities requested to designated tank locations within a 24-hour time period. Friday requests will be delivered on Monday.
3. ("The Contractor") drivers will take precautions to prevent spillage during deliveries. Driver will immediately notify City of Nashua personnel of problems resulting from defective equipment at City of Nashua facilities.
4. Deliveries will be via tanker loads or small truckloads depending on order size and/or location.
5. An authorized City of Nashua employee must sign all delivery slips.

6. All invoices must be forwarded to City of Nashua, c/o Accounts Payable, City Hall, 229 Main Street, PO Box 2019, Nashua NH 03061-2019. Invoices must identify the delivery point, date and quantity, and must include proof of delivery slip.

7. Delivery price will be \$ (Agreed upon pricing) per gallon for the duration of this agreement.

8. ("The Contractor") Certificate of Liability Insurance must be on file at our Purchasing Office and Risk Management Department. New certificates must be forwarded as coverage is renewed.

9. No confirming purchase order(s) will be mailed to XXX from the City of Nashua. Individual locations will issue draw-down orders to cover processing of invoices. However, no purchase order(s) needs to be referenced on invoices. Location of delivery point is the critical data to identify the City of Nashua cost center.

10. All requests for delivery will come from an authorized City of Nashua employee.

Dan Kookan
Purchasing Manager
City of Nashua NH

Name: _____
for
Vendor name: _____



THE CITY OF NASHUA

Financial Services

Purchasing Department

"The Gate City"

June 30, 2016
Memo #17-013

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: APPROVAL OF AGREEMENT TO ADDITIONAL REQUIREMENTS FOR
TECHNOLOGIES OTHER THAN HIGH PRESSURE SODIUM OR METAL HALIDE
LIGHTING (VALUE: \$0.00)
DEPARTMENT: 126 FINANCIAL SERVICES

Financial Services Division is seeking approval of the attached agreement which includes Requirements for the LED Option under the Rate EOL tariff (also attached) that the City of Nashua will operate under as part of the LED Street Light Conversion Project.

Pursuant to NRO § 5-84. Special purchase procedures. A. The competitive bidding process shall not apply to the following special purchase. (2) Purchases where the cost of the service is fixed by law.

The Financial Services Division CFO and the Purchasing Department recommend the approval of the the agreement to the terms of the Rate EOL tariff that includes additional requirements for technologies other than high pressure sodium or metal halide lighting by **PSNH dba Eversource Energy of Manchester, NH.**

Respectfully,

Dan Kooker
Purchasing Manager

Cc: J. Griffin D. Danielson

**Public Service Company of New Hampshire d/b/a Eversource Energy
Customer Responsibilities under the LED Option of Energy Efficient
Outdoor Lighting Delivery Service Rate EOL**

Municipal lighting customers of Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Company") served under Energy Efficient Outdoor Lighting Delivery Service Rate EOL ("Rate EOL") may opt to have LED fixtures installed, in place of, or in addition to, the metal halide or high pressure sodium fixtures offered under this rate. This is an acknowledgement of customer responsibilities under the LED option of Rate EOL, under the terms and conditions of the Company's Electric Tariff on file with the New Hampshire Public Utilities Commission. The City/Town of Nashua, New Hampshire (the "Customer"), hereby agrees to accept service under the terms and conditions of the Tariff.

Requirements for the LED Option:

- Customer is responsible for selecting and purchasing accepted LED fixtures from a vendor and for providing replacement fixtures in the event an installed fixture fails for any reason.
- Fixtures must be accepted by the Company in advance of installation and must be compatible with existing line voltage, brackets and photoelectric controls, and must require no special tools or training to install and maintain.
- Customer will pay the Company, or a private contractor approved by the Company, for removal and installation of LED fixtures. Private contractors must be accepted by the Company in advance of commencement of work.
- The Company will hold title to all fixtures during the time they are installed. All maintenance of the fixtures will be performed by the Company or its agent.
- The Company will correct system voltage problems at no charge to the Customer. The Customer will be charged a per-fixture per-visit charge, as specified in the Tariff, when it is necessary for the Company to replace photoelectric controls; or to remove a non-working fixture, return it to the customer, and install a new fixture provided by the Customer. LED fixtures will be considered to have failed if, after confirmation of adequate voltage and an operational photo electric control, the fixture fails to work.

Accepted: ~~Town/City of~~ Nashua
Account Number(s) 800046601

By: _____ Date: _____

Accepted: Eversource Energy

By: _____ Date: _____

ENERGY EFFICIENT OUTDOOR LIGHTING
DELIVERY SERVICE RATE EOL

AVAILABILITY

Subject to the Terms and Conditions of the Tariff of which it is a part, this unmetered rate is available to any federal, state, county, municipal or other governmental unit, or department or agency of the government. Service under this rate is for delivery and maintenance of street and area lighting service to fixtures utilizing high pressure sodium, metal halide, light emitting diode ("LED") or other energy efficient technology accepted by the Company, for which the Customer has paid the installed cost of fixtures and brackets. It is available at the Customer's option to those Customers who sign a Service Agreement to receive all of their street and area lighting service requirements under Rate EOL where feasible.

Customers choosing to convert from service under Outdoor Lighting Delivery Service Rate OL to service under Rate EOL must:

- (a) contribute to the Company the remaining unexpired life of currently installed high pressure sodium and metal halide fixtures and brackets which the Customer wishes to remain in service on the date that service under this rate is initiated;
- (b) contribute to the Company the cost of removal and remaining unexpired life of any street and area lighting fixtures and brackets as of the date that such fixtures are removed and replaced with energy efficient lighting technology in accordance with this Rate Schedule;
- (c) pay the Company the installed cost for all new high pressure sodium and metal halide fixtures and brackets placed into service under this rate, and;
- (d) furnish any fixtures utilizing other lighting technologies accepted by the Company, and pay either the Company or a private line contractor, as described under the "Additional Requirements" section below, for the installation of these fixtures.

The Company will perform all maintenance of lighting fixtures under this rate. The Company will hold title to all fixtures during the time they are installed.

All-night outdoor lighting service on an annual basis totaling approximately 4,345 hours of operation per year and midnight outdoor lighting service on an annual basis totaling approximately 2,005 hours of operation per year shall be provided for under this rate.

LIMITATIONS ON AVAILABILITY

The availability of this rate to any Customer is contingent upon the availability to the Company of personnel and/or other resources necessary to perform the conversion of existing fixtures in accordance with the time schedule specified in the Service Agreement.

Issued: March 24, 2016

Issued by: William J. Quinlan

Effective: May 1, 2016

Title: President and Chief Operating Officer

ADDITIONAL REQUIREMENTS FOR TECHNOLOGIES OTHER THAN HIGH PRESSURE SODIUM OR METAL HALIDE

Fixtures utilizing technologies other than High Pressure Sodium or Metal Halide must be provided by the Customer for installation on the Company's facilities. Fixtures shall be accepted by the Company in advance of installation and must be compatible with existing line voltage, brackets and photoelectric controls, and must require no special tools or training to install and maintain.

Customers who are replacing existing fixtures with these technologies are responsible for the cost of removal and installation. Customers may choose to have this work completed by the Company or may opt to hire and pay a private line contractor to perform the work. Any private contractor shall have all the requisite training, certifications and insurance to safely perform the required installations, and shall be licensed by the State and accepted by the Company. Prior to commencement of work, the municipality must provide written certification of the qualifications to the Company. Contractors shall coordinate the installation work with the Company and submit a work plan subject to approval by the Company. The Customer shall bear all expenses related to the use of such labor, including any expenses arising from damage to the Company's electrical system caused by the contractor's actions.

SERVICE AGREEMENT

The Customer shall sign a Service Agreement governing the contribution for the remaining unexpired life of the existing street lighting fixtures and brackets, the contribution for the installed cost of the new fixtures and brackets, and the conversion of existing fixtures.

SERVICE DURING THE CONVERSION PERIOD FROM RATE OL TO RATE EOL

Service under this rate shall be implemented on a prorated basis, according to the number of fixtures which have been converted. Therefore, during the conversion period a portion of the Customer's street and area lighting requirements may be served under Outdoor Lighting Delivery Service Rate OL for those fixtures which have not yet been converted under this Rate.

MONTHLY RATES

Energy Charge:

	<u>Per Kilowatt-Hour</u>
Transmission Charge	1.338¢
Stranded Cost Recovery	-0.015¢

In addition to the energy charges above, Customers shall be assessed the monthly Distribution Rates shown below. The energy charge shall be applied to the monthly kilowatt-hours specified below for the applicable fixture and service option. For outdoor lighting charges

Issued: March 24, 2016

Issued by: William J. Quinlan

Effective: May 1, 2016

Title: President and Chief Operating Officer

which are billed in conjunction with service rendered under a metered Rate Schedule, the kilowatt-hours used for billing purposes shall be the amount specified for the calendar month in which the later meter read date occurred for service rendered under the metered Rate Schedule.

All-Night Service Option:

The monthly kilowatt-hours and distribution rates for each fixture served under the all-night service option are shown below.

Lamp Nominal Light Output Lumens	Power Rating Watts	Monthly KWH per Fixture												Monthly Distribution Rate
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
High Pressure Sodium:														
4,000	50	27	23	22	19	16	16	16	18	21	23	24	27	\$8.47
5,800	70	40	34	32	29	24	23	24	27	31	35	37	40	8.47
9,500	100	59	50	47	42	35	34	35	39	46	51	53	59	10.41
16,000	150	88	74	70	62	53	51	53	59	68	76	79	88	11.44
30,000	250	142	120	113	101	85	82	85	95	110	123	128	142	11.44
50,000	400	217	183	173	154	130	126	130	144	168	188	196	217	11.81
130,000	1,000	510	430	408	362	306	296	306	340	395	442	460	510	22.42
Metal Halide:														
5,000	70	41	35	33	29	25	24	25	28	32	36	37	41	\$8.79
8,000	100	56	47	45	40	34	33	34	38	44	49	51	56	11.62
13,000	150	88	74	71	63	53	51	53	59	68	77	80	88	12.40
13,500	175	96	81	77	68	57	56	57	64	74	83	87	96	13.07
20,000	250	134	113	107	95	80	78	80	89	104	116	121	134	13.28
36,000	400	209	176	167	149	126	122	126	140	162	181	189	209	13.66
100,000	1,000	502	423	402	356	301	292	301	335	389	435	454	502	24.33

LED's and other technologies accepted by the Company:

	Per <u>Fixture</u>	Per <u>Watt</u>
Monthly Distribution Rates	\$3.39	\$ 0.0515

Monthly KWH per Fixture will be calculated to the nearest whole (1.0) KWH as follows:

Total Fixture Wattage divided by 1,000 times the monthly hours of operation below

Monthly Hours of Operation											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
465	392	372	330	279	270	279	310	360	403	420	465

Issued: March 24, 2016

Issued by: William J. Quinlan

Effective: May 1, 2016

Title: President and Chief Operating Officer

Midnight Service Option:

The monthly kilowatt-hours and distribution rates for each fixture served under the midnight service option are shown below.

Lamp Nominal Light Output Lumens	Power Rating Watts	Monthly KWH per Fixture												Monthly Distribution Rate
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
High Pressure Sodium:														
4,000	50	14	11	9	10	7	6	6	7	9	11	13	14	\$8.47
5,800	70	20	16	13	15	11	9	9	11	13	16	20	21	8.47
9,500	100	30	23	20	21	16	13	14	16	19	24	28	31	10.41
16,000	150	44	34	29	31	24	20	21	24	28	35	42	47	11.44
30,000	250	71	56	47	51	38	32	33	38	46	57	69	76	11.44
50,000	400	109	85	72	77	58	49	51	58	70	87	105	116	11.81
130,000	1,000	255	200	170	181	136	115	119	136	165	204	246	272	22.42
Metal Halide:														
5,000	70	20	16	14	15	11	9	10	11	13	17	20	22	\$8.79
8,000	100	28	22	19	20	15	13	13	15	18	23	27	30	11.62
13,000	150	44	34	30	31	24	20	21	24	28	36	43	47	12.40
13,500	175	48	38	32	34	25	22	22	26	31	38	47	51	13.07
20,000	250	67	52	45	48	36	30	31	36	43	54	65	71	13.28
36,000	400	104	82	70	74	56	47	49	56	68	84	101	111	13.66
100,000	1,000	251	196	167	178	134	114	117	134	162	201	243	268	24.33

LED's and other technologies accepted by the Company:

	Per Fixture	Per Watt
Monthly Distribution Rates	\$3.39	\$0.0515

Monthly KWH per Fixture will be calculated to the nearest whole (1.0) KWH as follows:
 Total Fixture Wattage divided by 1,000 times the monthly hours of operation below

Monthly Hours of Operation											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
233	182	155	165	124	105	108	124	150	186	225	248

LEAP YEAR ADJUSTMENT TO ENERGY

During any leap year, the energy (Kilowatt-hour) usage during the month of February for all fixtures shall be increased by 3.6 percent for the purpose of determining total energy charges under this rate.

Issued: March 24, 2016

Issued by: William J. Quinlan

Effective: May 1, 2016

Title: President and Chief Operating Officer

MAINTENANCE

The Company shall exercise reasonable diligence to insure that all lamps are burning and shall make replacements promptly when notified of outages. However, the Company shall not be required to perform any replacements or maintenance except during regular working hours.

For high pressure sodium and metal halide fixtures, lamp replacement, maintenance and cleaning of lighting fixtures will normally be performed on a periodic basis in accordance with generally accepted utility practices and consistent with any manufacturer's recommendations.

For fixtures utilizing technologies other than high pressure sodium or metal halide, the Company will be responsible for correcting Company system voltage problems at no charge to the Customer. When the Company responds to a report of a non-working fixture not related to voltage, the Customer will be assessed a per-fixture per-visit charge to replace photoelectric controls or to remove an otherwise non-working fixture and return it to the Customer.

Maintenance Charge.....Per-Fixture Per-Visit \$95.00 plus cost of materials

MODIFICATION OF SERVICE OPTION

Municipal and state roadway lighting Customers may request a modification of service from the all-night service option to the midnight service option during the calendar months of January and February of each year, otherwise known as the open enrollment period. Requests received from municipal and state roadway lighting Customers after the open enrollment period shall be implemented during the subsequent open enrollment period, unless the Company determines that it is feasible and practicable to implement the request prior to the subsequent enrollment period. All other Customers may request a modification of service from the all-night service option to the midnight service option at any time. Customers requesting a modification of service from the all-night service option to the midnight service option are responsible to pay to the Company the installed cost of any additional equipment required to provide service under the midnight service option. The installed cost includes the cost of the additional equipment, labor, vehicles and overheads. The Customer is responsible to pay such costs prior to the installation of the equipment. If such a request is made concurrent with the Company's existing schedule for lamp replacement and maintenance, the Customer is responsible to pay to the Company the cost of any additional equipment required, including overheads. The Customer is responsible to pay such costs prior to the installation of the equipment.

Customers requesting a modification of service from the midnight service option to the all-night service option are responsible to pay to the Company the installation cost of the equipment required to provide service under the all-night service option. The installation cost includes the cost of labor, vehicles and overheads. The Customer is responsible to pay such costs prior to the installation of the equipment. If such a request is made concurrent with the Company's existing schedule for lamp replacement and maintenance, no additional costs are required to modify service from the midnight service option to the all-night service option.

Issued: March 24, 2016

Issued by: William J. Quinlan

Effective: May 1, 2016

Title: President and Chief Operating Officer

The Company will utilize fixed price estimates per fixture for the installed cost, the additional equipment cost and the equipment installation cost and will update the fixed price estimates per fixture each year based upon current costs. In the event traffic control is required during a modification of service option or for equipment repair, the Customer is responsible to coordinate and to provide traffic control and to pay all costs associated with traffic control. The scheduling of work associated with the modification of a service option will be made at the Company's discretion with consideration given to minimizing travel and set-up time.

NEW INSTALLATIONS, EXTENSIONS AND REPLACEMENTS

No additional cost, other than a contribution for the installed cost of new fixtures and brackets as provided for herein, shall be assessed for fixtures and brackets which are attached to existing poles utilizing overhead secondary wiring. Any cost incurred in connection with the installation of lighting facilities which exceeds the cost of using existing poles with overhead secondary wiring shall be borne by the Customer.

Except for the excess costs of underground facilities to be apportioned as set forth in the provisions for underground electric distribution facilities specified in the Company's "Requirements for Electric Service Connections", any cost incurred in connection with the installation of poles, transformers, wiring, or any other facilities or equipment used exclusively for lighting purposes shall be borne by the Customer. In such cases, the Company shall credit the Customer with the portion, if any, of the estimated cost of such facilities which would normally be allocated to lighting purposes.

Any cost incurred in connection with new installations, or with the replacement or removal of existing fixtures and/or brackets shall be borne by the Customer. Such costs shall include the installed cost of the new fixtures and/or brackets in the case of new installations and replacements, and the cost of removal of the existing fixtures and/or brackets, less any salvage value of such fixtures and/or brackets which are removed from service.

In the case of new installations, extensions and replacements which make use of underground conductors for supply and distribution and/or of standards or poles employed exclusively for lighting purposes, the Company reserves the right to require the Customer to furnish, own, and maintain such underground supply and distribution facilities and/or the standards or poles.

If the Company's right under the preceding paragraph is exercised and the Company thereby is relieved of the cost of installing the customary overhead wires and appurtenances and the customary dual purpose poles, the Company shall:

1. pay to the Customer the sum of the following:
 - a. the estimated saving in investment to the Company represented by the estimated cost of the customary overhead wires and appurtenances;
 - b. such portion, if any, of the estimated cost to the Company of the customary dual purpose poles as would normally be allocated to lighting purposes;

Issued: March 24, 2016

Issued by: William J. Quinlan

Effective: May 1, 2016

Title: President and Chief Operating Officer

2. have the right, without payment of any charge, to attach its wires, brackets, fixtures, transformers, and other equipment to the standards or poles owned by the Customer.

Should the standards or poles furnished, owned, and maintained by the Customer be located in a public highway, the Customer shall procure and furnish to the Company a license under the Public Laws of New Hampshire (R.S.A. Chapter 231) covering such interest as the Company may have in the standards or poles, including their wires, brackets, fixtures, transformers, and other equipment.

For outdoor area lighting installations, the Customer shall provide without expense or cost to the Company, all permits, consents, or easements necessary for the erection, maintenance, and operation of the Company's facilities, including the right to cut and trim trees and bushes wherever necessary; and the Company shall not be required to move its facilities to another location on the Customer's premises unless the Customer shall bear the cost thereof. The Company reserves the right to restrict such installations under this Rate to areas which are easily accessible by service truck.

All poles, wires, brackets, fixtures, transformers, and other equipment furnished by the Company shall be maintained by it and title to such shall in all cases remain vested in the Company.

Issued: March 24, 2016

Effective: May 1, 2016

Issued by: William J. Quinlan

Title: President and Chief Operating Officer



THE CITY OF NASHUA

Financial Services

Purchasing Department

"The Gate City"

June 30, 2016
Memo #17-003

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: MAIN STREET SIDEWALK IMPROVEMENTS – BLOCK 3 & 4 INSTALATION OF BRICK
CROSSWALKS (VALUE: \$17,765)
DEPARTMENT: 161 STREETS; FUND: GENERAL
ACTIVITY DESCRIPTION: MAIN STREET

Please see the attached communication from Stephen Dookran, P.E., City Engineer dated June 23, 2016 for the information related to this purchase.

Pursuant to **§ 5-78 Major purchases (greater than \$10,000)** A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

The City Engineer, Board of Public Works (6/23/2016 Meeting) and the Purchasing Department recommend the award of this contract in an amount of **\$17,765 to Morin's Landscaping of Hollis, NH.**

Respectfully,

Dan Kooken
Purchasing Manager

Cc: S Dookran L Fauteux

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016
From: Stephen Dookran, P.E., City Engineer
Engineering Department
Re: Main Street Sidewalk Improvements -- Blocks 3 and 4
Brick Crosswalk

D. Motion: To approve the construction contract for the Main Street Sidewalk Improvements project on Block 3 and 4 to Morin's Landscaping, Inc. of Hollis, NH in an amount of \$ 17,765. Funding will be through: Department: 161 Street; Fund: General; Activity Description: Main Street.

Discussion: As part of the Main Street Sidewalk Improvements project, two new crosswalks with brick inlay will be installed. One is located near the intersection of High Street on Block 3 and the other near the intersection of Eldridge Street on Block 4. The brick will be provided by the City. These crosswalks will be similar to the two existing mid-block crosswalks located at the Main Street Bridge and near 100 Main Street. The new crosswalks will provide a uniform look and add to the aesthetics of downtown.

The project was advertised on May 9, 2016 and posted to the web site. Nine companies were solicited by email. Morin's Landscaping, Inc., of Hollis, NH was the only bidder submitting a price of \$17,765.

The price submitted by Morin's Landscaping is reasonable and compares with the cost of previous work that was completed on the Main St. crosswalks. Morin's has satisfactory completed other projects for the City.



**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

This agreement is made:

**BETWEEN the OWNER: City of Nashua, New Hampshire
229 Main Street
Nashua, NH 03060-2019**

**And the CONTRACTOR: Morin's Landscaping, Inc.
and its successors, transferees and assignees
(together "CONTRACTOR")**

For the following Project: **Main Street Sidewalk Improvements
Block 3 & 4
Brick Crosswalk
(IFB0851-052616)**

ARTICLE 1 – THE CONTRACT DOCUMENTS

The **CONTRACTOR** shall complete the work described in the Contract Documents for this project. The documents consist of:

The Contractor shall complete the work described in the Contract Documents for this project. The documents consist of:

1. This Agreement signed by the Owner and Contractor, including the General Terms and Conditions.
2. Standard Specifications and Special Provisions- Main Street Sidewalk Improvements – Block 3 & 4 Crosswalk Curbing, dated May 3, 2016.
3. Drawings and Specifications provided in the bid documents, "Main Street Sidewalk Improvements - Block 3 and Block 4 Brick Crosswalk Cross Section" dated May 2016;
4. Bid Schedule – Morin's Landscaping, Inc. - dated May 25, 2016.
5. Insurance Certificate
6. Written change orders or orders for minor changes in the Work issued after execution of this Agreement; and
7. Fully Executed City of Nashua Purchase Order

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

In the event of a conflict between the terms of the Proposals and the terms of this Agreement, a written change order and/or fully executed **OWNER** Purchase Order, the terms of this Agreement, the written change order or the fully executed **OWNER** Purchase Order shall control over the terms of the Proposals

ARTICLE 2 – DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE

The date of commencement shall be the date of the Notice to Proceed. Substantial Completion shall be **by the end of 2016 construction season, (to be determined after coordinating with Street Department).**

ARTICLE 3 – CONTRACT SUM

Subject to additions and deductions by Change Order, the **OWNER** shall pay **CONTRACTOR**, in accordance with the Contract Documents, the Contract Sum of:

Seventeen Thousand Seven Hundred Sixty-Five and 00/100 Dollars (\$17,765.00)

The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

ARTICLE 4 – INSURANCE AND INDEMNIFICATION

CONTRACTOR shall carry and maintain in effect during the performance of services under this contract:

- General liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
- Motor Vehicle Liability: \$1,000,000 Combined Single Limit;
***Coverage must include all owned, non-owned and hired vehicles.**
- Workers' Compensation Coverage in compliance with the State of NH Statutes, \$100,000/\$500,000/\$100,000.

CONTRACTOR and subcontractors at every tier will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

The parties agree that **CONTRACTOR** shall have the status of and shall perform all work under this contract as an independent **CONTRACTOR**, maintaining control over all its consultants, sub consultants, or subcontractor's. The only contractual relationship created by this contract is between the **OWNER** and **CONTRACTOR**, and nothing in this contract shall create any contractual relationship between the **OWNER** and **CONTRACTOR**'s consultants, sub consultants, or subcontractor's. The parties also agree that **CONTRACTOR** is not an **OWNER** employee and that there shall be no:

1. Withholding of income taxes by the **OWNER**;
2. Industrial insurance coverage provided by the **OWNER**;
3. Participation in group insurance plans which may be available to employees of the **OWNER**;

4. Participation or contributions by either the independent **CONTRACTOR** or the **OWNER** to the public employee's retirement system;
5. Accumulation of vacation leave or sick leave provided by the **OWNER**;
6. Unemployment compensation coverage provided by the **OWNER**.

CONTRACTOR will provide the **OWNER** with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the **OWNER** issues the notice of award. The **OWNER** requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability and Auto Liability policies must name the OWNER as an additional insured** and reflect on the certificate of insurance. **CONTRACTOR** is responsible for filing updated certificates of insurance with the **OWNER's** Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, **CONTRACTOR** must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve **CONTRACTOR** of its responsibilities or limit the amount of its liability to the **OWNER** or other persons, and **CONTRACTOR** is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the **OWNER** shall be called upon to contribute to a loss.
- **CONTRACTOR** is responsible for and required to remedy all damage or loss to any property, including property of the **OWNER**, caused in whole or part by **CONTRACTOR** or anyone employed, directed, or supervised by **CONTRACTOR**.

Regardless of any coverage provided by any insurance, **CONTRACTOR** agrees to indemnify and shall defend and hold harmless the **OWNER**, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of **CONTRACTOR** or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. **CONTRACTOR's** indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

General Terms and Conditions

ARTICLE 5 – GENERAL PROVISIONS

1. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification.
2. The term “Work” means the construction and services required by the Contract Documents, and include all other labor, materials, equipment and services provided by the **CONTRACTOR** to fulfill the **CONTRACTOR**’s obligations.
3. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the **CONTRACTOR**. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
4. In the case of a discrepancy, calculated dimensions will govern over scaled dimensions, Contract Drawings will govern over Standard Specifications, and Technical Specifications will govern over both Contract Drawings and Standard Specifications. In the case of a discrepancy between the Agreement and other Contract Documents, the more specific or stringent obligation or requirement to the benefit of the **OWNER** shall take precedence.
5. The **CONTRACTOR** shall take no advantage of any apparent error or omission in the Contract Drawings or Technical Specifications, and the Engineer will be permitted to make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract Documents.

ARTICLE 6 – OWNER

1. Except for permits and fees, which are the responsibility of the **CONTRACTOR** under the Contract Documents, the **OWNER** shall obtain and pay for other necessary approvals, easements, assessments and charges.
2. If the **CONTRACTOR** fails to correct Work that is not in accordance with the Contract Documents, the **OWNER** may direct the **CONTRACTOR** in writing to stop the Work until the correction is made.
3. If the **CONTRACTOR** defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the **OWNER** to correct such default or neglect with diligence and promptness, the **OWNER** may, without prejudice to other remedies, correct such deficiencies. In such case, a Change Order shall be issued deducting the cost of correction from payments due the **CONTRACTOR**.
4. The **OWNER** reserves the right to perform construction or operations related to the project with the **OWNER**’s own forces, and to award separate contracts in connection with other portions of the project.
5. The **CONTRACTOR** shall coordinate and cooperate with separate **CONTRACTORS** employed by the **OWNER**.
6. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

ARTICLE 7 – CONTRACTOR

1. Execution of the Contract by the **CONTRACTOR** is a representation that the **CONTRACTOR** has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
2. The **CONTRACTOR** shall carefully study and compare the Contract Documents with each other and with information furnished by the **OWNER**. Before commencing activities, the **CONTRACTOR** shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the **CONTRACTOR** with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the **OWNER**.
3. Within ten (10) days of notification of award, and prior to commencement of work, the **CONTRACTOR** shall obtain and forward to **OWNER** a Performance Bond and a Payment Bond representing 100% of the contract work
4. The **CONTRACTOR** shall supervise and direct the Work, using the **CONTRACTOR**'s best skill and attention. The **CONTRACTOR** shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.
5. The **CONTRACTOR**, as soon as practicable after award of the Contract, shall furnish in writing to the **OWNER** the names of subcontractors or suppliers for each portion of the Work. The **OWNER** will promptly reply to the **CONTRACTOR** in writing if, after due investigation, he has reasonable objection to the subcontractors or suppliers listed.
6. Unless otherwise provided in the Contract Documents, the **CONTRACTOR** shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work.
7. The **CONTRACTOR** shall deliver, handle, store and install materials in accordance with manufacturers' instructions.
8. The **CONTRACTOR** warrants to the **OWNER** that (1) materials and equipment furnished under the contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.
9. The **CONTRACTOR** shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.
10. The **CONTRACTOR** shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.
11. The **CONTRACTOR** shall comply with and give notices required by agencies having jurisdiction over the Work. If the **CONTRACTOR** performs Work knowing it to be contrary to laws, statutes, ordinances building codes, and rules and regulations without notice to the **OWNER**, the **CONTRACTOR** shall assume full responsibility for such Work and shall bear the attributable costs. The **CONTRACTOR** shall promptly notify the **OWNER** in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.
12. The **CONTRACTOR** shall promptly review, approve in writing and submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

13. The **CONTRACTOR** shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the **OWNER**.
14. The **CONTRACTOR** shall be responsible for cutting, fitting or patching required completing the Work or to make its parts fit together properly.
15. The **CONTRACTOR** shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work.
16. **CONTRACTOR** warrants and guarantees to **OWNER**, for one (1) year, upon completion of work, that all Work will be in accordance with the Contract Documents and will not be defective. **CONTRACTOR**'s warranty and guarantee hereunder excludes defects or damage caused by:
 - Abuse, modification, or improper maintenance or operation by persons other than **CONTRACTOR**, subcontractors, suppliers, or any other individual or entity for whom **CONTRACTOR** is responsible; or
 - Normal wear and tear under normal usage.

ARTICLE 8 – CHANGES IN THE WORK

1. After execution of the Contract, changes in the Work may be accomplished by Change Order or by order for a minor change in the Work. The **OWNER**, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
2. A Change Order shall be a written order to the **CONTRACTOR** signed by the **OWNER** to change the Work, Contract Sum or Contract Time.
3. Change Order requests must include material and equipment cost plus labor with a profit margin of no more than 10%. Change Orders may require approval by the Board of Public Works and the **OWNER**'s Finance Committee vote prior to proceeding.
4. The **OWNER** will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be written orders and shall be binding on the **OWNER** and **CONTRACTOR**. The **CONTRACTOR** shall carry out such written orders promptly.
5. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment following authorization of the **OWNER** to the charges.

ARTICLE 9 – TIME

1. Time limits stated in the Contract Documents are of the essence to the Contract.
2. If the **CONTRACTOR** is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the **CONTRACTOR**'s control, the Contract Time shall be extended by Change Order for such reasonable time as may be determined.

ARTICLE 11 – PAYMENTS AND COMPLETION

1. The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the **OWNER** to the **CONTRACTOR** for performance of the Work under the Contract Documents.

2. Once every **thirty (30) days**, the **CONTRACTOR** shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such application shall be supported by such data substantiating the **CONTRACTOR's** right to payment as the **OWNER** may reasonably require.
3. Application for Payment performed under this agreement shall be submitted directly to:

**City of Nashua
Accounts Payable
PO Box 2019
Nashua, NH 03061-2019
Attn: Sonia Shahnaj, P.E.**

To facilitate the proper and timely payment of applications, the **OWNER** requires that all applications contain a valid **PURCHASE ORDER NUMBER**.

4. The **CONTRACTOR** warrants that title to all Work covered by an Application for Payment will pass to the **OWNER** no later than the time of payment. The **CONTRACTOR** further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the **OWNER** shall, to the best of the **CONTRACTOR's** knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the **OWNER's** interests.
5. **OWNER** shall make payments, for work satisfactorily completed and accurately invoiced, on the basis of **CONTRACTORs** Application for Payment, within **30** days of approval by the **OWNER**.
6. The **CONTRACTOR** shall promptly pay each subcontractor and supplier out of the amount paid to the **CONTRACTOR** on account of such entities' portion of the Work.
7. The **OWNER** shall have no responsibility for the payment of money to a subcontractor or supplier.
8. An Application for Payment, a progress payment, or partial or entire use or occupancy of the project by the **OWNER** shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.
9. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the **OWNER** can occupy or utilize the Work for its intended use.
10. When the Work or designated portion thereof is substantially complete, the **CONTRACTOR** and **OWNER** shall establish responsibilities for completion and shall fix the time within which the **CONTRACTOR** shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
11. Upon receipt of a final Application for Payment, the **OWNER** will inspect the Work. When he finds the Work acceptable and the Contract fully performed, the **OWNER** will promptly issue a final Certificate for Payment.
12. Acceptance of final payment by the **CONTRACTOR**, a subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 11- RETAINAGE

1. The **OWNER** will retain a portion of the progress payment, each month, in accordance with the following procedures:
 - a. The **OWNER** will establish an escrow account in the bank of the **OWNER's** choosing. The account will be established such that interest on the principal will be paid to the **CONTRACTOR**. The principal will be the accumulated retainage paid into the account by the **OWNER**. The principal will be held by the bank, available only to the **OWNER**, until termination of the contract.
 - b. Until the work is 50% complete, as determined by the **OWNER**, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage will be deposited in the escrow account established above.
 - c. After the work is 50% complete, and provided the **CONTRACTOR** has satisfied the **OWNER** in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount will be withheld. The escrow account will remain at the same balance throughout the remainder of the project.
2. Upon final completion and acceptance of the Work, **OWNER** shall hold 2% retainage during the **1 (one) year** warranty period and release it only after the project has been accepted.

ARTICLE 12- PROTECTION OF PERSONS AND PROPERTY

1. The **CONTRACTOR** shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The **CONTRACTOR** shall promptly remedy damage and loss to property caused in whole or in part by the **CONTRACTOR**, or by anyone for whose acts the **CONTRACTOR** may be liable.

ARTICLE 13 - CORRECTION OF WORK

1. The **CONTRACTOR** shall promptly correct Work rejected by the **OWNER** as failing to conform to the requirements of the Contract Documents. The **CONTRACTOR** shall bear the cost of correcting such rejected work
2. In addition to the **CONTRACTOR's** other obligations including warranties under the Contract, the **CONTRACTOR** shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.
3. If the **CONTRACTOR** fails to correct nonconforming Work within a reasonable time, the **OWNER** may correct it and the **CONTRACTOR** shall reimburse the **OWNER** for the cost of the correction.

ARTICLE 14 - PROHIBITED INTERESTS

CONTRACTOR shall not allow any officer or employee of the **OWNER** to have any indirect or direct interest in this contract or the proceeds of this contract. **CONTRACTOR** warrants that no officer or employee of the **OWNER** has any direct or indirect interest, whether contractual, non-contractual, financial or otherwise, in this contract or in the business of the **CONTRACTOR**. **CONTRACTOR** also warrants that it presently has no interest and that it will not acquire any

interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. **CONTRACTOR** further warrants that no person having such an interest shall be employed in the performance of this contract. If any such interest comes to the attention of **CONTRACTOR** at any time, a full and complete disclosure of the interest shall be immediately made in writing to the **OWNER**. If **OWNER** determines that a conflict exists and was not disclosed to the **OWNER**, it may terminate the contract at will or for cause.

ARTICLE 15 – TERMINATION OF THE CONTRACT

TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL

The **OWNER**, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the **OWNER** chooses to terminate, abandon, or suspend all or part of the project, it shall provide **CONTRACTOR** 10 day's written notice of its intent to do so. If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or that part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, **CONTRACTOR** shall:

- a. Immediately discontinue work on the date and to the extent specified in the notice.
- b. Provide the **OWNER** with a list of all unperformed services.
- c. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
- d. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the **OWNER** of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the **OWNER** any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
- e. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the **OWNER** to resume performance.

In the event of a termination, abandonment, or suspension at will, **CONTRACTOR** shall receive all amounts due and not previously paid to **CONTRACTOR** for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

TERMINATION FOR CAUSE

This agreement may be terminated by the **OWNER** on 10 calendar day's written notice to **CONTRACTOR** in the event of a failure by **CONTRACTOR** to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the **OWNER**, to complete or make sufficient progress on the work in a timely and professional manner. **CONTRACTOR** shall be given an opportunity for consultation with the **OWNER** prior to the effective date of the termination. **CONTRACTOR** may terminate the contract on 10 calendar days written notice if, through no fault of **CONTRACTOR**, the **OWNER** fails to pay **CONTRACTOR** for 45 days after the date of approval by the **OWNER** of any Application for Payment.

Upon receipt of notice of termination for cause, **CONTRACTOR** shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the **OWNER** with a list of all unperformed services.
3. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the **OWNER** of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the **OWNER** any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
5. Not resume work after the effective date of a notice of termination unless and until receipt of a written notice from the **OWNER** to resume performance.

In the event of a termination for cause, **CONTRACTOR** shall receive all amounts due and not previously paid to **CONTRACTOR** for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the **OWNER** by reasons of **CONTRACTOR's** failure. **CONTRACTOR** shall not be relieved of liability to the **OWNER** for damages sustained from the failure, and the **OWNER** may withhold any payment to the **CONTRACTOR** until such time as the exact amount of damages due to the **OWNER** is determined. All claims for payment by the **CONTRACTOR** must be submitted to the **OWNER** within 30 days of the effective date of the notice of termination.

If after termination for the failure of **CONTRACTOR** to adhere to any of the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the **OWNER**, to complete or make sufficient progress on the work in a timely and professional manner, it is determined that **CONTRACTOR** had not so failed, the termination shall be deemed to have been a termination at will. In that event, the **OWNER** shall, if necessary, make an adjustment in the compensation paid to **CONTRACTOR** such that **CONTRACTOR** receives total compensation in the same amount as it would have received in the event of a termination-at-will.

GENERAL PROVISIONS FOR TERMINATION

Upon termination of the contract, the **OWNER** may take over the work and prosecute it to completion by agreement with another party or otherwise. Upon termination of the contract or in the event **CONTRACTOR** shall cease conducting business, the **OWNER** shall have the right to solicit applications for employment from any employee of the **CONTRACTOR** assigned to the performance of the contract. Neither party shall be considered in default of the performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of **CONTRACTOR's** principals, officers, employees, agents, subcontractors, sub consultants, vendors, or suppliers are expressly recognized to be within **CONTRACTOR's** control.

ARTICLE 16- DISPUTE RESOLUTION

The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the **OWNER** Representative and the **CONTRACTOR** Representative. At all times, **CONTRACTOR** shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the **OWNER**. If the parties are unable to resolve their dispute as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

ARTICLE 17- CHOICE OF LAW AND VENUE

This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere

ARTICLE 18- MISCELLANEOUS PROVISIONS

1. Neither party to the Contract shall assign the Contract as a whole without written consent of the other.
2. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time.
3. If additional testing is required, the **CONTRACTOR** shall perform these tests.
4. The **OWNER** shall pay for tests except for testing Work found to be defective for which the **CONTRACTOR** shall pay.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

City of Nashua, NH (signature)

Morin's Landscaping, Inc. (signature)

James Donchess, Mayor
(Printed Name and Title)

(Printed Name and Title)

Date

Date

**Standard Specifications and Special Provisions
Main Street Sidewalk Improvements- Block 3 & 4 Brick Crosswalk**

Date: May 3, 2016

All Items that are not included in the special provision shall comply with the latest approved NHDOT Standard Specifications for Road and Bridge Construction, the latest approved City of Nashua Standard Specifications for Road Construction Sewer and Drains, the latest approved NHDOT Standard Plans for Construction and the latest approved edition of Manual of Uniform Traffic Control Devices.

Special Provisions

ITEM A – Installation of Brick Crossing – Night Work

A. SCOPE

This work shall consist of installing 1100 square feet of Pine Hall Brick, 2 3/4" X4"X8" English Edge Series Full Range for crosswalks on Block 3 & 4, Main Street, following the detail on Cross Section plan provided or as ordered by the Engineer. This work will be conducted at night and the City will be responsible for providing traffic control. The brick will be provided by City. The Contractor will provide the labor, equipment, and material and as shown on the detail sheet on Cross Section plan.

B. MATERIALS AND CONSTRUCTION

The Contractor shall supply all labor, bed sand, poly sand, equipment and transportation necessary for the required work.

Brick shall be sealed using KURE 1315 provided by Contractor and can be purchased at Hudson Quarry Corporation located at 6 Candy Ln. Hudson NH.

All required excavation including existing asphalt and base will be performed by the City. In addition, the City will prepare base prior to brick installation.

The City will provide tower lights during construction at night. The brick will be installed in between 7:00 pm to 5:30 am or as directed by the Engineer and shall not take more than two nights.

Installation

Install 1" sand bed minimum compacted as shown on the plan (see Cross Section detail).

The Contractor shall use a digital "Smart Level" to check all sub-base grades for compliance prior to installation of bricks. The Contractor shall not proceed with brick installation on the crosswalk if is out of compliance without first contacting the Engineer.

Wet saw is required for cutting of bricks and filling in pieces where needed. No other method will be acceptable. The Contractor shall be responsible for bringing its own water for the wet saw.

Once the bricks are placed in their specified patterns, they shall be compacted with a plate compactor. The compactor shall have a minimum force of 5000 lbs. and a frequency of 75 to 90 cycles per second. All adjacent surfaces such as curb tops, manhole/handhole covers and rims, tree grates, etc. shall be absolutely flush with brick paving surfaces after compaction. Brick pavers shall be tamped with manual equipment in tight areas to assure tight bonding with setting material.

Work shall proceed within an area only when that area can be completed within the work period. Secure all loose materials and provide temporary accessible edges of partially completed areas of brick that will be accessible to the public.

**IFB0851-052616 Main Street Improvements –
Block 3 & 4 Brick Crosswalks**

**Standard Specifications and Special Provisions
Main Street Sidewalk Improvements- Block 3 & 4 Brick Crosswalk**

After the bricks are in place, when the brick is thoroughly dry, apply polysand as shown on the detail and sweep into the joint voids around the bricks. Re-apply a minimum of three times until all the voids are filled and sweep away all extraneous material.

Prior to acceptance, the brick paved area shall be flooded with water to assure that there are no depressions. Remove and reset bricks as required until surface is true to line and grade. Refill sand-cement joints as necessary until all joints are filled to finish grade.

Crosswalk shall be installed in strict conformance with the layout and grades shown on the Drawings, current Americans with Disabilities Act (ADA) and City of Nashua regulations.

C. MEASUREMENT AND PAYMENT

Brick work will be measured by the square foot, complete in place. Payment for work under this item shall be at the contract unit price per square foot and shall include full compensation for installing new bricks, sand setting bed, poly-sand joint filler, labor, tools, equipment and any other incidentals necessary for the satisfactory completion of this work as specified.

**Standard Specifications and Special Provisions
Main Street Sidewalk Improvements- Block 3 & 4 Brick Crosswalk**



English Edge® Full Range

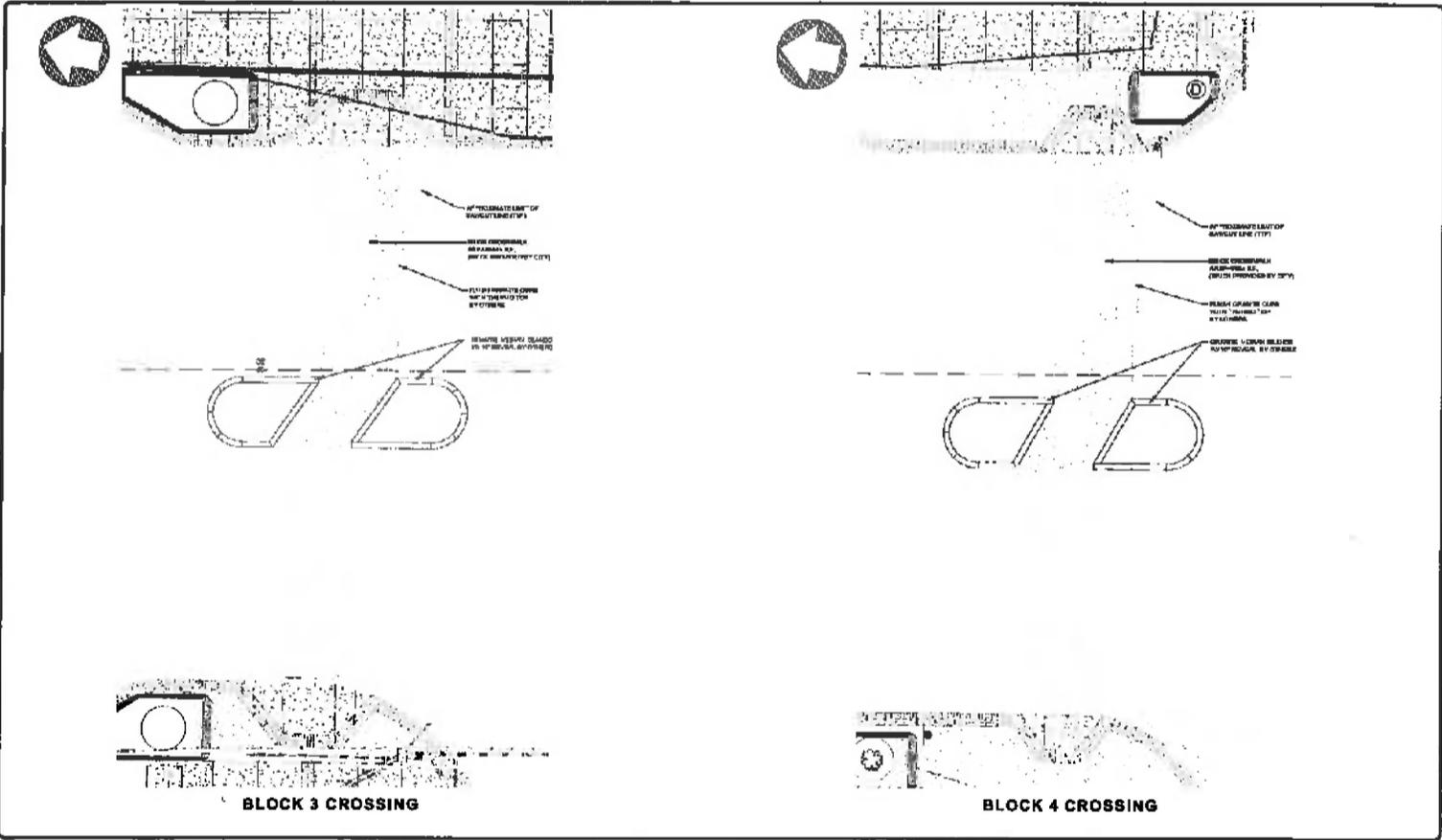
English Edge® Heavy Duty 2 3/4" X 4" X 8"

Pine Hall Brick's English Edge® Heavy Duty pavers are manufactured to conform to the American Society for Testing and Materials (ASTM) specification standards C1272, (Type F, Application PX).

Features: Spacer nibs & beveled edges to control joint size and chippage; full range, through the body color eliminates color fading; exceeds ASTM standard with over 10,000 p.s.i. compressive strength and less than 6% cold water absorption. Meets PX application on dimensional tolerance. Colors: Red & Full Range (red flash).

Specification: Unit clay paver shall conform to the requirements of ASTM C1272, Type F, Application PX. The units shall be standard 4" x 8" size having dimensions of 2 3/4" x 4" x 8" (including spacer nibs on the side), chamfered edges, 10,000 psi minimum compressive strength and below 6% cold water absorption. Paver color shall conform to English Edge® [color] heavy duty brick pavers as manufactured by Pine Hall Brick Co., Inc., Winston-Salem, North Carolina and distributed by [party responsible for specification].





BLOCK 3 CROSSING

BLOCK 4 CROSSING

CITY OF NASHUA NEW HAMPSHIRE
CITY ENGINEER'S OFFICE
 9 RIVERSIDE STREET
 NASHUA, NEW HAMPSHIRE 03082

NO.	REVISION DESCRIPTION	DATE



NASHUA NEW HAMPSHIRE
 PLANNING
MAIN STREET SIDEWALK IMPROVEMENTS
BLOCK 3 & BLOCK 4
 BRICK CROSSWALK LAYOUT

DATE: MAY 2016
 SHEET: 2 OF 2

City of Nashua, New Hampshire
 Division of Public Works
 Main Street Sidewalk Improvements - Brick Crosswalk on Main Street Block 3 & 4

Item No.	Item Description with Unit Bid Price in Words	Estimated Quantity	Units	Unit Price	Total
				\$/ SF	\$
A	Installation of two Brick Crosswalks - Night work includes installation of brick pavers and sand and sealing of bricks	1100	SF	\$16.15	\$17,765.00
				Total	\$17,765.00

TOTAL OF BID
ITEMS (words)

SEVENTEEN THOUSAND, SEVEN HUNDRED AND SIXTY-FIVE DOLLARS
AND ZERO CENTS

Contractor:

MORIN'S LANDSCAPING, INC.

Authorized Signature:

Bob Smith

Date:

MAY 25, 2016

Address

301 DEPOT ROAD HOLLIS, NH 03049

Phone:

603.882.5835

Facsimile:

603.882-8788

Email Address

bob@morinslandscaping.com



THE CITY OF NASHUA

Financial Services

Purchasing Department

"The Gate City"

June 30, 2016
Memo #17-004

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: MAIN STREET SIDEWALK IMPROVEMENTS – BLOCK 3 & 4 GRANITE CURBING AT
CROSSWALKS AND MEDIAN ISLANDS (VALUE: \$16,120)
DEPARTMENT: 161 STREETS; FUND: GENERAL
ACTIVITY DESCRIPTION: MAIN STREET

Please see the attached communication from Stephen Dookran, P.E., City Engineer dated June 23, 2016 for the information related to this purchase.

Pursuant to **§ 5-78 Major purchases (greater than \$10,000)** A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

The City Engineer, Board of Public Works (6/23/2016 Meeting) and the Purchasing Department recommend the award of this contract in an amount of **\$16,120 to Granite State Curbing Setters, Inc. of Suncook, NH.**

Respectfully,

Dan Kooker
Purchasing Manager

Cc: S Dookran L Fauteux

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016

From: Stephen Dookran, P.E., City Engineer
Engineering Department

Re: Main Street Sidewalk Improvements – Blocks 3 and 4
Granite Curbing at Crosswalks and Median Islands

E. Motion: To approve the construction contract for the Main Street Sidewalk Improvements project Blocks 3 and 4 to Granite State Curbing Setters, Inc. of Suncook, NH in an amount of \$16,120. Funding will be through: Department: 161 Street; Fund: General; Activity Description: Main Street.

Discussion: As part of the Main Street Sidewalk Improvements project, mid-block crosswalks will be improved at locations near the intersection of High Street on Block 3 and near the intersection of Eldridge Street on Block 4. This contract is for the addition of granite curb to outline the proposed brick crosswalks and also granite curbing at the median islands so they will be similar in appearance to mid-block crosswalks located at the Main Street Bridge and near 100 Main Street. The new crosswalks will provide a uniform look and add to the aesthetics of downtown.

The project was advertised on May 9, 2016 and posted to the web site. Six companies were solicited by email. Granite State Curbing Setter, Inc. of Suncook, NH was the only bidder, submitting a price of \$16,120.

The price submitted by Granite State is reasonable and consistent with the estimates developed by the Engineering Department.



**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

This agreement is made:

**BETWEEN the OWNER: City of Nashua, New Hampshire
229 Main Street
Nashua, NH 03060-2019**

**And the CONTRACTOR: Granite State Curbing Setters, Inc.
and its successors, transferees and assignees
(together "CONTRACTOR")**

For the following Project: **Main Street Sidewalk Improvements
Block 3 & 4
Granite Curbing at Crosswalks and Median Islands
(IFB0851-052716)**

ARTICLE 1 – THE CONTRACT DOCUMENTS

The **CONTRACTOR** shall complete the work described in the Contract Documents for this project. The documents consist of:

The Contractor shall complete the work described in the Contract Documents for this project. The documents consist of:

1. This Agreement signed by the Owner and Contractor, including the General Terms and Conditions.
2. Standard Specifications and Special Provisions- Main Street Sidewalk Improvements – Block 3 & 4 Crosswalk Curbing, dated May 3, 2016.
3. Drawings and Specifications provided in the bid documents, "Main Street Sidewalk Improvements Block 3 and Block 4 Crosswalks – Curbing Layout" dated May 2016.
4. Bid Schedule – Granite State Curbing Setters, Inc. - dated May 18, 2016.
5. Insurance Certificate
6. Written change orders or orders for minor changes in the Work issued after execution of this Agreement; and
7. Fully Executed City of Nashua Purchase Order

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

In the event of a conflict between the terms of the Proposals and the terms of this Agreement, a written change order and/or fully executed **OWNER** Purchase Order, the terms of this Agreement, the written change order or the fully executed **OWNER** Purchase Order shall control over the terms of the Proposals

ARTICLE 2 – DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE

The date of commencement shall be the date of the Notice to Proceed. Substantial Completion shall be **by the end of 2016 construction season, (to be determined after coordinating with Street Department).**

ARTICLE 3 – CONTRACT SUM

Subject to additions and deductions by Change Order, the **OWNER** shall pay **CONTRACTOR**, in accordance with the Contract Documents, the Contract Sum of:

Sixteen Thousand One Hundred Twenty and 00/100 Dollars (\$16,120.00)

The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

ARTICLE 4 – INSURANCE AND INDEMNIFICATION

CONTRACTOR shall carry and maintain in effect during the performance of services under this contract:

- General liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
- Motor Vehicle Liability: \$1,000,000 Combined Single Limit;
***Coverage must include all owned, non-owned and hired vehicles.**
- Workers' Compensation Coverage in compliance with the State of NH Statutes, \$100,000/\$500,000/\$100,000.

CONTRACTOR and subcontractors at every tier will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

The parties agree that **CONTRACTOR** shall have the status of and shall perform all work under this contract as an independent **CONTRACTOR**, maintaining control over all its consultants, sub consultants, or subcontractor's. The only contractual relationship created by this contract is between the **OWNER** and **CONTRACTOR**, and nothing in this contract shall create any contractual relationship between the **OWNER** and **CONTRACTOR**'s consultants, sub consultants, or subcontractor's. The parties also agree that **CONTRACTOR** is not an **OWNER** employee and that there shall be no:

1. Withholding of income taxes by the **OWNER**;
2. Industrial insurance coverage provided by the **OWNER**;
3. Participation in group insurance plans which may be available to employees of the **OWNER**;

4. Participation or contributions by either the independent **CONTRACTOR** or the **OWNER** to the public employee's retirement system;
5. Accumulation of vacation leave or sick leave provided by the **OWNER**;
6. Unemployment compensation coverage provided by the **OWNER**.

CONTRACTOR will provide the **OWNER** with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the **OWNER** issues the notice of award. The **OWNER** requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability and Auto Liability policies must name the OWNER as an additional insured** and reflect on the certificate of insurance. **CONTRACTOR** is responsible for filing updated certificates of insurance with the **OWNER's** Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, **CONTRACTOR** must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve **CONTRACTOR** of its responsibilities or limit the amount of its liability to the **OWNER** or other persons, and **CONTRACTOR** is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the **OWNER** shall be called upon to contribute to a loss.
- **CONTRACTOR** is responsible for and required to remedy all damage or loss to any property, including property of the **OWNER**, caused in whole or part by **CONTRACTOR** or anyone employed, directed, or supervised by **CONTRACTOR**.

Regardless of any coverage provided by any insurance, **CONTRACTOR** agrees to indemnify and shall defend and hold harmless the **OWNER**, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of **CONTRACTOR** or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. **CONTRACTOR's** indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

General Terms and Conditions

ARTICLE 5 – GENERAL PROVISIONS

1. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification.
2. The term “Work” means the construction and services required by the Contract Documents, and include all other labor, materials, equipment and services provided by the **CONTRACTOR** to fulfill the **CONTRACTOR**’s obligations.
3. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the **CONTRACTOR**. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
4. In the case of a discrepancy, calculated dimensions will govern over scaled dimensions, Contract Drawings will govern over Standard Specifications, and Technical Specifications will govern over both Contract Drawings and Standard Specifications. In the case of a discrepancy between the Agreement and other Contract Documents, the more specific or stringent obligation or requirement to the benefit of the **OWNER** shall take precedence.
5. The **CONTRACTOR** shall take no advantage of any apparent error or omission in the Contract Drawings or Technical Specifications, and the Engineer will be permitted to make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract Documents.

ARTICLE 6 – OWNER

1. Except for permits and fees, which are the responsibility of the **CONTRACTOR** under the Contract Documents, the **OWNER** shall obtain and pay for other necessary approvals, easements, assessments and charges.
2. If the **CONTRACTOR** fails to correct Work that is not in accordance with the Contract Documents, the **OWNER** may direct the **CONTRACTOR** in writing to stop the Work until the correction is made.
3. If the **CONTRACTOR** defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the **OWNER** to correct such default or neglect with diligence and promptness, the **OWNER** may, without prejudice to other remedies, correct such deficiencies. In such case, a Change Order shall be issued deducting the cost of correction from payments due the **CONTRACTOR**.
4. The **OWNER** reserves the right to perform construction or operations related to the project with the **OWNER**’s own forces, and to award separate contracts in connection with other portions of the project.
5. The **CONTRACTOR** shall coordinate and cooperate with separate **CONTRACTORS** employed by the **OWNER**.
6. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

ARTICLE 7 – CONTRACTOR

1. Execution of the Contract by the **CONTRACTOR** is a representation that the **CONTRACTOR** has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
2. The **CONTRACTOR** shall carefully study and compare the Contract Documents with each other and with information furnished by the **OWNER**. Before commencing activities, the **CONTRACTOR** shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the **CONTRACTOR** with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the **OWNER**.
3. Within ten (10) days of notification of award, and prior to commencement of work, the **CONTRACTOR** shall obtain and forward to **OWNER** a Performance Bond and a Payment Bond representing 100% of the contract work
4. The **CONTRACTOR** shall supervise and direct the Work, using the **CONTRACTOR**'s best skill and attention. The **CONTRACTOR** shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.
5. The **CONTRACTOR**, as soon as practicable after award of the Contract, shall furnish in writing to the **OWNER** the names of subcontractors or suppliers for each portion of the Work. The **OWNER** will promptly reply to the **CONTRACTOR** in writing if, after due investigation, he has reasonable objection to the subcontractors or suppliers listed.
6. Unless otherwise provided in the Contract Documents, the **CONTRACTOR** shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work.
7. The **CONTRACTOR** shall deliver, handle, store and install materials in accordance with manufacturers' instructions.
8. The **CONTRACTOR** warrants to the **OWNER** that (1) materials and equipment furnished under the contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.
9. The **CONTRACTOR** shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.
10. The **CONTRACTOR** shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.
11. The **CONTRACTOR** shall comply with and give notices required by agencies having jurisdiction over the Work. If the **CONTRACTOR** performs Work knowing it to be contrary to laws, statutes, ordinances building codes, and rules and regulations without notice to the **OWNER**, the **CONTRACTOR** shall assume full responsibility for such Work and shall bear the attributable costs. The **CONTRACTOR** shall promptly notify the **OWNER** in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.
12. The **CONTRACTOR** shall promptly review, approve in writing and submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

13. The **CONTRACTOR** shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the **OWNER**.
14. The **CONTRACTOR** shall be responsible for cutting, fitting or patching required completing the Work or to make its parts fit together properly.
15. The **CONTRACTOR** shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work.
16. **CONTRACTOR** warrants and guarantees to **OWNER**, for one (1) year, upon completion of work, that all Work will be in accordance with the Contract Documents and will not be defective. **CONTRACTOR**'s warranty and guarantee hereunder excludes defects or damage caused by:
 - Abuse, modification, or improper maintenance or operation by persons other than **CONTRACTOR**, subcontractors, suppliers, or any other individual or entity for whom **CONTRACTOR** is responsible; or
 - Normal wear and tear under normal usage.

ARTICLE 8 – CHANGES IN THE WORK

1. After execution of the Contract, changes in the Work may be accomplished by Change Order or by order for a minor change in the Work. The **OWNER**, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
2. A Change Order shall be a written order to the **CONTRACTOR** signed by the **OWNER** to change the Work, Contract Sum or Contract Time.
3. Change Order requests must include material and equipment cost plus labor with a profit margin of no more than 10%. Change Orders may require approval by the Board of Public Works and the **OWNER**'s Finance Committee vote prior to proceeding.
4. The **OWNER** will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be written orders and shall be binding on the **OWNER** and **CONTRACTOR**. The **CONTRACTOR** shall carry out such written orders promptly.
5. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment following authorization of the **OWNER** to the charges.

ARTICLE 9 – TIME

1. Time limits stated in the Contract Documents are of the essence to the Contract.
2. If the **CONTRACTOR** is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the **CONTRACTOR**'s control, the Contract Time shall be extended by Change Order for such reasonable time as may be determined.

ARTICLE 11 – PAYMENTS AND COMPLETION

1. The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the **OWNER** to the **CONTRACTOR** for performance of the Work under the Contract Documents.

2. Once every **thirty (30) days**, the **CONTRACTOR** shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such application shall be supported by such data substantiating the **CONTRACTOR's** right to payment as the **OWNER** may reasonably require.
3. Application for Payment performed under this agreement shall be submitted directly to:

**City of Nashua
Accounts Payable
PO Box 2019
Nashua, NH 03061-2019
Attn: Sonia Shahnaj, P.E.**

To facilitate the proper and timely payment of applications, the **OWNER** requires that all applications contain a valid **PURCHASE ORDER NUMBER**.

4. The **CONTRACTOR** warrants that title to all Work covered by an Application for Payment will pass to the **OWNER** no later than the time of payment. The **CONTRACTOR** further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the **OWNER** shall, to the best of the **CONTRACTOR's** knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the **OWNER's** interests.
5. **OWNER** shall make payments, for work satisfactorily completed and accurately invoiced, on the basis of **CONTRACTORs** Application for Payment, within **30** days of approval by the **OWNER**.
6. The **CONTRACTOR** shall promptly pay each subcontractor and supplier out of the amount paid to the **CONTRACTOR** on account of such entities' portion of the Work.
7. The **OWNER** shall have no responsibility for the payment of money to a subcontractor or supplier.
8. An Application for Payment, a progress payment, or partial or entire use or occupancy of the project by the **OWNER** shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.
9. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the **OWNER** can occupy or utilize the Work for its intended use.
10. When the Work or designated portion thereof is substantially complete, the **CONTRACTOR** and **OWNER** shall establish responsibilities for completion and shall fix the time within which the **CONTRACTOR** shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
11. Upon receipt of a final Application for Payment, the **OWNER** will inspect the Work. When he finds the Work acceptable and the Contract fully performed, the **OWNER** will promptly issue a final Certificate for Payment.
12. Acceptance of final payment by the **CONTRACTOR**, a subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 11- RETAINAGE

1. The **OWNER** will retain a portion of the progress payment, each month, in accordance with the following procedures:
 - a. The **OWNER** will establish an escrow account in the bank of the **OWNER's** choosing. The account will be established such that interest on the principal will be paid to the **CONTRACTOR**. The principal will be the accumulated retainage paid into the account by the **OWNER**. The principal will be held by the bank, available only to the **OWNER**, until termination of the contract.
 - b. Until the work is 50% complete, as determined by the **OWNER**, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage will be deposited in the escrow account established above.
 - c. After the work is 50% complete, and provided the **CONTRACTOR** has satisfied the **OWNER** in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount will be withheld. The escrow account will remain at the same balance throughout the remainder of the project.
2. Upon final completion and acceptance of the Work, **OWNER** shall hold 2% retainage during the **1 (one) year** warranty period and release it only after the project has been accepted.

ARTICLE 12- PROTECTION OF PERSONS AND PROPERTY

1. The **CONTRACTOR** shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The **CONTRACTOR** shall promptly remedy damage and loss to property caused in whole or in part by the **CONTRACTOR**, or by anyone for whose acts the **CONTRACTOR** may be liable.

ARTICLE 13 - CORRECTION OF WORK

1. The **CONTRACTOR** shall promptly correct Work rejected by the **OWNER** as failing to conform to the requirements of the Contract Documents. The **CONTRACTOR** shall bear the cost of correcting such rejected work
2. In addition to the **CONTRACTOR's** other obligations including warranties under the Contract, the **CONTRACTOR** shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.
3. If the **CONTRACTOR** fails to correct nonconforming Work within a reasonable time, the **OWNER** may correct it and the **CONTRACTOR** shall reimburse the **OWNER** for the cost of the correction.

ARTICLE 14 - PROHIBITED INTERESTS

CONTRACTOR shall not allow any officer or employee of the **OWNER** to have any indirect or direct interest in this contract or the proceeds of this contract. **CONTRACTOR** warrants that no officer or employee of the **OWNER** has any direct or indirect interest, whether contractual, non-contractual, financial or otherwise, in this contract or in the business of the **CONTRACTOR**. **CONTRACTOR** also warrants that it presently has no interest and that it will not acquire any

interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. **CONTRACTOR** further warrants that no person having such an interest shall be employed in the performance of this contract. If any such interest comes to the attention of **CONTRACTOR** at any time, a full and complete disclosure of the interest shall be immediately made in writing to the **OWNER**. If **OWNER** determines that a conflict exists and was not disclosed to the **OWNER**, it may terminate the contract at will or for cause.

ARTICLE 15 – TERMINATION OF THE CONTRACT

TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL

The **OWNER**, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the **OWNER** chooses to terminate, abandon, or suspend all or part of the project, it shall provide **CONTRACTOR** 10 day's written notice of its intent to do so. If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or that part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, **CONTRACTOR** shall:

- a. Immediately discontinue work on the date and to the extent specified in the notice.
- b. Provide the **OWNER** with a list of all unperformed services.
- c. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
- d. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the **OWNER** of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the **OWNER** any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
- e. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the **OWNER** to resume performance.

In the event of a termination, abandonment, or suspension at will, **CONTRACTOR** shall receive all amounts due and not previously paid to **CONTRACTOR** for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

TERMINATION FOR CAUSE

This agreement may be terminated by the **OWNER** on 10 calendar day's written notice to **CONTRACTOR** in the event of a failure by **CONTRACTOR** to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the **OWNER**, to complete or make sufficient progress on the work in a timely and professional manner. **CONTRACTOR** shall be given an opportunity for consultation with the **OWNER** prior to the effective date of the termination. **CONTRACTOR** may terminate the contract on 10 calendar days written notice if, through no fault of **CONTRACTOR**, the **OWNER** fails to pay **CONTRACTOR** for 45 days after the date of approval by the **OWNER** of any Application for Payment.

Upon receipt of notice of termination for cause, **CONTRACTOR** shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the **OWNER** with a list of all unperformed services.
3. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the **OWNER** of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the **OWNER** any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
5. Not resume work after the effective date of a notice of termination unless and until receipt of a written notice from the **OWNER** to resume performance.

In the event of a termination for cause, **CONTRACTOR** shall receive all amounts due and not previously paid to **CONTRACTOR** for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the **OWNER** by reasons of **CONTRACTOR's** failure. **CONTRACTOR** shall not be relieved of liability to the **OWNER** for damages sustained from the failure, and the **OWNER** may withhold any payment to the **CONTRACTOR** until such time as the exact amount of damages due to the **OWNER** is determined. All claims for payment by the **CONTRACTOR** must be submitted to the **OWNER** within 30 days of the effective date of the notice of termination.

If after termination for the failure of **CONTRACTOR** to adhere to any of the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the **OWNER**, to complete or make sufficient progress on the work in a timely and professional manner, it is determined that **CONTRACTOR** had not so failed, the termination shall be deemed to have been a termination at will. In that event, the **OWNER** shall, if necessary, make an adjustment in the compensation paid to **CONTRACTOR** such that **CONTRACTOR** receives total compensation in the same amount as it would have received in the event of a termination-at-will.

GENERAL PROVISIONS FOR TERMINATION

Upon termination of the contract, the **OWNER** may take over the work and prosecute it to completion by agreement with another party or otherwise. Upon termination of the contract or in the event **CONTRACTOR** shall cease conducting business, the **OWNER** shall have the right to solicit applications for employment from any employee of the **CONTRACTOR** assigned to the performance of the contract. Neither party shall be considered in default of the performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of **CONTRACTOR's** principals, officers, employees, agents, subcontractors, sub consultants, vendors, or suppliers are expressly recognized to be within **CONTRACTOR's** control.

ARTICLE 16– DISPUTE RESOLUTION

The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the **OWNER** Representative and the **CONTRACTOR** Representative. At all times, **CONTRACTOR** shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the **OWNER**. If the parties are unable to resolve their dispute as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

ARTICLE 17– CHOICE OF LAW AND VENUE

This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere

ARTICLE 18– MISCELLANEOUS PROVISIONS

1. Neither party to the Contract shall assign the Contract as a whole without written consent of the other.
2. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time.
3. If additional testing is required, the **CONTRACTOR** shall perform these tests.
4. The **OWNER** shall pay for tests except for testing Work found to be defective for which the **CONTRACTOR** shall pay.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

City of Nashua, NH (signature)

James Donchess, Mayor
(Printed Name and Title)

Date

Granite State Curbing Setters, Inc. (signature)

(Printed Name and Title)

Date

**Standard Specifications and Special Provisions
Main Street Sidewalk Improvements- Block 3 & 4 Crosswalk Curbing**

Date: May 3, 2016

All Items that are not included in the special provision shall comply with the latest approved NHDOT Standard Specifications for Road and Bridge Construction, the latest approved City of Nashua Standard Specifications for Road Construction Sewer and Drains, the latest approved NHDOT Standard Plans for Construction and the latest approved edition of Manual of Uniform Traffic Control Devices.

Special Provisions

**ITEM A – Straight Granite Curb (flush 6"x12") – Night Work
ITEM B – Curved 8"x22" Median Granite Curb – Night Work
ITEM C – Straight 8"x22" Median Granite Curb – Night Work**

A. SCOPE

This work shall consist of installing straight granite curb (Item A) at the crosswalks and straight and curved granite curb at the crosswalk median islands (Item B & C) on Block 3 & 4, following the plan provided or as ordered by the Engineer. The top of the curb shall be of thermal finish. This work will be conducted at night and the City will be responsible for providing traffic control.

B. MATERIALS AND CONSTRUCTION

The Contractor shall furnish joint material, labor, and equipment necessary for constructing granite curb in accordance with relevant provisions of Section 609 of the NHDOT Standard Specifications for Road and Bridge Construction, 2016. The City will provide the granite curb.

The City will provide the layout plan, elevations and traffic control during construction.

All required excavation including existing asphalt and base course material will be performed by the City. In addition, the City will prepare base prior to curb installation.

The City will be responsible for providing the tower lights. The curb will be installed in between 7:00 pm to 5:30 am or as directed by the Engineer and shall not take more than two nights.

The Contractor shall use a digital "Smart Level" to check all sub-base grades for compliance prior to installation of curb. The Contractor shall not proceed with curb installation on the crosswalk if it is out of compliance without first contacting the Engineer.

Curb at the crossings (Item A) shall be flushed with road surface and shall have 4" clean back to allow paver to be installed behind the curb. Curb at the median islands (Item B & C) shall have a 10" reveal from the road surface and shall have 4" clean back to allow paver to be installed behind the curb.

**Standard Specifications and Special Provisions
Main Street Sidewalk Improvements- Block 3 & 4 Crosswalk Curbing**

Joints between curbstones shall be carefully filled with cement mortar and shall be neatly pointed on top and exposed front portions. Cement mortar shall be composed of equal parts of cement and sand with sufficient water to form a workable mixture.

The City will also be responsible for backfilling immediately after the curb is set and jointed.

Work shall proceed within an area only when that area can be completed within the work period.

C. MEASUREMENT AND PAYMENT

Granite curb will be measured by the linear foot to the nearest 0.1 foot, from end to end along the lower edge of the exposed face of the curbing. Payment for installing granite curb shall be at the contract unit price per linear foot, complete in place, and shall include full compensation for labor, tools, equipment, and any other incidentals necessary for the satisfactory completion of this work as specified.

Item A – Straight Granite Curb (flush 6"x12")	Linear Foot
Item B – Curved 8"x22" Median Granite Curb	Linear Foot
Item C – Straight 8"x22" Median Granite Curb	Linear Foot

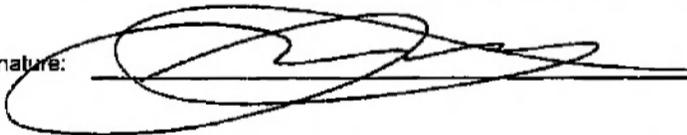
City of Nashua, New Hampshire
Division of Public Works
Main Street Sidewalk Improvements - Granite Curbing for Crosswalk on Main Street Block 3 & 4

Item No.	Item Description with Unit Bid Price in Words	Estimated Quantity	Units	Unit Price	Total
				\$/LF	\$
A	Installation of curb - Night work includes installation of Straight Granite Curb (flush 6"x12"). Top to be thermo finish & 4" clean back to allow paver to be installed behind the curb	213	Ln/Ft	\$40.00	\$8,520.00
B	Installation of curb - Night work includes installation of Curved 8"x22" Median Granite Curb - 10" Reveal, 4' radius, 2"x2" bevel & thermo top	50	Ln/Ft	\$40.00	\$2,000.00
C	Installation of curb - Night work includes installation of Straight 8"x22" Median Granite Curb 10" Reveal, 4' radius, 2"x2" bevel. Thermo top & 4" clean back to allow paver to be installed behind the curb	140	Ln/Ft	\$40.00	\$5,600.00
				Total	\$16,120.00

TOTAL OF BID
ITEMS (words)

Contractor: Granite State Curbing Setters, Inc.

Authorized Signature:



Date:

05/18/2016

Address: 65 Pinewood Rd, Suncook, NH 03275

Phone: 603-210-2475

Facsimile: 603-210-2433

Email Address: Jakep@Granitestatecurb.com



THE CITY OF NASHUA

*Financial Services
Purchasing Department*

"The Gate City"

June 30, 2016
Memo #17-007

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: AMENDMENT #1 TO CONTRACT WITH STANTEC – PAVEMENT MANAGEMENT
(VALUE: \$12,000)
DEPARTMENT: 161 STREETS; FUND: PRIOR YEAR ESCROW
ACCOUNT CATEGORY: 53 – PROFESSIONAL SERVICES

Please see the attached communication from Stephen Dookran, P.E., City Engineer dated June 23, 2016 for the information related to this purchase.

The original contract was awarded in the amount of \$5,900. Change Order #1 in the amount of \$12,000 for a new contract total of \$17,900 is over \$10,000. Pursuant to NRO § 5-78 Major purchases (greater than \$10,000) this contract now requires Finance Committee approval.

The City Engineer, Board of Public Works (6/23/2016 Meeting) and the Purchasing Department recommend Amendment #1 to this contract in an amount of \$12,000 to **Stantec Consulting Services, Inc. of Burlington, MA.**

Respectfully,

Dan Kooker
Purchasing Manager

Cc: S Dookran L Fauteux

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016

From: Stephen Dookran, P.E., City Engineer
Engineering Department

Re: Pavement Management
Amendment No. 1

J. Motion: To approve Amendment No. 1 with Stantec Consulting Services, Inc. of Burlington, MA in the amount of \$12,000. Funding will be through: Department: 161 Streets; Funding Prior Year Escrow Account Category 53- Professional Services

Discussion: The City hired Stantec Consulting Services, Inc. to provided assistance in developing a five year plan for a pavement management program. Stantec has developed regional pavement management programs for Bedford, NH, Boston and Cambridge as well as dozens of other communities for many years. Using their expertise, Stantec has provided assistance in developing the necessary protocols for preventative maintenance, their costs and decision trees when selecting a prioritized list of roadways to pave.

The City is requesting Stantec to continue their services and provide a cost effective pavement management strategy and recommend a five year a pavement management program plan. This work will include a report of findings and recommendations and public presentation. Engineering is requesting \$12,000 to amend Stantec's scope of work. This will bring the total contract value to \$17,900.



Stantec

STANTEC Consulting Services Inc.
5 Burlington Woods Drive Suite 210, Burlington MA 01803-4511

June 22, 2016

Attention: Stephen Dookran, P.E.
9 Riverside Street
Nashua, NH 03062

Reference: Pavement Management Implementation Proposal #2

Dear Mr. Dookran:

Per your request, STANTEC Consulting Services, Inc. is pleased to continue providing professional Asset/Pavement Management Services to the City of Nashua. The City purchased CarteGraph OMS software, had a City-wide pavement surface condition assessment completed by MDS Technologies and STANTEC recently analyzed 5 and 10 year funding models using CarteGraph's pavement condition analysis module. The City desires STANTEC to develop a cost effective pavement management strategy and recommend a five (5) year pavement management program plan for the City of Nashua. STANTEC proposes the following work tasks:

WORK TASKS:

1. **QUALITY ASSURANCE OF 5 YEAR PLAN DATA:**
STANTEC will provide quality assurance of plan output data to ensure data integrity. STANTEC will field verify 38 centerline miles of roadways for pavement segmentation and treatment.
2. **REPORT OF FINDINGS AND RECOMMENDATIONS:**
STANTEC will work with City of Nashua project members to derive the optimum program repair plan. STANTEC will produce a report for City officials, which will include graphs, tables, and figures to convey pavement management concepts, citywide conditions, budget analysis, and funding recommendations. STANTEC will provide ten (10) hardcopies of final report.
3. **PUBLIC PRESENTATION:**
STANTEC will prepare and attend two (2) public meetings to present pavement management findings and recommendations. Presentation will include MS PowerPoint.

SCHEDULE:

STANTEC will initiate the proposed work tasks immediately upon receipt of an executed copy of this agreement/Notice to Proceed such that work tasks can be performed as soon as possible. This project is expected to require approximately eight (8) weeks from start to completion.

Design with community in mind

June 22, 2016
Stephen Dookran, P.E.
Page 2 of 2

Reference: Pavement Management Implementation Proposal

Task	Expected Completion Schedule
Executed Contract/Notice to Proceed	July 1, 2016
Quality Assurance	July 25, 2016
Final Report and Recommendations	August 8, 2016
Public Meetings	TBD

FEE:

Our not to exceed fee to complete the proposed scope of services as defined above is Twelve Thousand Dollars (\$12,000). Should the scope of services be expanded, STANTEC will discuss the additional fee to accomplish the additional scope and an amendment to this Agreement will be executed.

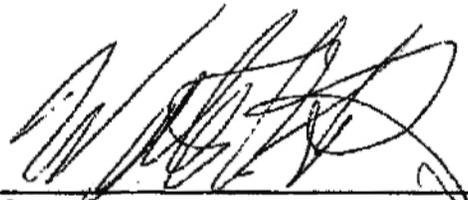
INVOICES:

STANTEC will invoice the City on a monthly basis during the performance of our services. The amount of each invoice will be based on the percentage completion for each work task at the time of work performance.

Regards,

STANTEC CONSULTING SERVICES INC.


William R. Moore, P.E.
Senior Principal
Phone: (781) 221-1142
william.moore@STANTEC.com


Bill Scarpoti
Asset Management Specialist
Phone: (781) 221-1165
william.scarpofl@STANTEC.com

Date _____

City of Nashua, NH (signature)
James Donchess, Mayor

Design with community in mind!



THE CITY OF NASHUA

Financial Services
Purchasing Department

"The Gate City"

June 9, 2016
Memo #16-153

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: PURCHASE OF VARIOUS CHEMICALS FOR THE WASTEWATER TREATMENT FACILITY (VALUE: \$571,000)
DEPARTMENT: 169 WASTEWATER; FUND: WASTEWATER
ACCOUNTING CLASSIFICATION: 61 SUPPLIES & MATERIALS

Please see attached communications from David A. Simmons, Superintendent Wastewater Department dated June 23, 2016 for the information related to these purchases.

The Wastewater Treatment Facility will be purchasing the following chemicals from the vendors as noted:

Sodium Bi-Sulfite	PVS Chemical Solutions of Detroit, MI Amount not to exceed \$90,000	\$0.0925/wet pound
Sodium Hypochlorite	Borden & Remington, Fall River, MA Amount not to exceed \$141,000	\$0.059/wet pound
Ferric Chloride	Borden & Remington, Fall River, MA Amount not to exceed \$20,000	\$0.2875/dry pound
Polymer - Polydyne	Polydyne, Riceboro, GA Amount not to exceed \$250,000	\$1.03/lb.
Polymer - BASF	BASF, Florham Park, NJ Amount not to exceed \$70,000	\$1.92/lb. for ZETAG 7878FS40, LIQ \$2.53/lb. for ZETAG 4110 DRY for WW

The Superintendent of Wastewater and the Board of Public Works (6/23/2016 meeting) recommend the purchase of the above items.

Respectfully,

Dan Kooker
Purchasing Manager

Cc: D Simmons L Fautuex

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016
From: David A. Simmons, Superintendent
Wastewater Department
Re: Sodium Bisulfite

D. Motion: To approve the contract with PVS Chemical Solutions of Detroit, MI (Montreal, PQ terminal) for the purchase of the chemical Sodium Bisulfite in the amounts of \$90,000. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 61 Supplies & Materials.

Discussion: Sodium Bisulfite is used to remove chlorine in the wastewater before it is discharged into the Merrimack River. This chemical is used at the Wastewater Treatment Facility and the CSO 014 Screening and Disinfection Facility located at 70 Bridge Street.

For the third year, the City of Nashua, NH participated in the Northeast/Merrimack Valley Chemical Consortium (NEMVCC) bid process. Sealed bids were due by May 19, 2016 electronically or on paper to the Westford Water Department.

PVS Chemical Solutions was the low bidder and is the selected vendor we wish to purchase BiSulfite from for FY17.

#60 – Sodium Bisulfite 38% , Bulk, price wet lb.

PVS Chemical Solutions	Detroit, MI	\$0.0925
Southern Ionics	West Point, MS	\$0.1090
Holland Co	Adams, MA	\$0.1500

50				
SODIUM BISULFITE - 38% SOLUTION				
BULK				
WET LB.				
PVS CHEMICAL SOLUTIONS	1	\$0.0925		
SOUTHERN IONICS	1	\$0.1090		
Holland CO	1	\$0.1500		
61				
SODIUM BISULFITE- 38% SOLUTION				
250 GAL TOTE				
WET LB.				
UNIVAR	1	\$0.1540		
MANN DISTR.	1	\$0.1910		
Harcros Chemicals, Inc.	1	\$0.1980	330 GAL TOTE	
ASTRO CHEMICAL	1	\$0.2075		
Borden & Remington Corp.	1	\$0.2275		
Monson Companies Inc.	1	\$0.2290	3,000 lb. IBD	
62				
SODIUM BISULFITE- 38% SOLUTION				
55 GAL DRUM				
WET LB.				
MANN DISTR.	1	\$0.2010		
Harcros Chemicals, inc.	1	\$0.2030		
Borden & Remington Corp.	1	\$0.2104		
ASTRO CHEMICAL	1	\$0.2109		
UNIVAR	1	\$0.2657		
63 - DUPLICATE- ELIMINATED FROM BID				
64				
SODIUM CARBONATE SODA ASH -DENSE				
50 LB. BAG				
DRY LB.				
Lincoln Fine Ingredients	1	\$0.2592		
Roberts Chemical	1	\$0.2650		
Harcros Chemicals, Inc.	1	\$0.2667		
Thatcher CO. of NY	1	\$0.2690		
Monson Companies Inc.	1	\$0.2695		
Borden & Remington Corp.	1	\$0.2804		
Astro Chemicals Inc.	1	\$0.2950		
MANN DISTR.	1	\$0.3225		
UNIVAR	1	\$0.3266		
65				
SODIUM CARBONATE SODA ASH - DENSE				
BULK				
DRY LB.				
Monson Companies Inc.	1	\$0.1875		
Harcros Chemicals, Inc.	1	\$0.1884		
Astro Chemicals Inc.	1	\$0.1898		
Borden & Remington Corp.	1	\$0.1919		
BHS Marketing	1	\$0.1973	44,000 lb. minimum	
UNIVAR	1	\$0.3266		

**City of Nashua Central Purchasing Department
FINANCIAL SERVICES DIVISION**

Request to Include on Finance Committee Agenda **Request to Solicit Bid or Proposal**

Date of Request: 06/06/2016
Proposed Finance Meeting Date: 06/15/2016

Project or Item Title: Wastewater Chemical – Sodium Hypochlorite

Amount: \$141,000

Lawson RQ# FY2017

Funding Description: Wastewater – Chemicals

Accounting (Finance Committee): 69.6200.670 - 61156

Acctg Unit	Acct	Sub Acct	Activity	Acct Category
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Requesting Department:

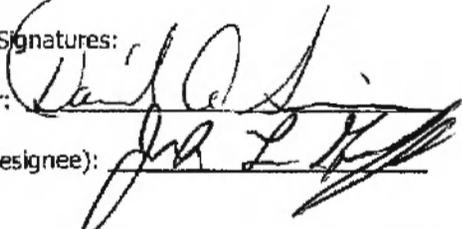
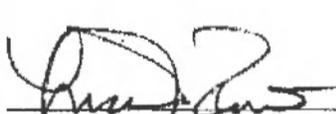
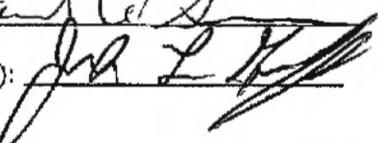
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|-------------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> Information Technology | <input type="checkbox"/> Police Department |
| <input type="checkbox"/> Engineering | <input type="checkbox"/> Fire Rescue |
| <input type="checkbox"/> Streets | <input type="checkbox"/> Community Development |
| <input type="checkbox"/> Traffic | <input type="checkbox"/> Public Health |
| <input type="checkbox"/> Park Recreation | <input type="checkbox"/> Financial Services |
| <input checked="" type="checkbox"/> Wastewater | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Solid Waste | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Library | |

Are CDBG Funds being used for this item? Yes No
Is this a time sensitive project? Yes No
For Solicit Bid – is a list of bidders attached? Yes No

Reason for request:
See attached BPW Motion

Other supporting comments:

Attach supporting documents (bid document, tabulation, contract, etc.)

Approval Signatures:
Requester:  Division Director: 
CFO (or designee):  Date: 6/7/16

Note: This form will be returned unless fully completed.

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016
From: David A. Simmons, Superintendent
Wastewater Department
Re: Sodium Hypochlorite

C. Motion: To approve the contract with Borden & Remington Corp of Fall River, MA for the purchase of the chemical Sodium Hypochlorite (Chlorine) in the amount of \$141,000. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 61 Supplies & Materials.

Discussion: Sodium Hypochlorite is used to disinfect the wastewater before it is discharged into the Merrimack River. It is also used in odor control for the air scrubber system. This chemical is used at the Wastewater Treatment Facility and the CSO 014 Screening and Disinfection Facility located at 70 Bridge Street.

For the third year, The City of Nashua, NH participated in the Northeast/Merrimack Valley Chemical Consortium (NEMVCC) bid process. Sealed bids were due by May 19, 2016 electronically or on paper to the Westford Water Department.

Borden & Remington was the low bidder.

#75 – Sodium Hypochlorite 15% , Bulk, price wet lb.

Borden & Remington	Fall River, MA	\$0.0590
Univar U.S.A., Inc	Providence, RI	\$0.0697
Kuehne Co.	South Kearny	\$0.1150

75			
SODIUM HYPOCHLORITE- 15%			
BULK			
WET LB.			
Borden & Remington Corp.	1	\$0.0590	
UNIVAR	1	\$0.0697	
KUEHNE CO.	1	\$0.1150	
76			
SODIUM HYPOCHLORITE- 15%			
55 GAL. DRUM			
WET LB.			
Roberts Chemical	1	\$0.1200	
Borden & Remington Corp.	1	\$0.1258	
Harcros Chemicals, Inc.	1	\$0.1368	
UNIVAR	1	\$0.1614	
MANN DISTR.	1	\$0.3625	
77			
SODIUM HYPOCHLORITE- 15%			
30 GAL CONTAINERS			
WET LB.			
Harcros Chemicals, Inc.	1	\$0.1830	
78			
SODIUM HYPOCHLORITE- 15%			
15 GAL CONTAINERS			
WET LB.			
Roberts Chemical	1	\$0.1700	
Harcros Chemicals, Inc.	1	\$0.1930	
Borden & Remington Corp.	1	\$0.1948	
UNIVAR	1	\$0.2856	
MANN DISTR.	1	\$0.3910	
79			
SODIUM HYPOCHLORITE- 15%			
5 GAL. CONTAINER			
WET LB.			
Borden & Remington Corp.	1	\$0.3855	
80			
SODIUM HYPOCHLORITE- 15%			
1 GAL. CONTAINER			
WET LB.			
NO BIDDERS			
81			
SODIUM SILICOFLUORIDE			
50 LB. BAG			
DRY LB.			
Harcros Chemicals, Inc.	1	\$0.5321	
Borden & Remington Corp.	1	\$0.5552	
UNIVAR	1	\$0.7785	
82			
SODIUM THIOSULPHATE (PENTA-HYDRATE)			
25 KG BAGS			
DRY KG.			
ASTRO CHEMICAL	1	\$1.1520	
Harcros Chemicals, Inc.	1	\$1.1740	
Coyne Chemical CO	1	\$1.3220	Min. 24 bags
MANN DISTR.	1	\$1.4400	

**City of Nashua Central Purchasing Department
FINANCIAL SERVICES DIVISION**

Request to Include on Finance Committee Agenda **Request to Solicit Bid or Proposal**

Date of Request: 06/06/2016
Proposed Finance Meeting Date: 06/15/2016

Project or Item Title: Wastewater Chemical – Ferric Chloride

Amount: \$20,000

Lawson RQ# FY2017

Funding Description: Wastewater – Chemicals

Accounting (Finance Committee): 69.6200.670 & .540 - 61156

Acctg Unit	Acct	Sub Acct	Activity	Acct Category
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Requesting Department:

- | | |
|-------------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> Information Technology | <input type="checkbox"/> Police Department |
| <input type="checkbox"/> Engineering | <input type="checkbox"/> Fire Rescue |
| <input type="checkbox"/> Streets | <input type="checkbox"/> Community Development |
| <input type="checkbox"/> Traffic | <input type="checkbox"/> Public Health |
| <input type="checkbox"/> Park Recreation | <input type="checkbox"/> Financial Services |
| <input checked="" type="checkbox"/> Wastewater | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Solid Waste | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Library | |

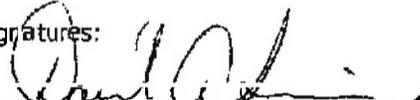
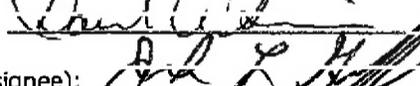
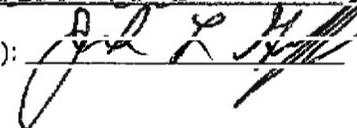
Are CDBG Funds being used for this item? Yes No
Is this a time sensitive project? Yes No
For Solicit Bid – is a list of bidders attached? Yes No

Reason for request:

See attached BPW Motion

Other supporting comments:

Attach supporting documents (bid document, tabulation, contract, etc.)

Approval Signatures:  Division Director: 
Requester:  Date: 6/7/16
CFO (or designee): 

Note: This form will be returned unless fully completed.

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016

From: David A. Simmons, Superintendent
Wastewater Department

Re: Ferric Chloride chemical contract

B. Motion: To approve the contract with Borden & Remington Corp of Fall River, MA for the purchase of the chemical Ferric Chloride in the amount of \$20,000. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 61 Supplies & Materials.

Discussion: Ferric Chloride is used in settling solids in the wet weather treatment facility influent.

For the third year, The City of Nashua, NH participated in the Northeast/Merrimack Valley Chemical Consortium (NEMVCC) bid process. Sealed bids were due by May 19, 2016 electronically or on paper to the Westford Water Department.

Borden Remington was the sole bidder and is the selected vendor we wish to purchase Ferric Chloride from for FY17.

#28 - Ferric Chloride – Bulk 32-38%, price dry lb.

Borden & Remington	Fall River, MA	\$0.2875
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**City of Nashua Central Purchasing Department
FINANCIAL SERVICES DIVISION**

Request to Include on Finance Committee Agenda **Request to Solicit Bid or Proposal**

Date of Request: 06/06/2016
Proposed Finance Meeting Date: 06/15/2016

Project or Item Title: Wastewater Chemical – Polymer

Amount: \$320,000

Lawson RQ# FY2017

Funding Description: Wastewater – Chemicals

Accounting (Finance Committee): 69.6200.670 - 61156

Acctg Unit	Acct	Sub Acct	Activity	Acct Category
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Requesting Department:

- Information Technology
- Engineering
- Streets
- Traffic
- Park Recreation
- Wastewater
- Solid Waste
- Library

- Police Department
- Fire Rescue
- Community Development
- Public Health
- Financial Services
- Other _____
- Other _____

Are CDBG Funds being used for this item? Yes No
Is this a time sensitive project? Yes No
For Solicit Bid – is a list of bidders attached? Yes No

Reason for request:

See attached BPW Motion

Other supporting comments:

Attach supporting documents (bid document, tabulation, contract, etc.)

Approval Signatures: _____
Requester: [Signature] Division Director: [Signature]
CFO (or designee): [Signature] Date: 6/7/16

Note: This form will be returned unless fully completed.

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016
From: David A. Simmons, Superintendent
Wastewater Department
Re: Polymer

E. Motion: To approve the contracts with Polydyne of Riceboro, GA in the amount of \$250,000 and BASF Corporation of Florham Park, NJ in the amount of \$70,000.. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 61 Supplies & Materials.

Discussion: Two kinds of Polymer are used at the plant to coagulate sludge.

In FY15, with the introduction of the new Huber Presses, a new polymer was required. We conducted bench testing and selected a polymer from Polydyne and we have been using that product since May.

The unit price is \$1.03/lb, and Polydyne has agreed to keep this pricing through FY17 (June 30, 2017).

The yearly estimated cost for this polymer is \$250,000.

The other kinds of Polymer are known as ZETAG 7878 FS40, LIQ and is used with the thickeners and the ZETAG 4119 DRY is for the Wet Weather Facility for use during rain events. Polymer is used to coagulate sludge. BASF is the sole source for the polymer that the facility needs. There are other manufacturers but they cannot meet the molecular weight and electrical charge that is optimum for the facility's sludge processing needs.

ZETAG 7878 FS40, LIQ @ \$1.92/lb
ZETAG 4110 DRY for WW @ \$2.53/lb

The yearly estimated cost for this polymer is \$70,000.



www.polydyneinc.com

Emailed to: osbornen@nashuanh.gov

June 3, 2016

Ms. Noelle Osborne
City of Nashua
Sawmill Road
Nashua, NH 03060

Subject: Polymer Price Quotation

Dear Ms. Osborne:

Polydyne Inc. is pleased to offer the City of Nashua the following price quotation:

PRODUCT	PRICE	PACKAGE
CLARIFLOC® NE-2067	\$1.03/LB. DELIVERED	LTL BULK – 2,000 GAL MIN.

Quotation Period: Firm July 1, 2016 through June 30, 2017.

Delivery Terms: 5 – 10 Days A.R.O. - Bulk Deliveries

Payment Terms: Net 30 days – No Discounts

Thank you for your business.

If you have any questions, feel free to contact Alex Krantz, Technical Sales Representative, at (856) 745-1936. To place an order, please call (800) 848-7659 or visit our website at www.polydyneinc.com.

Sincerely,

Boyd Stanley
Business Director



We create chemistry

June 17, 2015

Performance Chemicals
Water Solutions, North America EV/WN

Geraldine Ciardelli
DPW Administration
Nashua Wastewater Treatment Facility
23353 Sawmill Road
City of Nashua, NH 03060

Reference: Price Extension

Dear Ms Ciardelli,

BASF Corporation is pleased to extend pricing to the City of Nashua, NH, as noted below from July 1, 2015 to June 30, 2016.

Product	Package	Net Wt.	Price (\$/lb)	Additional Information (Quantity Requirements, etc.)
Zetag® 7878 FS40	TOTES	2,205 lbs	\$1.92	
Zetag® 4110	BAGS	55 lb	\$2.53	36 bags per pallet

Josep gar
with
BASF ON

Reid
new
quote



THE CITY OF NASHUA

Financial Services
Purchasing Department

"The Gate City"

June 9, 2016
Memo #16-154

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: WAUKESHA GENERATOR MAINTENANCE (VALUE: NOT TO EXCEED \$30,000)
DEPARTMENT: 169 WASTEWATER; FUND: WASTEWATER
ACCOUNT CLASSIFICATION: 54 PROPERTY SERVICES

Please see the attached communication from David Simmons, Wastewater Department Superintendent dated June 23, 2016 for the information related to this purchase.

Pursuant to **§ 5-84 A. (4) Special purchase procedures**. Sole-source procurements, where the proposed purchase is manufactured by only one company. Attached is a sole-source memo concerning this purchase. This is a weekly check of engine and generator performance of the Waukesha Generator at the Nashua Wastewater Treatment Plant. This is done weekly at a cost of \$499 and will continue thru the end of FY17.

The Wastewater Plant Engineer, Board of Public Works (June 23, 2016 meeting) and the Purchasing Department recommend the award of this contract in an amount not to exceed **\$30,000 to Highland Power of Brockton, MA.**

Respectfully,

Dan Kooker
Purchasing Manager

Cc: D Simmons L Fauteux

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 3016
From: David A. Simmons, Superintendent
Wastewater Department
Re: Waukesha Generator Repairs

F Motion: To approve the contract with Highland Power of Brockton, MA in the amount of \$30,000. Funding will be through Department: 169 – Wastewater; Fund; Wastewater; Account Classification: 54 Property Services.

Discussion: Highland Power has been the sole provider of repairs and maintenance to the Waukesha generator since 2008. This has been documented by previous sole source letters. The Waukesha generator produces electricity for the plant or power grid by burning methane produced through the digestion process.

For these reasons, I would recommend that we hire Highland Power to continue to perform the necessary maintenance.

Highland Power Corporation

86 Intervale St.
Brockton, MA 02302
Phone: (508)941-6500

June 2, 2016

Jerry Ciardellig, Purchasing Manager
Nashua Public Works Department, Wastewater Treatment Facility
City of Nashua, New Hampshire

CC: Jim

Jerry:

Subject: Proposal: Routine Maintenance on Waukesha VGF36GLD Digester Gas Engine

In response to your request, I have prepared the following proposal for the routine maintenance on the Waukesha VGF-36GD digester gas engine.

Item One: Weekly maintenance: Check engine for normal operation, record vital parameters, take oil sample, make log entries as needed, coordinate with site management with any urgent service requirements.

Option: Perform oil analysis monthly

Pricing: For routine maintenance: \$499 per week. For oil analysis add \$65 per month.

Unscheduled maintenance per our Standard Terms & Conditions.

Not Included:

- Service or repairs not specifically called for
- Fuel for generator
- Permits

Delivery Time: As arranged.

This quotation is good for 90 days and only with Highland Power's Standard Terms and Conditions.

Thank you for the opportunity to present this proposal, and as always if you have any questions, please don't hesitate to call.

John R. Stewart, P.E.
Highland Power Corporation



THE CITY OF NASHUA

*Financial Services
Purchasing Department*

"The Gate City"

June 9, 2016
Memo #16-155

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: ANALYTICAL TESTING SERVICES (VALUE: NOT TO EXCEED \$15,000)
DEPARTMENT: 169 WASTEWATER; FUND: WASTEWATER
ACCOUNTING CLASSIFICATION: 53 PROFESSIONAL & TECHNICAL SERVICES

Please see attached communication from David A. Simmons, Superintendent Wastewater Department dated June 23, 2016 for the information related to this contract award.

The attached quote shows the costs for each of the 19 individual tests that they may perform for the Pretreatment Program.

Pursuant to NRO § 5-84 **Special purchase procedures** (A) (5) Purchases from a sole manufacturer, where it is determined to be more efficient and economical to reduce costs of maintenance of additional repair parts, supplies or services.

The Superintendent of Wastewater, Board of Public Works (June 23, 2016 meeting), and the Purchasing Department recommend awarding the contract to **ChemServe Environmental Analysts, Milford, NH** for an amount not to exceed **\$15,000**.

Respectfully,

Dan Kooker
Purchasing Manager

Cc: D. Simmons L Fautuex

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016
From: David A. Simmons, Superintendent
Wastewater Department
Re: Analytical Testing Services

G Motion: To approve the contract with Chemserve Environmental Analysts of Milford, NH in the amount of \$15,000. Funding will be through Department: 169 - Wastewater; Fund; Wastewater; Account Classification: 53 Professional & Technical Services.

Discussion: Chemserve Environmental Analysts has been providing quality analytical services to the Industrial Pretreatment Program of Nashua Wastewater for over 14 years. The fees for these services are then back charged to the industrial users through the wastewater billing department.

Chemserve is certified to perform these services by N.H. D.E.S. as required by our N.P.D.E.S. Permit. They follow all E.P.A. protocol as required. They provide all appropriate containers with the proper preservatives and sample pick up as part of their services at no additional charge. Their rates are below market average and have remained constant.

For these reasons, I would recommend that we continue to use Chemserve for our analytical services for the Pretreatment Program.



Email- Sales@chemservelab.com

Quote

Date	Estimate #
7/7/2015	GG071502

City of Nashua
Noelle Osborne
PO Box 2019
Nashua, NH 03061

Reference General Pricing

Location N/A

Contact / Phone #

Terms
Net 30 days

Item	Description	Qty	Cost	Total
Cyanide, Total	Cyanide, Total	1.00	26.25	26.25
ICP Cadmium	200.7 Cd	1.00	8.78	8.78
ICP Chromium	ICP Chromium	1.00	8.78	8.78
ICP Copper	ICP Copper	1.00	8.78	8.78
ICP Lead	ICP Lead	1.00	8.78	8.78
ICP Nickel	ICP Nickel	1.00	8.78	8.78
ICP Silver	200.7 Ag	1.00	8.78	8.78
ICP Zinc	ICP Zinc	1.00	8.78	8.78
ICP Selenium	200.7 Se	1.00	8.78	8.78
Mercury	245.1 Hg	1.00	26.25	26.25
Surfactants (MBAS)	425.1	1.00	175.00	175.00
624	Volatile Organic Analysis by GC/MS	1.00	112.50	112.50
625	Semi Volatile Organic Analysis by GC/MS	1.00	262.50	262.50
Metal Prep	Digestion for metals (3015/3050/200.7/3052)	1.00	25.00	25.00
ICP-Silver Photo Processing	200.7 Ag-Photo Processing	1.00	35.00	35.00
Phosphorus Total	200.7	1.00	13.50	13.50
Phosphorus, Ortho	SM 4500P E	1.00	28.00	28.00
Ammonia - N	SM 4500-NH3 B & C	1.00	21.00	21.00
Filter	sample filtration - Dissolved metals	1.00	12.50	12.50
Total				\$807.74

Signature _____



THE CITY OF NASHUA

Financial Services

Purchasing Department

"The Gate City"

June 30, 2016
Memo #17-006

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: NWTF CAPACITY ANALYSIS STUDY UPDATE (VALUE: \$19,898)
DEPARTMENT: 169 WASTEWATER; FUND: WASTEWATER
ACCOUNT CLASSIFICATION: 53 – PROFESSIONAL & TECHNICAL SERVICES

Please see the attached communication from David A. Simmons, Superintendent Wastewater Department, dated June 23, 2016 for the information related to this purchase.

Pursuant to NRO § 5-83 Professional Services (A) In the purchase of accounting, architectural, auditing, engineering, legal, medical and ambulance services and purchases of independent professional consultant services for personnel, data processing, actuarial, planning, management and other comparable purchases competitive bidding shall not be required.

The Superintendent Wastewater Department, Board of Public Works (6/23/2016 Meeting) and the Purchasing Department recommend the award of this contract in an amount of **\$19,898 to Hazen & Sawyer of Livermore, ME.**

Respectfully,

Dan Kooker
Purchasing Manager

Cc: D Simmons L Fauteux

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016
From: David A. Simmons, Superintendent
Wastewater Department
Re: NWTF Capacity Analysis Update

H. Motion: To approve a contract to Hazen & Sawyer for professional services for an update to the plant capacity analysis in an amount of \$19,898. Funding will be through: Department: 169 Wastewater; Account Classification: 53 Professional & Technical Services.

Attachments: Hazen Sawyer Scope of Work and Fee.

Discussion: The Wastewater Treatment Facility (WWTF) has been using the services of Hazen & Sawyer (Hazen) for analyzing the WWTF capacity to determine constraints and limitations of all treatment processes that specifically impact secondary treatment capacity based on current and future predicted wastewater flow rates. Hazen completed a WWTF capacity analysis in 2014 and prepared a final report in March 2015. The capacity analysis was based on plant data collected from July 2013 to January 2014. However, during this time period, the plant was not always working at optimal capacity due to on-going repairs and equipment upgrades. Since completion of the March 2015 Capacity Analysis Report (Report), these repairs and upgrades have been completed and recent plant data indicates improved solids settling characteristics which may impact the findings presented in the Report.

One of the findings from the Report was that the wastewater plant is limited in capacity due to lower than optimal capacity of the anaerobic digester as a result of lower solids concentration that existed at the time of the study. Recent plant data suggests that the plant is operating with a higher solids concentration. A re-evaluation of the data is necessary to confirm if the plant capacity is greater than previously thought.

The update of the March 2015 Capacity Analysis Report is also tied into the WWTF's NPDES discharge permit. The permit requires the permittee to submit to the permitting authorities a projection of loadings, and a program for maintaining satisfactory treatment levels if the effluent discharged over 3 consecutive months exceeds 80 percent of the facility's 16 million gallons per day (MGD) design flow, so it is critical to have updated capacity report.

Hazen is ready to begin this update to the March 2015 Capacity Analysis Report right away. Any updates to Report will be conveyed to the EPA prior to the WWTF engaging in any project needed as stated in the original report.



CONTRACT FOR PROFESSIONAL SERVICES

NASHUA WWTF CAPACITY ANALYSIS

A CONTRACT BETWEEN

THE CITY OF NASHUA, 229 MAIN STREET, NASHUA, NH 03061-2019
AND

HAZEN AND SAWYER, P.C.
and its successors, transferees and assignees (together "Professional Engineer")

NAME AND TITLE OF PROFESSIONAL ENGINEER

24 FEDERAL STREET, 5TH FLOOR, BOSTON, MA 02110

ADDRESS OF PROFESSIONAL ENGINEER

WHEREAS, the City of Nashua, a political subdivision of the State of New Hampshire, from time to time requires the services of a Professional Engineer ; and

WHEREAS, it is deemed that the services of a Professional Engineer herein specified are both necessary and desirable and in the best interests of the City of Nashua; and

WHEREAS, Professional Engineer represents they are duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. DOCUMENTS INCORPORATED. The following exhibits are by this reference incorporated herein and are made part of this contract:

- Exhibit A--General Conditions for Contracts
- Exhibit B--Scope of Services, Contract Time, Fee Schedule

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

In the event of a conflict between the terms of the Proposal and the terms of this Agreement, a written change order and/or fully executed City of Nashua Purchase Order, the terms of this Agreement, the written change order or the fully executed City of Nashua Purchase Order shall control over the terms of the Proposal.

2. WORK TO BE PERFORMED Except as otherwise provided in this contract, Professional Engineer shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described.

3. PERIOD OF PERFORMANCE. Professional Engineer shall perform and complete all work within the time periods set forth and may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Professional Engineer shall begin performance upon receipt of an Executed Contract **and** a valid Purchase Order issued from the City of Nashua.

4. COMPENSATION. Professional Engineer agrees to perform the work for a total cost not to exceed

Nineteen Thousand Eight Hundred Ninety-Eight Dollars (\$ 19,898.00)

which, unless otherwise provided in this contract, shall be paid in accordance with the provisions of Exhibit B or unless Professional Engineer has received a written exemption from the City of Nashua. Professional Engineer shall submit monthly requests for payment for services performed under this agreement directly to

**City of Nashua
Attn: Accounts Payable
PO Box 2019
Nashua, NH 03061-2019
Atten: William Keating**

To facilitate the proper and timely payment of applications, the City of Nashua requires that all invoices contain a valid **PURCHASE ORDER NUMBER**.

Requests for payment shall be submitted no later than fifteen (15) days after the end of each month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Professional Engineer agrees to provide the following with each request for payment:

1. Appropriate invoice forms. The forms shall include the project purchase order number, a listing of personnel hours and billing rates, and other expenditures for which payment is sought.
2. A progress report. The report shall include, for each monthly reporting period, a description of the work accomplished, problems experienced, upcoming work, any extra work carried out, and a schedule showing actual expenditures billed for the period, cumulative total expenditures billed and paid to date under the contract, and a comparison of cumulative total expenditures billed and paid to the approved budget.

The City of Nashua will pay for work satisfactorily completed by Professional Engineer. The City of Nashua will pay Professional Engineer within **30** days of approval by the City of Nashua of the submitted invoice forms and progress reports. The City of Nashua will make no payments until the invoice forms and progress reports have been submitted and approved.

5. EFFECTIVE DATE OF CONTRACT. This contract shall not become effective until and unless approved by the City of Nashua.

6. NOTICES. All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:

CITY OF NASHUA REPRESENTATIVE:

William Keating, Wastewater Project Engineer
Nashua WWTF
2 Sawmill Road
Nashua, NH 03062

REPRESENTATIVE:

Frank Ayotte, P.E.
Hazen and Sawyer, P.C.
24 Federal Streets, 5th Floor
Boston, MA 02110

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City of Nashua or Professional Engineer may change the address or representative by giving written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

City of Nashua, NH (signature)

Hazen and Sawyer (signature)

*James Donchess, Mayor
(Printed Name and Title)*

(Printed Name and Title)

Date

Date

**EXHIBIT A
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General Terms and Conditions

1. DEFINITIONS. Unless otherwise required by the context, "Professional Engineer", and its successors, transferees and assignees (together "Professional Engineer") includes any of the Professional Engineer's consultants, sub consultants, contractors, and subcontractors

2. PROFESSIONAL ENGINEER STATUS. The parties agree that Professional Engineer shall have the status of and shall perform all work under this contract as a Professional Engineer, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City of Nashua and Professional Engineer, and nothing in this contract shall create any contractual relationship between the City of Nashua and Professional Engineer's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Professional Engineer is not a City of Nashua employee and that there shall be no:

- (1) Withholding of income taxes by the City of Nashua;
- (2) Industrial insurance coverage provided by the City of Nashua;
- (3) Participation in group insurance plans which may be available to employees of the City of Nashua;
- (4) Participation or contributions by either the Professional Engineer or the City of Nashua to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the City of Nashua;
- (6) Unemployment compensation coverage provided by the City of Nashua.

3. STANDARD OF CARE. Professional Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Professional Engineer warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Professional Engineer to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City of Nashua may have, Professional Engineer shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Professional Engineer's failure to perform in accordance with this standard of care. Any approval by the City of Nashua of any products or services furnished or used by Professional Engineer shall not in any way relieve Professional Engineer of the responsibility for professional and technical accuracy and adequacy of its work. City of Nashua review, approval, or acceptance of, or payment for any of Professional Engineer's work under this contract shall not operate as a waiver of any of the City of Nashua's rights or causes of action under this contract, and Professional Engineer shall be and remain liable in accordance with the terms of the contract and applicable law.

Professional Engineer shall furnish competent and skilled personnel to perform the work under this contract. The City of Nashua reserves the right to approve key personnel assigned by Professional Engineer to perform work under this contract. Approved key personnel shall not be taken off of the project by Professional Engineer without the prior written approval of the City of

Nashua, except in the event of termination of employment. Professional Engineer shall, if requested to do so by the City of Nashua, remove from the job any personnel whom the City of Nashua determines to be incompetent, dishonest, or uncooperative.

4. CITY OF NASHUA REPRESENTATIVE. The City of Nashua may designate a City of Nashua representative for this contract. If designated, all notices, project materials, requests by Professional Engineer, and any other communication about the contract shall be addressed or be delivered to the City of Nashua Representative.

5. CHANGES TO SCOPE OF WORK. The City of Nashua may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Professional Engineer's performance under the contract. Professional Engineer shall provide to the City of Nashua within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Professional Engineer should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Professional Engineer's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Professional Engineer for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Professional Engineer of the change.

When Professional Engineer seeks changes, Professional Engineer shall, before any work commences, estimate their effect on the cost of the contract and on its schedule and notify the City of Nashua in writing of the estimate. The proposal for a change shall provide enough detail, including

personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Professional Engineer should proceed with any or all of the proposed change.

Except as provided in this paragraph, Professional Engineer shall implement no change unless the City of Nashua in writing approves the change. Unless otherwise agreed to in writing, the provisions of this contract shall apply to all changes. The City of Nashua may provide verbal approval of a change when the City of Nashua, in its sole discretion, determines that time is critical or public health and safety are of concern. Any verbal approval shall be confirmed in writing as soon as practicable. Any change undertaken without prior City of Nashua approval shall not be compensated and is, at the City of Nashua's election, sufficient reason for contract termination.

6. CITY OF NASHUA COOPERATION. The City of Nashua agrees that its personnel will cooperate with Professional Engineer in the performance of its work under this contract and that such personnel will be available to Professional Engineer for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The City of Nashua also agrees to provide Professional Engineer with access to City of Nashua records in a reasonable time and manner and to schedule items that require action by the Board of Public Works and Finance Committee in a timely manner. The City of Nashua and Professional Engineer also agree to attend all meetings called by the City of Nashua or Professional Engineer to discuss the work under the Contract, and that Professional Engineer

may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City of Nashua.

7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES. Professional Engineer warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City of Nashua in writing, and has concluded that the City of Nashua's resolution of each matter is satisfactory to Professional Engineer. All future questions Professional Engineer may have concerning interpretation or clarification of this contract shall be submitted in writing to the City of Nashua within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Professional Engineer's question or position. The City of Nashua representative shall render a decision within 15 calendar days. The City of Nashua's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Professional Engineer prior to having received the City of Nashua's resolution shall be at Professional Engineer's risk and expense. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City of Nashua. Professional Engineer is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

8. TERMINATION OF CONTRACT

A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL. The City of Nashua, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City of Nashua chooses to terminate, abandon, or suspend all or part of the project, it shall provide Professional Engineer 10 day's written notice of its intent to do so.

If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, Professional Engineer shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
3. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of Nashua of all orders or subcontracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City of Nashua any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.
4. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City of Nashua to resume performance.

In the event of a termination, abandonment, or suspension at will, Professional Engineer shall receive all amounts due and not previously paid to Professional Engineer for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for

work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

B. TERMINATION FOR CAUSE. This agreement may be terminated by the City of Nashua on 10 calendar day's written notice to Professional Engineer in the event of a failure by Professional Engineer to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on the work in a timely and professional manner. Professional Engineer shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. Professional Engineer may terminate the contract on 10 calendar days written notice if, through no fault of Professional Engineer, the City of Nashua fails to pay Professional Engineer for 45 days after the date of approval by the City of Nashua of any Application for Payment.

Upon receipt of notice of termination for cause, Professional Engineer shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the City of Nashua with a list of all unperformed services.
3. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of Nashua of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City of Nashua any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
5. Not resume work after the effective date of a notice of termination unless and until receipt of a written notice from the City of Nashua to resume performance.

In the event of a termination for cause, Professional Engineer shall receive all amounts due and not previously paid to Professional Engineer for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City of Nashua by reasons of Professional Engineer's failure. Professional Engineer shall not be relieved of liability to the City of Nashua for damages sustained from the failure, and the City of Nashua may withhold any payment to the Professional Engineer until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the Professional Engineer must be submitted to the City of Nashua within 30 days of the effective date of the notice of termination.

If after termination for the failure of Professional Engineer to adhere to any of the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on the work in a timely and professional manner, it is determined that Professional Engineer had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City of Nashua shall, if necessary, make an adjustment in the compensation paid to Professional Engineer such that Professional Engineer receives total compensation in the same amount as it would have received in the event of a termination-at-will.

C. GENERAL PROVISIONS FOR TERMINATION. Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Professional Engineer shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Engineer assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Professional Engineer's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Engineer's control.

9. DISPUTE RESOLUTION. The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and a Professional Engineer Representative. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

10. NO DAMAGES FOR DELAY. Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Professional Engineer for damages because of hindrances or delays in the progress of the work from any cause, and Professional Engineer agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City of Nashua may provide.

11. INSURANCE. Professional Engineer shall carry and maintain in effect during the performance of services under this contract:

- General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
- \$1,000,000 Combined Single Limit Automobile Liability;
***Coverage must include all owned, non-owned and hired vehicles.**
- \$1,000,000 Profession Liability;
- and Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

Professional Engineer shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Professional Engineer are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Professional Engineer under this

contract. The City of Nashua shall not maintain any insurance on behalf of Professional Engineer. Subcontractors are subject to the same insurance requirements as Professional Engineer and it shall be the Professional Engineer's responsibility to ensure compliance of this requirement.

Professional Engineer will provide the City of Nashua with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the City of Nashua issues the notice of award. The City of Nashua requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability, and Auto Liability policies must name the City of Nashua as an additional insured** and reflect on the certificate of insurance. Professional Engineer is responsible for filing updated certificates of insurance with the City of Nashua's Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Professional Engineer must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve Professional Engineer of its responsibilities or limit the amount of its liability to the City of Nashua or other persons, and Professional Engineer is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Professional Engineer is responsible for and required to remedy all damage or loss to any property, including property of the City of Nashua, caused in whole or part by Professional Engineer or anyone employed, directed, or supervised by Professional Engineer.

12. INDEMNIFICATION Regardless of any coverage provided by any insurance, Professional Engineer agrees to indemnify and hold harmless the City of Nashua, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Professional Engineer or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Professional Engineer's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

13. FISCAL CONTINGENCY. All payments under this contract are contingent upon the availability to the City of Nashua of the necessary funds. This contract shall terminate and the City of Nashua's obligations under it shall be extinguished at the end of any fiscal year in which the City of Nashua fails to appropriate monies for the ensuing fiscal year sufficient for the performance of this contract.

Nothing in this contract shall be construed to provide Professional Engineer with a right of payment over any other entity. Any funds obligated by the City of Nashua under this contract that are not paid to Professional Engineer shall automatically revert to the City of Nashua's discretionary control upon the completion, termination, or cancellation of the agreement. The City of Nashua shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Professional Engineer. Professional Engineer shall have no claim of any sort to the unexpended funds.

14. COMPENSATION. Review by the City of Nashua of Professional Engineer's submitted monthly invoice forms and progress reports for payment will be promptly accomplished by the City of Nashua. If there is insufficient information, the City of Nashua may require Professional Engineer to submit additional information. Unless the City of Nashua, in its sole discretion, decides otherwise, the City of Nashua shall pay Professional Engineer in full within **30 days of approval** of the submitted monthly invoice forms and progress reports.

15. COMPLIANCE WITH APPLICABLE LAWS. Professional Engineer, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Professional Engineer shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City of Nashua in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

16. NONDISCRIMINATION. If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Professional Engineer agrees to the following terms. Professional Engineer will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Professional Engineer agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

Without limitation of the foregoing, Professional Engineer's attention is directed to 41 C.F.R. § 60-1.4, and the clause entitled "Equal Opportunity Clause" which, by reference, is incorporated into this contract, to 41 C.F.R. § 60-250 et seq. and the clause entitled "Affirmative Action Obligations of Professional Engineers and Subcontractor for Disabled Veterans and Veterans of the Vietnam Era," which, by reference, is incorporated in this contract, and to 41 C.F.R. § 60-471 and the clause entitled "Affirmative Action Obligations of Professional Engineers and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

Professional Engineer agrees to assist disadvantaged business enterprises in obtaining business opportunities by identifying and encouraging disadvantaged suppliers, consultants, and sub consultants to participate to the extent possible, consistent with their qualification, quality of work, and obligation of Professional Engineer under this contract.

In connection with the performance of work under this contract, Professional Engineer agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or sexual orientation. This agreement includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Professional Engineer agrees, if applicable, to insert these provisions in all subcontracts, except for subcontracts for standard commercial supplies or raw materials. Any violation of any applicable provision by Professional Engineer shall constitute a material breach of the contract.

17. FEDERAL SUBCONTRACTING REQUIREMENTS. If Professional Engineer awards a subcontract under this contract, Professional Engineer, if applicable, shall use the following alternative steps:

- A. Using the services of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce, as appropriate; and
- B. Requiring the subcontractor, if it awards subcontracts, to take the affirmative steps set forth in paragraph A.

If applicable, Professional Engineer agrees to complete and submit to the City of Nashua a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization Report (Standard Form 334) within 30 days after the end of each fiscal quarter until the end of the contract.

18. ENDORSEMENT. Professional Engineer shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Professional Engineer or under its direction as required under the laws of the State of New Hampshire.

19. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING. Professional Engineer shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

20. CITY INSPECTION OF CONTRACT MATERIALS. The books, records, documents and accounting procedures and practices of Professional Engineer related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

21. DISPOSITION OF CONTRACT MATERIALS. Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the exclusive property of the City of Nashua and all such materials shall be remitted and delivered, at Professional Engineer's expense, by Professional Engineer to the City of Nashua upon completion, termination, or cancellation of this contract. Alternatively, if the City of Nashua provides its written approval to Professional Engineer, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract must be retained by Professional Engineer for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City of Nashua, in writing, requests any or all of the materials, then Professional Engineer shall promptly remit and deliver the materials, at Professional Engineer's expense, to the City of Nashua. Professional Engineer shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Professional Engineer's obligations under this contract without the prior written consent of the City of Nashua.

22. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS. Professional Engineer expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Professional Engineer (including those remitted to the City of Nashua by Professional Engineer pursuant to paragraph 21), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Professional Engineer. The City of Nashua shall have the right to reproduce any such materials.

Professional Engineer expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City of Nashua or any of its officers or employees, in either their official or individual capacity of the City of Nashua, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Professional Engineer agrees to indemnify, to defend, and to hold harmless the City of Nashua, its representatives, and employees from any claim or action seeking to impose liability, costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Professional Engineer infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Professional Engineer infringes any patent.

Professional Engineer shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided

that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

23. FINAL ACCEPTANCE. Upon completion of all work under the contract, Professional Engineer shall notify the City of Nashua in writing of the date of the completion of the work and request confirmation of the completion from the City of Nashua. Upon receipt of the notice, the City of Nashua shall confirm to Professional Engineer in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Engineer with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Engineer shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City of Nashua shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.

24. TAXES. Professional Engineer shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Professional Engineer hereby indemnifies and holds harmless the City of Nashua from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

25. NON-WAIVER OF TERMS AND CONDITIONS. None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.

26. RIGHTS AND REMEDIES. The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

27. PROHIBITED INTERESTS. Professional Engineer shall not allow any officer or employee of the City of Nashua to have any indirect or direct interest in this contract or the proceeds of this contract. Professional Engineer warrants that no officer or employee of the City of Nashua has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of Professional Engineer. If any such interest comes to the attention of Professional Engineer at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua. Professional Engineer also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Professional Engineer further warrants that no person having such an interest shall be employed in the performance of this contract. If City of Nashua determines that a conflict exists and was not disclosed to the City of Nashua, it may terminate the contract at will or for cause in accordance with paragraph 8.

In the event Professional Engineer (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, City of Nashua may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, Professional Engineer shall refund to the City of Nashua any profits realized under this contract, and Professional Engineer shall be liable to the City of Nashua for any costs

incurred by the City of Nashua in completing the work described in this contract. At the discretion of the City of Nashua, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

Professional Engineer warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Professional Engineer to any officer or employee of the City of Nashua with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract. If City of Nashua determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with paragraph 8.

The rights and remedies of this section shall in no way be considered for be construed as a waiver of any other rights or remedies available to the City of Nashua under this contract or at law.

28. THIRD PARTY INTERESTS AND LIABILITIES. The City of Nashua and Professional Engineer, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City of Nashua and Professional Engineer.

29. SURVIVAL OF RIGHTS AND OBLIGATIONS. The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

30. SEVERABILITY. In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

31. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT. This contract constitutes the entire contract between the City of Nashua and Professional Engineer. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

32. CHOICE OF LAW AND VENUE. This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere

EXHIBIT A SCOPE OF SERVICES

**City of Nashua, New Hampshire
Division of Public Works
Wastewater Treatment Facility**

Revision of Capacity Analysis

Hazen and Sawyer, P.C. will perform professional engineering services in conjunction with revising the capacity analysis of the Nashua Wastewater Treatment Facility (WWTF) that was performed in 2013 and 2014. The project is in response to effluent limitations defined in NPDES permit NH0100170 and possible future flows and loads to the plant. An amendment to the existing capacity technical memorandum will be prepared summarizing the results of the revised analysis.

SCOPE OF WORK

Task 1 – Historical Data Review and Data Collection

Hazen and Sawyer will:

- Conduct data review of historical data for the period June 2014 through June 2016. This effort will be used to revise findings from the data summary performed as part of the 2013/2014 capacity analyses.
- Updated data will be used to revise influent wastewater characteristics and peaking factors.
- Maximum one (1) day in the field to collect updated solids data at the Nashua WWTF for use in the model update and analysis, as required.

Task 2 – Plant Analysis

Hazen and Sawyer will use the updated data from Task 1 to perform updated capacity evaluations on liquids and solids process at the WWTF. The processes that will be included in the evaluation will be limited to:

- 1) Aeration tanks,
- 2) Aeration system,
- 3) Secondary clarifiers,
- 4) Primary anaerobic digester.

Updates to existing planning level cost estimates for infrastructure modification will not be provided in this effort.

Task 3 – Draft and Final Report and Workshop

Hazen and Sawyer will develop an amendment to the existing capacity technical memorandum. The amendment will provide information regarding the revised capacity of each unit process and the overall WWTF capacity under current design conditions.

Hazen and Sawyer will

- 1) Furnish six (6) copies of the draft report for review by the City.
- 2) Meet with representatives of the City to present the findings of the study as presented in the draft report. Furnish six (6) copies of the final report with electronic copy.
- 3) Furnish the amended report by September 1, 2016 (or 2 months from Notice to Proceed.)
Maintaining the project schedule is predicated upon receiving sampling record information from the City.

Task 4 – Project Management

Perform overall project management services so the work remains focused on the project objectives.

TABLE A - 1: Fee Schedule
 CITY OF NASHUA PUBLIC WORKS DIVISION
 NWTf Capacity Analysis Update
 HAZEN AND SAWYER PROJECT BUDGET BY TASK

Task	Sub task	Description	Principal-in-Charge / TRC	Associate / Project Manager	Sr.Principal Engineer / Scientist	Principal Engineer / Scientist	Engineer	Clerical hours	TOTAL HOURS	TOTAL LABOR DOLLARS	TOTAL INDIRECT COSTS	TOTAL LABOR & INDIRECT DOLLARS	OTHER DIRECT COSTS	FIXED FEE	TOTAL DOLLARS
	Rates		\$72.00	\$80.00	\$45.00	\$34.00	\$28.00	\$26.00			1,7830			0.10	
Task 1	-	Historical Data Review	1	2	8	20	20	0	51	\$1,792	\$3,195	\$4,987		\$499	\$5,486
Task 2	-	Plant Analyses	1	4	12	24	20	0	61	\$2,228	\$3,973	\$6,201		\$620	\$6,821
Task 3	-	Draft and Final Report	1	6	8	12	12	0	39	\$1,536	\$2,739	\$4,275	\$ 1,200	\$427	\$5,902
Task 4	-	Project Management and QA/QC	1	8	0	0	0	0	9	\$552	\$984	\$1,536		\$154	\$1,690
		Total Tasks 1 - 4	4	20	28	56	52	0	160	\$6,108	\$10,891	\$16,999	\$ 1,200	\$1,700	\$19,898



THE CITY OF NASHUA

*Financial Services
Purchasing Department*

"The Gate City"

June 30, 2016
Memo #17-005

TO: MAYOR DONCHESS
FINANCE COMMITTEE

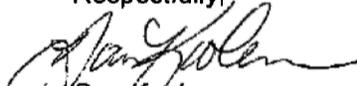
SUBJECT: SEWER AND DRAIN PIPE AND STRUCTURE INSPECTION (VALUE: \$113,423)
DEPARTMENT: 169 WASTEWATER; FUND: WASTEWATER
ACTIVITY DESCRIPTION: SEWER REHAB

Please see the attached communication from Stephen Dookran, P.E., City Engineer dated June 23, 2016 for the information related to this purchase.

Pursuant to **§ 5-78 Major purchases (greater than \$10,000)** A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$10,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

The City Engineer, Board of Public Works (6/23/2016 Meeting) and the Purchasing Department recommend the award of this contract in an amount of **\$113,423** to **Ted Berry Company, Inc.** of **Livermore, ME.**

Respectfully,


Dan Kooker
Purchasing Manager

Cc: S Dookran L Fauteux

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: June 23, 2016
From: Stephen Dookran, P.E., City Engineer
Engineering Department
Re: Paving Program
Sewer and Drain Pipe and Structure Inspection

G. Motion: To approve the contract for Sewer and Drain Pipe and Structure Inspection to Ted Berry Company, Inc. of Livermore, ME in the amount of \$113,423. Funding will be through: Department 169 Wastewater; Fund: Wastewater; Activity: Sewer Rehab.

Discussion: This project will inspect and investigate sewer and drain infrastructure focusing on streets included as part of the annual Paving Program and includes pipe cleaning, video inspection, structure cleaning and structure inspection. Information obtained will be used to determine the need for repairs to sewer mains, storm drains, catch basins, and catch basin laterals and manholes prior to paving. This inspection data will be used as part of the assessment of the collection systems and included in the Cartegraph Asset Management System data base.

The project was advertised on April 29, 2016. Four bids were received on June 9, 2016 and are as follows:

Ted Berry Company, Inc.	\$ 113,423
Eastern Pipe Service	\$ 116,250
National Water Main Cleaning	\$ 180,998
Heitkamp, Inc.	\$ 397,421

Ted Barry Company is the qualified, low bidder. The bid price is reasonable and compares favorably to the engineers estimate. Ted Berry Company has satisfactorily completed other projects for the City.



**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

This agreement is made:

BETWEEN the OWNER: City of Nashua, New Hampshire
229 Main Street
Nashua, NH 03060-2019

And the CONTRACTOR: Ted Barry Company, Inc.
and its successors, transferees and assignees
(together "CONTRACTOR")

For the following Project: Sewer and Drain Pipe and Structure Inspection
(IFB0844-060916)

ARTICLE 1 – THE CONTRACT DOCUMENTS

The **CONTRACTOR** shall complete the work described in the Contract Documents for this project. The documents consist of:

1. This Agreement signed by the **OWNER** and **CONTRACTOR**, including the General Terms and Conditions;
2. Scope of Work – **IFB0844-060916 and addendums issued;**
3. Drawings and Specifications provided in the bid documents;
4. Ted Barry Co, Inc.- **Bid Proposal and Schedule of Values, dtd June 8, 2016;**
5. Change Order Form;
6. Insurance Certificate;
7. Written change orders for minor changes in the Work issued after execution of this Agreement; and
8. Fully Executed **OWNER** Purchase Order

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

In the event of a conflict between the terms of the Proposals and the terms of this Agreement, a written change order and/or fully executed **OWNER** Purchase Order, the terms of this Agreement, the written change order or the fully executed **OWNER** Purchase Order shall control over the terms of the Proposals

ARTICLE 2 – DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE

The date of commencement shall be the date of the Notice to Proceed which is expected to be **Monday, July 18, 2016**. Substantial Completion shall be **October 15, 2016**. Substantial completion is defined as when all work is completed in the street. Final completion shall be **November 15, 2016**. Final completion is defined as when all deliverables have been submitted and deliverables are acceptable to the City.

ARTICLE 3 – CONTRACT SUM

Subject to additions and deductions by Change Order, the **OWNER** shall pay **CONTRACTOR**, in accordance with the Contract Documents, the Contract Sum of:

One Hundred Thirteen Thousand Four Hundred Twenty-Three Dollars (\$113,423.00)

The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

ARTICLE 4 – INSURANCE AND INDEMNIFICATION

CONTRACTOR shall carry and maintain in effect during the performance of services under this contract:

- General liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
- Motor Vehicle Liability: \$1,000,000 Combined Single Limit;
***Coverage must include all owned, non-owned and hired vehicles.**
- Workers' Compensation Coverage in compliance with the State of NH Statutes, \$100,000/\$500,000/\$100,000.

CONTRACTOR and subcontractors at every tier will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

The parties agree that **CONTRACTOR** shall have the status of and shall perform all work under this contract as an independent **CONTRACTOR**, maintaining control over all its consultants, sub consultants, or subcontractor's. The only contractual relationship created by this contract is between the **OWNER** and **CONTRACTOR**, and nothing in this contract shall create any contractual relationship between the **OWNER** and **CONTRACTOR**'s consultants, sub consultants, or subcontractor's. The parties also agree that **CONTRACTOR** is not an **OWNER** employee and that there shall be no:

1. Withholding of income taxes by the **OWNER**;
2. Industrial insurance coverage provided by the **OWNER**;
3. Participation in group insurance plans which may be available to employees of the **OWNER**;

4. Participation or contributions by either the independent **CONTRACTOR** or the **OWNER** to the public employee's retirement system;
5. Accumulation of vacation leave or sick leave provided by the **OWNER**;
6. Unemployment compensation coverage provided by the **OWNER**.

CONTRACTOR will provide the **OWNER** with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the **OWNER** issues the notice of award. The **OWNER** requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability and Auto Liability policies must name the OWNER as an additional insured** and reflect on the certificate of insurance. **CONTRACTOR** is responsible for filing updated certificates of insurance with the **OWNER's** Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, **CONTRACTOR** must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve **CONTRACTOR** of its responsibilities or limit the amount of its liability to the **OWNER** or other persons, and **CONTRACTOR** is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the **OWNER** shall be called upon to contribute to a loss.
- **CONTRACTOR** is responsible for and required to remedy all damage or loss to any property, including property of the **OWNER**, caused in whole or part by **CONTRACTOR** or anyone employed, directed, or supervised by **CONTRACTOR**.

Regardless of any coverage provided by any insurance, **CONTRACTOR** agrees to indemnify and shall defend and hold harmless the **OWNER**, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of **CONTRACTOR** or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. **CONTRACTOR's** indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

General Terms and Conditions

ARTICLE 5 – GENERAL PROVISIONS

1. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification.
2. The term “Work” means the construction and services required by the Contract Documents, and include all other labor, materials, equipment and services provided by the **CONTRACTOR** to fulfill the **CONTRACTOR**'s obligations.
3. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the **CONTRACTOR**. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
4. In the case of a discrepancy, calculated dimensions will govern over scaled dimensions, Contract Drawings will govern over Standard Specifications, and Technical Specifications will govern over both Contract Drawings and Standard Specifications. In the case of a discrepancy between the Agreement and other Contract Documents, the more specific or stringent obligation or requirement to the benefit of the **OWNER** shall take precedence.
5. The **CONTRACTOR** shall take no advantage of any apparent error or omission in the Contract Drawings or Technical Specifications, and the Engineer will be permitted to make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract Documents.

ARTICLE 6 – OWNER

1. Except for permits and fees, which are the responsibility of the **CONTRACTOR** under the Contract Documents, the **OWNER** shall obtain and pay for other necessary approvals, easements, assessments and charges.
2. If the **CONTRACTOR** fails to correct Work that is not in accordance with the Contract Documents, the **OWNER** may direct the **CONTRACTOR** in writing to stop the Work until the correction is made.
3. If the **CONTRACTOR** defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the **OWNER** to correct such default or neglect with diligence and promptness, the **OWNER** may, without prejudice to other remedies, correct such deficiencies. In such case, a Change Order shall be issued deducting the cost of correction from payments due the **CONTRACTOR**.
4. The **OWNER** reserves the right to perform construction or operations related to the project with the **OWNER**'s own forces, and to award separate contracts in connection with other portions of the project.
5. The **CONTRACTOR** shall coordinate and cooperate with separate **CONTRACTORS** employed by the **OWNER**.
6. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

ARTICLE 7 – CONTRACTOR

1. Execution of the Contract by the **CONTRACTOR** is a representation that the **CONTRACTOR** has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
2. The **CONTRACTOR** shall carefully study and compare the Contract Documents with each other and with information furnished by the **OWNER**. Before commencing activities, the **CONTRACTOR** shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the **CONTRACTOR** with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the **OWNER**.
3. Within ten (10) days of notification of award, and prior to commencement of work, the **CONTRACTOR** shall obtain and forward to **OWNER** a Performance Bond and a Payment Bond representing 100% of the contract work
4. The **CONTRACTOR** shall supervise and direct the Work, using the **CONTRACTOR's** best skill and attention. The **CONTRACTOR** shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.
5. The **CONTRACTOR**, as soon as practicable after award of the Contract, shall furnish in writing to the **OWNER** the names of subcontractors or suppliers for each portion of the Work. The **OWNER** will promptly reply to the **CONTRACTOR** in writing if, after due investigation, he has reasonable objection to the subcontractors or suppliers listed.
6. Unless otherwise provided in the Contract Documents, the **CONTRACTOR** shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work.
7. The **CONTRACTOR** shall deliver, handle, store and install materials in accordance with manufacturers' instructions.
8. The **CONTRACTOR** warrants to the **OWNER** that (1) materials and equipment furnished under the contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.
9. The **CONTRACTOR** shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.
10. The **CONTRACTOR** shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.
11. The **CONTRACTOR** shall comply with and give notices required by agencies having jurisdiction over the Work. If the **CONTRACTOR** performs Work knowing it to be contrary to laws, statutes, ordinances building codes, and rules and regulations without notice to the **OWNER**, the **CONTRACTOR** shall assume full responsibility for such Work and shall bear the attributable costs. The **CONTRACTOR** shall promptly notify the **OWNER** in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

12. The **CONTRACTOR** shall promptly review, approve in writing and submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.
13. The **CONTRACTOR** shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the **OWNER**.
14. The **CONTRACTOR** shall be responsible for cutting, fitting or patching required completing the Work or to make its parts fit together properly.
15. The **CONTRACTOR** shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work.
16. **CONTRACTOR** warrants and guarantees to **OWNER**, **1 (one) year**, upon completion of work, that all Work will be in accordance with the Contract Documents and will not be defective. **CONTRACTOR**'s warranty and guarantee hereunder excludes defects or damage caused by:
 - Abuse, modification, or improper maintenance or operation by persons other than **CONTRACTOR**, subcontractors, suppliers, or any other individual or entity for whom **CONTRACTOR** is responsible; or
 - Normal wear and tear under normal usage.

ARTICLE 8 – CHANGES IN THE WORK

1. After execution of the Contract, changes in the Work may be accomplished by Change Order or by order for a minor change in the Work. The **OWNER**, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
2. A Change Order shall be a written order to the **CONTRACTOR** signed by the **OWNER** to change the Work, Contract Sum or Contract Time.
3. Change Order requests must include material and equipment cost plus labor with a profit margin of no more than 10%. Change Orders **may require approval** by the Board of Public Works and the **OWNER**'s Finance Committee vote prior to proceeding.
4. The **OWNER** will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be written orders and shall be binding on the **OWNER** and **CONTRACTOR**. The **CONTRACTOR** shall carry out such written orders promptly.
5. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment following authorization of the **OWNER** to the charges.

ARTICLE 9 – TIME

1. Time limits stated in the Contract Documents are of the essence to the Contract.
2. If the **CONTRACTOR** is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the **CONTRACTOR**'s control, the Contract Time shall be extended by Change Order for such reasonable time as may be determined.

ARTICLE 11 – PAYMENTS AND COMPLETION

1. The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the **OWNER** to the **CONTRACTOR** for performance of the Work under the Contract Documents.
2. Once every **thirty (30) days**, the **CONTRACTOR** shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such application shall be supported by such data substantiating the **CONTRACTOR's** right to payment as the **OWNER** may reasonably require.
3. Application for Payment performed under this agreement shall be submitted directly to:

**City of Nashua
Accounts Payable
PO Box 2019
Nashua, NH 03061-2019
Attn: Todd Welch**

- To facilitate the proper and timely payment of applications, the **OWNER** requires that all applications contain a valid **PURCHASE ORDER NUMBER**.
4. The **CONTRACTOR** warrants that title to all Work covered by an Application for Payment will pass to the **OWNER** no later than the time of payment. The **CONTRACTOR** further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the **OWNER** shall, to the best of the **CONTRACTOR's** knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the **OWNER's** interests.
 5. **OWNER** shall make payments, for work satisfactorily completed and accurately invoiced, on the basis of **CONTRACTORs** Application for Payment, within **30** days of approval by the **OWNER**.
 6. The **CONTRACTOR** shall promptly pay each subcontractor and supplier out of the amount paid to the **CONTRACTOR** on account of such entities' portion of the Work.
 7. The **OWNER** shall have no responsibility for the payment of money to a subcontractor or supplier.
 8. An Application for Payment, a progress payment, or partial or entire use or occupancy of the project by the **OWNER** shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.
 9. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the **OWNER** can occupy or utilize the Work for its intended use.
 10. When the Work or designated portion thereof is substantially complete, the **CONTRACTOR** and **OWNER** shall establish responsibilities for completion and shall fix the time within which the **CONTRACTOR** shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

11. Upon receipt of a final Application for Payment, the **OWNER** will inspect the Work. When he finds the Work acceptable and the Contract fully performed, the **OWNER** will promptly issue a final Certificate for Payment.
12. Acceptance of final payment by the **CONTRACTOR**, a subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 11– RETAINAGE

1. The **OWNER** will retain a portion of the progress payment, each month, in accordance with the following procedures:
 - a. The **OWNER** will establish an escrow account in the bank of the **OWNER's** choosing. The account will be established such that interest on the principal will be paid to the **CONTRACTOR**. The principal will be the accumulated retainage paid into the account by the **OWNER**. The principal will be held by the bank, available only to the **OWNER**, until termination of the contract.
 - b. Until the work is 50% complete, as determined by the **OWNER**, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage will be deposited in the escrow account established above.
 - c. After the work is 50% complete, and provided the **CONTRACTOR** has satisfied the **OWNER** in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount will be withheld. The escrow account will remain at the same balance throughout the remainder of the project.
2. Upon final completion and acceptance of the Work, **OWNER** shall hold 2% retainage during the **1 (one) year** warranty period and release it only after the project has been accepted.

ARTICLE 12– PROTECTION OF PERSONS AND PROPERTY

1. The **CONTRACTOR** shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The **CONTRACTOR** shall promptly remedy damage and loss to property caused in whole or in part by the **CONTRACTOR**, or by anyone for whose acts the **CONTRACTOR** may be liable.

ARTICLE 13 – CORRECTION OF WORK

1. The **CONTRACTOR** shall promptly correct Work rejected by the **OWNER** as failing to conform to the requirements of the Contract Documents. The **CONTRACTOR** shall bear the cost of correcting such rejected work
2. In addition to the **CONTRACTOR's** other obligations including warranties under the Contract, the **CONTRACTOR** shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

3. If the **CONTRACTOR** fails to correct nonconforming Work within a reasonable time, the **OWNER** may correct it and the **CONTRACTOR** shall reimburse the **OWNER** for the cost of the correction.

ARTICLE 14 – PROHIBITED INTERESTS

CONTRACTOR shall not allow any officer or employee of the **OWNER** to have any indirect or direct interest in this contract or the proceeds of this contract. **CONTRACTOR** warrants that no officer or employee of the **OWNER** has any direct or indirect interest, whether contractual, non-contractual, financial or otherwise, in this contract or in the business of the **CONTRACTOR**. **CONTRACTOR** also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. **CONTRACTOR** further warrants that no person having such an interest shall be employed in the performance of this contract. If any such interest comes to the attention of **CONTRACTOR** at any time, a full and complete disclosure of the interest shall be immediately made in writing to the **OWNER**. If **OWNER** determines that a conflict exists and was not disclosed to the **OWNER**, it may terminate the contract at will or for cause.

ARTICLE 15 – TERMINATION OF THE CONTRACT

TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL

The **OWNER**, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the **OWNER** chooses to terminate, abandon, or suspend all or part of the project, it shall provide **CONTRACTOR** 10 day's written notice of its intent to do so. If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or that part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, **CONTRACTOR** shall:

- a. Immediately discontinue work on the date and to the extent specified in the notice.
- b. Provide the **OWNER** with a list of all unperformed services.
- c. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
- d. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the **OWNER** of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the **OWNER** any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
- e. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the **OWNER** to resume performance.

In the event of a termination, abandonment, or suspension at will, **CONTRACTOR** shall receive all amounts due and not previously paid to **CONTRACTOR** for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter

completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

TERMINATION FOR CAUSE

This agreement may be terminated by the **OWNER** on 10 calendar day's written notice to **CONTRACTOR** in the event of a failure by **CONTRACTOR** to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the **OWNER**, to complete or make sufficient progress on the work in a timely and professional manner. **CONTRACTOR** shall be given an opportunity for consultation with the **OWNER** prior to the effective date of the termination. **CONTRACTOR** may terminate the contract on 10 calendar days written notice if, through no fault of **CONTRACTOR**, the **OWNER** fails to pay **CONTRACTOR** for 45 days after the date of approval by the **OWNER** of any Application for Payment.

Upon receipt of notice of termination for cause, **CONTRACTOR** shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the **OWNER** with a list of all unperformed services.
3. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the **OWNER** of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the **OWNER** any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
5. Not resume work after the effective date of a notice of termination unless and until receipt of a written notice from the **OWNER** to resume performance.

In the event of a termination for cause, **CONTRACTOR** shall receive all amounts due and not previously paid to **CONTRACTOR** for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the **OWNER** by reasons of **CONTRACTOR's** failure. **CONTRACTOR** shall not be relieved of liability to the **OWNER** for damages sustained from the failure, and the **OWNER** may withhold any payment to the **CONTRACTOR** until such time as the exact amount of damages due to the **OWNER** is determined. All claims for payment by the **CONTRACTOR** must be submitted to the **OWNER** within 30 days of the effective date of the notice of termination.

If after termination for the failure of **CONTRACTOR** to adhere to any of the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the **OWNER**, to complete or make sufficient progress on the work in a timely and professional manner, it is determined that **CONTRACTOR** had not so failed, the termination shall be deemed to have been a termination at will. In that event, the **OWNER** shall, if necessary, make an adjustment in the compensation paid to **CONTRACTOR** such that **CONTRACTOR** receives total compensation in the same amount as it would have received in the event of a termination-at-will.

GENERAL PROVISIONS FOR TERMINATION

Upon termination of the contract, the **OWNER** may take over the work and prosecute it to completion by agreement with another party or otherwise. Upon termination of the contract or in the event **CONTRACTOR** shall cease conducting business, the **OWNER** shall have the right to solicit applications for employment from any employee of the **CONTRACTOR** assigned to the performance of the contract. Neither party shall be considered in default of the performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of **CONTRACTOR's** principals, officers, employees, agents, subcontractors, sub consultants, vendors, or suppliers are expressly recognized to be within **CONTRACTOR's** control.

ARTICLE 16- DISPUTE RESOLUTION

The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the **OWNER** Representative and the **CONTRACTOR** Representative. At all times, **CONTRACTOR** shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the **OWNER**. If the parties are unable to resolve their dispute as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

ARTICLE 17- CHOICE OF LAW AND VENUE

This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere

ARTICLE 18- MISCELLANEOUS PROVISIONS

1. Neither party to the Contract shall assign the Contract as a whole without written consent of the other.
2. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time.
3. If additional testing is required, the **CONTRACTOR** shall perform these tests.
4. The **OWNER** shall pay for tests except for testing Work found to be defective for which the **CONTRACTOR** shall pay.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

City of Nashua, NH (signature)

Ted Barry Co., Inc. (signature)

James Donchess, Mayor
(Printed Name and Title)

(Printed Name and Title)

Date

Date



THE CITY OF NASHUA

Financial Services
Purchasing Department

"The Gate City"

May 9, 2016

IFB0844-060916

**SEWER AND DRAIN PIPE AND STRUCTURE INSPECTION
ADDENDUM #1**

Information included in this document becomes a part of the original IFB.

Addendum #1 is being issued to include the plans for this IFB. The plans can be accessed on the City of Nashua website under Services>Bid Opportunities>Sewer and Drain Pipe and Structure Inspection>2016 4 28 Plans Sewer Drain Pipe Structure Inspection TO PURCHASING

All other aspects of the original document remain the same.

Please sign below to indicate receipt of this additional information and include this page with your bid submittal.

Respectfully,

Danielle Greenberg
City of Nashua - Purchasing Agent II
greenbergd@nashuanh.gov

Addendum #1 received and incorporated into bid submittal for IFB0844-060916
Please sign and include this addendum in your bid package.

(Authorized Signature)

6-8-16

(Date)

Ted Berry Company Inc

(Name of Firm)



May 26, 2016

IFB0844-060916

**SEWER AND DRAIN PIPE AND STRUCTURE INSPECTION
ADDENDUM #2**

Information included in this document becomes a part of the original IFB.

Addendum #2 is being issued to respond to submitted questions.

All other aspects of the original document remain the same.

Please sign below to indicate receipt of this additional information and include this page with your bid submittal.

Respectfully,

Danielle Greenberg
City of Nashua - Purchasing Agent II
greenbergd@nashuanh.gov

Addendum #2 received and incorporated into bid submittal for IFB0844-060916
Please sign and include this addendum in your bid package.

(Authorized Signature)

6-8-16

(Date)

Ted Berry Co Inc

(Name of Firm)

CITY OF NASHUA, NEW HAMPSHIRE
SEWER AND DRAIN PIPE
AND STRUCTURE INSPECTION
IFB 0844-060916

ADDENDUM NO. 2 – May 26, 2016

1. The following items were discussed at the pre-bid meeting conducted on May 9, 2016.
 - Root cutting will be done even if the camera can get passed.
 - Sample traffic control plans are available upon request.
 - Flagger rates should not exceed those specified in the contract.
 - The contract allows for free disposal at the Nashua Landfill.
 - Water is incidental to the cleaning item and a meter will need to be obtained from Pennichuck Water Works to get water.
 - Plans will be available showing pipe locations by the end of the day (May 9, 2016 or Addendum 1).
 - There were no questions/concerns about how to obtain GIS node numbers.
 - The format for deliverables needs to be approved by the City.
 - The proposed time frame for final completion was deemed acceptable to all.
 - There will be available parking for equipment off of Riverside St.
 - The City reviewed the submission dates and stressed that dates/times cannot be adjusted. If it's late, it will not be accepted. The submission dates are as follows:
 - a. Deadline for questions: Thursday, May 19, 2016 by 5:00pm
 - b. Deadline for addendum: Thursday, May 26, 2016 by 5:00pm
 - c. Deadline for Bids: Thursday, June 9, 2016 by 3:00pm at Purchasing Department
 - All addendums must be signed or the bids cannot be accepted.

2. Submitted questions with responses.
 - A. General, page 4, will a representative from the City be with the field crews on a day to day basis? The City will provide multiple points of contact and contacts will be available on short notice to answer questions or make decisions. However, in most cases, a representative will not be with the field crews on a day to day basis.

 - B. Maintenance of Traffic (Item 58), Page 11 lists streets where work is restricted to 9:00 am to 3:00pm. Would the City approve the contractor working a night shift with Uniformed Police Detail on the busiest streets: Main, Amherst and Canal? Working a night shift on these streets is a possibility. Some preplanning would be required to determine how to address issues related to City staffing, and City approved field decisions.



THE CITY OF NASHUA

Financial Services

Purchasing Department

"The Gate City"

April 29, 2016

INVITATION TO BID

Sewer and Drain Pipe and Structure Inspection IFB0844-060916

The City of Nashua Division of Public Works invites qualified contractors to submit bids for the **Sewer and Drain Pipe and Structure Inspection** project. The purpose of the project is to inspect sewer and drain pipes and structures focusing on streets that need to be paved. The work includes pipe video, pipe cleaning, structure inspection, and structure cleaning. Videos and reports of inspections will be provided to the city for evaluation prior to paving streets.

INSTRUCTIONS FOR BIDDERS

Bids must be submitted on the Bid Form in its entirety with **(1) original and two (2) copies**, in a sealed envelope plainly marked "**Sewer and Drain Pipe and Structure Inspection for Paving Program**" and must be received at Central Purchasing Office, 229 Main Street, Lower Level, Nashua, NH 03060 prior to **3:00 pm EST on Thursday, June 9, 2016**. Postmarks or other timestamps will not be accepted in lieu of actual delivery. The contractor can use whatever delivery mechanism it chooses as long as it remains clear that the contractor is responsible for submissions prior to the date and time. Further details are available on the City's web site, www.nashuanh.gov, under Services; Bid Opportunities; Bid Results, (Refer to Document **IFB0844-060916**) A list of bids received will be published on the website within twenty-four (24) hours after the opening.

There will be a **MANDATORY pre-bid meeting** at **9 Riverside Street, Nashua, NH 03062** at **11:00 AM on Monday, May 9, 2016**. The meeting is an opportunity for the City to overview the project and objectives and participants to request additional information directly from City staff managing or participating in the project. **You or your representatives are required to attend this meeting.**

Bid documents are available electronically on the City website: www.nashuanh.gov, under Services, Bid Opportunities; Current Bids; (Refer to Document **IFB0844-060916**).

Please note paper copies will not be available. No bid documents are available at the Central Purchasing office.

The timeline for this project is:

<u>Subject</u>	<u>Date</u>	<u>Time/Location</u>
Documents available	Thursday, April 29, 2016	5:00 p.m. on the City Web Site
Mandatory Pre-Bid Meeting	Monday May 9, 2016	11:00 a.m. at 9 Riverside Street
Deadline for questions to be submitted in writing	Thursday, May 19, 2016	5:00 p.m.
Addendum, if needed, posted	Thursday, May 26, 2016	5:00 p.m.
Bid Due	Thursday, June 9, 2016	3:00 p.m. Purchasing Department

The date of commencement shall be the date of the Notice to Proceed which is expected to be **Monday, July 18, 2016**. Substantial Completion shall be **October 15, 2016**. Substantial completion is defined as when all work is completed in the street. Final completion shall be **November 15, 2016**. Final completion is defined as when all deliverables have been submitted and deliverables are acceptable to the City.

Vendors are encouraged to submit questions via e-mail; however, the City assumes no liability for assuring accurate and complete email transmission/receipt and is not responsible to acknowledge receipt. **Inquiries must be submitted in writing, no later than Thursday, May 19, 2016 at 5:00 pm** citing the IFB title, IFB number, Page, Section to:

Todd Welch
Email: WelchT@NashuaNH.gov

The City will consider all timely-received questions and requests for change and, if reasonable and appropriate, will issue an addendum to clarify or modify this IFB. Answers to Vendor submitted questions and other addenda will be posted under document **IFB0844-060916** on the City of Nashua website; www.nashuanh.gov under Services; Bid Opportunities; Current Bids, (Refer to Document **IFB0844-060916**), **no later than Thursday, May 26, 2016 at 5:00 pm**.

No bidder may withdraw a bid within sixty (60) days after the actual date of bid opening.

Certificates of Liability and Workmen's Compensation Insurance must be filed by the successful bidder prior to commencement of work. Liability limits are as follows:

General Liability: \$1,000,000 per occurrence; \$2,000,000 aggregate

Automobile Liability: \$1,000,000 combined single limit

Coverage must include all owned, non-owned and hired vehicles.

City of Nashua must be named as an additional insured on all liability certificates.

Workers' Compensation: Per NH State Statute (\$100,000/\$500,000/\$100,000)

The City of Nashua may reject any or all of the bids on any basis and without disclosure of a reason. The failure to make such a disclosure shall not result in accrual of any right, claim or cause of action by any unsuccessful bidder against the City of Nashua. A bid that is abnormally high or low for any bid item, or as a whole, may be rejected as unbalanced.

To be eligible for an award, a bidder must be deemed "responsible". A responsible bidder 1) has the ability, capacity and skill to provide the goods or services required; 2) can provide the goods or services within the time frame specified; 3) has a satisfactory record of integrity, reputation, judgment and experience; 4) has sufficient financial resources to provide the goods or services; 5) has an ability to provide future maintenance and support as required; and 6) has developed a positive track record with the City of Nashua to the extent the bidder has previously provided goods or services.

The submission of a bid constitutes the bidder's acceptance of and agreement to the terms and conditions of this Invitation to Bid.

The City is exempt of all taxes. All bids must be FOB Nashua, NH. All bidders must comply with all applicable Equal Employment Opportunity laws and regulations.

Pursuant to NRO 5-78 (F), the purchasing manager shall not solicit a bid from a contractor who is in default on the payment of taxes, licenses or other monies due the city. Therefore, this bid request is void as to anyone who is in default on said payments.

Respectfully,



Danielle Greenberg
Purchasing Agent II
City of Nashua
greenbergd@nashuanh.gov

IFB0844-060916

SEWER AND DRAIN PIPE AND STRUCTURE INSPECTION FOR PAVING PROGRAM

SCOPE OF SERVICES:

General

The City of Nashua Division of Public Works (City) is requesting sewer and drain pipe video, and structure inspection services for 11 streets. There are approximately 35,000 LF of pipe and 400 structures to be cleaned and inspected.

The Contractor shall ensure inspection operations do not result in interruption of sewage service to any customer of the City. Sewage must be controlled within the pipeline at all times.

The Contractor shall notify and request the City for assistance, if needed, in connection with removal, dismantling, and replacement of any special equipment such as flow monitors or diversion gates within the manholes or pipelines of the system.

The Contractor shall be fully responsible for preventing sewage spillage, containing any sewage spillage, recovery and legal disposal of any spilled sewage, any fines, penalties, claims and liability arising from negligently causing a sewage spillage, and any violation of any law, ordinance, code, order, or regulation as a result of the spillage.

The City reserves the right to change the location of some streets if it is determined at a later date that there is more urgent need for services at other street(s). Furthermore, the City reserves the right to decrease or increase the scope as necessary depending on the availability of remaining funds. Should the City change street locations, or add or decrease the overall length of the video and cleaning services, such changes will occur at the unit costs bid in this proposal.

Pipe Cleaning for Sewer and Drain Main Lines (Items 1-13)

The Contractor shall furnish all labor, tools, equipment, materials, and supplies required for cleaning drain, sewer, and catch basin lateral pipes. Cleaning shall remove all obstructions from the pipe. All debris must be removed from the pipe, including any debris that may have been washed up into any service connections (does not include known pre-existing conditions in service connections), drop connections or the bench wall of the manholes. This includes all grease, rocks, debris, sticks, etc. that will reduce the hydraulic capacity of the sewer and limit future maintenance access of remote equipment. This work will include an unlimited number of passes by high velocity hydro-cleaning equipment. A mechanical/hydraulic Spinner Nozzle may be used where necessary at no additional cost to the City; however, the Contractor shall be responsible for any damage to the sewer or any service connections.

The contractor shall be responsible for making arrangements with Pennichuck Water Works for all water needs. Costs incurred for water shall be incidental to this item.

All debris from pipe and structure cleaning can be deposited at the City of Nashua Landfill, off Route 111 (West Hollis Street), at no charge. The Contractor shall coordinate with the Project Engineer prior to depositing debris at the landfill.

The Contractor shall maintain detailed documentation of cleaning efforts made to remove these items. Such documentation shall be made available to the City at any time.

This item will be paid for by the feet (FT) of pipe cleaned.

Pipe Cleaning for Catch Basin Laterals (Item 14)

See "Pipe Cleaning for Sewer and Drain Main Lines (Items 1-13)".

CCTV Inspection for Sewer and Drain Main Lines (Item 15-27)

The Contractor shall furnish all labor, tools, equipment, materials, and supplies required for CCTV inspection of sewer, drain, and catch basin lateral pipes as requested by the City, including in areas located within the City's easements on private property.

Plans shall be provided by the City showing streets and pipes where services are needed. Plans will not show all catch basin lateral pipes or structures.

Pipes types to be videoed include: sewer pipes, drain pipes, and catch basin lateral pipes. Pipe material, length, and diameter are provided where information is known from City records. Sewer and drain pipe video is required 30' into connecting streets. Video shall extend to the first manhole of the connector street. If the first manhole is less than 30' into the connecting street, video shall extend to the next manhole in that street.

Laterals of catch basins shall be videoed even when they extend more than 30' into connecting streets. In all situations, lateral videos shall be from the catch basin to structure or main line pipe.

In the event CCTV inspection cannot be performed by the contractor due to major debris accumulation and/or blockage, the contractor will clean the lines again then continue with the inspection. In addition, should upstream flows need to be stopped for inspection purposes; the contractor will notify the City prior to the placement of any flow stopping devices. The CCTV of this reach may need to be re-scheduled depending on the availability of a city crew. If a surcharge occurs, due to a blockage caused by the Contractor, the Contractor at his own expense shall repair it.

The camera shall be moved through the line in either direction at a uniform rate, stopping when necessary to ensure proper documentation of the sewer's condition. In no case shall the television camera be pulled at a speed greater than thirty feet per minute (30 fpm).

As the camera approaches a lateral connection or defect, the camera progress shall be halted and the camera lens panned to further view the lateral pipe and connection (including looking up the lateral) or defect to thoroughly evaluate the condition.

If during the television inspection the Contractor encounters a condition where public safety is threatened (such as, but not limited to, a pipe hole, pipe collapse, stoppage, blockage and/or eminent sewer spill) the City shall be notified immediately. Furthermore, the Contractor shall provide the City with a CD or DVD copy of the section of line containing the condition within 24 hours.

Accuracy of the measurements shall be checked daily by use of a walking meter roll-a-tape or other suitable device. Footage measurements shall begin at the centerline of the upstream manhole, unless specific permission is given to do otherwise.

Continuously displayed on the monitors shall be date of the inspection, GIS node numbers of the upstream and downstream manholes corresponding to the line section being inspected and a continuous forward and reverse footage readout of the camera distance from the manhole of reference.

The camera shall be operative in one hundred percent humidity and specifically designed for in sewer inspection of sewer lines ranging from 6 inch to 120 inch in diameter and inspection of various sized box conduits. The camera shall produce a continuously monitored picture with the resolution capability to discern small hairline cracks and other minor/major defects in the sewer line. It should be equipped with a ring of low intensity lights around the camera to obtain maximum peripheral vision and prevent fogging within the line being inspected. The camera shall be with a panning and rotational camera head with remote adjustable optical focus and automatic light compensating iris. Focal distance shall be adjustable through a range from 6 inches to infinity. Continuously displayed on the monitor shall be the date of the inspection, GIS node number of the upstream and downstream manholes corresponding to the line reach being inspected and a continuous forward and reverse readout of the camera distance from the manhole of reference. The camera, television monitor and other components of the video system shall be capable of producing a minimum 600-line resolution. The TV transmission and tow cable assembly must have the capability to CCTV lengths up to 1,000 feet. The remote footage counter shall be accurate to one percent over the length of the particular section being inspected.

A Nationally Recognized Testing Laboratory must approve all electrical equipment, including CCTV cameras, for use in a Hazardous location and wet environments. Specifically, this equipment must be approved for use in Class I, Division I, Group D Hazardous Locations as defined by the National Fire Protection Association (NFPA) Code 820-1999.

The Contractor shall have the ability to communicate with its vehicle at all times.

This item will be paid for by the feet (FT) of pipe videoed.

CCTV Inspection for Catch Basin Laterals (Item 28)

See "CCTV Inspection for Sewer and Drain Main Lines (Item 15-27)".

Root Cutting (Item 29-31)

The Contractor shall furnish all labor, tools, equipment, materials, and supplies required for removing roots in pipes, pipe joints, etc. The City shall determine if the pipe segment requires root cutting. All roots must be screened, collected, and removed for proper disposal. The contractor shall immediately notify the City if they believe the activities performed under this section will cause a sewer collapse due to the existing deterioration of the pipe. City's determination whether to continue or stop work is final.

This item will be paid for by the feet (FT) of roots cleared from the pipe.

Lateral Cutting (Item 32-33)

The Contractor shall furnish all labor, tools, equipment, materials, and supplies required for removing protruding lateral pipes prohibiting CCTV inspection. The City shall determine when lateral connections will require grinding based on review of the initial CCTV inspection. The Contractor shall cut/grind the protruding service connection by using a remote grinding/cutting device capable of removing, concrete, vitrified clay, PVC and other types of pipe material. The device shall be specifically designed to cut/grind protruding service connections. The Contractor shall use remote CCTV equipment to monitor the progress of the work and ensure that the service connection is not damaged.

The service connection shall be cut/ground flush to the main pipe without scouring or damaging the main pipe or service connection. All cuttings must be screened, collected, and removed from the pipe for proper disposal. During the final survey television inspection, the Contractor shall slowly pan the entire circumference of the trimmed connection to verify the quality of the work.

The Contractor shall immediately notify the City if he believes that the pipe is not structurally sound. The Contractor and City shall discuss the severity and risk of cutting/grinding the lateral. The City shall then determine, if they want the lateral cut/ground, at the City's risk, or if the work should not be performed on this contract.

If other than typical lateral materials are encountered, the Contractor shall notify the City and the City and Contractor should discuss the ability, costs and risks associated with cutting/grinding the lateral. The City shall decide whether to cut/grind the lateral or to not cut/grind the lateral. If the City decides to cut/grind the lateral, the price should be negotiated between the City and Contractor, prior to cutting/grinding the lateral.

The Contractor shall keep records of types of debris, removed from each segment of pipe and provide these records to City.

This item will be paid for by Each (EA) lateral cut.

Catch Basin Cleaning and Inspection (Item 34)

The Contractor shall furnish all labor, tools, equipment, materials, and supplies required for clean and inspect catch basins prior to inspection.

The contractor shall be responsible for making arrangements with Pennichuck Water Works for all water needs. Costs incurred for water shall be incidental to this item.

All debris from structure cleaning can be deposited at the City of Nashua Landfill, off Route 111 (West Hollis Street), at no charge. The Contractor shall coordinate with the Project Engineer prior to depositing debris at the landfill.

See "Structure Report (Item 47-57)" for inspection requirements.

This item will be paid for by each (EA) catch basin cleaned and inspected.

Sewer and Drain Manhole Cleaning and Inspection (Item 35)

See "Catch Basin Cleaning and Inspection (Item 34)".

Pipe Video and Report (Item 36-46)

Video

The contractor shall provide color copies of all pipe video within one week from completion. Videos shall be provided on a CD or DVD. Videos shall be in MPEG-2, MP4, or WMV file format. Files shall be labeled with the street name, to and from streets, and the date the video was taken (example Kinsley St Video (Hanover St to Main St) 2016 1 31). Video shall comply with CCTV Inspection for Sewer and Drain Main Lines (Item 15-27).

Video will include a narration identifying the pipe segment, all connections, general conditions of the pipe, problem areas, condition of all connections, observations concerning the condition of pipe joints, etc.

GIS node numbers shall be used to identify every manhole and catch basin for videoing, cleaning, and inspection. Node numbers can be obtained from GIS on the Cities website. Some structures may not have GIS node ID's. The report shall indicate when that is the case.

Video Report

The contractor shall provide color video reports on a CD, DVD, or flash drive. Reports shall be in PDF format and follow the same file labeling structure as the videos (example Kinsley St Report (Hanover St to Main St) 2016 1 31). Reports shall be prepared for the entire length of each street videoed, and shall provide a graphic image of the starting and ending manhole/catch basin locations.

The report shall contain still color photographs clearly showing the location in relation to adjacent manholes, of each lateral connection and defect discovered. In addition, brief and informative

comments shall be made on sewer conditions and other data of significance including the locations of unusual conditions, cracks, misalignments, collapsed sections, presence of debris and deposits and other discernable features.

GIS node numbers shall be used to identify every manhole and catch basin for videoing, cleaning, and inspection. Node numbers can be obtained from GIS on the Cities website. Some structures may not have GIS node ID's. The report shall indicate when that is the case.

A sample report shall be submitted to the City and approved by the City prior to commencement of work.

Payment shall be per each (EA). Each is defined as an entire street including all side streets. Eleven entire streets are included in this contract. Therefore 11 submittals will be due.

Structure Report (Item 47-57)

The contractor shall provide color catch basin and manhole inspection report. Reports shall be provided on a CD, DVD, or Flash Drive. Reports shall be in PDF format and contain images of the structure and structure defects. Reports shall note items of concern (cracks, unsuitable brick work, broken pipe connections, etc.), and general conditions of the structures. Generally, structure inspections should identify the same defects as in a MACP condition assessment.

GIS node numbers shall be used to identify every manhole and catch basin to be cleaned, and inspected. Node numbers can be obtained from GIS on the Cities website. Some structures may not have GIS node ID's. The report shall indicate when that is the case.

A sample report shall be submitted to the City and approved by the City prior to commencement of work.

Payment shall be per each (EA). Each is defined as an entire street including all side streets. Eleven entire streets are included in this contract. Therefore 11 submittals will be due.

Maintenance of Traffic (item 58)

The Contractor shall be responsible for maintaining "local" traffic at all times and for notifying the proper authorities regarding the closing of the roads or lanes. The Contractor will be responsible for obtaining all permits required for maintenance of traffic. The City requires a lane/road closure permit and a basic traffic control plan.

Proper Authorities:

Nashua Department of Public Works Engineering: (603) 589-3120

Nashua Police Department: (603) 594-3500

Nashua Fire Department: (603) 594-3652

Schools Bus Garage: (603) 594-4300

Nashua Solid Waste Department: (603) 589-3410

Nashua Building Department: (603) 589-3080

The Contractor shall not begin work until standard barricades and warning signs are in an acceptable position and the markers and signs conform to the Federal Highway Administration (FHWA) "Manual of Uniform Traffic Control Devices for Streets and Highways" and all applicable state and local requirements. The Contractor assumes all responsibilities and liabilities regarding strict adherence to applicable sections for the maintenance of traffic and public safety as set forth in the FHWA "Manual of Uniform Traffic Control Devices for Streets and Highways". All traffic control devices must be in place prior to starting work.

The Contractor shall maintain local traffic at all times during all phases of this project in a manner causing the least amount of inconvenience to the abutting property owners and traveling public. Temporary driveways, temporary roadways, or run around as may be necessary to provide vehicular access to and from the abutting properties shall be constructed, maintained, and subsequently removed by the Contractor as directed by the City.

The Contractor shall furnish all labor, materials, equipment and transportation necessary for the required maintenance of traffic needs based on the Contractor's daily operations in accordance with the latest approved MUTCD. At a minimum, the Contractor's crew shall, at all times, carry two (2) of the following signs to be erected as the need may arise:

- ROAD WORK AHEAD (MUTCD W20-1)
- ONE LANE ROAD AHEAD (MUTCD W20-4)
- DIRECTIONAL ARROW SIGN (MUTCD W1-6)
- FLAGGER SIGN (MUTCD W20-7)

Work in the following streets is restricted to 9:00 am to 3:00 pm:

Amherst St East Hollis St

Kinsley St Allds St

Canal St Bridge St

Broad St West Hollis St

Main St

Maintenance of traffic will be measured as a unit. Payment for maintenance of traffic shall be at the contract lump sum, which lump sum includes full compensation for material, equipment and labor to complete this portion of the Bid Schedule. The lump sum can only be amended by written, approved change order. Payments towards the lump sum will be made periodically based on the percent of the contract and the balance will be paid at final payment upon completion of all project requirements. Should the contract be terminated prior to completion, or the contract work not completed, total payment for this item shall be proportional to the percentage of the contract completed.

Flaggers (Item 59)

The Contractor shall supply qualified flaggers as per the latest approved NHDOT Standard Specifications for Road and Bridge Construction. Daily coverage needs to be approved by the Engineer. Payment for flaggers will be based on the actual number of hours authorized, as determined by the Engineer. An allowance for flaggers will be provided on the Bid Form. In no case shall the gross hourly rate exceed \$22/hour for straight time work and \$33/hour for overtime work.

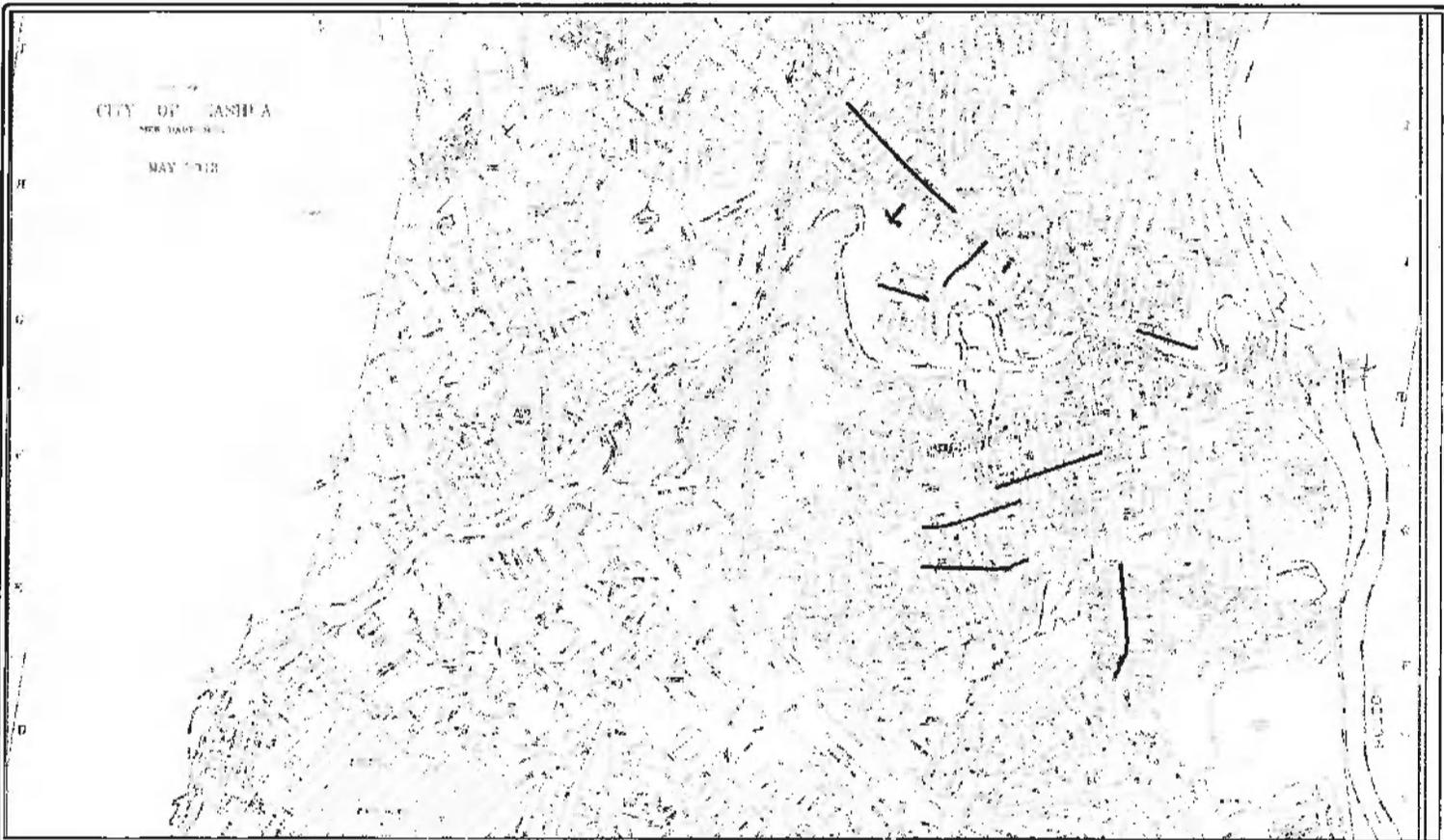
Payments to Contractor will be made based on approved hours and resulting dollar amounts. In the case of outsourced flagger services, payments to Contractor will be made only after Contractor's proof of payment to flagger company.

Officers (Item 60)

The Contractor shall supply qualified uniformed officers as per the latest approved NHDOT Standard Specifications for Road Construction. Uniformed officers shall only be used when the Engineer has previously approved it. Daily coverage needs to be approved by the Engineer. Uniformed officers will be measured by the actual number of hours authorized, as determined by the Engineer. An allowance for uniformed officers will be provided on the Bid Form.

Payments to Contractor will be made based on approved hours and resulting dollar amounts on Police Department invoices and only after contractor's proof of payment to Police Department.

CITY OF NASHUA
NEW HAMPSHIRE
MAY 2018



 CITY OF NASHUA NEW HAMPSHIRE
CITY ENGINEER'S OFFICE
9 RIVERSIDE STREET
NASHUA, NEW HAMPSHIRE 03062

NO.	REVISION/DESCRIPTION	DATE



DESIGNED BY: L. WELCH
DRAWN BY: J. WELCH



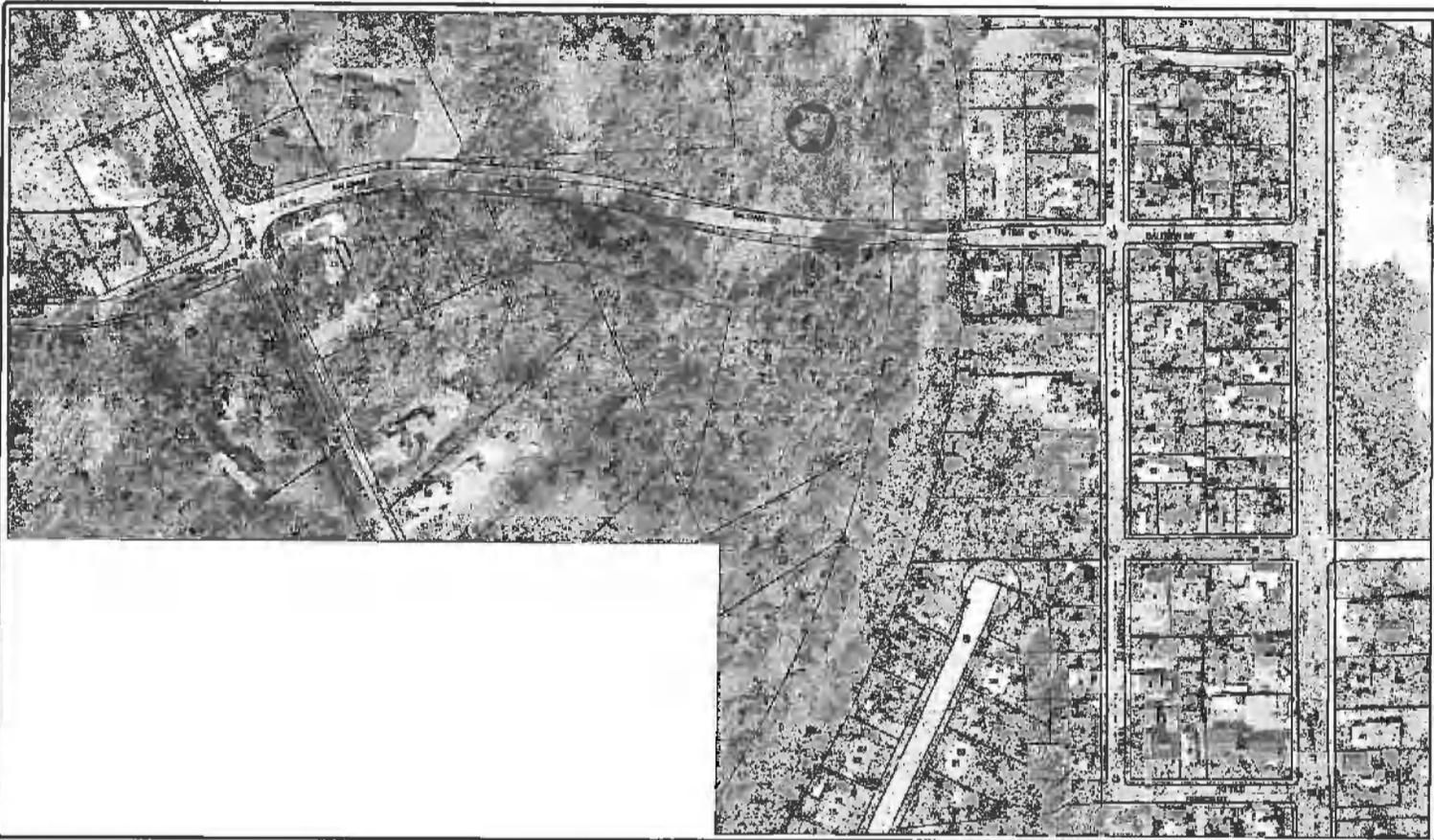
MAY 2018

NASHUA, NEW HAMPSHIRE
PLAN OF
**PIPE & STRUCTURE INSPECTION
FOR PAVING PROGRAM**
LOCUS MAP

SHEET
3
OF 3



 <p>CITY OF NASHUA NEW HAMPSHIRE CITY ENGINEER'S OFFICE 8 RIVERSIDE STREET NASHUA, NEW HAMPSHIRE 03062</p>	<table border="1"><thead><tr><th>NO.</th><th>DESCRIPTION</th><th>DATE</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></tbody></table>	NO.	DESCRIPTION	DATE														 <p>1" = 20' (AS SHOWN)</p> <table border="1"><thead><tr><th>DRAWN BY:</th><th>CHECKED BY:</th><th>REVISIONS BY:</th></tr></thead><tbody><tr><td>T. WELSH</td><td>S. VILLOI</td><td>J. HANCOCK</td></tr></tbody></table>	DRAWN BY:	CHECKED BY:	REVISIONS BY:	T. WELSH	S. VILLOI	J. HANCOCK		<p>PIPE & STRUCTURE INSPECTION FOR PAVING PROGRAM ANNHEST ST 1</p>	<table border="1"><tr><td>DATE</td><td>SHEET</td></tr><tr><td>MAY 2018</td><td>4</td></tr></table>	DATE	SHEET	MAY 2018	4
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CITY OF NASHUA NEW HAMPSHIRE
CITY ENGINEER'S OFFICE
 9 RIVERSIDE STREET
 NASHUA, NEW HAMPSHIRE 03062

NO.	REVISION DESCRIPTION	DATE



<p>VERTICAL SCALE IN FEET 1" = 10.0'</p>		
DESIGNED BY	DRAWN BY	CHECKED BY
T. WILSON	T. WILSON	A. BISHOP



NASHUA, NEW HAMPSHIRE
 PLAN OF
PIPE & STRUCTURE INSPECTION
FOR PAVING PROGRAM
 BALDWIN ST & BRUCE ST

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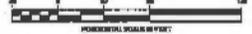
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CITY OF NASHUA NEW HAMPSHIRE
CITY ENGINEER'S OFFICE
 8 RIVERSIDE STREET
 NASHUA, NEW HAMPSHIRE 03062

NO.	REVISION DESCRIPTION	DATE



 HORIZONTAL SCALE IN FEET SCALE 1"=50'		
DESIGNED BY T. WELLS	ENGINEERED BY T. WELLS	INSPECTED BY J. BRONCKA



NASHUA, NEW HAMPSHIRE
 PLANS OF
PIPE & STRUCTURE INSPECTION
FOR PAVING PROGRAM
 BROADVIEW AVE & FOX ST

DATE
JULY
2016
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CITY OF NASHUA NEW HAMPSHIRE
CITY ENGINEER'S OFFICE
 9 RIVERSIDE STREET
 NASHUA, NEW HAMPSHIRE 03062

NO.	TYPE/DESCRIPTION	DATE




 HORIZONTAL SCALE IN FEET
 1" = 20'

DRAWN BY: T. WELCH	CHECKED BY: T. WELCH	DESIGNED BY: J. MINICKA
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NASHUA, NEW HAMPSHIRE
 IN MAY 2018
**PIPE & STRUCTURE INSPECTION
 FOR PAVING PROGRAM**
 DNAL ST

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 **CITY OF NASHUA NEW HAMPSHIRE**
CITY ENGINEER'S OFFICE
9 RIVERSIDE STREET
NASHUA, NEW HAMPSHIRE 03062

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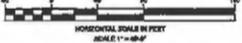

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VERTICAL SCALE IN FEET
DRAWN BY: T. KELLY
CHECKED BY: J. WOODS
APPROVED BY: J. WOODS

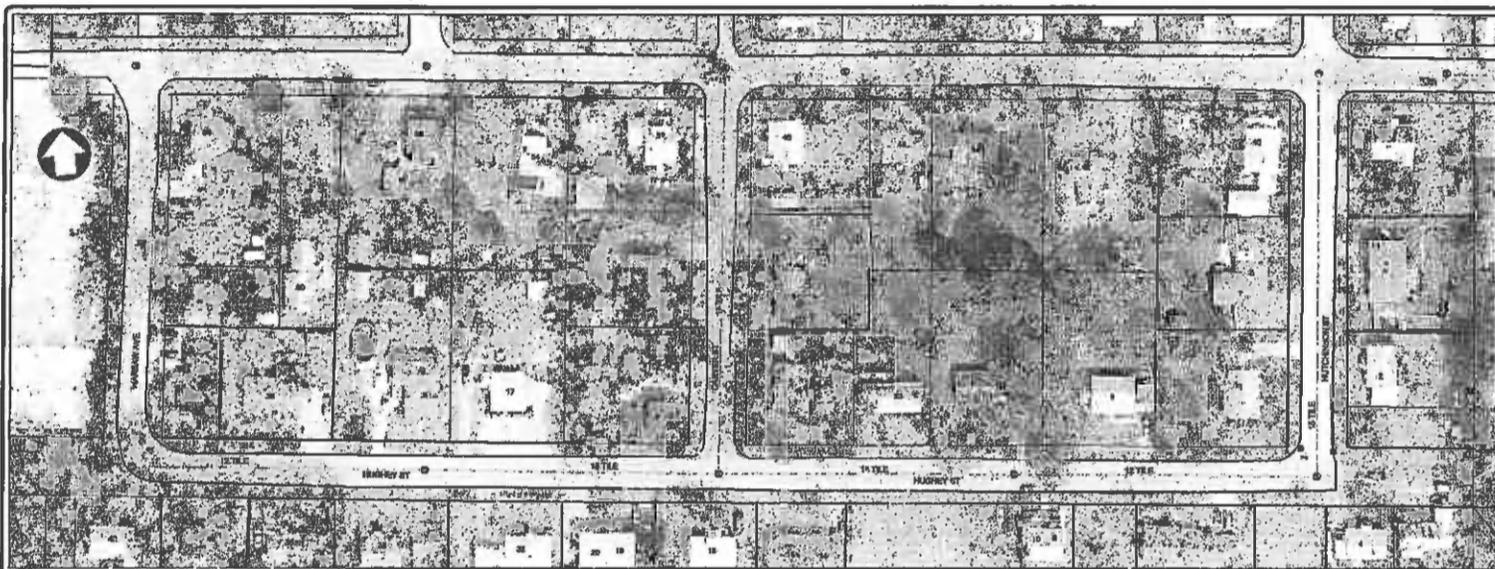


NASHUA, NEW HAMPSHIRE
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FOR PAVING PROGRAM**
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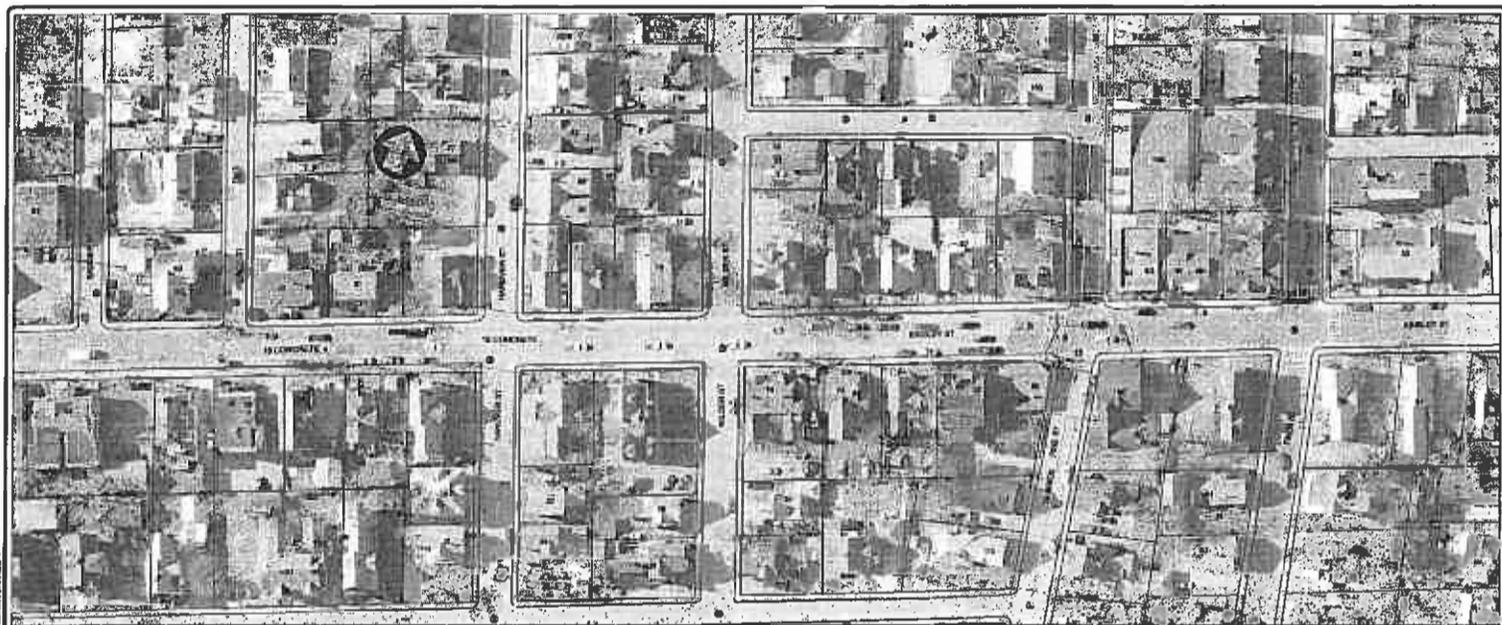
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 <p>CITY OF NASHUA NEW HAMPSHIRE CITY ENGINEER'S OFFICE 9 RIVERSIDE STREET NASHUA, NEW HAMPSHIRE 03062</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">NO.</th> <th style="width: 85%;">REVISION DESCRIPTION</th> <th style="width: 10%;">DATE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	REVISION DESCRIPTION	DATE								 <p>HORIZONTAL SCALE IN FEET SCALE: 1" = 40'-0"</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">DRAWN BY: T. WELCH</td> <td style="width: 33%;">DESIGNED BY: T. WELCH</td> <td style="width: 33%;">REVIEWED BY: J. MERRILL</td> </tr> </table>	DRAWN BY: T. WELCH	DESIGNED BY: T. WELCH	REVIEWED BY: J. MERRILL	 <p>NASHUA, NEW HAMPSHIRE PLAN OF PIPE & STRUCTURE INSPECTION FOR PAVING PROGRAM GILMAN ST 2</p> <div style="border: 1px solid black; padding: 2px; display: inline-block;"> SHEET 10 OF 12 </div>
NO.	REVISION DESCRIPTION	DATE														
DRAWN BY: T. WELCH	DESIGNED BY: T. WELCH	REVIEWED BY: J. MERRILL														



 <p>CITY OF NASHUA NEW HAMPSHIRE CITY ENGINEER'S OFFICE 9 RIVERSIDE STREET NASHUA, NEW HAMPSHIRE 03062</p>	<table border="1"> <thead> <tr> <th>NO.</th> <th>REVISION DESCRIPTION</th> <th>DATE</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	NO.	REVISION DESCRIPTION	DATE														 <p>HORIZONTAL SCALE IN FEET SCALE 1" = 40'-0"</p> <table border="1"> <tr> <td>DRAWN BY T. WELCH</td> <td>DESIGNED BY T. WELCH</td> <td>REVIEWED BY A. MUNKOLA</td> </tr> </table>	DRAWN BY T. WELCH	DESIGNED BY T. WELCH	REVIEWED BY A. MUNKOLA	 <p>NASHUA, NEW HAMPSHIRE PLAN OF PIPE & STRUCTURE INSPECTION FOR PAVING PROGRAM HUGHEY ST</p> <p>DATE MAY 2016</p> <p>SEEK 11 DC 10</p>
NO.	REVISION DESCRIPTION	DATE																				
DRAWN BY T. WELCH	DESIGNED BY T. WELCH	REVIEWED BY A. MUNKOLA																				




CITY OF NASHUA NEW HAMPSHIRE
CITY ENGINEER'S OFFICE
 9 RIVERSIDE STREET
 NASHUA, NEW HAMPSHIRE 03062

NO.	REVISION DESCRIPTION	DATE



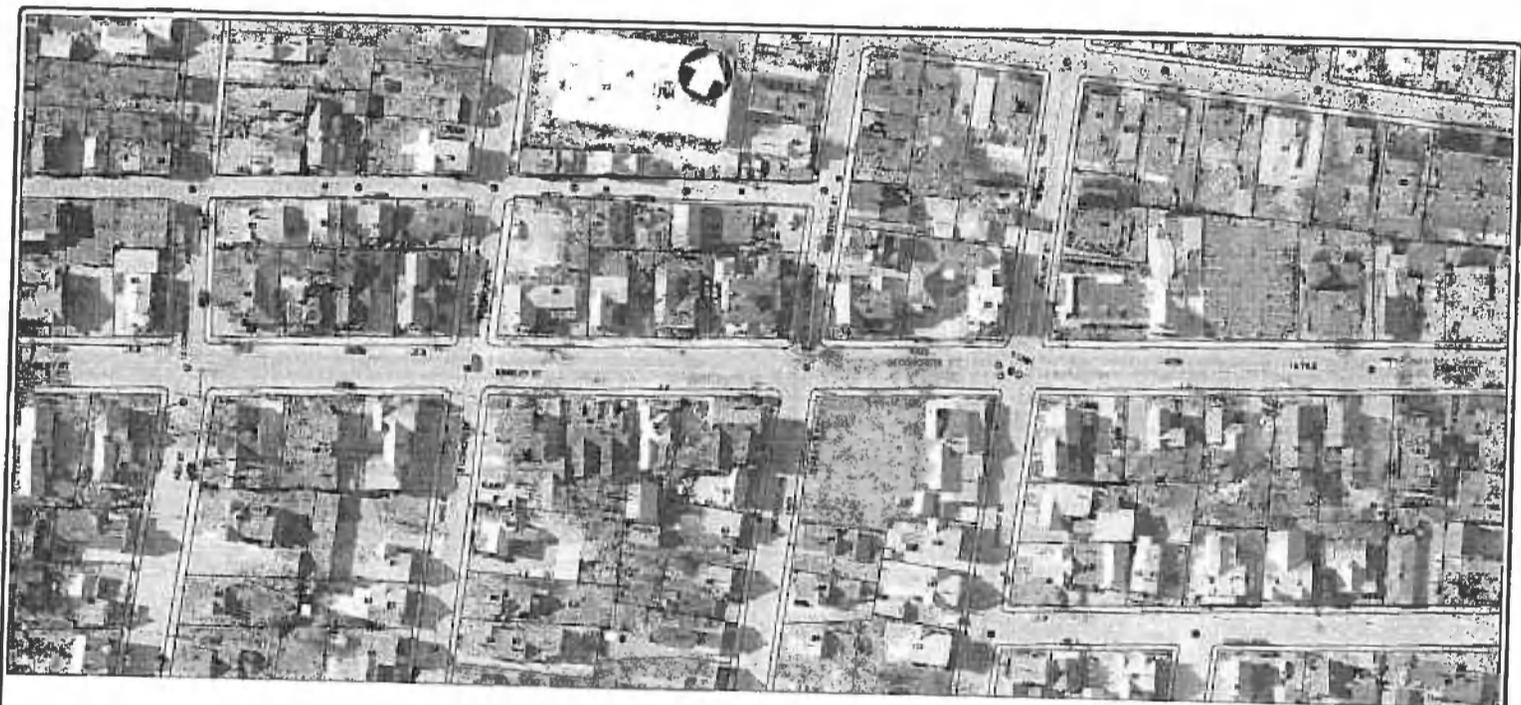
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DRAWN BY:	DESIGNED BY:	REVIEWED BY:
T. WELSH	T. WELSH	J. MENDOLA



NASHUA, NEW HAMPSHIRE
 PLAN OF
PIPE & STRUCTURE INSPECTION
FOR PAVING PROGRAM
 KINBLEY ST 1

DATE: MAY 2016

SHEET: **12**
 OF 15



 **CITY OF NASHUA NEW HAMPSHIRE**
CITY ENGINEER'S OFFICE
8 RIVERSIDE STREET
NASHUA, NEW HAMPSHIRE 03062

NO.	DESCRIPTION	DATE

 **GRAPHIC SCALE IN FEET**
1" = 200'

DRAWN BY	FORWARDED BY	REVIEWED BY
V. WELCH	V. WELCH	J. WINSLOW

MAY
2015

PIPE & STRUCTURE INSPECTION
FOR PAVING PROGRAM
KINSLEY ST 2

SHEET
13
OF 30



 **CITY OF NASHUA NEW HAMPSHIRE**
CITY ENGINEER'S OFFICE
8 RIVERSIDE STREET
NASHUA, NEW HAMPSHIRE 03062

NO.	REVISION DESCRIPTION	DATE



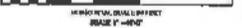

FOR LARGE WORK, 1" = 100'
SCALE 1" = 100'
DESIGNED BY: J. WELSH
CHECKED BY: J. WELSH
DRAWN BY: J. WELSH

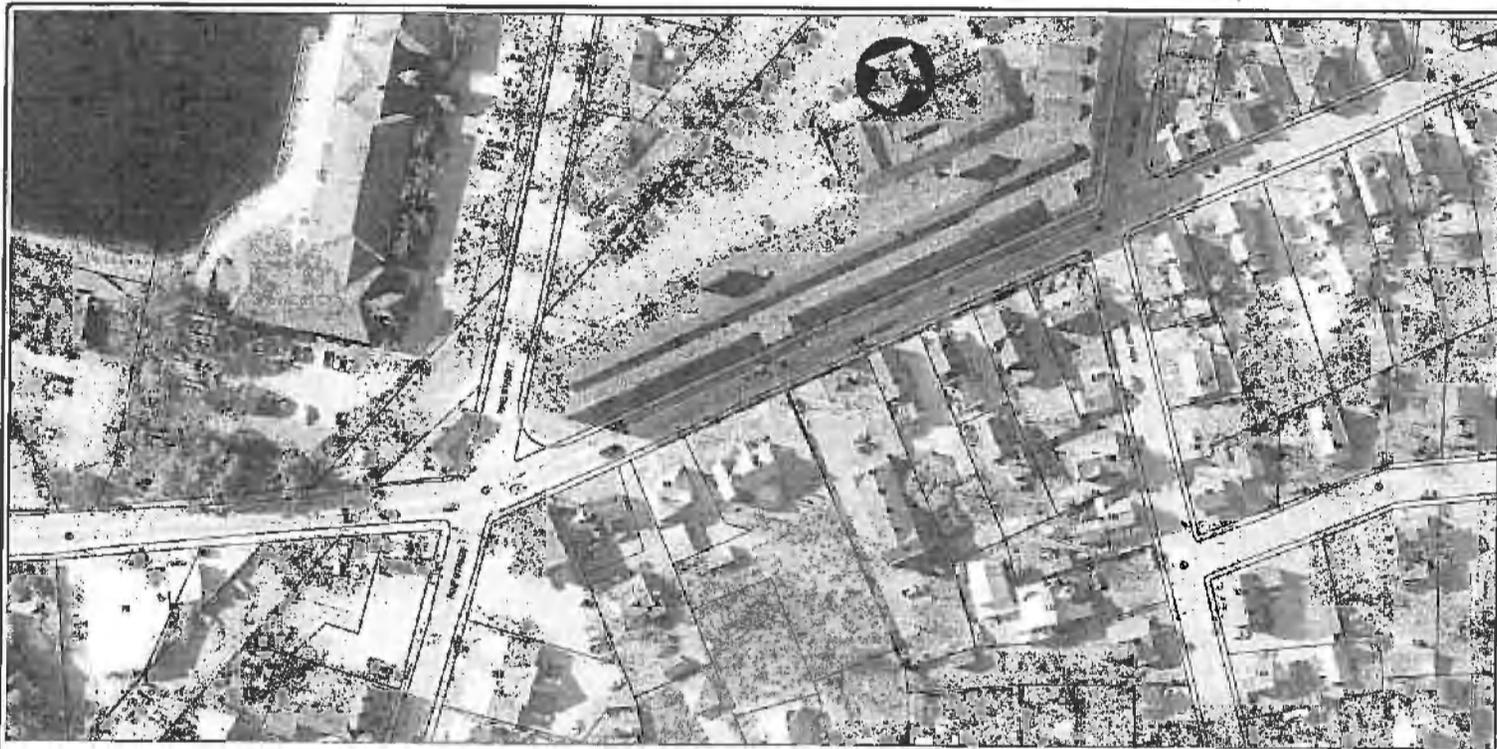


NEW HAMPSHIRE
PLAN OF
PIPE & STRUCTURE INSPECTION
FOR PAVING PROGRAM
KINSLEY ST J

DATE
MAY
2016
SHEET
14
OF 19



 CITY OF NASHUA NEW HAMPSHIRE CITY ENGINEER'S OFFICE 5 RIVERSIDE STREET NASHUA, NEW HAMPSHIRE 03062			 HORIZONTAL SCALE: 1" = 40' VERTICAL SCALE: 1" = 20'	 CITY OF NASHUA NEW HAMPSHIRE PLUMBER PIPE & STRUCTURE INSPECTION FOR PAVING PROGRAM LARG ST 1		SHEET 16 OF 2													
	<table border="1"><thead><tr><th>NO.</th><th>REVISION, OBSERVATION</th><th>DATE</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></tbody></table>						NO.	REVISION, OBSERVATION	DATE										<table border="1"><tr><td>SPANNED BY:</td><td>DESIGNED BY:</td><td>ENGINEERED BY:</td></tr><tr><td>T. WALSH</td><td>T. WALSH</td><td>J. BERGDA</td></tr></table>
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T. WALSH	T. WALSH	J. BERGDA																	



 **CITY OF NASHUA NEW HAMPSHIRE**
CITY ENGINEER'S OFFICE
8 RIVERSIDE STREET
NASHUA, NEW HAMPSHIRE 03062

NO.	DESCRIPTION	DATE




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DESIGNED BY: T. WILSON
CHECKED BY: J. WILSON
DATE: 5/1/2016



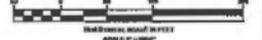
NASHUA, NEW HAMPSHIRE
PLAN OF
PIPE & STRUCTURE INSPECTION
FOR PAVING PROGRAM
LAKE ST 3

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17
OF 20



 **CITY OF NASHUA NEW HAMPSHIRE**
CITY ENGINEER'S OFFICE
8 RIVERBIDE STREET
NASHUA, NEW HAMPSHIRE 03063

NO.	REVISION DESCRIPTION	DATE

 
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ORDER BY: T. WILSON DRAWN BY: J. WILSON
DATE: 5/15/16 CHECKED BY: J. WILSON

MURKIN, NEW HAMPSHIRE
PLAN 07
**PIPE & STRUCTURE INSPECTION
FOR PAVING PROGRAM**
MAY 2016
MAIN ST 1
 SHEET **18** OF 18



Danielle Greenberg
City of Nashua Purchasing Department
229 Main Street
Nashua, NH 03060

June 8, 2016

Greetings Danielle,

Subject: IFB0844-060916, Sewer and Drain Pipe and Structure Inspection Bid Submittal

Thank you for giving us the opportunity to provide you with the following bid for cleaning & inspecting sanitary sewer pipe, manholes, storm drain lines, and catch basins for the City of Nashua.

Founded in 1972 the Ted Berry Company Inc. has deep roots in both the Industrial and Municipal service sectors in New England. Built on service, hard work, trust, and commitment we offer industry leading technology and an extremely knowledgeable staff of over 60 employees. A family owned and operated business with the owner and President, Matt Timberlake being intimately involved in the daily operation and management of the company, the Ted Berry Company is the contractor of choice for municipal waste water collection system managers throughout New England.

Our company has built great working relationships with of our customers, which in turn, has given the Ted Berry Company the financial stability to continue providing service to our customers and invest in our employees and our fleet of equipment.

Our headquarters are located in Livermore, Maine with our New Hampshire base in Sandown, NH approximately 30 miles from the City of Nashua.

Organizational Capabilities:

The Ted Berry Company operates under a structure that allows all team members to participate in our success and be held accountable for safety and project performance. This collaborative effort is not common in today's workplace; however the camaraderie that exists within our company and the pride in work is evident throughout our crews.

Ted Berry Company Core Four Goals

1. **Enhance Company Reputation and Resume** - By enhancing our reputation and expanding the company's experience resume we gain credibility in the marketplace.
2. **Future Opportunity** - To grow our business and our brand by delivering projects that meet or exceed our customer expectations, growing customer relationships, and developing new service offerings consistent with our core business.

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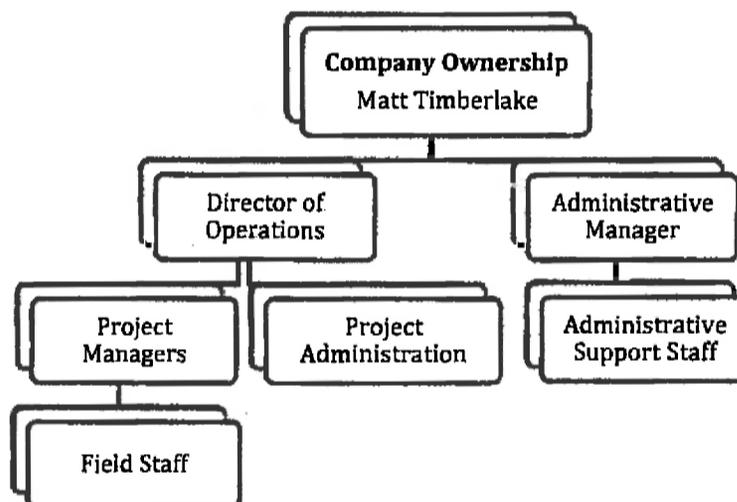
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3. **Continuous Company Improvement** - By continuously improving the company, our processes, our people, and our standard procedures we continually improve our ability to earn in the future.
4. **Financial Profit** - Excess revenue after all expenses that allow us to reward the owners for their investment and the risks they take and to invest future capital back into the company.

Management Team - The Ted Berry Company management team consists of a mix of the ownership, operations staff and administrative staff, and advisors that work collaboratively on achieving defined goals and providing a high level of service to its customers. Operating efficiencies and managing overhead are critical functions of the Management Team and there are daily, weekly, quarterly, and annual goals with KPI's that drive critical decision making all while maintaining close working relationships with our key customers.



Field Operations - The Ted Berry Company Field Operations Team is made up of over 60 employees which comprises between 12-15 daily work teams dependent on the project responsibilities of any given day. The field staff is a highly trained group who are in direct contact with their direct supervisors on a daily basis. All field staff are tracked with our internal labor utilization reports which allows operations management to monitor real time where productivity or efficiencies can be gained, there are a number of key performance indicators (KPI's) in regards to individual and service group performance that are viewed daily by senior staff. All Ted Berry Company Field Supervisory staff has 'smart phones' and data packages so communication of critical project data and the company staffing schedule are available real time in the field. All Field Supervisors and Project Managers have become OSHA 30 certified and all technicians are OSHA 10 certified.

CCTV and Deliverables Reporting Capabilities:

The Ted Berry Company prides itself in its trained staff and equipment that has capabilities for any mainline pipe inspection scenario that may exist in the City of Nashua. Our six CCTV units are dedicated to

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well-trained NASSCO PACP and MACP certified operators who take pride in their workplace and ownership of the results that they deliver. The most advanced field collection tools including digital video and imaging and IT Pipes data collection software give our team the tools they need to succeed. Our mainline CCTV units are equipped with a climate controlled control room with seating available for a customer representative.

Prior to delivering inspection data and video to our customers, Ted Berry's Information Systems Department reviews video, images and other data as part of an in-house a Quality Assurance program. After passing through QA, a custom deliverables package is assembled for each customer. Our staff is fully capable of providing the City of Nashua high quality deliverables report packages by street and by pipe/structure. Our deliverables fees are often included in the CCTV inspection prices as they are on the Schedule of Values.

CCTV data collection and reporting platform - Infrastructure Technologies (IT Pipes) has years of proven experience exclusively dedicated to implementing and integrating inspection software into municipal processes and applications. A combination of management, development and programming staff, regional consultants, technical personnel, and strategic contractor relationships makes IT Pipes not only a supplier but a member of the project team from concept through completion. The Ted Berry Company has worked with the staff from IT for over 10 years and has the utmost confidence in their systems and personnel.

PACP/MACP Certification - NASSCO was formed in 1976 with one goal in mind: To improve the success rate of everyone involved in the pipeline maintenance and rehabilitation industry through education, technical resources, and industry advocacy. NASSCO has established a common pipeline inspection and assessment certification program called PACP. ALL Ted Berry Company CCTV Inspection Operators are PACP and MACP certified as well as our CCTV Inspection software. Many in the sewer inspection industry claim to be certified or that their software is certified. **Only operators and software that are listed on the NASSCO website are truly certified in PACP and/or MACP, LACP.**

Pipeline Cleaning Capabilities - Simply put there is no local company that can compare experience or abilities with that of the Ted Berry Company Inc., and no national company that can compare with resources and dedicated staff to Northern New England. Since 1972 Ted Berry Co has been providing municipal and industrial sewer line cleaning, inspection, maintenance, and trenchless rehabilitation to customers throughout New England. With a dedicated fleet of six combination Vactor sewer cleaning units operated on a daily basis, we clean and inspect over 1 million feet of pipe and tens of thousands of manholes and catch basins each year. From small communities to New England's largest interceptors and remote access sewer lines, we have the experience and can back it up with results that are unmatched. All pipeline cleaning operators and technicians are trained with the NASSCO Jetter Code of Practice annually as part of their continuing education program at Ted Berry Company.

With the depth of six skilled pipeline cleaning and CCTV inspection teams, the Ted Berry Company has the equipment and qualified employees needed in order to successfully complete this project in a timely manner. We are prepared to dedicate a Vactor and CCTV unit with highly skilled operators and technicians

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to the City of Nashua's Sewer, Drain Pipe and Structure Inspection project beginning on Monday July 18. Our Information Systems Department will provide the City's custom reporting requirements within 10 business days of completion of all field work. Additions to the original Scope of Work can be accomplished, even if we need to double up on teams to fulfill the City's requirements.

Traffic Control: - Although Ted Berry has MUTCD trained employee traffic control flaggers, Traffic Control Flagging is often a function that is subcontracted to local area subcontractors who are required to adhere to all local, state, and federal safety regulations and must have documentation in hand of training required to perform traffic control duties. In addition to using flaggers and local police for traffic and worksite safety, Ted Berry uses traffic control software to assist with developing the TTCP (temporary traffic control plan) that can be reviewed with the project team and City of Nashua for setting up a safe strategy for signage, flaggers/police, general planning and obtaining permits required for traffic maintenance.

Subcontractor Qualifications -Any subcontractor that is hired by the Ted Berry Company must comply fully with the Ted Berry Company Safety handbook and all local, state, and federal safety regulations.

Execution of projects of a similar nature to verify integrity, service quality, reputation and experience.

Client	Contact Name	Contact Phone
Portland Water District (PWD)	Gordon Johnson Steve Sloan Charlene Poulin	207-761-8310
<p>The Ted Berry Company is currently involved in a multi-year (10+) contract for services with the PWD for collection and integration of CCTV data into the districts existing Hansen asset management system database which is a high end yet extremely complicated asset management based system. As part of the first phase of the multi-year contract a link had to be created allowing the import and export of data to and from Hansen, this was designed and built by the Ted berry Team. To date nearly 250,000lf has been inspected in (6) communities including residential areas, large diameter interceptors, remotely located pipes, busy commercial areas, and work on one of Maine's rugged islands.</p>		

Client	Contact Name	Contact Phone
City of Manchester NH EPD	Rob Robinson - City of Manchester Fred McNeil	1-603-624-6522
<p>The City of Manchester NH Environmental Protection Department has chosen the Ted Berry Company as a strategic partner in its long term piping assessment program which helps drive the CIP and CSO reduction plan. As the CCTV contractor for general condition assessment, pre-paving evaluations, and hydraulic studies, the Ted Berry Company works closely with the city's operations, public works, and GIS Manager and must integrate the CCTV data into an asset based report that is used to develop the annual maintenance and capital budgets. CCTV inspections to date have included large diameter interceptor sewers ranging from 36" to 72" brick pipe, 120" granite</p>		

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combined sewer tunnels, and over 15 miles of remote access pipelines running along the Piscataquog River and the historic Cemetery Brook.

Client	Contact Name	Contact Phone
Anson Madison Sanitary District	Pete Elias	207-696-3081
<p>The AMSD has historically had a very proactive maintenance program for its sanitary sewer collection system which receives sewer flow from two towns and an industrial facility. As the district owned equipment aged and operators neared retirement the district looked to take a new approach teaming with the Ted Berry Company to execute its annual maintenance plan. The annual plan has very specific goals and targets in regards to amount of pipe cleaned, inspected, and managing the cost of work so funds are spent where they are most needed. Annual CCTV inspections help determine areas where capital improvements or localized trenchless repairs are needed. The maintenance data is integrated into the districts GIS system and CCTV inspections performed in PACP coding which generates condition assessment ratings for critical areas.</p>		

Client	Contact Name	Contact Phone
City of Portland, Maine	Nathaniel Smith	207-874-8818 55 Portland Street Portland, ME 04101
<p>The City of Portland utilizes the services of Ted Berry Company to assess the condition of sewer lines and manholes located within the City of Portland Maine. The overall goal is to develop a strategy that will supplement the City's in-house program. The Ted Berry Company performs full service sewer/storm cleaning and inspection. The current 2015-2016 contract with the City of Portland includes 81,000 feet of various sized pipe for cleaning and conditional assessment, with customized reporting. Additions to the original Scope of Work have been provided as funds were released as the result of another contractor's failure to complete the 2014-2015 project.</p>		

Client	Contact Name	Contact Phone & Address
Lewiston, Maine Public Works	Kevin Gagne Justin Early	207-513-3003 207-761-8310 103 Adams Avenue Lewiston ME 04240
<p>In 2015, the Ted Berry Company was involved in a single year contract with the City of Lewiston Public Works Department for cleaning and obtaining CCTV data on existing sanitary sewer mainlines and manholes. Last year, over 170,000 feet of sewer lines and 600 manholes were cleaned and inspected in residential neighborhoods, remotely located pipes, and busy commercial areas. The original Scope of Work called for 93,000 feet of cleaning and inspection, but additional funds were made available from an unspent 2014 budget as another contractor did not complete their Lewiston contract. The 2015 scope increased to 171,000 feet, which Ted berry completed prior to our contract deadline.</p>		

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Additional Professional References:

1. Helen Gordon Senior Vice President, Woodard & Curran (800)446-5518 ext. 2440
2. Robert Kerry Environmental Engineer Town of Londonderry, NH (603) 432-1100
3. Laurie Perkins Senior Project Manager Wastewater Group Wright Pierce (603)606-4430
4. Kevin Gagne Deputy Director Lewiston Water and Sewer Division (207) 513-3003
5. Tim Haskell Superintendent York Sewer District (207) 363-4232
6. Mark Holt Superintendent Jay Sewer Department, Maine (207) 645-4246
7. Brian Tarbuck General Manager Greater Augusta Utility District (207)622-3701
8. Matt Mooney Collection Systems Coordinator, City of Laconia, NH (603) 528-6388
9. Dan Rivera Mayor City of Lawrence, Massachusetts (978) 620-3010

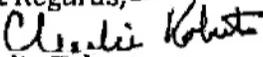
Projects Performed for the City of Nashua in 2015:

- Pump Stations Cleaning Project in November. RFQ1090-090915. Cleaned 12 pump stations. Contracted through Bill Keating in the Waste Water Department.
- Main Street Drain Cleaning – Temple. Jet/Vac cleaning with root removal from Granite box culvert. PO#: 123439. Coordinated by Amy Prouty Gill.

The Ted Berry Company accepts and agrees to the EEO, insurance requirements and General Terms and Conditions as outlined in the sample Standard Form of Agreement between Owner and Contractor.

Our Client Services Manager, Peter Goodwin and I spent an afternoon doing a physical investigation by looking in manholes and catch basins. As a result, we are excited about the prospect of performing pipeline and catch basin/manhole cleaning and investigations for the City of Nashua this summer.

Best Regards,


Charlie Roberts
Operations Project Manager
Cell: (207)320-0833
charlie.roberts@tedberrycompany.com


Matthew Timberlake
President
Cell: (207) 754-4282
matt@tedberrycompany.com

Enclosed:

- a) Schedule of Values
- b) Addendum 2 Signed
- c) Addendum 1 Signed

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Ted Berry Company, Inc.

Pipe Cleaning for Sewer and Drain Main Lines

Item	Item Description	Unit	QTY	Unit Price	Total
1	Pipe Cleaning 6" Pipe	FT	0	\$2.20	\$0.00
2	Pipe Cleaning 8" Pipe	FT	1050	\$1.20	\$1,260.00
3	Pipe Cleaning 10" Pipe	FT	5425	\$1.20	\$6,510.00
4	Pipe Cleaning 12" Pipe	FT	8850	\$1.20	\$10,620.00
5	Pipe Cleaning 15" Pipe	FT	1925	\$1.30	\$2,502.50
6	Pipe Cleaning 18" Pipe	FT	7250	\$1.30	\$9,425.00
7	Pipe Cleaning 20" Pipe	FT	825	\$1.30	\$1,072.50
8	Pipe Cleaning 24" Pipe	FT	1500	\$1.50	\$2,250.00
9	Pipe Cleaning 30" Pipe	FT	1175	\$1.50	\$1,762.50
10	Pipe Cleaning 36" Pipe	FT	1425	\$1.50	\$2,137.50
11	Pipe Cleaning 42" Pipe	FT	0	\$10.00	\$0.00
12	Pipe Cleaning 48" Pipe	FT	0	\$15.00	\$0.00
13	Pipe Cleaning 54" Pipe	FT	500	\$5.00	\$2,500.00
Subtotal					\$40,040.00

Pipe Cleaning for Catch Basin Laterals

Item	Item Description	Unit	QTY	Unit Price	Total
14	Catch Basin Lateral Pipe Cleaning 6"-12"	FT	4900	\$0.90	\$4,410.00
Subtotal					\$4,410.00

CCTV Inspection for Sewer and Drain Main Lines

Item	Item Description	Unit	QTY	Unit Price	Total
15	CCTV Inspection 6" Pipe	FT	0	\$2.00	\$0.00
16	CCTV Inspection 8" Pipe	FT	1050	\$1.00	\$1,050.00
17	CCTV Inspection 10" Pipe	FT	5425	\$1.00	\$5,425.00
18	CCTV Inspection 12" Pipe	FT	8850	\$1.00	\$8,850.00
19	CCTV Inspection 15" Pipe	FT	1925	\$1.00	\$1,925.00
20	CCTV Inspection 18" Pipe	FT	7250	\$1.00	\$7,250.00
21	CCTV Inspection 21" Pipe	FT	825	\$1.00	\$825.00
22	CCTV Inspection 24" Pipe	FT	1500	\$1.00	\$1,500.00
23	CCTV Inspection 30" Pipe	FT	1175	\$1.00	\$1,175.00
24	CCTV Inspection 36" Pipe	FT	1425	\$1.00	\$1,425.00
25	CCTV Inspection 42" Pipe	FT	0	\$5.00	\$0.00
26	CCTV Inspection 48" Pipe	FT	0	\$5.00	\$0.00
27	CCTV inspection 54" Pipe	FT	500	\$5.00	\$2,500.00
Subtotal					\$31,925.00

CCTV Inspection for Catch Basin Laterals

Item	Item Description	Unit	QTY	Unit Price	Total
28	CCTV Inspection for Catch Basin Lateral Pipe 6"-12"	FT	4900	\$1.00	\$4,900.00
Subtotal					\$4,900.00

Ted Berry Company, Inc.

Root Cutting

Item	Item Description	Unit	QTY	Unit Price	Total
29	Root Cutting 6" to 12"	FT	310	\$5.00	\$1,550.00
30	Root Cutting 15" to 24"	FT	230	\$5.00	\$1,150.00
31	Root Cutting >24"	FT	65	\$5.00	\$325.00
Subtotal					\$3,025.00

Lateral Cutting

Item	Item Description	Unit	QTY	Unit Price	Total
32	Lateral Cutting 6" to 12" Pipe	EA	10	\$200.00	\$2,000.00
33	Lateral Cutting 15" to 24" Pipe	EA	10	\$200.00	\$2,000.00
Subtotal					\$4,000.00

Structure Cleaning and Inspection

Item	Item Description	Unit	QTY	Unit Price	Total
34	Catch Basin Cleaning and Inspection	EA	200	\$47.50	\$9,500.00
35	Sewer or Drain Manhole Cleaning and Inspection	EA	200	\$25.00	\$5,000.00
Subtotal					\$14,500.00

Deliverables

Item	Item Description	Unit	QTY	Unit Price	Total
36	Amherst St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
37	Baldwin St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
38	Bruce St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
39	Broadview Ave Pipe Video and Report	Per Street	1	\$1.00	\$1.00
40	Canal St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
41	Fox St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
42	Gilman St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
43	Hughey St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
44	Kinsley St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
45	Lake St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
46	Main St Pipe Video and Report	Per Street	1	\$1.00	\$1.00
47	Amherst St Structure Report	Per Street	1	\$1.00	\$1.00
48	Baldwin St Structure Report	Per Street	1	\$1.00	\$1.00
49	Bruce St Structure Report	Per Street	1	\$1.00	\$1.00
50	Broadview St Structure Report	Per Street	1	\$1.00	\$1.00
51	Canal St Structure Report	Per Street	1	\$1.00	\$1.00
52	Fox St Structure Report	Per Street	1	\$1.00	\$1.00
53	Gilman St Structure Report	Per Street	1	\$1.00	\$1.00
54	Hughey St Structure Report	Per Street	1	\$1.00	\$1.00
55	Kinsley St Structure Report	Per Street	1	\$1.00	\$1.00
56	Lake St Structure Report	Per Street	1	\$1.00	\$1.00
57	Main St Structure Report	Per Street	1	\$1.00	\$1.00
Subtotal					\$22.00

Traffic Control

Item	Item Description	Unit	QTY	Unit Price	Total
58	Maintenance of Traffic	LS	1	\$1.00	\$1.00
59	Flaggers	Allowance	1	\$ 6,800.00	\$ 6,800.00
60	Officers	Allowance	1	\$ 3,800.00	\$ 3,800.00
Subtotal					\$10,601.00

Total Bid \$113,423.00



THE CITY OF NASHUA

Financial Services
Purchasing Department

"The Gate City"

June 30, 2016
Memo #16-141

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CONTRACT AWARD FOR RENEWAL OF USDA WILDLIFE MANAGEMENT SERVICE
AGREEMENT (VALUE: NOT TO EXCEED \$67,696)
DEPARTMENT: 168 SOLID WASTE; FUND: SOLID WASTE
ACCOUNT CLASSIFICATION: 53 PROFESSIONAL & TECHNICAL SERVICES

Please see attached communication from Jeff Lafleur, Solid Waste Department Superintendent dated May 26, 2016 for the information related to this purchase. This item was withdrawn at the 6/1/16 Finance Committee meeting and is being brought back to the 7/6/16 Finance Committee meeting agenda.

Pursuant to **§ 5-84 Special Purchase Procedures A**. The competitive bidding process shall not apply to the following special purchases. (8) Purchases under intergovernmental agreements or contracts which require use of procurement procedures in consistent with the provisions of this section.

This expense is a FY17 budgeted item. A copy of Agreement #1672332545RA with supporting work plan (Attachment A) is attached for your review.

The Solid Waste Department Superintendent, Board of Public Works (May 26, 2016) and the Purchasing Department recommend the renewal of this contract in an amount not to exceed **\$67,696** between the City of Nashua and **USDA Wildlife Services**.

Respectfully,

Dan Kooker
Purchasing Manager

Cc: J Lafleur L Fauteux

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: May 26, 2016
From: Jeff Lafleur, Superintendent
Solid Waste Department
Re: USDA Wildlife Management Service Agreement Renewal

B. Motion: To approve the renewal of the Cooperative Service Agreement between the City of Nashua and the USDA Wildlife Management Service for FY17 pending budget approval. This service agreement covers the integrated gull management program at the Four Hills Landfill and is not to exceed \$67,696.46. Funding for this agreement is through Department: 168 Solid Waste; Fund: Solid Waste; Account Classification 53 Professional & Technical Services.

Attachment: Cooperative Service Agreement between the City of Nashua, Four Hills Landfill and the United States Department of Agriculture, Animal and Plant Inspection Service (APHIS) Wildlife Services.

Discussion: The Cooperative Service Agreement (CSA) between the City of Nashua and the USDA Wildlife Service is a renewal of the ongoing integrated gull management project. Its purpose is to reduce on and off-site conflicts associated with large concentrations of gulls and other birds at the Four Hills Landfill that could potentially affect the surrounding neighborhoods. The CSA covers Wildlife Service activities for the period of July 1, 2016 through June 30, 2017.

Through this agreement trained personnel are assigned to the Four Hills Landfill Monday through Friday to control gull populations utilizing standardized harassment techniques. All necessary permitting and reporting is coordinated with the USDA.

Please see the attached copy of the Cooperative Service Agreement for further details.

This expense is a budgeted item and is subject to approval of the FY 2017 budget.

WS-ER (6/14)

Agreement No.: 16 7233 2545 RA
WBS Element: AP.RA.RX33.72.0012

COOPERATIVE SERVICE AGREEMENT
between
THE CITY OF NASHUA (CITY)
FOUR HILLS LANDFILL
and
UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)
WILDLIFE SERVICES (WS)

ARTICLE 1

The purpose of this Cooperative Service Agreement is to continue an integrated wildlife management and monitoring project on the Four Hills Landfill, Nashua, New Hampshire that will reduce on and off-site conflicts associated with large concentrations of gulls, starlings and woodchucks using the landfill. WS activities are described in the attached Work and Financial Plans.

ARTICLE 2

APHIS WS has statutory authority under the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C.426-426b) as amended, and the Act of December 22, 1987 (101 Stat. 1329-331, 7 U.S.C. 426c), to cooperate with States, local jurisdictions, individuals, public and private agencies, organizations, and institutions while conducting a program of wildlife services involving mammal and bird species that are reservoirs for zoonotic diseases, or animal species that are injurious and/or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife, and human health and safety.

ARTICLE 3

APHIS-WS and the CITY mutually agree:

1. The parties' authorized representatives who shall be responsible for carrying out the provisions of this Agreement shall be:

Cooperator: Lisa Fauteux, Director
Division of Public Works
9 Riverside Street
Nashua, NH 03062

APHIS-WS: David Allaben, State Director
USDA, APHIS, WS
59 Chenell Drive, Suite 7
Concord, NH 03301-8548

2. To meet as determined necessary by either party to discuss mutual program interests, accomplishments, needs, technology, and procedures to maintain or amend the Work Plan (Attachment A). Personnel authorized to attend meetings under this Agreement shall be CITY's Superintendent of Solid Waste or his/her designee, the State Director or his/her designee, and/or those additional persons authorized and approved by the CITY, and the State Director.
3. APHIS WS shall perform services more fully set forth in the Work Plan, which is attached hereto and made a part hereof. The parties may mutually agree in writing, at any time during the term of this Agreement, to amend, modify, add or delete services from the Work Plan.

ARTICLE 4

1. To authorize APHIS WS to conduct direct control activities to reduce human health and safety risks and property damage associated with large concentrations of gulls, starlings and woodchucks attracted to The Four Hills Municipal Landfill Nashua, New Hampshire. These activities are defined in the Work Plan. APHIS WS will be considered an invitee on the lands controlled by the CITY. The CITY will be required to exercise reasonable care to warn APHIS-WS as to dangerous conditions or activities in the project areas.
2. To reimburse APHIS WS for costs of services provided under this Agreement up to but not exceeding the amount specified in the Financial Plan (Attachment B). APHIS, WS shall bill the CITY quarterly. The CITY will begin processing for payment invoices submitted by APHIS-WS within 30 days of receipt. The Cooperator ensures and certifies that it is not currently debarred or suspended and is free of delinquent Federal debt.
3. To designate to APHIS WS the CITY's authorized individual whose responsibility shall be the coordination and administration of activities conducted pursuant to this Agreement.
4. To notify APHIS WS verbally or in writing as far in advance as practical of the date and time of any proposed meeting related to the program.
5. APHIS WS shall be responsible for administration and supervision of the program.

6. All equipment purchased for the program is and will remain the property of APHIS WS.
7. To coordinate with APHIS WS before responding to all media requests.
8. To obtain the appropriate permits for removal activities for herring, great black-backed, ring-billed gulls and turkey vultures and list USDA, APHIS, Wildlife Services as a sub-permittee.
9. To provide training to Landfill staff to conduct bird harassment activities on weekends and Federal Holidays to effectively keep birds from using the landfill when Wildlife Services personnel are not present at the landfill.
10. To provide storage space in a secure building for a locked gun cabinet supplied by WS for storage of firearms and pyrotechnics when these devices are not in active use. WS is required to store guns overnight in a locked gun safe (WS Directive 2.615).
11. There will be no equipment with a procurement price of \$5,000 or more per unit purchased directly with funds from the cooperator for use solely on this project. All other equipment purchased for the program is and will remain the property of APHIS WS.
12. To provide an indoor working space to complete necessary paperwork.

ARTICLE 5

APHIS WS Agrees:

1. To conduct activities at the Four Hills Landfill and adjacent condominiums as described in the Work and Financial Plans.
2. Designate to the CITY the authorized APHIS WS individual who shall be responsible for the joint administration of the activities conducted pursuant to this Agreement.
3. To bill the CITY for costs incurred by APHIS WS during the performance of services agreed upon and specified in the Work Plan. APHIS WS shall keep records and receipts of all reimbursable expenditures hereunder for a period of not less than one year from the date of completion of the services provided under this Agreement and the CITY shall have the right to inspect and audit such records.
4. To coordinate with the CITY before responding to all media requests.

ARTICLE 6

This Agreement is contingent upon the passage by Congress of an appropriation from which expenditures may be legally met and shall not obligate APHIS WS upon failure of Congress to so appropriate. This Agreement may also be reduced or terminated if Congress only provides APHIS WS funds for a finite period under a Continuing Resolution.

ARTICLE 7

APHIS WS assumes no liability for any actions or activities conducted under this Cooperative Service Agreement except to the extent that recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401(b), and 2671-2680).

ARTICLE 8

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

ARTICLE 9

Nothing in this Agreement shall prevent APHIS WS from entering into separate agreements with any other organization or individual for the purpose of providing wildlife damage management services exclusive of those provided for under this agreement.

ARTICLE 10

The CITY certifies that APHIS WS has advised the CITY that there may be private sector service providers available to provide wildlife management services that the CITY is seeking from APHIS WS.

ARTICLE 11

The performance of wildlife damage management actions by APHIS WS under this agreement is contingent upon a determination by APHIS WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable federal statutes. APHIS WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance.

ARTICLE 12

This Cooperative Service Agreement may be amended at any time by mutual agreement of the parties in writing. Also, this Agreement may be terminated at any time by mutual agreement of the parties in writing, or by one party provided that party notifies the other in writing at least 120 days prior to effecting such action. Further, in the event the Cooperator does not provide necessary funds, APHIS WS is relieved of the obligation to provide services under this agreement.

In accordance with the Debt Collection Improvement Act of 1996, the Department of Treasury requires a Taxpayer Identification Number for individuals or businesses conducting business with the agency.

The CITY's Taxpayer Identification Number (TIN) 02-6000581

**CITY OF NASHUA
SOLID WASTE DEPARTMENT
840 WEST HOLLIS STREET
NASHUA, NH 03060:**

BY: _____ Date _____
James Donchess, Mayor City of Nashua

**UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES**

BY: _____ Date _____
David Allaben, State Director
USDA, APHIS, WS
59 Chenell Drive, Suite 7
Concord, NH 03301-8548

BY: _____ Date _____
Charles S. Brown
Director, Eastern Region
USDA, APHIS, WS
920 Main Campus Drive; Suite 200
Raleigh, NC 27606

ATTACHMENT A WORK PLAN

**For the Conduct of an Integrated Wildlife Harassment and Monitoring Project
under a Cooperative Service Agreement between The City of Nashua and USDA,
APHIS, Wildlife Services (WS)**

Introduction

The U.S. Department of Agriculture (USDA) is authorized to protect American agriculture and other resources from damage associated with wildlife. The primary authority for Wildlife Services (WS) is the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C.426-426b) as amended, and the Act of December 22, 1987 (101Stat. 1329-331, 7 U.S.C. 426c). Wildlife Services activities are conducted in cooperation with other Federal, State and local agencies; private organizations and individuals.

The WS program uses an Integrated Wildlife Damage Management (IWDM) approach (sometimes referred to as IPM or "Integrated Pest Management") in which a series of methods may be used or recommended to reduce wildlife damage. IWDM is described in Chapter 1, 1-7 of the Animal Damage Control Program Final Environmental Impact Statement (USDA, 1994). These methods include the alteration of cultural practices as well as habitat and behavioral modification to prevent damage. However, controlling wildlife damage may require that the offending animal(s) are killed or that the populations of the offending species be reduced.

Purpose

To reduce on and off-site conflicts associated with large concentrations of gulls, turkey vultures, starlings and woodchucks attracted to the Four Hills Municipal Landfill, Nashua, New Hampshire through the conduct of an integrated wildlife harassment and monitoring project.

Planned USDA, APHIS, Wildlife Services Activities

1. Wildlife Services will staff the integrated bird damage management and monitoring program five working days (8-9 hours) from July 1, 2016 through June 30, 2017 (52 consecutive weeks) except government holidays, mandatory scheduled training days and under extreme weather conditions .
2. Wildlife Services completed an Environmental Assessment (EA) "*Reducing Bird Damage Through an Integrated Wildlife Damage Management Program in the State of New Hampshire*".

3. Wildlife Services will provide bird harassment training as required of landfill personnel.

4. Wildlife Services will assist the City in obtaining a USFWS depredation permit for 2016-2017. Wildlife Services will assume responsibility for processing the USFWS permit application for the City's signature.

5. Wildlife Services will continue monitoring efforts of wildlife activity and presence at the nearby Ledgewood Hills condominiums and other surrounding areas deemed to be of concern to the City and impacted by gulls, starlings or other birds associated with Four Hills Landfill activities to assess the effectiveness of the integrated gull harassment program. Wildlife Services will also conduct harassment activities at the Ledgewood Hills condominiums and other identified nearby properties as necessary and agreed upon, to reduce gull activity and associated damage to property.

6. Wildlife Services will conduct woodchuck control activities on landfill property to reduce burrowing activity and potential damage to landfill property as requested.

7. Wildlife Services will provide the City and other interested parties a summary report including recommendations of integrated harassment activities.

Effective Dates

The cooperative agreement shall become effective on July 1, 2016, and shall expire on June 30, 2017.

