

FINANCE COMMITTEE

AUGUST 17, 2016

7:00 PM

Aldermanic Chamber

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ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

From: Dan Kookan, Purchasing Manager  
Re: Police Ammunition (Value: \$31,537)  
Department: 150 Nashua Police Department; Fund: General Fund;  
Account Description: 61 Supplies and Materials

From: Dan Kookan, Purchasing Manager  
Re: Snow Plowing Contract – City Parking Lots (Value: Not-to-Exceed \$26,000)  
Department: 183 Economic Development; Fund: Parking General Fund;  
Account Classification: 54 Property Services

From: Dan Kookan, Purchasing Manager  
Re: Purchase of Radios for Emergency Management Vehicles (Value: \$11,997)  
Department: 156 Emergency Management; Fund: 2015/2016 Emergency Management  
Performance Grant (EMPG) \$11,822; Account Classification: 61 Supplies & Materials  
Department: 156 Emergency Management; Fund: General Fund \$175;  
Account Classification: 61 Supplies & Materials

From: Dan Kookan, Purchasing Manager  
Re: Award of Contract for Spit Brook Road Fire Station Addition/Renovation  
(Value: Not- to-Exceed \$112,500)  
Department: 152 Fire; Fund: General Fund Prior Year Escrows \$56,750  
Account Classification: 81 Capital Outlay; Department: 152 Fire; Fund: Bond;  
Account Classification: 81 Capital Outlay \$55,750

From: Dan Kookan, Purchasing Manager  
Re: Contract Award for Performing Arts Center Feasibility Study Phase II (Value: \$27,000)  
Department: 183 Economic Development; Fund: Downtown Improvement Committee Trust Fund;  
Account Classification: 53 Professional & Technical Services

From: Dan Kookan, Purchasing Manager  
Re: Contract Award for Wayfinding Project Phase 1 (Value: \$49,110)  
Department: 183 Economic Development; Fund: Downtown Improvement Committee Trust Fund;  
Account Classification: 53 Professional & Technical Services

UNFINISHED BUSINESS – None

NEW BUSINESS - None

DISCUSSION

RECORD OF EXPENDITURES

PUBLIC COMMENT

NON-PUBLIC SESSION

ADJOURNMENT



# THE CITY OF NASHUA

*Financial Services*

*Purchasing Department*

*"The Gate City"*

August 9, 2016  
Memo #17-028

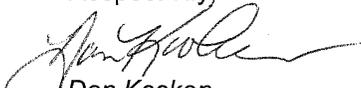
TO: MAYOR DONCHESS  
FINANCE COMMITTEE

SUBJECT: POLICE AMMUNITION (VALUE: \$31,537)  
DEPARTMENT: 150 NASHUA POLICE DEPARTMENT; FUND: GENERAL FUND  
ACCOUNT DESCRIPTION: 61 SUPPLIES AND MATERIALS

Please see the attached communication dated August 9, 2016 from Karen A. Smith, Business Manager for the information related to this purchase.

The Nashua Police Department and the Purchasing Department recommend the award of this purchase in the amount of **\$31,537** to **Eagle Point/TJ Morris & Son of Thorofare, NJ**.

Respectfully,



Dan Kookan  
Purchasing Manager

Cc: K. Smith      A. Lavoie

NASHUA POLICE  
DEPARTMENT

Date: 9 August 2016



## Intradepartmental Communication

To: Dan Kookan, Purchasing Manager

From: Karen A. Smith, Business Manager

Subject: Nashua Police Department ammunition and supplies

This request is for the purchase of the following ammunition and supplies. The state contract #8001897 has been awarded to Eagle Point Gun/TJ Morris & Son effective 9/14/15 – 9/30/17.

MANUFACTURER	MODEL	CALIBER	DESCRIPTION	QUANTITY	COST
FEDERAL	AE223	.223 CAL	55 GRN	54,000 RNDs	\$15,543.36
FEDERAL	LE308TT2	.308 CAL	168 GRN	4000 RNDs	\$5,478.40
FEDERAL	LE223T3	.223 CAL	62 GRN	7000 RNDs	\$8,213.45
FEDERAL	BC223NT5A	.223 CAL	55 GRN	3000 RNDs	\$2,301.90
				TOTAL	\$31,537.11

The Nashua Police Department recommends purchasing the ammunition order from Eagle Point/TJ Morris & Son of Thorofare, NJ under the state contract.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen A. Smith".

Karen A. Smith  
Business Manager



# THE CITY OF NASHUA

*Financial Services*

*Purchasing Department*

*"The Gate City"*

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August 11, 2016  
Memo #17-029

TO: MAYOR DONCHESS  
FINANCE COMMITTEE

SUBJECT: SNOW PLOWING CONTRACT – CITY PARKING LOTS (VALUE: NOT TO EXCEED  
\$26,000)  
DEPARTMENT: 183 ECONOMIC DEVELOPMENT; FUND: PARKING GENERAL FUND  
ACCOUNT CLASSIFICATION: 54 PROPERTY SERVICES

Please see attached communication from Tim Cummings, Director of Economic Development dated August 2, 2016 for the information related to this purchase.

The Director of Economic Development and the Purchasing Department recommend awarding this contract in an amount not to exceed **\$26,000** to **Doty Group of Hollis, NH**.

Respectfully,

Dan Kooker  
Purchasing Manager

Cc: T Cummings J Graziano



# THE CITY OF NASHUA

"The Gate City"

Economic Development Division

To: Dan Kooken, Purchasing Manager  
 From: Tim Cummings, Economic Development Division Director  
 Cc: Janet Graziano, Financial Manager, Sarah Marchant, Community Development Director  
 Date: August 2, 2016

Re: **FY'17 Snow Plowing Services Contract (Value not to exceed \$26,000)**  
**Department: 166 Parking**

### Request

The Economic Development Division is requesting approval to contract with The Doty Group, Inc. of Hollis, New Hampshire for snow plowing and optional snow removal services in the amount not to exceed \$26,000.

### Service Area

The contract's service area is the 15 parking lots under the responsibility of the Parking Department, as specified attached hereto in the contract's scope of work.

### Deliverable

The contractor intends to provide snow plowing services through May 15, 2017. The Parking Department Maintenance Staff will provide axillary salt and sanding services and the Department of Public Works provides for the removal of snow on an as-needed basis.

### RFP Background

For FY'17 The Parking Department went out to bid in an effort to learn what potential contractors could offer as a rate for snow plowing and snow removal services for the abovementioned parking lots. The RFP was posted on the City website under IFB0862-072916 in June 2016 and sent to 15 known snow plowing contractors.

Only one bid was received and it was from The Doty Group, Inc.:

<b>Doty Group</b>	<b>Price/hr.</b>
Plow Truck	\$75/hr.
Plow Truck with Dump Bed	\$85/hr.
Hyundai Bucket Front Loader	\$125/hr.
Tri-Axle Dump Trailer (20 yd.)	\$125/hr.
Tri-Axle Dump Trailer (30 yd.)	\$145/hr.

The Doty Group, Inc. is a reputable and responsible company. The City of Nashua has used them successfully during the previous five (5) winters.

The Doty Group has also given Nashua the same pricing as they used last year.

Subject: Snow Plowing Agreement

## AGREEMENT

The City of Nashua, New Hampshire and the Contractor hereby mutually agree as follows:

### GENERAL PROVISIONS

#### 1. IDENTIFICATION.

THIS AGREEMENT (the "Agreement") dated as of August 02, 2016 (the "Effective Date"), is between the CITY OF NASHUA, NEW HAMPSHIRE, c/o of the Transportation Department, 11 Riverside Street, Nashua NH 03060, a New Hampshire municipal corporation, phone: 603-880-0100 ext. 3 ("City"), and THE DOTY GROUP, INC, 26 Plain Road, Hollis, NH 03049 Phone: (603) 465-6623 ("Contractor"). Each of City and Contractor are sometimes referred to herein as a "Party" and collectively as the "Parties".

#### 2. CONTRACTOR CONTRACT MANAGER

Contractor shall designate a Contract Manager who shall be responsible for all contractual authorization and administration under the Contract. This person is:

Contract Manager: Lawrence Doty

Title: President

Address: 26 Plain Road  
Hollis NH 03049

Tel : 603-396-7409

Email : [LDLDDL17@hotmail.com](mailto:LDLDDL17@hotmail.com)

#### 3. CITY PURCHASING MANAGER

The City shall designate a Contract Manager who shall function as the City's representative with regard to Contract administration. This person is:

Contract Manager: Daniel Kooken

Title: Purchasing Manager

Address: 229 Main Street  
Nashua, NH 03060

Tel : 603-589-3333

Email : [kookend@nashuanh.gov](mailto:kookend@nashuanh.gov)

#### 4. **SCOPE OF WORK**

Services shall include, snow plowing and removal services. Snow plowing services shall be conducted within one hour after accumulation of snow greater than three (3) inches. Contractor must be available for snow removal services on an as-needed basis to be determined by the Parking Department Foreman. The Contractor shall perform routine maintenance and repair on all equipment required to provide snow plowing and removal service. All labor, tools, transportation, disposal costs, materials, equipment and permits required to perform snow plowing and removal shall be the responsibility of the Contractor. Contractor shall clearly identify areas such as, but not limited to, curbing, shrubs, manholes, fencing, guardrails, electrical junction boxes or any other areas that are susceptible to damage when concealed by snowfall prior to the first snowfall.

#### 5. **TERM & EXTENSION**

This agreement will be from the date approved by the City of Nashua Purchasing Department and terminating on May 15, 2017. This agreement may be extended for additional periods under the same terms, conditions and pricing structure upon the written agreement of the Contractor and the City of Nashua, NH.

#### 6. **DAMAGE**

- A. The Contractor agrees to indemnify and hold the City of Nashua, NH harmless from any and all liability, claims, and actions of whatever kind arising out of injuries or damage caused, arising from, resulting or due to its performance of its snow plowing services.
- B. The Contractor agrees that any damage to building(s), materials, equipment or other property caused, arising from, resulting or due to its performance of the snow plowing service will be repaired or replaced at its sole expense.

#### 7. **INSURANCE**

1. The Contractor shall carry the following minimum requirements relating to insurance coverage and policy limits:
  - General Liability - \$1,000,000
  - Motor Vehicle - \$1,000,000 combined single limit for bodily injury and property damage
  - Workers' Compensation as required by the NH statute

The agent/insurance carrier must issue the certificate of insurance. **The declaration page of a personal auto policy is not acceptable. Insurance coverage must be provided via a commercial policy.** The agent/insurance carrier must be licensed in the City of Nashua, New Hampshire and acceptable to the City of Nashua, New Hampshire.

**8. INSURANCE CERTIFICATES**

1. Insurance certificates evidencing the above are to be furnished the City as time of execution of the contract and shall provide for not less than 30 days prior notice to the City of any cancellation or major change in the policies.
2. The Risk Management Department is to be furnished a copy of the following documentation:
  - A copy of current motor vehicle registrations
  - A copy of all operators' current drivers' licenses
  - The Transportation Department is to verify that all vehicles to be operated have current inspection stickers; this needs to be noted when writing to the Risk Management Department
3. The City of Nashua must be named as an additional insured on all certificates.
4. The Contractor must provide proof of compliance meeting Federal Department of Transportation Commercial Driver Licensing requirements as to drug and alcohol testing.
5. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this prequalification shall provide the required coverage and shall not be suspended, voided, cancelled, or reduced in coverage in limits except after thirty (30) days prior written notice has been given to the City of Nashua Risk Management Department. Such notice shall be sent directly to The City of Nashua Risk Management Department, PO Box 2019, 229 Main Street, Nashua, NH 03061-2019 and shall be sent by certified mail, return receipt requested.
6. The Contractor agrees to provide City of Nashua, NH with the services indicated in the Exhibit A of this agreement at the prices as listed below.

Two vehicles per storm are required at the hourly rates listed below. The use of a third vehicle must be approved by the Parking Department Foreman or person designated by said Manager of the Division.

1. \$85.00/hr Ford 6 wheel dump (F450/F550)
2. \$75.00/hr Ford 4 wheel flatbed (F250/F350)
3. \$125/hr Front end loader with 2 yd. bucket
4. \$125/hr Tri-axle dump trailer (20 yds.)
5. \$145/hr Tri-axle dump trailer (30 yds.)

**Exhibit A**

**Lot Locations**

	<b><u>LOCATIONS</u></b>
1	City Hall Lot
2	Maple Street Lot
3	Garden Street & Lot

4	School Street Lot
5	High Street Lot
6	Factory Street Lot
7	Water Street Lot
8	Le Parc Renaissance Lot
9	Railroad Square Lot
10	Pearson/Park Avenue Lot
11	Library Lot
12	Library Annex Lot
13	Spring Lot
14	Senior Center Lot (west side)
15	Conway Arena Lot

**9. PAYMENTS**

The Contractor shall invoice the requesting agency within seven (7) days of service. Payment shall be paid in full within thirty (30) days after receipt of the properly documented invoice and acceptance of the work to the City of Parking Department's satisfaction.

The invoice shall be sent to the address of the using agency under agreement.

**10. GENERAL REQUIREMENTS FOR SNOW PLOWING SERVICES**

1. Contractor shall ensure that all equipment used is properly registered and inspected. The City reserves the right to verify this information.
2. Upon Notice of Acceptance, Contractor must provide phone numbers where employees can be reached. The inability of the City to make contact with Contractor within a reasonable amount of time is cause for the City to use other contractors.
3. All snow plowing operations, including the location and timing of snow plowing, will be scheduled directly by the Parking Department Foreman or authorized representative.
4. The Contractor shall provide services in order to ensure the snow is plowed to designated areas in each of the municipal parking lots per the direction of the Parking Department Foreman. The Contractor shall ensure that all leased parking spaces remain accessible to lease parking customers following the snow event. If, for any reason, a leased parking space must be utilized for storage of snow, the Contractor must contact the Parking Department Foreman immediately.
5. Snow removal operations will be at the discretion and scheduled directly by the Department. The contractor should have the proper equipment available to load the

plowed snow into a transport vehicle, and then take that vehicle to a City of Nashua approved snow dump site.

6. All equipment must be equipped with a revolving or flashing amber light.
7. Subcontracting is not allowed.
8. The City shall have no obligation to engage the services of the Contractor for a specified number of times.
9. Contractor shall be knowledgeable and comply with all federal, state, and local laws, rules, regulations, and ordinances that may be applicable to the operation of the equipment provided by Contractor for snow plowing services.
10. The Contractor shall do all the work and furnish all the materials, tools, equipment and safety devices necessary to perform snow plowing at all 14 (fourteen) municipal parking facilities, in a workman like manner and within the time specified. It shall complete the entire work to the satisfaction of the Parking Foreman and in accordance with the specifications herein mentioned, at the prices herein agreed upon and fixed therefore.
11. The Contractor shall conduct its work so as to interfere as little as possible with private business and public travel. It shall, at its own expense, wherever necessary or required, furnish safety devices and take such other precautions as may be necessary to protect life and property.
12. The Contractor shall be responsible for all work done under this contract; for the protection of the work; and, for preventing injuries to persons and damage to property and utilities on or about the work. It shall in no way, be relieved of its responsibilities by any right of the Parking Foreman to give permission or issue orders relating to any part of the work, or by any such permission given or orders issued, or by failure of the Parking Foreman to give such permission or such orders.
13. The Contractor shall bear all losses resulting to him or to the owner on account of the amount or character of the work, or because of the nature of the land in or on which the work is done is different from what was estimated or expected, or account of the weather, elements or other causes. The contractor shall assume the defense of all claims of whatsoever character against the Contractor of the City, and indemnify, save harmless, and insure the City, its officer or agents, against all claims arising out of injury or damage to persons, corporations or property, whether said claims are for unavoidable damage or

not, and from all claims relating to labor and equipment furnished for the snow plowing work.

**PARKING LOT SNOW REMOVAL PRIORITY LIST\***

1. SPRING STREET LOT
2. SENIOR CENTER LOT
3. LIBRARY LOT
4. LIBRARY LOT ANNEX
5. CITY HALL LOTS
6. GARDEN STREET & LOT
7. LE PARK RENAISSANCE LOT
8. WATER STREET LOT
9. PEARSON/PARK AVE. LOT
10. FACTORY STREET LOT
11. RAILROAD SQUARE LOT
12. MAPLE STREET LOT
13. SCHOOL STREET LOT
14. HIGH STREET LOT (55 TAXI)
15. CONWAY ARENA LOT

\*Subject to Change.

**11. GOVERNING LAW**

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.

**12. 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.

**13. 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.

**14. 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.

**15. 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 Effective Date.

**CITY OF NASHUA**

By: Jim Donchess, duly  
authorized

Signature:

Title: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

**THE DOTY GROUP, INC.**

By: \_\_\_\_\_, duly  
authorized

Signature:

Title: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_



# THE CITY OF NASHUA

*Financial Services*

*Purchasing Department*

*"The Gate City"*

August 11, 2016  
Memo #17-030

TO: MAYOR DONCHESS  
FINANCE COMMITTEE

SUBJECT: PURCHASE OF RADIOS FOR EMERGENCY MANAGEMENT VEHICLES (VALUE:  
\$11,997)  
DEPARTMENT: 156 EMERGENCY MANAGEMENT; FUND: 2015/2016 EMERGENCY  
MANAGEMENT PERFORMANCE GRANT (EMPG) \$11,822  
ACCOUNT CLASSIFICATION: 61 SUPPLIES & MATERIALS  
DEPARTMENT: 156 EMERGENCY MANAGEMENT; FUND: GENERAL FUND \$175  
ACCOUNT CLASSIFICATION: 61 SUPPLIES & MATERIALS

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

Pursuant to **§ 5-85. Special purchase procedures**. A. The competitive bidding process shall not apply to the following special purchase. (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 **\$11,997 to Motorola Solutions of Montvale, NJ.**

Respectfully,

*Dan Kookan*

Purchasing Manager

Cc: J. Kates J. Graziano



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

Justin Kates, Director  
603.589.3260  
[katesj@nashuanh.gov](mailto:katesj@nashuanh.gov)

TO: Dan Kooken  
Purchasing Manager

SUBJECT: Purchase of Motorola Radios for Emergency Management Vehicle (Value: \$11,997.20)  
Department: 156 Emergency Management; Fund: 2015/2016 Emergency Management Performance Grant (EMPG) \$11,822.00  
Account Classification: 61 Supplies & Materials  
Department: 156 Emergency Management; Fund: General Fund \$175.20  
Account Classification: 61 Supplies & Materials

This project will purchase a mobile radio to be installed in the Emergency Management Vehicle as well as a portable radio. Both radios are compatible with the Citywide Radio System as well as surrounding jurisdiction frequencies.

Pursuant to NRO § 5-84 (A) (5), these items will be purchased from Motorola Solutions who installed the current citywide trunked radio system. These two radios will be maintained in house by the Citywide Communications Division and contain a three year warranty.

Funding for this project will come from a Department of Homeland Security Grant accepted by the Board of Aldermen on May 24th, 2016. A 50% local match was required and is provided through an "in-kind" match through the value of the vehicle.

The Citywide Communications Division and this Office recommend the award of this purchase in the amount of **\$11,997.20 to Motorola Solutions of Montvale, NJ.**

Thank You,

Justin Kates  
Director of Emergency Management

Cc: B. Mansfield J. Graziano

MODEL #

DESC.

QTY.

UNIT

DISC.

D.UNIT

D.EXT.



DATE: 6.29.16

Nashua APX Pricing

Bill Mansfield

0 Panther Dr, Nashua, NH 03062

(603) 594-3500

APX8000 ALLBAND DIGITAL PORTABLE RADIO						
H91TGD9PW7 N	APX 8000 ALL BAND PORTABLE MODEL 3.5	1	\$6,109.00	30%	\$4,276.30	\$4,276.30
Q806	ADD: ASTRO DIGITAL CAI OPERATION	1	\$515.00	30%	\$360.50	\$360.50
H38	ADD: SMARTZONE OPERATION	1	\$1,500.00	30%	\$1,050.00	\$1,050.00
Q361	ADD: P25 9600 BAUD TRUNKING	1	\$300.00	30%	\$210.00	\$210.00
Q58	ADD: 3 YEAR SERVICE FROM THE START LITE	1	\$102.00	0%	\$102.00	\$102.00
G996	ADD: PROGRAMMING OVER P25 (OTAP)	1	\$100.00	30%	\$70.00	\$70.00
QA09001	ADD: WIFI CAPABILITY	1	\$300.00	30%	\$210.00	\$210.00
QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	1	\$0.00	30%	\$0.00	\$0.00
WPLN7080	APX 7000 IMPRES CG SU APX7000 US/NA/CA/LA	1	\$125.00	30%	\$87.50	\$87.50
Q53	FRONT PANEL PROGRAMMING	1	\$150.00	30%	\$105.00	\$105.00
NNTN7526A	FPP DONGLE	1	\$37.00	30%	\$25.90	\$25.90
					<b>TOTAL</b>	<b>\$6,497.20</b>

ORDERING PLEASE CONTACT  
 Scott Cruikshank  
[scott.cruikshank@motorolasolutions.com](mailto:scott.cruikshank@motorolasolutions.com)

*\*IV&D IS NOW INCLUDED IN ALL APX RADIOS*  
*\*BLUETOOTH IS NOW INCLUDED IN ALL APX PORTABLES*

DELIVERY 15-30 DAYS

All pricing at Motorola list

TERMS NET 45 FROM INVOICE AS SHIPPED

**MODEL #****DESC.****QTY. UNIT****Nashua APX Pricing****Bill Mansfield**

0 Panther Dr, Nashua, NH 03062

(603) 594-3500

	<b>APX7500 DUAL BAND MID POWER</b>		
M30TSS9PW1 N	APX7500 DUAL BAND MID POWER	1	\$2,736.00
GA00244	ADD: 7/800MHZ PRIMARY BAND	1	\$0.00
GA00308	ADD: VHF MP SECONDARY BAND	1	\$400.00
GA00579	ADD: ENABLE DUAL BAND OPERATION	1	\$600.00
G806	ADD: ASTRO DIGITAL CAI OPERATION	1	\$515.00
G51	ENH: SMARTZONE OPERATION APX	1	\$1,500.00
G361	ADD: P25 TRUNKING SOFTWARE	1	\$300.00
G442	ADD: O5 CONTROL HEAD	1	\$432.00
G444	ADD: APX CONTROL HEAD SOFTWARE	1	\$0.00
G89	ADD: REMOTE MOUNT MID POWER	1	\$297.00
G174	ADD: NO RF ANTENNA NEEDED	1	\$0.00
G78	ADD: 3 YEAR SERVICE FROM THE START LITE	3	\$158.00
G996	ENH: OVER THE AIR PROVISIONING	4	\$100.00
GA00235	ADD: NO GPS ANTENNA NEEDED	5	\$0.00

**ORDERING**

PLEASE CONTACT

Scott Cruikshank

[scott.cruikshank@motorolasolutions.com](mailto:scott.cruikshank@motorolasolutions.com)**\*IV&D IS NOW INC.****\*BLUETOOTH IS N****DELIVERY**

15-30 DAYS

**All pricing at Motorola list****TERMS****NET 45 FROM INVOICE AS SHIPPED**

**DISC. D.UNIT D.EXT.**

**DATE: 6.29.2016**

30%	\$1,915.20	\$1,915.20
30%	\$0.00	\$0.00
30%	\$280.00	\$280.00
30%	\$420.00	\$420.00
30%	\$360.50	\$360.50
30%	\$1,050.00	\$1,050.00
30%	\$210.00	\$210.00
30%	\$302.40	\$302.40
30%	\$0.00	\$0.00
30%	\$207.90	\$207.90
30%	\$0.00	\$0.00
0%	\$158.00	\$474.00
30%	\$70.00	\$280.00
30%	\$0.00	\$0.00
	<b>TOTAL</b>	<b>\$5,500.00</b>

**LUDED IN ALL APX RADIOS**

**OW INCLUDED IN ALL APX PORTABLES**

# APX™ 7500

## Project 25 Multi-Band Mobile Radio



### STANDARD FEATURES

Available in 700/800 MHz, VHF, UHF R1, and UHF R2 bands

Up to 1250 Channels

Optional multi-band operation

Trunking Standards supported:

- Clear or digital encrypted ASTRO® 25 Trunked Operation
- Capable of SmartZone®, SmartZone Omnilink, SmartNet®

Analog MDC-1200 and Digital APCO P25 Conventional System Configurations

Narrow and wide bandwidth digital receiver  
(6.25 kHz equivalent/12.5 kHz/25 kHz)

Embedded digital signaling (ASTRO and ASTRO 25)

Integrated GPS capable

Integrated Encryption Hardware

Seamless wideband scan

Intelligent lighting

Radio profiles

Unified Call List

Expansion Slot Standard

Meets applicable MIL-specs 810C, D, E, F and G

Ships standard IP54

Utilizes Windows XP and Vista Customer Programming Software (CPS)

- Supports USB Communications
- Built in FLASHport™ support

Re-use of most XTL™ accessories

### OPTIONAL FEATURES

Enhanced Encryption Software Options

Programming over Project 25 (POP25)

Text Messaging

Over the Air Re-Key (OTAR)

12 character RF ID asset tracking

The APX 7500 mobile exemplifies Motorola's commitment to meet the voice and data demands of today's first responders in mission critical environments—to enable, anywhere, anyplace, anytime connectivity. With integrated voice and data capabilities, these radios offer improved communications between multiple agencies, as well as neighboring communities, from everyday operations to disaster response.

Motorola's newest P25 mobile is multiband, operating in any 2 frequency bands (700/800 MHz, VHF, UHF R1, and UHF R2), communicates with current and future networks (FDMA and TDMA)



## SPECIFICATION SHEET

APX 7500  
Project 25 Multi-Band Mobile Radio



### O3 HANDHELD CONTROL HEAD FEATURES

- 4 lines: 2 lines text (14 characters), 1 line icons, 1 line soft menu keys
- 3 x 6 keypad with up to 24 programmable soft keys
- Cellular style user interface and color display



### O5 CONTROL HEAD FEATURES

Tri-color LCD display

- 4 lines: 2 lines text (14 characters), 1 line icons, 1 line soft menu keys
- 3 x 6 keypad microphone accessory with 3 programmable soft keys
- 5 programmable soft key buttons and 5 scroll-through menus with up to 24 programmable soft keys
- Multiple control head configuration to fully control a single radio with up to 4 different wired locations
- Motorcycle configuration available



### O9 INTEGRATED CONTROL HEAD

- Extra large full color display with Intelligent Lighting
- 12 button DTMF style keypad
- Dedicated siren controls
- Large programmable one touch buttons
- Night/day mode button

## SIGNALLING (ASTRO MODE)

Signalling Rate	9,6 kbps
Digital ID Capacity	10,000,000 Conventional / 48,000 Trunking
Digital Network Access Codes	4,096 network site addresses
ASTRO Digital User Group Addresses	4,096 network site addresses
Project 25 – CAI Digital User Group Addresses	65,000 Conventional / 4,094 Trunking
Error Correction Techniques	Golay, BCH, Reed-Solomon codes
Data Access Control	Slotted CSMA: Utilizes infrastructure-sourced data status bits embedded in both voice and data transmissions.

## MOBILE APX7500

Dimensions	Mid Power Radio Transceiver	2" x 7" x 8.6" (50.8 x 177.8 x 218.4 mm)
	O5 Control Head	2" x 7" x 2.5" (50.8 x 180.3 x 63.5 mm)
	Mid Power Radio Transceiver and O5 Control Head–Dash Mount	2" x 7" x 9.6" (50.8 x 180.3 x 243.8 mm)
	Mid Power Radio Transceiver and Remote Mount	2.0" x 7" x 9.6" (50.8 x 180.3 x 243.8 mm)
	High Power Radio Transceiver	2.9" x 11.5" x 8.8" (74 x 293 x 223 mm)
Weight	High Power Radio Transceiver with Handle	3.4" x 11.5" x 8.8" (87 x 293 x 223 mm)
	Mid Power Radio Transceiver and Control Head	7.0 lbs (3.17 kg)
	High Power Radio Transceiver	14.2 lbs with trunnion (6.4 kg) 12 lbs without trunnion (5.4 kg)

## SPECIFICATION SHEET

APX 7500  
Project 25 Multi-Band Mobile Radio

### TRANSMITTER – TYPICAL PERFORMANCE SPECIFICATIONS

	700 MHz	800 MHz	VHF	UHF R1	UHF R2	
Frequency Range/Bandsplits	764-776 MHz 794-806 MHz	806-824 MHz 851-870 MHz	136-174 MHz	380-470 MHz	450- 520 MHz	
Channel Spacing	25/12.5 kHz	25/20/12.5 kHz	30/25/12.5 kHz	25/12.5 kHz	25/12.5 kHz	
Maximum Frequency Separation	Full Bandsplit	Full Bandsplit	Full Bandsplit	Full Bandsplit	Full Bandsplit	
Rated RF Output Power Adj*	10-30 Watts	10-35 Watts	10-50 Watts or 25-100 Watts	10-40 Watts or 25-100 Watts	10-45 Watts (450-485 MHz) 10-40 Watts (485-512 MHz) 10-25 Watts (512-520 MHz)	
Frequency Stability* (-30°C to +60°C; +25°C Ref.)	±0.00015 %	±0.00015 %	±0.0002 %	±0.0002 %	±0.0002 %	
Modulation Limiting*	±5 kHz/±2.5 kHz	±5 kHz/±4 kHz (NPSAPC) /±2.5 kHz	±5 kHz/±2.5 kHz	±5 kHz/±2.5 kHz	±5 kHz/±2.5 kHz	
Modulation Fidelity (C4FM) 12.5kHz Digital Channel	±2.8 kHz	±2.8 kHz	±2.8 kHz	±2.8 kHz	±2.8 kHz	
Emissions*	Conducted <sup>†</sup> -70/-85 dBc	Radiated <sup>†</sup> -20/-40 dBm	Conducted -70 dBc	Radiated -20 dBm	Conducted -85 dBc	Radiated -20 dBm
Audio Response*	+1, -3 dB (EIA)	+1, -3 dB (EIA)	+1, -3 dB (EIA)	+1, -3 dB (EIA)	+1, -3 dB (EIA)	
FM Hum & Noise (25 & 20 KHz/12.5 KHz)	40/34 dB	40/34 dB	50/40 dB	45/40 dB	45/40 dB	
Audio Distortion*	2%	2%	2%	2%	2%	

### RECEIVER – TYPICAL PERFORMANCE SPECIFICATIONS

	700MHz	800MHz	VHF	UHF R1	UHF R2	
Frequency Range/Bandsplits	764-776	851-870	136-174 MHz	380-470 MHz	450-520 MHz	
Channel Spacing	25/12.5 kHz	25/20/12.5 kHz	30/25/12.5 kHz	25/12.5 kHz	25/12.5 kHz	
Maximum Frequency Separation	Full Bandsplit	Full Bandsplit	Full Bandsplit	Full Bandsplit	Full Bandsplit	
Audio Output Power at 3% distortion*	7.5W or 15W **	7.5W or 15W **	7.5W or 15W **	7.5W or 15W **	7.5W or 15W **	
Frequency Stability* (-30°C to +60°C; +25°C Ref.)	±0.00015 %	±0.00015 %	±0.0002 %	±0.0002 %	±0.0002 %	
Analog Sensitivity* 12 dB SINAD	0.25 µV	0.25 µV	Pre-Amp 0.2 µV	Standard 0.3 µV	Pre-Amp 0.2 µV	Standard 0.3 µV
Digital Sensitivity 1% BER	0.3 µV	0.3 µV	0.25 µV	0.25 µV	0.25 µV	0.4 µV
5% BER	0.25 µV	0.25 µV	0.2 µV	0.2 µV	0.2 µV	0.3 µV
Intermodulation	80 dB	80 dB	80 dB	85 dB	80 dB	85 dB
Spurious Rejection	90 dB	90 dB	90 dB	90 dB	90 dB	90 dB
Audio Distortion at rated*	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Selectivity* 25 kHz	80 dB	80 dB	-	82 dB	82 dB	82 dB
12.5 kHz	65 dB	65 dB	70 dB	70 dB	70 dB	70 dB
30 kHz	-	-	90 dB	-	-	-

### GPS SPECIFICATIONS

Channels	12
Tracking Sensitivity	-153 dBm
Accuracy**	<10 meters (95%)
Cold Start	<60 seconds (95%)
Hot Start	<10 seconds (95%)
Mode of Operation	Autonomous (Non-Assisted) GPS

### POWER AND BATTERY DRAIN

Model Type	136-174 MHz, 380-470 MHz, 450-520 MHz, 764-870 MHz					
Minimum RF Power Output	10-35 Watt (764-870 MHz), 10-50 Watts or 25-100 Watts (136-174 MHz), 10-40W or 25-100 Watts (380-470 MHz), 10-45Watts (450-485 MHz), 10-40Watts (485-512 MHz), 10-25Watts (512-520 MHz)					
Operation	13.8V DC ±20% Negative Ground					
Standby at 13.8V	0.85A (764-870 MHz), 0.85A (136-174 MHz), 0.85A (380-470 MHz), 0.85A (450-520 MHz)					
Receive Current at Rated Audio at 13.8V	3.2A (764-870 MHz), 3.2A (136-174 MHz), 3.2A (380-470 MHz), 3.2A (450-520 MHz)					
Transmit Current (A) at Rated Power	136-174 MHz (10-50 Watt)	13A (50W)	8A (15W)	764-870 MHz (10-35 Watt)	12A (35W)	8A (15W)
	380-470 MHz (10-40 Watt)	11A (40W)	8A (15W)	136-174 MHz (25-110 Watt)	20A (100W)	
	450-520 MHz (10-45 Watt)	11A (45W)	8A (15W)	380-470 MHz (25-110 Watt)	24A (100W)	

**SPECIFICATION SHEET**

APX 7500  
Project 25 Multi-Band Mobile Radio

**MOBILE MILITARY STANDARDS 810 C, D, E, F, & G**

	MIL-STD-810C	MIL-STD-810D	MIL-STD-810E	MIL-STD-810F	MIL-STD-810G
	Method Proc./Cat.	Method Proc./Cat.	Method Proc./Cat.	Method Proc./Cat.	Method Proc./Cat.
Low Pressure	500.1 I	500.2 II	500.3 II	500.4 II	500.5 II
High Temperature	501.1 I,II	501.2 I/A1,II/A1	501.3 I/A1,II/A1	501.4 I/Hot, II/Hot	501.5 I-A1, II
Low Temperature	502.1 I	502.2 I/C3, II/C1	502.3 I/C3, II/C1	502.4 I/C3, II/C1	502.5 I-C3, II
Temperature Shock	503.1 -	503.2 I/A1C3	503.3 I/A1C3	503.4 I	503.5 I-C
Solar Radiation	505.1 II	505.2 I	505.3 I	505.4 I	505.5 I-A1
Rain	506.1 I,II	506.2 I,II	506.3 I,II	506.4 I,III	506.5 I, III
Humidity	507.1 II	507.2 II	507.3 II	507.4 -	507.5 II - Aggravated
Salt Fog	509.1 -	509.2 -	509.3 -	509.4 -	509.5 -
Blowing Dust	510.1 I	510.2 I,II	510.3 I,II	510.4 I,II	510.5 I, II
Vibration	514.1 VIII/F, Curve-W	514.3 I/10, II/3	514.4 I/10, II/3	514.5 I/24	514.6 I-cat.24
Shock	516.1 I,II	516.3 I,IV	516.4 I,IV	516.5 I,IV	516.6 I, V, VI

**ENCRYPTION**

Supported Encryption Algorithms	ADP, AES, DES, DES-XL, DES-OFB, DVP-XL
Encryption Algorithm Capacity	7
Encryption Keys per Radio	Module capable of storing 1024 keys. Programmable for 48 Common Key Reference (CKR) or 16 Physical Identifier (PID)
Encryption Frame Re-sync Interval	P25 CAI 300 mSec
Encryption Keying	Key Loader
Synchronization	XL - Counter Addressing OFB - Output Feedback
Vector Generator	National Institute of Standards and Technology (NIST) approved random number generator
Encryption Type	Digital
Key Storage	Tamper protected volatile or non-volatile memory
Key Erasure	Keyboard command and tamper detection
Standards	FIPS 140-2 FIPS 197

\* Measured in the analog mode per TIA/EIA 603 under nominal conditions

\*\* Accuracy specs are for long-term tracking (95th percentile values >5 satellites visible at a nominal -130 dBm signal strength)

<sup>1</sup> Specs includes performance for the non-GNSS/GNSS bands

\*\* Output power in to 8 and 3.2 Ohm external speakers respectively

Specifications subject to change without notice. All specifications shown are typical.  
Radio meets applicable regulatory requirements.

**ENVIRONMENTAL SPECIFICATIONS**

Operating Temperature	-30°C / +60°C
Storage Temperature	-40°C / +85°C
Humidity	Per MIL-STD
ESD	IEC 801-2 KV
Water & Dust Intrusion	IP54, MIL-STD

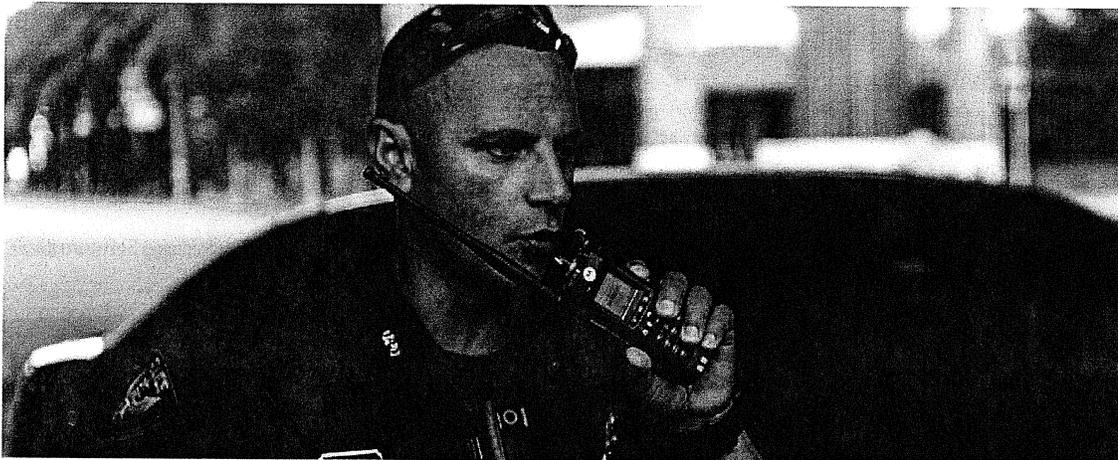
**FCC TYPE ACCEPTANCE ID**

FCC ID	Band and Power Level
AZ492FT3821	25-100 Watts (136-174 MHz)
AZ492FT4898	25-100 Watts (136-174 MHz) and 25-100 Watts (380-470 MHz)
AZ492FT4895	10-50 Watts (136-174 MHz) and 10-40Watts (380-470 MHz)
AZ492FT5858	10-35 Watt (764-870 MHz)
AZ492FT7037	10-50 Watts (136-174 MHz) and 10-35 Watt (764-870 MHz)
AZ492FT7035	25-100 Watts (136-174 MHz) and 10-35 Watt (764-870 MHz)
AZ492FT3824	10-50 Watts (136-174 MHz)
AZ492FT4894	10-40 Watts (380-470 MHz)
AZ492FT4897	25-100 Watts (380-470 MHz)
AZ492FT4896	10-45 Watts (450-520 MHz)



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R3-1-2037C



# APX™ 8000 ALL-BAND P25 PORTABLE RADIO

## UNLIMITED MOBILITY. UNCOMPROMISING PERFORMANCE.

Take command with a 4-in-1 radio that offers limitless interoperability, the clearest, loudest audio and seamless Wi-Fi® connectivity. The compact, rugged and secure APX 8000 redefines mission critical communications.

### ALL BANDS, NO BOUNDARIES

With four RF bands and multi-mode system access, the APX 8000 knows no limits when it comes to interoperability. Communicate across borders using a single device. Use analog MDC 1200 or digital P25 mode, conventional or trunked operation, SmartNet or SmartZone legacy systems, clear or secure - all across 7/800MHz, VHF and UHF Range 1 & 2 bands.

### HEAR AND BE HEARD MORE CLEARLY

Whether it's loud or windy, whether you whisper or yell, the APX 8000 adaptive audio engine and ultra-loud speaker brings clarity into every conversation. The radio dynamically changes the level of noise suppression, microphone gain, windporting and speaker equalization on the fly to consistently produce the loudest, clearest audio in any environment.

### VOICE AND DATA, ALL AT ONCE

With Wi-Fi® access, the APX 8000 can quickly receive new codeplugs, firmware and software features in order to redeploy the radio fleet with ease as users keep talking without interruption. Mission Critical Wireless Bluetooth® connects quickly and securely with remote speaker microphones, surveillance kits and the LEX L10 Mission Critical LTE Handheld for radio remote control.

### FIT FOR THE MISSION

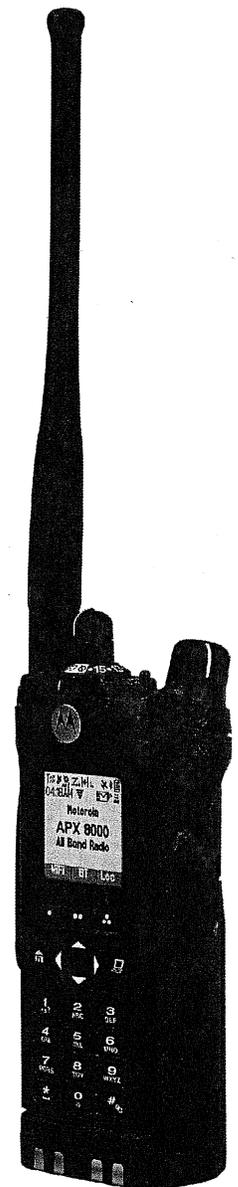
Intuitively designed with a familiar look and feel, the compact APX 8000 is always comfortable to use, from your holster to your grip. It contains 4 radio bands packaged into the award-winning design of the APX 6000. The all-band antenna is flexible so it doesn't get in the way.

### RUGGED, ROBUST & RELIABLE

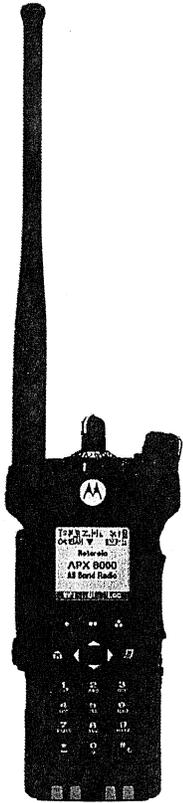
With a water-tight seal, drop-resistant dual battery latch, pressure-tested tempered glass display and a shock-absorbing aluminum alloy endoskeleton, the APX 8000 is ready for unpredictable environments. It can survive 2 meter water submersion for 2 hours (IP68) and Motorola's renowned Accelerated Life Test.

### DESIGNED TO SECURE & PROTECT

The APX 8000's voice and data is secured by multiple hardware encryption algorithms (AES, DES, ADP), up to 128 keys and the ability to re-key over the air so that sensitive information stays protected from scanners and eavesdroppers. P25 Radio Authentication ensures only valid users can access the system while two-factor authentication allows users to securely log in to databases.



**PRODUCT DATA SHEET**  
APX™ 8000



**RF BANDS:**

700/800 MHz, VHF, UHF Range 1 & 2

**OPERATION MODES:**

9600 Baud Digital APCO P25 Phase 1 FDMA and Phase 2 TDMA Trunking

3600 Baud SmartNet®, SmartZone®, SmartZone, Omnilink Trunking

Digital APCO 25, Conventional, Analog MDC 1200, Quick Call II System Configurations

Narrow and wide bandwidth digital receiver (6.25 kHz equivalent/25/20/12.5 KHz)

**STANDARD FEATURES:**

Mission Critical Wireless Bluetooth\*

ASTRO 25 Integrated Voice & Data

Software Key

Text-Messaging

Voice Announcements

ISSI 8000 Roaming

Radio Profiles, Dynamic Zone

Intelligent Lighting

Single-key ADP Encryption

IP68 submersion (2 meters, 2 hours)

IMPRES Battery

**ADAPTIVE AUDIO ENGINE:**

1 Watt Speaker with Adaptive Equalization

Adaptive Dual-sided Operation

Adaptive Noise Suppression Intensity

Adaptive Gain Control

Adaptive Windporting

**PROGRAMMING:**

Utilizes Windows 7 & 8 Customer Programming Software (CPS) with Radio Management

**OPTIONAL FEATURES:**

Wi-Fi® 802.11 b/g/n

GPS Outdoor Location Tracking

RFID Volume Knob

Multi-key for 128 keys and multi-algorithm

Programming Over Project 25 (OTAP)

Over the Air Rekey (OTAR)

Digital Tone Signaling

LEX L10 Collaboration

P25 Authentication

Man Down Sensor

Rugged submersible option: MIL-STD 512.X/I, IP68 (2 meters, 4 hours)

\* Compatible with BT 2.1, HSP, PAN, DUN and SPP Profiles found in off-the-shelf BT accessories

**TRANSMITTER - TYPICAL PERFORMANCE SPECIFICATIONS**

	700/800	VHF	UHF Range 1	UHF Range 2
Frequency Range/Bandsplits	764-776, 794-806 MHz 806-825, 851-870 MHz	136-174 MHz	380-470 MHz	450-520 MHz
Channel Spacing	25/20/12.5 kHz	25/20/12.5 kHz	25/20/12.5 kHz	25/20/12.5 kHz
Maximum Frequency Separation	Full Bandsplit	Full Bandsplit	Full Bandsplit	Full Bandsplit
Rated RF Output Power Adj <sup>1</sup>	700 MHz: 1-2.5 Watts 800 MHz: 1-3 Watts	1-6 Watts	1-5 Watts	1-5 Watts
Frequency Stability <sup>1</sup> (-30°C to +60°C; +25°C Ref.)	+/- 1.0 ppm	+/- 1.0 ppm	+/- 1.0 ppm	+/- 1.0 ppm
Modulation Limiting <sup>1</sup>	±5 kHz / ±4 kHz / ±2.5 kHz	±5 kHz / ±4 kHz / ±2.5 kHz	±5 kHz / ±4 kHz / ±2.5 kHz	±5 kHz / ±4 kHz / ±2.5 kHz
Emissions (Conducted and Radiated) <sup>1</sup>	-75 dBc	-75 dBc	-75 dBc	-75 dBc
Audio Response <sup>1</sup>	+1, -3 dB	+1, -3 dB	+1, -3 dB	+1, -3 dB
FM Hum & Noise (25kHz / 12.5kHz) <sup>1</sup>	700 MHz: -49 dB/-47 dB 800 MHz: -49 dB/-46 dB	-51 dB/-51 dB	-51 dB/-51 dB	-51 dB/-47 dB
Audio Distortion (25kHz / 12.5kHz) <sup>1</sup>	700 MHz: 0.90 % / 0.90 % 800 MHz: 0.60 % / 0.90 %	0.50 % / 0.90 %	0.50 % / 0.90 %	0.60 % / 0.90 %

**BATTERIES FOR APX 8000**

Battery Capacity / Type	Dimensions (HxWxD)	Weight	Battery Part Number	Battery Capacity
Li-Ion IMPRES 2150 mAh IP68	3.39" x 2.34" x 1.45"	5.07 oz	PMNN4403	2150 mAh
Li-Ion IMPRES 3100 mAh IP68**	3.39" x 2.34" x 1.65"	6.61 oz	NNTN7038	3100 mAh
Li-Ion IMPRES 4200 mAh IP68	5.12" x 2.34" x 1.65"	11.43 oz	NNTN7034	4400 mAh

**KEY AUDIO ACCESSORIES**

Name	Type	Part Number	Features
Extreme Policing (XP) RSM	Wired	NMN6271	Dual-Mic Noise Suppression, Emergency, Volume Control, Prog Button, IP68
Mission Critical Wireless (MCW) RSM	Bluetooth	RLN6554	Windporting, Audio Jack, Emergency, Volume Control, Task Light, IP55, 12 hour 5/35/60 Duty Cycle

\*\*Ships standard with radio



**PRODUCT DATA SHEET**  
APX™ 8000

<b>RADIO MODELS</b>			
	<b>MODEL 1.5</b>	<b>MODEL 2.5</b>	<b>MODEL 3.5</b>
Display	Full bitmap monochromatic LCD top display 1 line text x 8 characters 1 line of icons No menu support Multi-color backlight	<b>Top display plus:</b> Full bitmap color LCD display 4 lines of text x 14 characters 2 lines of icons 1 menu line x 3 menus White backlight	<b>Top display plus:</b> Full bitmap color LCD display 4 lines of text x 14 characters 2 lines of icons 1 menu line x 3 menus White backlight
Keypad	none	Backlit keypad 3 soft keys 4 direction Navigation key Home and Data buttons	Backlit keypad 3 soft keys 4 direction navigation key 4x3 keypad Home and Data buttons
Channel Capacity	1200	3000	3000
FLASHport Memory	2 GB	2 GB	2 GB
700/800 MHz (764-870 MHz)			
VHF (136-174 MHz)			
UHF Range 1 (380-470 MHz)	H91TGD9PW5AN	H91TGD9PW6AN	H91TGD9PW7AN
UHF Range 2 (450-520 MHz)			

Buttons & Switches      Large PTT button   ■ Angled On/Off volume control   ■ Orange emergency button   ■ 16 position top-mounted rotary switch  
    ■ 2-position concentric switch   ■ Multi-color backlight   ■ 3-position toggle switch   ■ 3 programmable side buttons

<b>Regulatory Information</b>	
FCC ID	AZ489FT7061
Industry Canada	109U-89FT7061
Emission Designators	<p><u>LMR</u>: 8K10F1D, 8K10F1E, 8K10F1W, 11K0F3E, 16K0F3E***, 20K0F1E***  <u>Bluetooth</u>: 852KF1D, 1M17F1D, 1M19F1D  <u>WLAN (Wi-Fi®)</u>: 13M7G1D, 17MOD1D, 18M1D1D</p>

\*\*\* In accordance with FCC mandate, the APX 8000 all band radio is restricted to 12.5kHz operation only and does NOT support 25kHz in the VHF and UHF Bands (excluding I-Band). This applies to customers under Rule Part 90.

<b>RECEIVER - TYPICAL PERFORMANCE SPECIFICATIONS</b>				
	<b>700</b>	<b>800</b>	<b>VHF</b>	<b>UHF</b>
Frequency Range/Bandsplits	764-776 MHz	851-870 MHz	136-174 MHz	380-520 MHz
Channel Spacing	25/20/12.5 kHz	25/20/12.5 kHz	25/20/12.5 kHz	25/20/12.5 kHz
Maximum Frequency Separation	Full Bandsplit	Full Bandsplit	Full Bandsplit	Full Bandsplit
Audio Output Power at Rated <sup>1</sup>	1 Watt	1 Watt	1 Watt	1 Watt
Frequency Stability <sup>1</sup> (-30°C to +60°C; +25°C Ref.)	+/- 1.0 ppm	+/- 1.0 ppm	+/- 1.0 ppm	+/- 1.0 ppm
Analog Sensitivity <sup>1</sup>	12 dB SINAD	0.224 uV	0.224 uV	0.168 uV
Digital Sensitivity <sup>2</sup>	1% BER	0.316 uV	0.316 uV	0.199 uV
	5% BER	0.211 uV	0.211 uV	0.282 uV
	5% BER Faded	0.562uV	0.562 uV	0.158 uV
			0.562 uV	0.530 uV
Selectivity (25 kHz / 12.5 kHz) <sup>1,5</sup>	79 dB / 72 dB	78 dB / 72 dB	82 dB / 77 dB	80 dB / 74 dB
Intermodulation Rejection <sup>1</sup>	81 dB	80 dB	82 dB	80 dB
Spurious Rejection <sup>1</sup>	98 dB	98 dB	92 dB	98 dB
FM Hum and Noise (25 kHz / 12.5 kHz) <sup>1</sup>	-55 dB / -53 dB	-54 dB / -52 dB	-57 dB / -55 dB	-56 dB / -54 dB
Audio Distortion <sup>1</sup>	0.9 %	0.9 %	0.9 %	0.9 %

**PRODUCT DATA SHEET**  
APX™ 8000

**PORTABLE MILITARY STANDARDS 810 C, D, E, F & G**

	MIL-STD 810C		MIL-STD 810D		MIL-STD 810E		MIL-STD 810F		MIL-STD 810G	
	Method	Proc./Cat.	Method	Proc./Cat.	Method	Proc./Cat.	Method	Proc./Cat.	Method	Proc./Cat.
Low Pressure	500.1	I	500.2	II	500.3	II	500.4	II	500.5	II
High Temperature	501.1	I, II	501.2	I/A1, II/A1	501.3	I/A1, II/A1	501.4	I/Hot, II/Hot	501.5	I/A1, II/A1
Low Temperature	502.1	I	502.2	I/C3, II/C1	502.3	I/C3, II/C1	502.4	I/C3, II/C1	502.5	I/C3, II/C1
Temperature Shock	503.1	I	503.2	I/A1C3	503.3	I/A1C3	503.4	I	503.5	I/C
Solar Radiation	505.1	II	505.2	I	505.3	I	505.4	I	505.5	I/A1
Rain	506.1	I, II	506.2	I, II	506.3	I, II	506.4	I, III	506.5	I, III
Humidity	507.1	II	507.2	II	507.3	II	507.4	1 Proc	507.5	II/Aggravated
Salt Fog	509.1	I	509.2	I	509.3	I	509.4	1 Proc	509.5	1 Proc
Blowing Dust	510.1	I	510.2	I	510.3	I	510.4	I	510.5	I
Blowing Sand	1 Proc	1 Proc	510.2	II	510.3	II	510.4	II	510.5	II
Immersion <sup>5</sup>	512.1	I	512.2	I	512.3	I	512.4	I	512.5	I
Vibration	514.2	VIII/F, Curve-W	514.3	I/10, II/3	514.4	I/10, II/3	514.5	I/24	514.6	I/24
Shock	516.2	I, III, V	516.3	I, V, VI	516.4	I, V, VI	516.5	I, V, VI	516.6	I, V, VI
Shock (Drop)	516.2	II	516.2	IV	516.4	IV	516.5	IV	516.6	IV

**DIMENSIONS OF THE RADIOS WITHOUT BATTERY**

	Inches	Millimeters
Length	5.47	139
Width Push-To-Talk button	2.39	60.7
Depth Push-To-Talk button	1.40	35.6
Width Top	2.98	75.7
Depth Top	1.58	40.1
Depth Bottom of Battery	1.24	31.5
Weight of the radios without battery	11.25 oz	319 g

**ENCRYPTION**

Supported Encryption Algorithms	ADP, AES, DES, DES-XL, DES-OFB, DVP-XL, Localized Algorithm
Encryption Algorithm Capacity	8
Encryption Keys per Radio	Module capable of storing 1024 keys. Programmable for 128 Common Key Reference (CKR) or 16 Physical Identifier (PID)
Encryption Frame Re-sync Interval	P25 CAI 360 mSec
Encryption Keying	Key Loader and Over the Air Rekeying (OTAR)
Synchronization	XL – Counter Addressing OFB – Output Feedback
Vector Generator	National Institute of Standards and Technology (NIST) approved random number generator
Encryption Type	Digital and SecureNet
Key Storage	Tamper protected volatile or non-volatile memory
Key Erasure	Keyboard command and tamper detection
Standards	FIPS 140-2 Level 3 FIPS 197

**WIRELESS CONNECTIVITY & SECURITY**

Frequency Range/Bandsplits:	
Bluetooth: 2402 - 2480 MHz, WLAN (Wi-Fi®): 2400 - 2483.5 MHz	
WLAN (Wi-Fi®) 802.11 b/g/n supports WPA-2, WPA, WEP security protocols; radio can be pre-provisioned with up to 20 SSIDs	
Mission Critical Wireless Bluetooth 2.1 uses 96 bit encryption for pairing & 128 bit encryption for voice, signaling and data. The radio BT supports up to 6 data connections and 1 audio connection.	

**GPS/GNSS SPECIFICATIONS**

Constellations	GPS & GLONASS
Tracking Sensitivity	-164 dBm
Accuracy <sup>3</sup>	<5 meters (95%)
Cold Start <sup>3</sup>	<60 seconds (95%)
Hot Start <sup>3</sup>	<5 seconds (95%)
Mode of Operation	Autonomous (Non-Assisted)

**ENVIRONMENTAL SPECIFICATIONS**

Operating Temperature <sup>4</sup>	-30°C / +60°C
Storage Temperature <sup>4</sup>	-40°C / +85°C
Humidity	Per MIL-STD
ESD	IEC 801-2 KV
Water and Dust Intrusion	IP68 (2 meters, 2 hours)

**RUGGED OPTION SPECIFICATIONS**

Leakage (immersion) <sup>6</sup>	MIL-STD-810 C, D, E, F and G Method 512.X Procedure I, IP68 (2 meters, 4 hours)
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**HOUSING COLOR**

Black (Standard), Public Safety Yellow, and High Impact Green
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<sup>1</sup> Measured conductively in analog mode per TIA / FIA 603 under nominal conditions.  
<sup>2</sup> Measured conductively in digital mode per TIA / FIA IS 102.CAAA under nominal conditions.  
<sup>3</sup> Measured conductively with >6 satellites visible at a nominal -130 dBm signal strength. Specs provided are 95th percentile values.  
<sup>4</sup> Temperatures listed are for radio specifications. Battery storage is recommended at 25°C, ±5°C to ensure best performance.  
<sup>5</sup> Measured using the TIA-603 single-tone method.  
<sup>6</sup> Rugged option only. Specifications subject to change without notice.

All specifications shown are typical.  
Radio meets applicable regulatory requirements.

Motorola Solutions, Inc. 1301 East Algonquin Road Schaumburg, Illinois 60196, U.S.A. 800-367-2346 [www.motorolasolutions.com/APX8000](http://www.motorolasolutions.com/APX8000)

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# THE CITY OF NASHUA

*Financial Services*

*Purchasing Department*

*"The Gate City"*

August 11, 2016  
Memo #17-031

TO: MAYOR DONCHESS  
FINANCE COMMITTEE

SUBJECT: AWARD OF CONTRACT FOR SPIT BROOK ROAD FIRE STATION  
ADDITION/RENOVATION (VALUE: NOT TO EXCEED \$112,500)  
DEPARTMENT: 152 FIRE; FUND: GENERAL FUND PRIOR YEAR ESCROWS \$56,750  
ACCOUNT CLASSIFICATION: 81 CAPITAL OUTLAY  
DEPARTMENT: 152 FIRE; FUND: BOND  
ACCOUNT CLASSIFICATION: 81 CAPITAL OUTLAY \$55,750

Please see the attached communication from Assistant Fire Chief Brian Rhodes to John Griffin, CFO/Comptroller dated August 8, 2016 for information related to this request.

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.

Nashua Fire Rescue and the Purchasing Department recommend the award of this contract to **Port One Architects of Portsmouth, NH** in an amount not to exceed **\$112,500**.

Respectfully,

Dan Kookan  
Purchasing Manager

Cc: S. Galipeau B. Rhodes J. Graziano



## Nashua Fire Rescue

Administrative Office  
70 East Hollis Street, Nashua, NH 03060  
[www.nashuafire.com](http://www.nashuafire.com)

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

John Griffin, CFO  
Brian D Rhodes, Asst. Chief  
August 8, 2016  
Spit Brook Road Addition

Mr. Griffin,

On October 14, 2015, the City of Nashua Fire Rescue Department solicited proposals from professional architectural/engineering consultants for services to assist with design and engineering of an addition to the Spit Brook Road Fire Station under RFP0265-110215. A mandatory pre-bid meeting was held on October 21<sup>st</sup> at the Spit Brook Road Fire Station with five (5) firms in attendance.

Two bids were subsequently received from Corzilius Matuszewski Krause Architects in the amount of \$7,500 and Port One Architects in the amount of \$7,450 for this first phase. Each of these architects has worked with Nashua Fire Rescue on construction of other fire stations. The team selected Port One Architects for this project due to their expertise as well as the positive experience we had working with them in constructing the East Hollis Street Fire Station.

We are requesting approval to proceed with Phase II of the project, which is to provide architectural and engineered drawings as well as assist Nashua Fire Rescue in the search and subsequent hiring of a qualified Construction Management firm.

The standard AIA Document B133, Standard Form of Agreement between Owner and Architect, is currently being reviewed by our Legal and Risk Departments.

We would like to extend our contract with Port One Architects of Portsmouth, NH in the amount of \$112,500 for the completion of Phase II of the Spit Brook Road Fire Station addition.

Respectfully,

Brian D. Rhodes  
Assistant Fire Chief

**Fee Schedule**

January 2016

**Architectural Design Staff (1)**

Principal Architect	\$ 135.00
Senior Architect	\$ 120.00
Project Manager	\$ 100.00
Architectural Designer	\$ 85.00
Clerical/Intern	\$ 70.00

**Consultants (subcontracted work)**

Engineering Consultants	\$ cost + 15%
Fire Protection/Code Consultants	\$ cost + 15%
Hardware/Lighting/Food Service Consultants	\$ cost + 15%
Interior Design	\$ cost + 15%

**Miscellaneous Reimbursable Expenses**

CAD Plots	\$ 0.80/sf
Telephone/Communications (3)	at 1% labor costs
Overnight Delivery Services	\$ cost + 10%
Postage	\$ cost + 10%
Reprographic Services	\$ cost + 10%
Photography	\$ cost + 10%
Mileage: Automobile (2)	\$ 0.54/mile
Copies (b&w)	\$ 0.10/each
Copies (color)	\$ 0.50/each

**Presentation Expenses**

Mounted Color Presentation Boards	\$ as quoted
Architectural Presentation Models	\$ as quoted
3D Computer Renderings	\$ as quoted
3D Computer Videos	\$ as quoted

**Notes**

- (1) Rates will be charged for time worked on the project and for the time required for travel between the office and the meeting or project site.
- (2) Automobile mileage expense shall be periodically adjusted consistent with IRS allowances
- (3) Telephone/Communications will be invoiced as a reimbursable expense at 1% of the total labor cost.

# DRAFT AIA® Document B133™ - 2014

## Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the «Eighteenth» day of «August» in the year «2016»  
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

«City of Nashua New Hampshire»  
«229 Main Street»  
«Nashua, New Hampshire 03060»  
«»

and the Architect:  
(Name, legal status, address and other information)

«Port One Architects Inc.»  
«959 Islington Street»  
«Portsmouth New Hampshire 03801»  
«»

for the following Project:  
(Name, location and detailed description)

«Nashua Fire Department  
Station 3»  
«124 Spit Brook Road»  
«Nashua, New Hampshire 03060»  
Miscellaneous renovations to approximately 6575 sf of existing space and construction of approximately 2975 sf of a new apparatus bay addition on two levels.

The Construction Manager (if known):  
(Name, legal status, address and other information)

«»  
«»  
«»  
«»

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201™-2007, General Conditions of the Contract for Construction; A133™-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134™-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

AIA Document A201™-2007 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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Deleted: - Spit Brook Road

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TABLE OF ARTICLES

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.  
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution," or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:  
(Identify documentation or state the manner in which the program will be developed.)

~~«The Owner's program is complete, having been developed in meetings between the Architect and the Fire Department.»~~

§ 1.1.2 The Project's physical characteristics:  
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

~~«The existing fire station site is approximately 90,800 sq. ft. sloping toward the northwest. A geotechnical report was prepared by Geotechnical Services, Inc., Weare, N.H. Site boundary and topographic survey was prepared by Hayner/Swanson, Inc., Nashua, N.H. An architectural site plan was prepared by Port One Architects, Inc., Portsmouth, N.H. and was submitted to the Nashua Planning Department.»~~

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:  
(Provide total and, if known, a line item breakdown.)

~~«\$ 1,550,000.»~~

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§ 1.1.4 The Owner's anticipated design and construction schedule:  
.1 Design phase milestone dates, if any:

«December 2016 proposed completion date»

.2 Commencement of construction:

«April 2017»

Deleted:

.3 Substantial Completion date or milestone dates:

«October 2017»

.4 Other:

«Contract Approval of the City of Nashua Aldermanic Finance Committee was required»

Deleted:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:  
(Indicate agreement type.)

AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

AIA Document A134-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling or phased construction are set forth below:  
(List number and type of bid/procurement packages.)

«NA»

§ 1.1.7 Other Project information:  
(Identify special characteristics or needs of the Project not provided elsewhere, such as the Owner's sustainable objective, if any, or historic preservation requirements.)

«NA»

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:  
(List name, address and other information.)

«Chief Steven G. Galipeau»  
«Assistant Chief Brian D. Rhodes»  
«Nashua Fire Department»  
«79 East Hollis Street»  
«Nashua, NH 03060»  
«(603) 594-3651»

Deleted:

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address and other information.)

«NA»

§ 1.1.10 The Owner will retain the following consultants:  
(List name, legal status, address and other information.)

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.)

«N/A»

- .2 Cost Consultant (if in addition to the Construction Manager):  
(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.3.6, 3.3.7, 3.4.2, 3.4.3, 3.5.4, 3.5.5, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)

«N/A»

- .3 Land Surveyor:

«Hayner Swanson Inc.»  
 «1 Congress Street»  
 «Nashua, NH 03062»  
 «T-603-883-2057»  
 «Paul Hayner PE»

- .4 Geotechnical Engineer:

«Geotechnical Services Inc.»  
 «55 North Stark Highway»  
 «Weare, NH 03281»  
 «T-603-529-7766»  
 «Hansy K. Wetherbee PE»

- .5 Environmental:

«Axiom Partners Inc.»  
 «545 Salem Street»  
 «Wakefield, MA 01880»  
 «T-603-498-5005»  
 «Randall Ames»  
 «Hardwoods Building Materials Survey Report - March 24, 2016»

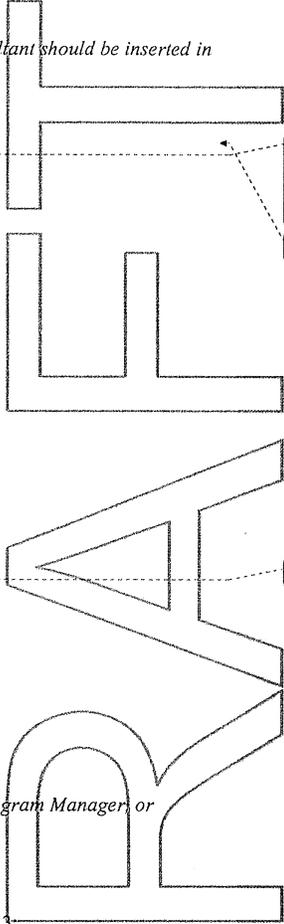
- .6 Other consultants:  
(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)

«N/A»

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address and other information.)

«William K. Davis AIA»  
 «Port One Architects Inc.»  
 «959 Slingshot Street»  
 «Plymouth, NH 03801»  
 «T-603-436-8891»

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:  
(List name, legal status, address and other information.)



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§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

«Summit Engineering Inc.»  
«111 Maplewood Avenue»  
«Portsmouth, NH 03801»  
«1-603-319-1817»  
«Bob Champagne PE»

.2 Mechanical Engineer:

«Yeaton Associates Inc.»  
«66 Jackson Hill Street»  
«Litchfield, NH 03561»  
«1-603-444-6578»  
«Wayne Hillion PE»

.3 Electrical Engineer:

«Yeaton Associates Inc.»  
«66 Jackson Hill Street»  
«Litchfield, NH 03561»  
«1-603-444-6578»  
«Lenny Edmunds»

§ 1.1.12.2 Consultants retained under Additional Services:

«NA»

§ 1.1.13 Other Initial Information on which the Agreement is based:

«NA»

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost as set forth in Section 11.8.3.

§ 2.6.1 Commercial General Liability with policy limits of not less than ~~One Million Dollars~~ (\$ ~~1,000,000~~) for each occurrence and ~~Two Million Dollars~~ (\$ ~~2,000,000~~) in the aggregate for bodily injury and property damage.

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§ 2.6.2 Automobile Liability covering vehicles owned by the Architect and non-owned vehicles used by the Architect with policy limits of not less than ~~One Million Dollars~~ (\$ ~~1,000,000~~) per claim and ~~One Million Dollars~~ (\$ ~~1,000,000~~) in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

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§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.6.1 and 2.6.2.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with policy limits of not less than ~~One Million Dollars~~ (\$ ~~1,000,000~~).

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§ 2.6.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ~~Two Million Dollars~~ (\$ ~~2,000,000~~) per claim and ~~Two Million Dollars~~ (\$ ~~2,000,000~~) in the aggregate.

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§ 2.6.6 The Owner shall be an additional insured on the Architect's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

§ 2.6.7 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as additional insureds on the Commercial General Liability, Automobile Liability, and any excess policies.

**ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Construction Manager's Preconstruction Phase services, (4) for the performance of the Owner's consultants, and (5) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 Once the Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the Owner and Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 Evaluation of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 Prior to the Owner's acceptance of the Guaranteed Maximum Price proposal or Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner on all communications related to substitution requests, clarifications, and interpretations.

§ 3.2.2 During one of the design phases, the Owner will receive a Guaranteed Maximum Price proposal or Control Estimate, as appropriate, from the Construction Manager. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.3 Upon authorization by the Owner, and subject to Section 4.3.1.15, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

### § 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information; and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner's sustainable objective, if any. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, implications of sustainable code requirements enacted in the relevant jurisdiction, if any, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other sustainable design services under Article 4.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

#### § 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

#### § 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems

and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and obtain the Owner's approval of the Construction Documents.

### § 3.6 Construction Phase Services

#### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or the Owner's issuance of a Notice to Proceed to the Construction Manager. Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

#### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith

either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall

specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

#### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. (Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Assistance with selection of the Construction Manager	Architect	
§ 4.1.2 Programming	Architect/Owner	
§ 4.1.3 Multiple preliminary designs	NP	
§ 4.1.4 Measured drawings	NP	
§ 4.1.5 Existing facilities surveys	Architect	
§ 4.1.6 Site Evaluation and Planning (B203™-2007)	NP	
§ 4.1.7 Building Information Modeling (E203™-2013)	NP	
§ 4.1.8 Civil engineering	Owner	
§ 4.1.9 Landscape design	NP	
§ 4.1.10 Architectural Interior Design (B252™-2007)	NP	
§ 4.1.11 Value Analysis (B204™-2007)	NP	
§ 4.1.12 Detailed cost estimating	NP	
§ 4.1.13 On-site project representation (B207™-2008)	Owner	
§ 4.1.14 Conformed construction documents	NP	
§ 4.1.15 As-Designed Record drawings	NP	
§ 4.1.16 As-Constructed Record drawings	Architect	
§ 4.1.17 Post occupancy evaluation	Architect/Owner	
§ 4.1.18 Facility Support Services (B210™-2007)	NP	
§ 4.1.19 Tenant-related services	NP	
§ 4.1.20 Coordination of Owner's consultants	Architect	
§ 4.1.21 Telecommunications/data design	Owner	
§ 4.1.22 Security Evaluation and Planning (B206™-2007)	Owner	
§ 4.1.23 Commissioning (B211™-2007)	Owner	
§ 4.1.24 Extensive sustainable design services	NP	
§ 4.1.25 LEED® Certification (B214™-2012)	NP	
§ 4.1.26 Historic Preservation (B205™-2007)	NP	
§ 4.1.27 Furniture, Furnishings, and Equipment Design	Architect/Owner	

Deleted:

Deleted: (B202™-2009)

Deleted: (B253™-2007)

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

« Commissioning »

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- 1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the

- Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
  - .3 Services necessitated by the Owner's request for extensive sustainable design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
  - .4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations, or official interpretations;
  - .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
  - .6 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
  - .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
  - .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
  - .9 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
  - .10 Evaluation of the qualifications of bidders or persons providing proposals;
  - .11 Consultation concerning replacement of Work resulting from fire or other cause during construction;
  - .12 Assistance to the Initial Decision Maker, if other than the Architect;
  - .13 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
  - .14 Services necessitated by the Owner's delay in engaging the Construction Manager; and
  - .15 Making revisions in Drawings, Specifications, and other documents resulting from substitutions included in the agreed to assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 ~~One (1)~~ reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager

Deleted:

Deleted:

- .2 ~~(Fifteen)~~ ~~(15)~~ visits to the site by the Architect over the duration of the Project during construction
- .3 ~~(Two)~~ ~~(2)~~ inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 ~~(One)~~ ~~(1)~~ inspections for any portion of the Work to determine final completion

- Deleted:

§ 4.3.4 If the services covered by this Agreement have not been completed within ~~(Twelve)~~ ~~(12)~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

**ARTICLE 5 OWNER'S RESPONSIBILITIES**

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.6 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the

Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall contemporaneously provide the Architect with any communications provided to the Construction Manager about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

#### ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Managers' general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Architect, the compensation of the Construction Manager for Preconstruction Phase services, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect shall work cooperatively with the Construction Manager to conform the cost estimates to one another.

§ 6.3.2 Subject to Section 4.3, if the Owner engages a Cost Consultant and a discrepancy exists between the Construction Manager's estimate and the Cost Consultant's estimate, the Architect shall assist the Cost Consultant and Construction Manager as necessary to conform the estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)



### § 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses

incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

«\$112,500 (One Hundred Twelve Thousand Five Hundred Dollars)»

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

«Hourly (See attached Rate Sheet)»

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

«Hourly (See attached Rate Sheet)»

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus «Fifteen» percent («15» %), or as otherwise stated below:

«»

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	«Ten»	percent («10» %)
Design Development Phase	«Fifteen»	percent («15» %)
Construction Documents Phase	«Fifteen»	percent («15» %)
Construction Phase	«Twenty-five»	percent («25» %)
Total Basic Compensation	one hundred	percent («100» %)

- Deleted:
- Deleted:
- Deleted:
- Deleted:
- Deleted:

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the Owner-accepted Guaranteed Maximum Price Amendment or Control Estimate, as applicable, or (2) if the Guaranteed Maximum Price proposal or Control Estimate has not been accepted by the Owner, the most recent

estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« See Attached Hourly Rate Sheet »

Employee or Category	Rate (\$0.00)
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§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~« Fifteen »~~ percent (~~« 15 »~~ %) of the expenses incurred.

Deleted:

§ 11.8.3 If the insurance requirements listed in Section 2.6 exceed the types and limits the Architect normally maintains and the Architect incurred additional costs to satisfy such requirements, the Owner shall reimburse the Architect for such costs as set forth below:

« N/A »

§ 11.9 Compensation for Use of Architect's Instruments of Service

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

« N/A »

§ 11.10 Payments to the Architect

§ 11.10.1 An initial payment of ~~« zero »~~ (\$ ~~« 0.00 »~~) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

Deleted:

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ~~« Thirty »~~ (~~« 30 »~~).

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Deleted:

days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

~~15~~ % ~~per annum~~

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

~~N/A~~

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- 1 AIA Document B133™-2014, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

- 2 Other documents:  
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

~~N/A~~

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

~~James Donohess, Mayor~~  
(Printed name and title)  
City of Nashua, NH

ARCHITECT (Signature)

~~William K. Davis, Principal~~  
(Printed name and title)  
Port One Architects Inc.

Deleted: 2. AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:¶

Deleted: 3

Deleted:



# THE CITY OF NASHUA

*Financial Services*

*Purchasing Department*

*"The Gate City"*

August 11, 2016

Memo #17-032

TO: MAYOR DONCHESS  
FINANCE COMMITTEE

SUBJECT: CONTRACT AWARD FOR PERFORMING ARTS CENTER FEASIBILITY STUDY  
PHASE II (VALUE: \$27,000)  
DEPARTMENT: 183 ECONOMIC DEVELOPMENT; FUND: DOWNTOWN  
IMPROVEMENT COMMITTEE TRUST FUND  
ACCOUNT CLASSIFICATION: 53 PROFESSIONAL & TECHNICAL SERVICES

Please see attached communication from Tim Cummings, Director of Economic Development dated August 7, 2016 for the information related to this contract award.

The Director of Economic Development and the Purchasing Department recommend awarding this contract in an amount not to exceed **\$27,000** to **Web Management Services** of **NY, NY**.

Respectfully,

Dan Kooker  
Purchasing Manager

Cc: T Cummings J Graziano



# THE CITY OF NASHUA

Economic Development Division

"The Gate City"

---

To: Dan Kookan, Purchasing Manager  
From: Tim Cummings, Economic Development Division Director  
Cc: Janet Graziano, Financial Manager, Sarah Marchant, Community Development Director  
Date: August 7, 2016

**Re: Performing Arts Center Feasibility Study Phase II**

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## **Request**

The Economic Development Division requests approval to extend the contract with Webb Management Services, Inc. of New York, New York for the second Phase II of the Performing Arts Center Feasibility Study **in the amount not to exceed \$27,000.**

## **Background**

In September of 2015, the City of Nashua Mayor's Office of Economic Development issued a Request for Proposals (RFP0265-101415) seeking proposals from professional consultants to study the feasibility of developing a new Cultural and Performing Arts Center within Downtown Nashua. The services sought include the evaluation of programming needs, the development of project feasibility, review of specific sites and assistance with project next steps.

Webb Management Services, Inc., was selected due to a number of factors, including:

- vast experience with relevant performing arts center feasibility studies;
- intimate knowledge of the New Hampshire/Massachusetts regional performing arts center market;
- clear viewpoint as an objective analyst - the firm only works on these types of feasibility studies and will not look for additional work from Nashua (designing the future facility, etc.)
- a low overall price proposal the provides the most value to Nashua;

After consulting with Webb, the City chose to break out the work into two phases with Phase I, evaluating demand for a new performing arts facility in Nashua, verifying audience potential, identifying potential users and uses, confirming its positioning within a competitive market, and considering how new performance facilities might support the broader goals of the City and region. This phase of the project has been completed and the project has been deemed to be viable.

At the PEDC meeting on July 14<sup>th</sup> the decision was made to continue moving forward and that the city should engage Webb Management to execute on the scope of work associated with Phase II of the feasibility study.

Attached is the contract including the Phase II scope of work along with a memo outlining key discussion points based on the conclusions of Webb Management.



## City of Nashua

Economic Development Division

City Hall, 229 Main Street, PO Box 2019

Nashua, New Hampshire 03061-2019

[www.nashuanh.gov](http://www.nashuanh.gov)

**To:** Alderman Melizzi-Golja and the Planning & Economic Development Committee

**From:** Tim Cummings, Economic Development Division Director

**Date:** July 14, 2016

**Re:** Discussion on Moving Forward with Performing Arts Center  
Feasibility Study Phase II

### Objective(s)

1. Ensure we have consensus on moving forward with Phase II
2. Begin discussion on outstanding issue(s)

### Background

The City has chosen to break out the work into two phases, with up to two separate contracts.

Phase I: Evaluates demand for a new performing arts facility in Nashua, verifying audience potential, identifying potential users and uses, confirming its positioning within a competitive market, and considering how new performance facilities might support the broader goals of the City and region.

### Duncan Webb's conclusions & recommendation(s):

- \* The case for building a brand new, large-capacity performing arts venue in Nashua is challenged by the city's proximity to multiple large, presenting performing arts centers, the development of a new concert hall nearby, and limited demand on the part of local users for a venue with 750 or more seats.
- \* Additionally, the city is already home to two performance venues that are regularly used by the community but that are greatly in need of renovation.
- \* With that said, we see tremendous opportunity in Nashua. The organizations that are currently active in the community offer a diverse product, maintain busy schedules, and have demonstrated an ability to grow and develop programs over time. If we look to Positive Street Art as an example, Nashua can be seen as the type of environment that can allow an emerging organization the time, space, and support needed to flourish.
- \* Our recommendations, then, are focused on harnessing the city and community's current arts-momentum and resources, directing them at three different options.

**Outlined Options:**

1. Partner with a college or university on the development of a new downtown arts center
  2. Develop a downtown meeting, events, and music center
  3. Develop an arts district
- Phase I cost \$22,500 and has been completed and the budget has been 100% expended

**Development of a Phase II Scope**

Director Sarah Marchant and I received a draft scope of work from Duncan Webb (General Performing Art Center Consultant) and Scott Aquilina (Architect for the project) for a phase II project:

- It includes developing a business plan (operating projections), cost estimates for implementing a program (capital expenses), basic physical plans. (Please see attached).

**Outstanding Issues**

- Financial – Capital Requirements/Expenditures – A clear understanding of the capital expense and investment in such an asset should be understood with an associated order of magnitude
- Vision for operational Management – Understanding the operational costs associated with this project needs to be understood with the a clear understanding of a vision of how this asset will be managed
- Setting Aside Keefe Auditorium – A clear directive that setting aside Keefe Auditorium is the desire due to the lack of control (should this variable change we could adjust accordingly, but as of now I want to ensure it is clear whether Keefe should be studied or not)
- Citizen Engagement – There will be a need to develop a small working group to help steer the conversation and make a recommendation back to you.
- Understanding an additional \$27,000 will be necessary to execute Phase II (which Downtown Improvements Committee has approved \$25,000 for this project as a funding source for this project)



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## phase 2 contract

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**to:** Tim Cummings, City of Nashua  
**from:** Duncan Webb, Webb Management Services  
**regarding:** Phase 2 Scope + Fees  
**date:** July 14, 2016

---

Here is our scope of services and financial proposal for the second phase of the Performing Arts Center Feasibility Study.

### scope of services

As the results of Phase One have confirmed the need for new and improved facilities together with the development of a cultural district, we would propose a second phase of work that considers the physical, financial, and operating implications of the new facilities. These two parts of the work would proceed in parallel.

#### part 1: physical planning

**space program:** Based on Phase One recommendations, develop a space program and assign square footages for specific spaces, list essential characteristics and recommend infrastructure/equipment/technology required for functions. This will also include a template/footprint for the ideal plan.

**site evaluation + recommendation:** Apply the template to sites identified by the City, specifically the Court Street Complex, Alec Shoe Store Building and two of the "open" parking lot sites. Compare fit to function on each site, analyze the site conditions and list pro's and con's for each option.

**order of magnitude capital cost estimate:** Based on the space program and current regional cost information, prepare a provide a benchmark budget for each scenario described above.

#### part 2: preliminary business plan

**define goals + practices:** Define the vision and operating goals for recommended facilities and an arts district, covering such areas as support for the local arts groups, sustainable operations, supporting economic and downtown development, and maximizing community benefits.



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**comparable models:** Research comparable facilities and districts nationwide to inform the business plan. Key areas of research are governance and operating models, the scheduling of facilities, levels of utility and cost, balancing internal and external demand for facilities, partnerships, revenue-generating activity, and key factors that led to successful operation of new and similar projects.

**activity profile + programming plan:** Prepare a multi-year activity profile for recommended facilities, listing types and level of use related to presenting, rentals and any other activity. Also include any additional programming opportunities and positioning strategies, based on the market analysis and competitive analysis.

**pro-forma operating budget:** Develop a multi-year pro-forma operating budget for recommended facilities, starting the year before new facilities open and then through the first three years of operation. Project attendance and other levels of participation. Identify and estimate all sources of operating revenues and expenses, appropriate capital reserves, and the likely result of operations with and without an operating endowment.

**funding plan:** Assist with the development of a basic funding plan to pursue the contributed income needed to sustain recommended facilities, as indicated by the pro-forma operating budget. Consider types and levels of contributed income from all public and private sector sources, and suggest how to use the business plan as a fundraising tool.

**economic impacts:** Forecast the economic and fiscal impacts of recommended facilities and an arts district including the impacts of construction, operation, and ancillary spending associated with attendance. Use the RIMS II model developed by the Bureau of Economic Analysis to estimate the direct and indirect impacts of the project on the market area, including outputs, increased earnings, and employment. Also identify and describe the more qualitative economic impacts of new performing arts facilities in downtown Nashua, including impacts on commercial development, cultural tourism, and the recruitment of new businesses to locate in Nashua.

**critical path plan:** Create a critical path plan for leadership that identifies key milestones and deadlines towards the development and operation of facilities and a district.

**report + presentation:** Present the findings and recommendations of the physical and business plans. Incorporate feedback from the client, and deliver a final written document that includes all research, analysis, conclusions, and recommendations.



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**deliverables**

In Phase 2, we will deliver a Powerpoint summary of the work, in addition to an Excel-based space program and capital budget, site analysis drawings, Excel-based pro-forma operating budgets, research on operating comparables, economic impact multipliers, and other supporting data.

**timeline**

We would anticipate completing this work over a three-month period, subject to timely review of materials and the scheduling of presentations.

**fee proposal**

We propose professional fees of \$27,000, including expenses, to complete the second phase of work, broken down as follows:

Phase Two, Part 1:	\$15,000
Phase Two, Part 2:	<u>\$12,000</u>
Total Fees:	<u>\$27,000</u>

We will bill the City monthly based on the progress of the study.

Yours sincerely,

Duncan M. Webb, President  
Webb Management Services, Inc.

Agreed and accepted this \_\_\_ day of \_\_\_\_\_, 2016

By: \_\_\_\_\_  
City of Nashua



**CONTRACT FOR PROFESSIONAL SERVICES**

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**NASHUA PERFORMING ARTS CENTER FEASIBILITY STUDY:  
PHASE II**

A CONTRACT BETWEEN

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

AND

**WEBB MANAGEMENT SERVICES, INC.**

NAME OF CONSULTANT

**350 FIFTH AVENUE, SUITE 4005, NEW YORK, NH 10118**

ADDRESS OF CONSULTANT

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

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

WHEREAS, Consultant 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, Consultant 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.** Consultant 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. Consultant shall begin performance upon receipt of an Executed Contract and a valid Purchase Order issued from the City of Nashua.

**4. COMPENSATION.** Consultant agrees to perform the work for a total cost not to exceed Twenty-Seven Thousand Dollars (\$ 27,000)

which, unless otherwise provided in this contract, shall be paid in accordance with the provisions of Exhibit B or unless Consultant has received a written exemption from the City of Nashua. Consultant 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, Consultant 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 Consultant. The City of Nashua will pay Consultant 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:

Tim Cummings  
Economic Development Director  
City Hall, 229 Main Street  
Nashua, NH 03060

REPRESENTATIVE:

Duncan Webb  
Webb Management Services, Inc.  
350 Fifth Avenue, Suite 4005  
New York, NH 10118

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 Consultant 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 Terms and Conditions*

1. **DEFINITIONS** Unless otherwise required by the context, "Consultant", and its successors, transferees and assignees (together "Consultant") includes any of the Consultant's consultants, sub consultants, contractors, and subcontractors
2. **CONSULTANT STATUS** The parties agree that Consultant shall have the status of and shall perform all work under this contract as a Consultant, 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 Consultant, and nothing in this contract shall create any contractual relationship between the City of Nashua and Consultant's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Consultant 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 Consultant 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** Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Consultant 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 Consultant 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, Consultant 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 Consultant'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 Consultant shall not in any way relieve Consultant 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 Consultant'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 Consultant shall be and remain liable in accordance with the terms of the contract and applicable law.

Consultant 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 Consultant to perform work under this contract. Approved key personnel shall not be taken off of the project by Consultant without the prior written approval of the City of Nashua, except in the event of termination of employment. Consultant 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

Consultant, 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 Consultant's performance under the contract. Consultant 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 Consultant should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Consultant'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 Consultant for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Consultant of the change.

When Consultant seeks changes, Consultant 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 Consultant should proceed with any or all of the proposed change.

Except as provided in this paragraph, Consultant 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 Consultant in the performance of its work under this contract and that such personnel will be available to Consultant 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 Consultant 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 Consultant also agree to attend all meetings called by the City of Nashua or Consultant to discuss the work under the Contract, and that Consultant 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** Consultant 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 Consultant. All future questions Consultant 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 Consultant'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 Consultant prior to having received the City of Nashua's resolution shall be at Consultant's risk and expense. At all times, Consultant 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. Consultant 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 Consultant 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, Consultant 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, Consultant shall receive all amounts due and not previously paid to Consultant 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 Consultant in the event of a failure by Consultant 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. Consultant shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. Consultant may terminate the contract on 10 calendar days written notice if, through no fault of Consultant, the City of Nashua fails to pay Consultant 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, Consultant 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, Consultant shall receive all amounts due and not previously paid to Consultant 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 Consultant's failure. Consultant 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 Consultant until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the Consultant 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 Consultant 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 Consultant 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 Consultant such that Consultant 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 Consultant shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Consultant 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 Consultant's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Consultant'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 Consultant Representative. At all times, Consultant 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 Consultant for damages because of hindrances or delays in the progress of the work from any cause, and Consultant agrees to accept in full

satisfaction of such hindrances and delays any extension of time that the City of Nashua may provide.

11. **INSURANCE** Consultant 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.

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

Consultant 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. Consultant 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, Consultant 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 Consultant of its responsibilities or limit the amount of its liability to the City of Nashua or other persons, and Consultant 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.
  - Consultant 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 Consultant or anyone employed, directed, or supervised by Professional Engineer.

12. **INDEMNIFICATION** Regardless of any coverage provided by any insurance, Consultant agrees to indemnify and shall defend 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 Consultant or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Consultant'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 Consultant 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 Consultant 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 Consultant. Consultant shall have no claim of any sort to the unexpended funds.

14. **COMPENSATION** Review by the City of Nashua of Consultant'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 Consultant to submit additional information. Unless the City of Nashua, in its sole discretion, decides otherwise, the City of Nashua shall pay Consultant in full within **30 days of approval** of the submitted monthly invoice forms and progress reports.

15. **COMPLIANCE WITH APPLICABLE LAWS** Consultant, 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. Consultant 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, Consultant agrees to the following terms. Consultant 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. Consultant 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, Consultant'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 Consultants 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 Consultants and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

Consultant 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 Consultant under this contract.

In connection with the performance of work under this contract, Consultant 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.

Consultant 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 Consultant shall constitute a material breach of the contract.

17. **ENDORSEMENT** Consultant shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Consultant or under its direction as required under the laws of the State of New Hampshire.
18. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** Consultant 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.
19. **CITY INSPECTION OF CONTRACT MATERIALS** The books, records, documents and accounting procedures and practices of Consultant 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.
20. **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 Consultant 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 Consultant's expense, by Consultant to the City of Nashua upon completion, termination, or cancellation of this contract. Alternatively, if the City of Nashua provides its written approval to Consultant, 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 Consultant in the performance of its obligations under this contract must be retained by Consultant 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 Consultant shall promptly remit and deliver the materials, at Consultant's expense, to the City of Nashua. Consultant shall not use, willingly allow or cause to have such materials used for any purpose other than the performance

of Consultant's obligations under this contract without the prior written consent of the City of Nashua.

21. **PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS** Consultant expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Consultant (including those remitted to the City of Nashua by Consultant pursuant to paragraph 20), 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 Consultant 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 Consultant. The City of Nashua shall have the right to reproduce any such materials.

Consultant 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. Consultant 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 Consultant infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Consultant infringes any patent.

Consultant 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.

22. **FINAL ACCEPTANCE** Upon completion of all work under the contract, Consultant 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 Consultant in writing that the whole of the work was completed on the date indicated in the notice or provide Consultant with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Consultant 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.
23. **TAXES** Consultant 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. Consultant 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.
24. **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.

25. **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.
26. **PROHIBITED INTERESTS** Consultant 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. Consultant 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 Consultant. If any such interest comes to the attention of Consultant at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua. Consultant 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. Consultant 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 Consultant (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, Consultant shall refund to the City of Nashua any profits realized under this contract, and Consultant 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.

Consultant warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Consultant 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.

27. **THIRD PARTY INTERESTS AND LIABILITIES** The City of Nashua and Consultant, 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 Consultant.
28. **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.
29. **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.

30. **MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT** This contract constitutes the entire contract between the City of Nashua and Consultant. 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.
31. **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"*

August 11, 2016  
Memo #17-033

TO: MAYOR DONCHESS  
FINANCE COMMITTEE

SUBJECT: CONTRACT AWARD FOR WAYFINDING PROJECT PHASE 1 (VALUE: \$49,110)  
DEPARTMENT: 183 ECONOMIC DEVELOPMENT; FUND: DOWNTOWN  
IMPROVEMENT COMMITTEE TRUST FUND  
ACCOUNT CLASSIFICATION: 53 PROFESSIONAL & TECHNICAL SERVICES

Please see attached communication from Tim Cummings, Director of Economic Development dated August 2, 2016 for the 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.

The Director of Economic Development and the Purchasing Department recommend awarding this contract in an amount of **\$49,110** to **Greenman-Pedersen** of **Portsmouth, NH**.

Respectfully,

Dan Kooker  
Purchasing Manager

Cc: T Cummings J Graziano



# THE CITY OF NASHUA

"The Gate City"

Economic Development Division

To: Dan Kookan, Purchasing Manager  
 From: Tim Cummings, Economic Development Division Director  
 Cc: Janet Graziano, Financial Manager, Sarah Marchant, Community Development Director  
 Date: August 2, 2016

**Re: Wayfinding Sign Package**

### Background

Since 2015, the Downtown Improvement Committee has been looking for an update to the existing signage in the downtown area. The City of Nashua Mayor's Office of Economic Development issued a Request for Proposals (RFP0860-061616) on May 5<sup>th</sup>, to develop a program design and fabrication for an updated wayfinding program in the downtown. The services sought included:

- Identification and assessment of existing wayfinding signs
- Review of existing traffic routing and proposal of new sign sites
- Development of graphics and promotional materials
- Construction documents
- Fabrication

While following required Purchasing Department protocol for public notification of consulting opportunities, staff took additional steps to identify the most capable companies in New England and throughout the country. Notices of the availability were sent directly to 13 firms.

On May 12<sup>th</sup>, the City held a pre-bid meeting with 11 attendees. A PowerPoint presentation was reviewed with the bidders and distributed to them for their reference.

On June 16<sup>th</sup>, the City received the following proposals:

	Location	Total Price Proposal	Phase 1 Price – Design "Bid Alt. 1"
Archetype Signworks	Peterborough, NH	\$115,600.00 (estimate)	\$52,100.00
Greenman-Pedersen	Portsmouth, NH (Nashua office)	\$76,235.00	\$59,055.00
W.S. Sign Design	Springfield, MA	\$70,000.00	\$12,000.00

\*Two additional vendors submitted proposals that were deemed "not acceptable due to non-signing of addendum"

\*\*Archetype Signworks provided a total price proposal estimate

On June 17<sup>th</sup> a seven-member proposal evaluation committee met to review the proposals submitted the committee included representatives from the Community Development Division, Economic Development Office, Department of Public Works, and Downtown Improvement Committee.

Out of the five firms that submitted proposals, only three were deemed to be acceptable: (1) Archetype SignWorks, (2) Greenman-Pedersen, and (3) W.S. Sign Design.

During the review of the proposals the overall consensus opinion is that the city should solely pursue the design aspects of the project, because there is not enough clarity around the overall project to procure everything at this time, i.e. fabrication. Therefore, the committee opted to pursue “Bid Alternate 1” as a Phased approach to this project. (Phase I: develops a design and implementation plan for the wayfinding signs) This contract will cover Phase I only.

It should be noted that this particular strategy was articulated in the RFP and the city reserved its right to pursue solely the design phase known as “Bid Alternative 1”.

#### **Recommendation of Greenman-Pedersen, Inc.**

Only one vendor had the requisite skills and experience to execute the primary function of design work and the evaluation committee believed their skills and ability were superior compared to the other respondents.

Greenman-Pedersen, Inc. was selected due to their excellent approach to the scope of work, long track record of completing similar projects for municipalities, and dynamic project teams that have worked with the city of Nashua in the past on various projects. In addition, their intimate knowledge of New Hampshire design and traffic standards brought them to the forefront of the group. Although they were not the overall lowest bidder for the phase 1 component of the project the evaluation committee’s believed their design skills merited their higher quote, which slightly more than 10% greater than the next respondent. Greenman Pedersen reduced their proposal slightly once they learned the project would be phased

#### **Downtown Improvement Committee’s Budgeted Project**

This project has been budgeted and is accounted for in the Downtown Improvement Committee’s Budgeted work plan for this year.

#### **Request**

The Office of Economic Development requests the approval of a contract in the amount of **\$49,110 with Greenman Pedersen, Inc., of Nashua, NH** for a design and implementation plan for wayfinding signs.

**Scope of Work  
Downtown Wayfinding Sign Package  
RFP 0860-061616**

**July 20, 2016**

**Scope of Work  
Downtown Wayfinding Sign Package  
RFP 0860-061616**

**Submitted to the City of Nashua, New Hampshire**

**Submitted by the Team of: Greenman-Pedersen, Inc. (GPI) and Courage Creative  
July 20, 2016**

### **TASK 1 - IDENTIFICATION AND ASSESSMENT OF EXISTING WAYFINDING SIGNS**

The GPI Team will fully research all relevant materials relating to the existing wayfinding signage currently in place within the City. We will start by utilizing the proposed location maps prepared by Barlo Signs as part of the 2003 project. GPI will integrate the existing Great American Downtown Signs GIS layer into the Collector App for ArcGIS and utilize the existing data structure to perform a field assessment of all the existing signs and supports. In addition, the database will be updated to include any wayfinding signage that is installed but currently not included in the existing database. A critical part of this assessment will be to evaluate the condition of the existing sign structures. If locations and condition of the existing poles are deemed sufficient, the existing poles will be restored and reused in an effort to reduce construction costs.

In addition to the inventory and assessment of the existing wayfinding signage, a comprehensive geodatabase referencing layers obtained from the City of Nashua and open source data made available from ESRI's ArcGIS Online, will be developed to assess and analyze the need for and placement of wayfinding sign elements. Spatial analysis tools within the ArcGIS interface will be deployed to identify areas where signage is needed based on traffic flow patterns and the built environment in proximity to municipal facilities (such as parking and City buildings) as well as relevant points of interests ranging from restaurants, retail, natural landscapes, historic landmarks and more. A network analysis will then be conducted to safely and efficiently route motorists, pedestrians, and bicyclists to desired destinations.

Upon completion of the field assessment and research, GPI will coordinate a meeting with the City and the Downtown Improvement Committee to review the condition assessment as well as to identify any additional points of interest or facilities to be included in the updated wayfinding routing and planning.

**Task 1 Deliverable:** GIS Map/Database displaying the location and condition of all existing wayfinding signs as well as all relevant points of interest and municipal facilities.

### **TASK 2: REVIEW EXISTING TRAFFIC ROUTING AND PROPOSE WAYFINDING SIGN PLACEMENT RELATIVE TO A CONCEPTUAL DOWNTOWN "PARKING LOOP" AS WELL AS CONDUCT A CURSORY REVIEW OF THE WAYFINDING SIGN NEEDS FOR REVERSAL OF TRAVEL ON THE "PARKING LOOP"**

The GPI Team's strength lies in the expertise, comprehensive knowledge and experience in transportation planning in downtown areas. GPI's team of traffic planners and engineers will provide a comprehensive assessment of the existing roadway network accessing the downtown area and develop recommendations for appropriate wayfinding signage leading to downtown destinations. The scale of the signs will be appropriate for the roadway infrastructure, anticipated travel speeds, expected user and MUTCD sign type requirements. Larger scale signs with appropriate graphics and text would be developed to notify travelers and visitors along Route 3 as to the presence of the vibrant downtown area. Smaller scale wayfinding signs would be expected along the arterial and local roadways directing visitors to designated parking areas in the

downtown. Upon leaving the parking facility, more detailed pedestrians scale signage with specific destinations would be anticipated to guide visitors to downtown attractions and promote a healthier, walkable community.

GPI's traffic professionals will review the Downtown Circulation Study in concert with city staff and assess the needs for additional or modified wayfinding signage under future conditions.

**Task 2 Deliverable:** GIS Map displaying the location and type (scale) of all proposed wayfinding signs as well as all relevant points of interest and municipal facilities. Additional GIS layers will be developed for future revised traffic patterns of the core downtown streets. This would include a GIS layer depicting the reversal of traffic on the "Parking Loop".

### **TASK 3: DEVELOPMENT OF GRAPHICS AND PROMOTIONAL MATERIALS**

While Tasks 1 and 2 are underway, Courage Creative will simultaneously work with the Downtown Improvement Committee to develop a graphic art for the wayfinding signs. While the assessment of existing signs and determination of the location of new signs is important, the success of the project will ultimately be determined by public perception and appreciation. The graphics and message of the signs are therefore critical. Courage Creative brings a portfolio of similar projects where not only were signs developed for the roadway corridors, but entire "motifs" were developed including graphics for kiosks, websites, park or trail maps, and other promotional materials.

GPI would encourage the City to host a series of public meetings or charrettes as part of the development of the graphics and branding for the wayfinding signs and downtown area in general. Involving the public early in the planning process encourages participation and develops a sense of cooperation rather than opposition and facilitates approvals by governing bodies including the Planning Board and Board of Alderman.

GPI will coordinate with the City of Nashua's GIS Department to develop a GIS Based Web Application providing interactive route planning and GPS based directions to specific destinations. Interactive pictures/descriptions of each destination would be integrated into the application.

**Task 3 Deliverable:** Attendance at up to three (3) public meetings charrettes with Downtown Improvement Committee or similar committee to present a series of sign graphics and designs. Attendance at Board of Alderman and Planning Board to present final graphical materials.

### **TASK 4: CONSTRUCTION DOCUMENTS**

GPI will prepare construction documents for the various signs and/or banners developed under Task 3.

**Task 4 Deliverable:** It is anticipated that the following will be included with the construction documents:

- AutoCAD plans developed from available resources (Aerial Mapping, GIS, Assessors Maps, etc.) depicting location of signs
- Summary table of signs listing sign type (code), mounting (new pole, existing pole, etc.) and GIS coordinate of sign location
- Details of the legend, colors, logo, size, mounting, etc. of the various signs and/or banners
- Details of mounting methodology (pole, building, kiosk, etc.)
- Construction Specifications
- Construction Cost Estimate

**Scope of Work  
Downtown Wayfinding Sign Package  
RFP 0860-061616**

**July 20, 2016**

**FEE**

GPI anticipates invoicing this project on a Time and Materials basis at the hourly contract rates attached herein. Based on the Scope of Work outlined above, the fee of Forty Nine Thousand One Hundred Ten dollars (\$49,110) shall not be exceeded unless written authorization in the form of an Amendment is provided by the City.

Rev. 7-15-16						
City of Nashua						
Downtown Wayfinding Sign Package						
RFP 0860-061616						
	John Diaz Project Manager	Nicole Rogers Traffic Engineer/GIS Coordinator	Robert White Landscape Architect	George Courage Graphic Design/Artist	Hours	Fee
	\$ 225.00	\$ 100.00	\$ 160.00	\$ 75.00		
<b>Task 1 - Identification and Assessment of Existing Wayfinding Signs</b>	4	20	8	14	46	\$ 5,230.00
<b>Task 2 - Review of Traffic Routing and Proposed Wayfinding Sign Placement</b>	10	50	30		90	\$ 12,050.00
<b>Task 3 - Development of Graphics/Logo and Promotional Materials/Public Participation</b>	12	24	20	191	247	\$ 22,625.00
<b>Task 4 - Construction Documents and Details</b>	4	24	8	35	71	\$ 7,205.00
<b>Expenses</b>						\$ 2,000.00
<b>TOTALS</b>	<b>30</b>	<b>118</b>	<b>66</b>	<b>240</b>	<b>454</b>	<b>\$ 49,110.00</b>

**FEE SCHEDULE**

**Contract Hourly Billing Rates**

Senior Vice President/Branch Manager .....	\$250.00
Vice President/Project Director .....	\$225.00
Assistant Vice President/Project Director .....	\$185.00
Senior Project Manager .....	\$175.00
Senior Engineer .....	\$160.00
Project Manager .....	\$150.00
Project Engineer .....	\$125.00
Senior Inspector/Coatings Inspector .....	\$110.00
Engineer/Inspector .....	\$100.00
Senior Technician .....	\$90.00
Engineering Technician .....	\$80.00
Technician .....	\$65.00
Administration .....	\$55.00
Court Testimony/Deposition .....	Negotiated

**REIMBURSABLE EXPENSES**

Direct, Non-salary expenses will be billed at 1.2 times cost:

1. Transportation and living expenses incurred for assignments outside of the closest CONSULTANT office, including the use of rental cars.
2. Shipping charges for plans, equipment, etc.
3. Purchase of specialized equipment and rental of equipment from outside vendors.
4. Reproduction of drawings and reports.
5. Construction materials and spent tools specifically for the project.
6. Automobile expenses for personal or company vehicles will be charged at \$0.50 per mile plus toll charges for travel from the CONSULTANT office to the project and return and for travel at the job in conduct of work. No mark-up of this charge.
7. Insurance in excess or in addition to insurance coverage's or at limits not normally carried by CONSULTANT or its subconsultants.

**Services of Others**

On occasion, CONSULTANT engages the specialized services of others as subconsultants on the project. When considered necessary in CONSULTANT's sole discretion, subconsultants will be used. The CLIENT agrees to reimburse the actual cost of these services plus a 20% service charge prior to the release of any work product which involves subconsultants' work.



## CONTRACT FOR SERVICE PROVIDER

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### TITLE:

A CONTRACT BETWEEN

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

**GREENMAN-PEDERSEN, INC.**  
NAME AND TITLE OF SERVICE PROVIDER

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**21 DANIEL STREET, 2<sup>ND</sup> FLOOR, PORTSMOUTH, NH 03801**  
ADDRESS OF SERVICE PROVIDER

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

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

WHEREAS, Service Provider 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 Service Provider shall complete the work described in the Contract Documents. The following are by reference incorporated herein and are made part of this contract:

1. This Agreement signed by the City of Nashua and Service Provider, including the General Terms and Conditions.
2. Bid Form or Proposal
3. Insurance Certificate
4. Written change orders or orders for minor changes in the Work issued after execution of this Agreement; and
5. 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 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, Service Provider shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform the work as described in and in accordance with the specifications in the City of Nashua's request for proposals and the terms and conditions of the contract.

**3. PERIOD OF PERFORMANCE.** Service Provider shall perform and complete all work within the time periods set forth. The time periods 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. Service Provider shall begin performance upon receipt of an Executed Contract **and** a valid Purchase Order issued from the City.

**4. COMPENSATION.** Service Provider agrees to perform the work for a total cost not to exceed

Dollars (\$ 49,110.00 )

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

Unless Service Provider has received a written exemption from the City of Nashua, Service Provider shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such applications shall be supported by such data substantiating the Service Provider's right to payment as the City of Nashua may reasonably require. Service Provider shall submit monthly requests for payment for services performed under this agreement directly to:

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

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

Applications for Payment shall be submitted no later than fifteen (15) days after the end of each month. The City of Nashua will pay for work satisfactorily completed by Service Provider within thirty (30) days from the time of **final approval** by the City of Nashua of the submitted Application for Payment.

**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:**

James Vayo, AICP  
Downtown Economic Development Specialist  
Economic Development Division  
229 Main Street  
Nashua, NH 03061

**SERVICE PROVIDER REPRESENTATIVE:**

Christer Ericsson  
Sr. Vice President  
Greenman-Pedersen  
21 Daniel Street - 2nd FL  
Portsmouth, NH 03801

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 Service Provider may change the address or representative by giving written notice to the other party

## *General Terms and Conditions*

1. **DEFINITIONS.** Unless otherwise required by the context, "Service Provider" and its successors, transferees and assignees (together "Service Provider") includes any of the Service Provider's consultants, sub consultants, contractors, and sub-contractors

2. **SERVICE PROVIDER STATUS AND PROVISION OF WORKERS' COMPENSATION COVERAGE.** The parties agree that Service Provider 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, contractors, or sub-contractors. The only contractual relationship created by this contract is between the City of Nashua and Service Provider, and nothing in this contract shall create any contractual relationship between the City of Nashua and Service Provider's consultants, sub consultants, contractors, or sub-contractors. The parties also agree that Service Provider 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 Service Provider 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.** Service Provider shall be responsible for the quality, accuracy, timely completion, and coordination of all work performed under this contract. Service Provider warrants that all work shall be performed with the degree of skill, care, diligence, and sound practices and judgment that are normally exercised by recognized firms with respect to services of a similar nature. It shall be the duty of Service Provider 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, Service Provider 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 Service Provider's failure to perform in accordance with this standard of care. Any approval by the City of Nashua of any services furnished or used by Service Provider shall not in any way relieve Service Provider 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 Service Provider'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 Service Provider shall be and remain liable in accordance with the terms of the contract and applicable law. Service Provider shall furnish competent and skilled personnel to perform the work under this contract.

4. **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 Service Provider's performance under the contract. Service Provider 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 Service Provider should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Service Provider'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 Service Provider for adjustment under this clause shall be asserted in writing within 30 days of the date the City notified Service Provider of the change.

**5. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES.**

Service Provider 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 Service Provider. All future questions Service Provider 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 Service Provider's question or position.

The City of Nashua's 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 Service Provider prior to having received the City of Nashua's resolution shall be at Service Provider's risk and expense. At all times, Service Provider 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. Service Provider is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

**6. 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 Service Provider 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, Service Provider 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 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, Service Provider shall receive all amounts due and not previously paid to Service Provider 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 Service Provider in the event of a failure by Service Provider 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. Service Provider shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. Service Provider may terminate the contract on 10 calendar days written notice if, through no fault of Service Provider, the City of Nashua fails to pay Service Provider 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, Service Provider 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, Service Provider shall receive all amounts due and not previously paid to Service Provider 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 Service Provider's failure. Service Provider 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 Service Provider until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider such that Service Provider 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. Upon termination of the contract or in the event Service Provider shall cease conducting

business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Service Provider 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 Service Provider's principals, officers, employees, agents, sub-contractors, sub consultants, vendors, or suppliers are expressly recognized to be within Service Provider's control.

7. **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 Service Provider Representative. At all times, Service Provider 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.

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

9. **INSURANCE.** Service Provider 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.

Service Provider 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 Service Provider are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Service Provider under the contract. The City of Nashua shall not maintain any insurance on behalf of Service Provider. Subcontractors are subject to the same insurance requirements as the Service Provider and it shall be the Service Provider's responsibility to ensure compliance of this requirement. Service Provider 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 (10) calendar days after the City of Nashua issues the notice of award. The City of Nashua requires thirty (30) days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy are to be signed by a person authorized

by the insurer and who is licensed by the State of New Hampshire. Certificates must name the **City of Nashua as an additional insured on General Liability, and Auto Liability policies.** Service Provider is responsible for filing updated Certificates of Insurance with the City of Nashua's Risk Management Department during the life of the contract. The certificate should be mailed to:

Risk Management  
City of Nashua  
229 Main Street  
Nashua, NH 03060-2019

- 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, Service Provider 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 Service Provider of its responsibilities or limit the amount of its liability to the City of Nashua or other persons, and Service Provider 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.
- Service Provider 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 Service Provider or anyone employed, directed, or supervised by Service Provider.

**10. INDEMNIFICATION.** Regardless of the coverage provided by any insurance, Service Provider agrees to indemnify and shall defend 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, attorneys' fees, costs and expenses of any kind or nature to the extent 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 Service Provider or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Service Provider'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.

**11. 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 Service Provider 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 Service Provider 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 Service Provider. Service Provider shall have no claim of any sort to the unexpended funds.

**12. COMPLIANCE WITH APPLICABLE LAWS.** Service Provider, 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. Service Provider 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.

**13. NONDISCRIMINATION.** In connection with the performance of work under this contract, Service Provider agrees not to discriminate against any employee or applicant for employment because of race, religion, 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.

**14. SERVICE PROVIDER ENDORSEMENT.** Service Provider shall sign, seal, and/or stamp as appropriate any necessary documents as required under the laws of the State of New Hampshire.

**15. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING.** Service Provider 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.

**16. CITY OF NASHUA INSPECTION OF CONTRACT MATERIALS.** The books, records, documents and accounting procedures and practices of Service Provider related to this contract shall be subject to inspection, examination and audit by the City of Nashua.

**17. TAXES.** Service Provider 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. Service Provider 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.

**18. 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.

**19. 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. Said rights and remedies to be had or exercised in accordance with section 25, hereof.

**20. PROHIBITED INTERESTS.** Service Provider 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. Service Provider 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 Service Provider. If any such interest comes to the attention of Service Provider at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua. Service Provider warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Service Provider 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.

**21. THIRD PARTY INTERESTS AND LIABILITIES.** The City of Nashua and Service Provider, 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 Service Provider.

**22. 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.

**23. 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.

**24. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT.** This contract constitutes the entire contract between the City of Nashua and Service Provider. 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.

**25. 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.

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*

  
\_\_\_\_\_  
*Service Provider (signature)*

\_\_\_\_\_  
*Christopher Ericsson  
(Printed Name and Title) Sr. VICE PRESIDENT*

\_\_\_\_\_  
*7/20/16  
Date*