STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

This agreement is made:

BETWEEN the Owner: **City of Nashua, New Hampshire**
229 Main Street
Nashua, NH 03060

And the Contractor:

For the following Project: **2012 Sewer Video & Pipe Cleaning Services**

ARTICLE 1 – THE CONTRACT DOCUMENTS

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

1. This Agreement signed by the Owner and Contractor, including the General Terms and Conditions.
2. Bid Form
3. Specifications provided in the bid documents
4. Insurance Certificate
5. Written change orders or orders for minor changes in the Work issued after execution of this Agreement; and
6. 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.

ARTICLE 2 – DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE

The date of commencement shall be the date of the Notice to Proceed. Substantial Completion shall be **May 4, 2012.**

ARTICLE 3 – CONTRACT SUM

Subject to additions and deductions by Change Order, the Contract Sum is:
_____ ( ) _____

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

ARTICLE 4 – PAYMENT

The City shall pay the Contractor based on work completed and reflected on Contractor's Application for Payment submitted monthly.

ARTICLE 5 – INSURANCE AND INDEMNIFICATION

Contractor shall carry and maintain in effect during the performance of services under this contract: General liability insurance in the amount of $1,000,000 per occurrence; $2,000,000 aggregate; $1,000,000 Combined Single Limit Automobile Liability; and Workers' Compensation Coverage in compliance with the State of NH Statutes, $100,000/$500,000/$100,000. Contractor shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers and forms of policy satisfactory to the City, acceptance of which shall not be unreasonably withheld. None of the requirements as to types, limits, and approval of insurance coverage to be maintained by Contractor are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the contract. The City shall not maintain any insurance on behalf of Contractor. Any subcontractors used are the agents of the Contractor and not the City of Nashua. Subcontractors are subject to the same insurance requirements as the Contractor.

Contractor will provide the City with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within 10 calendar days after the City 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**. Contractor is responsible for filing updated Certificates of Insurance with the City of Nashua's Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificates of insurance.
- If aggregate limits of less than $2,000,000 are imposed on bodily injury and property damage, the Contractor must maintain umbrella liability insurance of at least $1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve Contractor of its responsibility or limit the amount of its liability to the City or other persons, and Contractor is encouraged to purchase such additional insurance, as it deems necessary.
- Contractor is responsible for and required to remedy all damage or loss to any property, including property of the City, caused in whole or in part by Contractor or anyone employed, directed, or supervised by Contractor.

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

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General Terms and Conditions

ARTICLE 6 – GENERAL PROVISIONS

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

ARTICLE 7 – OWNER

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

8. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

ARTICLE 8 – CONTRACTOR

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

11. The Contractor shall promptly review, approve in writing and submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.
12. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.
13. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
14. The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work.

ARTICLE 9 – CHANGES IN THE WORK

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

ARTICLE 10 – TIME

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

ARTICLE 11 – PAYMENTS AND COMPLETION

1. The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.
2. At least ten days before the date established for each progress payment, the Contractor shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner may reasonably require and reflecting retainage if provided for elsewhere in the Contract Documents.
3. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.
4. After the Contractor has submitted a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.
5. The Contractor shall promptly pay each Subcontractor and material supplier out of the amount paid to the Contractor on account of such entities' portion of the Work.
6. The Owner shall have no responsibility for the payment of money to a Subcontractor or material supplier.
7. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.
8. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.
9. When the Work or designated portion thereof is substantially complete, the Contractor and Owner shall establish responsibilities for completion and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
10. Upon receipt of a final Application for Payment, the Owner will inspect the Work. When they find the Work acceptable and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment.
11. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 12 – PROTECTION OF PERSONS AND PROPERTY

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

ARTICLE 13 – CORRECTION OF WORK

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

ARTICLE 14 – PROHIBITED INTERESTS

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

ARTICLE 15 – MISCELLANEOUS PROVISIONS

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

4. The Owner shall pay for tests except for testing Work found to be defective for which the Contractor shall pay.
5. The Contract shall be governed exclusively by the law of the State of New Hampshire, and any litigation shall be brought in a court located in the State of New Hampshire.

ARTICLE 16 – TERMINATION OF THE CONTRACT

1. If the Owner fails to make payment when due or substantially breaches any other obligation of this Contract, following fifteen days' written notice to the Owner, the Contractor may terminate the Contract and recover from the Owner payment for work executed.
2. The Owner may terminate the contract for cause if the Contractor:
   - persistently or repeatedly refuses or fails to supply enough properly skilled workers;
   - fails to make payment(s) to Subcontractors for labor or materials in accordance with the respective agreements between the Contractor and Subcontractors;
   - disregards laws, ordinanances, rules, regulations, or orders of any public authority having jurisdiction; or
   - is otherwise guilty of a substantial breach of a provision of the Contract Documents.
3. If the Owner has decided to terminate the contract for cause, the Owner, without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, shall terminate the employment of the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient.
4. If the Contract has been terminated by the Owner for cause, the Contractor shall not be entitled to receive further payment until the work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, such excess shall be paid to the Contractor. If the cost of finishing the Work exceeds the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.
5. The Owner also has the right to terminate this Contract, in whole or in part, without cause, upon fifteen days' written notice. As of the date specified in the notice, Contractor shall stop all performance under this Contract, except as otherwise directed by the Owner, provide the Owner with a list of all unperformed services, and take such action relative thereto as Contractor may be directed by the Owner. The Owner agrees to pay for all work that has been performed and equipment that has been installed or is on order and the order cannot be cancelled.

_____	_____
OWNER ***(signature)***	**CONTRACTOR** ***(signature)***
Donnalee Lozeau, Mayor	_____
(Printed Name and Title)	*(Printed Name and Title)*
_____	_____
Date	Date