FINANCE COMMITTEE

FEBRUARY 6, 2019

7:00 pm
Aldermanic Chamber

ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

From: Dan Kooker, Purchasing Manager
Re: Purchase of One (1) New Pierce Arrow XT 1500 GPM Pumper Truck (Value: $641,206)
   Department: 152 Fire Rescue; Fund: Bond

From: Dan Kooker, Purchasing Manager
Re: Comprehensive Lighting Design and Electrical Plan for Downtown Riverfront (Value $100,000)
   Department: 181 Community Development; Fund: General

From: Dan Kooker, Purchasing Manager
Re: Unleaded Fuel Contract (Value Estimated $366,625); Department: 186 Transportation
   Fund: Grant and Various Department’s General Funds

UNFINISHED BUSINESS – None

NEW BUSINESS – None

RECORD OF EXPENDITURES

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT
January 31, 2019
Memo #19-115

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: PURCHASE OF ONE (1) NEW PIERCE ARROW XT 1500 GPM PUMPER TRUCK
(VALUE: $641,206)
DEPARTMENT: 152 FIRE RESCUE; FUND: BOND

Please see the attached communication from George A. Walker, Assistant Chief to Brian D. Rhodes, Chief of Department dated January 23, 2019 for information related to this purchase.

Pursuant to § 5-84 Special purchase procedures A. (3) Purchases which can be procured through cooperative intergovernmental purchase agreements with other governmental jurisdictions.

Nashua Fire Rescue and the Purchasing Department recommend the purchase of this vehicle from Minuteman Fire & Rescue Apparatus Inc. of Walpole, MA in the amount of $641,206.

Respectfully,

[Signature]
Dan Kooker
Purchasing Manager

Cc: B. Rhodes   G. Walker   J. Graziano
To: Chief of Department Brian D. Rhodes  
From: Assistant Chief George A. Walker  
Re: Pierce Arrow XT 1500 GPM Pumper Truck  
Date: January 23, 2019

Chief Rhodes,

I have attached Resolution R-18-081 which authorizes the Mayor and City Treasurer to issue bonds not to exceed the amount of six hundred sixty thousand dollars ($660,000) to purchase a new pumper truck for the Fire Department.

This bond will allow the replacement of our 2001 Pierce Enforcer 1500 GPM Pumper truck.

Historically Nashua Fire Rescue has purchased vehicles from Pierce Manufacturing with a pre pay. This option offers the City a significant savings of $17,883 in finance charges for this vehicle that can be used towards the outfitting and purchase.

I am recommending that we move forward with accepting this financing of the pre pay option, in order to secure the savings and to establish a construction schedule to meet the requirements of the bond.

Respectfully,

[Signature]

George A. Walker  
Assistant Chief
RESOLUTION

AUTHORIZING THE MAYOR AND CITY TREASURER TO ISSUE BONDS NOT TO EXCEED THE AMOUNT OF SIX HUNDRED SIXTY THOUSAND DOLLARS ($660,000) TO PURCHASE A NEW PUMPER TRUCK FOR THE FIRE DEPARTMENT

CITY OF NASHUA

In the Year Two Thousand and Eighteen

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor of the City of Nashua and the City Treasurer of the City of Nashua are hereby authorized to issue and sell general obligation bonds of the City in an aggregate principal not to exceed six hundred sixty thousand dollars ($660,000). The proceeds of said bonds shall be used to purchase a new pumper truck for the Fire Department. The useful life of the truck is fifteen years.

Pursuant to Nashua City Charter §54-a, this resolution requires a “duly advertised public hearing.” Also see N.H. RSA 33:9, which requires a 2/3 vote for passage of this resolution.

The bonds shall be general obligations of the City of Nashua, payable as to principal and interest from ad valorem taxes, which will be levied without limitation as to rate or amount on all taxable property within the territorial limits of the City of Nashua.

The bonds shall bear the manual or facsimile signature of the City Treasurer and the Mayor. In accordance with Chapter 91 of the New Hampshire Acts of 2005, bonds issued pursuant to this resolution shall not require an authenticating certificate of a bank or trust company doing business in the State of New Hampshire or The Commonwealth of Massachusetts, or the Commissioner of Revenue Administration.

The bonds are to be issued in fully-registered form by means of a book-entry system or otherwise and shall have such terms and conditions and be in such form, subject to the provisions of this resolution and applicable law, as shall be determined by the Mayor and the City Treasurer.

RESOLVED FURTHER, that the Mayor is authorized to enter into the required contracts therefor as well as any amendments to be made thereto or any other documentation necessary for the receipt of said funds.
LEGISLATIVE YEAR 2018

RESOLUTION: R-18-081

PURPOSE: Authorizing the Mayor and City Treasurer to issue bonds not to exceed the amount of six hundred sixty thousand dollars ($660,000) to purchase a new pumper truck for the Fire Department

SPONSOR(S): Mayor Jim Donchess
Alderwoman Mary Ann Melizzi-Golja

COMMITTEE ASSIGNMENT:

FISCAL NOTE: It is anticipated that the bond would be sold in FY 20/21 for a fifteen year term. It is estimated the interest rate will be approximately 3.5% and the total cost of the bond will be $844,800 including interest. The average annual payment will be approximately $56,320 with the beginning years at a higher amount. The vehicle was approved in the FY 19 CERF schedule/budget.

ANALYSIS

This resolution authorizes the City to issue and sell general obligation bonds up to $660,000 for the purchase of a new pumper truck for the Fire Department. The pumper truck was approved in the FY 2019 Capital Equipment Reserve Fund plan.

Pursuant to Nashua City Charter §54-a, this resolution requires a “duly advertised public hearing”. Also see NH RSA 33:9, which requires a 2/3 vote for passage of this resolution.

This legislation should be referred to the Board of Fire Commissioners for its review and approval.

Approved as to account structure, numbers and amount: Financial Services Division
By: Rosemarie Grant

Approved as to form: Office of Corporation Counsel
By: Dorely Clarke
Date: September 20, 2018
City of Nashua Fire & Rescue
70 East Hollis Street
Nashua, NH 03060

PROPOSAL  Bid # 425
FOR FURNISHING

Pierce  FIRE APPARATUS

The undersigned is prepared to manufacture for you, upon an order being placed by you, for final acceptance by
Minuteman Fire & Rescue Apparatus, Inc. at its home office in Walpole, Massachusetts, the apparatus and equipment herein
named and for the following prices:

One (1) Pierce ® Arrow XT 1500 GPM Pumper  $ 666,089.00

OPTION – If a 100% prepayment in the amount of $ 648,206.00 is remitted to
Minuteman Fire & Rescue Apparatus Inc. within fifteen (15) days of a fully
executed contract the balance due at time of delivery will be 0.00.

TRADE IN OPTION – (1) 2001 Pierce Enforcer 1500 GPM Pumper  $ - 7,000.00

The above amount reflects HGAC contract pricing and is valid until 01/30/2019

TOTAL $ 

Said apparatus and equipment are to be built and shipped in accordance with the specifications hereto attached, delays
due to strikes, war or international conflict, failures to obtain chassis, materials, or other causes beyond our control not
preventing, within about 190 working days after receipt of this order and the acceptance thereof at our office at Walpole,
Massachusetts, and to be delivered to you at the Nashua Fire Department, Nashua New Hampshire specifications herein
contained shall form a part of the final contract, and are subject to changes desired by the purchaser, provided such alterations
are interlined prior to the acceptance by the company of the order to purchase, and provided such alterations do not materially
affect the cost of the construction of the apparatus.

The proposal for fire apparatus conforms with all Federal Department of Transportation (DOT) rules and regulations
in effect at the time of bid, and with all National Fire Protection Association (NFPA) Guidelines for Automotive Fire Apparatus
as published at the time of bid, except as modified by customer specifications. Any increased costs incurred by first party
because of future changes in or additions to said DOT or NFPA standards will be passed along to the customers as an addition
to the price set forth above.

Unless accepted within 30 days from date, the right is reserved to withdraw this proposition.

MINUTEMAN FIRE & RESCUE APPARATUS INC.

By: William K. O’Connor, VP Sales & Marketing
PURCHASE AGREEMENT

This Purchase Agreement (together with all attachments referenced herein, the “Agreement”), made and entered into by and between Minuteman Fire and Rescue Apparatus, Inc. d/b/a Minuteman Fire and Rescue Apparatus (“Dealer”), and the City of Nashua, New Hampshire, a New Hampshire municipality (“Customer”) is effective as of the date specified in Section 3 hereof.

1. Definitions.
   a. “Product” means the apparatus described in Exhibit “A” which is attached to the Agreement and made a part hereof, along with any associated equipment furnished for the Customer by Dealer pursuant to the Specifications.
   b. “Specifications” means the general specifications, technical specifications, training, and testing requirements for the Product contained in the Dealer Proposal for the Product prepared in response to the Customer’s request for proposal.
   c. “Dealer Proposal” means the proposal provided by Dealer attached as Exhibit C which is attached to the Agreement and made a part hereof, prepared in response to the Customer’s request for proposal.
   d. “Delivery” means the date Dealer is prepared to make physical possession of the Product available to the Customer.
   e. “Acceptance” The Customer shall have the opportunity, as described in Section 8(b) below, to inspect the Product for substantial conformance with the material Specifications; unless Dealer receives a Notice of Defect within the time frame described in Section 8(b), the Product will be deemed to be in conformance with the Specifications and accepted by the Customer.

2. Purpose. This Agreement sets forth the terms and conditions of Dealer’s sale of the Product to the Customer.

3. Term of Agreement. This Agreement will become effective on the date it is signed and approved by both Customer and Dealer, which ever date is later (“Effective Date”) and, unless earlier terminated pursuant to the terms of this Agreement, it will be deemed satisfactorily performed by the Dealer upon the Customer’s Acceptance and payment in full of the Purchase Price.

4. Purchase and Payment. The Customer agrees to purchase the Product specified on Exhibit A for the total purchase price of $666,089.00 (“Purchase Price”). Prices are in U.S. funds.

5. Future Changes/Changes to Specifications. Various state or federal regulatory agencies (e.g. NFPA, DOT, EPA) may require changes to the Specifications and/or the Product and in any such event any resulting cost increases incurred to comply therewith will be added to the Purchase Price shall be paid by the Customer. In addition, any future drive train upgrades (engine, transmission, axles, etc.), or any other specification changes have not been calculated into the manufacturer’s annual increases and will be provided at additional cost. To the extent practicable, Dealer will document and itemize any such price increases for the Customer. If, subsequent to the Effective Date of this Agreement: 1) the manufacturer of the Apparatus (or a manufacturer of a component therein) makes design and/or production changes, including, but not limited to future drive train upgrades (such as engine, transmission or axle upgrades) (“Manufacturer Modifications”); or 2) design or production changes are made to the Apparatus to comply with any applicable government regulation (such as the Federal Motor Vehicle Safety Standards or the Environmental Protection Agency Emissions Standards) or industry standards (such as those adopted by the National Fire Protection Association) (cumulatively referred to hereinafter as “Compliance Modifications”), and if there is an increase in costs to Dealer as a result of Manufacturer Modifications or Compliance Modifications, the Purchase Price shall be automatically adjusted to reimburse Dealer for said costs. Dealer shall make reasonable efforts to advise the Customer of such changes within a reasonable time and provide documentation to support any changes in price to Customer upon request. In addition, Customer and Dealer may agree to make changes to the Specifications, but any such changes must be by written change order signed by Customer and Dealer (“Change Order”).
6. **Agreement Changes.** The Customer may request that Dealer incorporate a change to the Products or the Specifications for the Products by delivering a change order to Dealer; provided, however, that any such change order must be in writing and include a description of the proposed change sufficient to permit Dealer to evaluate the feasibility of such change (“Change Order”). Within fifteen (15) business days of receipt of a Change Order, Dealer will make diligent efforts to inform the Customer in writing of the feasibility of the Change Order, the earliest possible implementation date for the Change Order, of any increase or decrease in the Purchase Price resulting from such Change Order, and of any effect on production scheduling or Delivery resulting from such Change Order. Dealer shall not be liable to the Customer for any delay in performance or Delivery arising from any such Change Order. A Change Order is only effective when counter-signed by Dealer’s authorized representative.

7. **Cancellation/Termination.** In the event this Agreement is cancelled or terminated by a party before completion, Dealer may charge a cancellation fee. Customer acknowledges and agrees that: 1) the Product is a unique and highly customized vehicle, made specifically for Customer; 2) Dealer has invested a significant effort and incurred significant expense in the design and engineering of the Product for the Customer; 3) due to its unique and customized nature, resale of the Product will be difficult to sell to a third-party without a significant loss to the Dealer; 4) that the actual damages that Dealer will incur are unknown at the time of the signing of this Agreement; and 5) the parties agree that the schedule of liquidated damages as set forth in this Agreement are reasonable. As a result, Dealer and Customer agree that the following charge schedule based on costs incurred shall be applied: (a) 10% of the Purchase Price after order is accepted and entered by Dealer; (b) 20% of the Purchase Price after completion of approval drawings, and; (c) 30% of the Purchase Price upon any material requisition. The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing.

8. **Delivery, Inspection and Acceptance.** (a) **Delivery.** Delivery of the Product is scheduled to be within 9.5 months of the Effective Date of this Agreement, the City of Nashua Fire & Rescue, Nashua NH. Risk of loss shall pass to Customer upon Delivery. (b) **Inspection and Acceptance.** Upon Delivery, Customer shall have ten (10) business days within which to inspect the Product for substantial conformance to the material Specifications, and in the event of substantial non-conformance to the material Specifications to furnish Dealer with written notice sufficient to permit Dealer to evaluate such non-conformance (“Notice of Defect”). Any Product not in substantial conformance to material Specifications shall be remedied by Dealer by putting the Manufacturer on written notice of such non-conformance. In the event Dealer does not receive a Notice of non-conformance within ten (10) business days of Delivery, Product will be deemed to be in conformance with Specifications and accepted by Customer.

9. **Notice.** Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, overnight mail by a recognized overnight carrier, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

**Dealer:**
Minuteman Fire and Rescue Apparatus, Inc.
2181 Providence Highway
Walpole, Massachusetts 02081
Fax: 508-216-6368

**Customer:**
City of Nashua New Hampshire
70 East Hollis Street
Nashua, New Hampshire 03060

10. **Standard Warranty.** Any applicable manufacturer warranties are attached hereto as Exhibit B and made a part hereof. Any additional warranties must be expressly approved in writing by Dealer’s authorized representative. Unless provided otherwise in writing and signed by Dealer, no other warranties are provided other than the applicable manufacturer’s warranties.

a. **Disclaimer.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER DEALER, ITS AFFILIATES, SUBSIDIARIES, LICENSORS OR SUPPLIERS, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES, MAKE ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE
b. Exclusions of Incidental and Consequential Damages. In no event shall Dealer be liable for consequential, incidental or punitive damages incurred by Customer or any third party in connection with any matter arising out of or relating to this Agreement, or the breach thereof, regardless of whether such damages arise out of breach of warranty, tort, contract, strict liability, statutory liability, indemnity, whether resulting from non-delivery or from Dealer’s own negligence, or otherwise.

11. Insurance. Manufacturer maintains the following limits of insurance with a carrier(s) rated A- or better by A.M. Best:

- **Commercial General Liability Insurance:**
  - Products/Completed Operations Aggregate: $1,000,000
  - Each Occurrence: $1,000,000

- **Umbrella/Excess Liability Insurance:**
  - Aggregate: $25,000,000
  - Each Occurrence: $25,000,000

The Customer may request: (x) manufacturer to provide the Customer with a copy of a current Certificate of Insurance with the coverages listed above; (y) to be included as an additional insured for Commercial General Liability (subject to the terms and conditions of the applicable manufacturer insurance policy); and (z) all policies to provide a 30 day notice of cancellation to the named insured.

12. Force Majeure. Dealer shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond Dealer’s control which make Dealer’s performance impracticable, including but not limited to civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, any act of government, delays in transportation, inability to obtain necessary labor supplies or manufacturing facilities, allocation regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy or terrorism, failure of transportation, epidemics, quarantine restrictions, failure of vendors (due to causes similar to those within the scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work.

13. Default. The occurrence of one or more of the following shall constitute a default under this Agreement: (a) the Customer fails to pay when due any amounts under this Agreement or to perform any of its obligations under this Agreement; (b) Dealer fails to perform any of its obligations under this Agreement; (c) either party becomes insolvent or become subject to a bankruptcy or insolvency proceedings; (d) any representation made by either party to induce the other to enter into this Agreement is false in any material respect; (e) the Customer dissolves, merges, consolidates or transfers a substantial portion of its property to another entity; or (f) the Customer is in default or has breached any other contract or agreement with Dealer.

14. Manufacturer’s Statement of Origin/Security Interest. It is agreed that the manufacturer’s statement of origin (“MSO”) for the Product covered by this Agreement shall remain in the possession of Dealer until the entire Purchase Price has been paid. If more than one Product is covered by this Agreement, then the MSO for each individual Product shall remain in the possession of Dealer until the Purchase Price for that Product has been paid in full. In case of any default in payment, Dealer may take full possession of the Product by any lawful means and shall be entitled to any additional damages sustained by the Dealer, including, but not limited to, reasonable attorney’s fees and costs.

15. Indemnity. To the extent permitted by law, Customer shall indemnify, defend and hold harmless Dealer and all of its officers, directors, employees, representatives, dealers, agents and subcontractors, from and against any and all claims, costs, judgments, liability, loss, damage, attorneys’ fees or expenses of any kind or nature whatsoever (including, but without limitation, relating to personal injury or death) caused by, resulting from, arising out of or occurring directly or indirectly in connection with Customer’s purchase, operation, ownership, installation or use of any items (including, without limitation, the Apparatus) sold or supplied by Dealer, except only to the extent caused by the sole negligence of Dealer.

16. Severability. If any provision, or part hereof, of this Agreement shall be declared invalid by judicial determination or legislative action, only such provision, or part thereof, so declared invalid shall be affected, and all other provisions not consistent therewith or directly dependent thereon shall remain in force and effect.

17. Independent Contractors. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venture of or with the other.

18. Assignment. Neither party may assign its rights and obligations under this Agreement unless it has obtained the prior written approval of the other party.
19. **Governing Law; Jurisdiction.** Without regard to any conflict of law provisions, this Agreement is to be governed by and under the laws of the Commonwealth of Massachusetts.

20. **Facsimile or Electronic Signatures/Counterparts.** The delivery of signatures to this Agreement by facsimile transmission or by electronic transmission shall be binding as original signatures. This Agreement may be signed in duplicate counterparts which, when taken together, shall constitute one and the same agreement and be the Agreement.

21. **Entire Agreement.** This Agreement shall be the exclusive agreement between the parties for the Product. Additional or different terms proposed by the Customer shall not be applicable, unless accepted in writing by Dealer’s authorized representative. No change in, modification of, or revision of this Agreement shall be valid unless in writing and signed by Dealer’s authorized representative.

22. **Conflict.** In the event of a conflict between the Customer Specifications and the Dealer Proposal, the Dealer Proposal shall control. In the event there is a conflict between the Dealer Proposal and this Agreement, the Dealer Proposal shall control.

23. **Signatures.** This Agreement is not effective unless and until it is approved, signed and dated by Minuteman Fire & Rescue Apparatus, Inc.’s authorized representative.

Accepted and agreed to:

Minuteman Fire and Rescue Apparatus, Inc.
d/b/a Minuteman Fire and Rescue Apparatus

**Dealer:**

Name: [Signature]

Title: Vice President, Sales & Marketing

Date: January 22, 2019

**Customer: City of Nashua New Hampshire**

Name: [Signature]

Title: Chief of Department

Date: January 22, 2019
EXHIBIT A

PURCHASE DETAIL FORM
Minuteman Fire & Rescue Apparatus Inc.
2181 Providence Highway
Walpole, MA 02081
Fax (508) 216-6368

Date: January 22, 2019

Customer Name: City of Nashua, New Hampshire

<table>
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<th>Quantity</th>
<th>Chassis Type</th>
<th>Body Type</th>
<th>Price per Unit</th>
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<tbody>
<tr>
<td>One (1)</td>
<td>Pierce® Arrow XT</td>
<td>1500 GPM Pumper</td>
<td>$ 648,206.00</td>
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Provided that a 100% prepayment in the above amount of $648,206.00 is remitted to Minuteman Fire & Rescue Apparatus Inc. within fifteen (15) days of a fully executed contract. The above amount reflects HGAC contract pricing and is valid until the end of day January 31, 2019. After that date this price is subject to an annual increase.

Warranty Period: Two (2) year bumper to bumper and other warranties as specified in bid proposal #425. The Two (2) year bumper to bumper warranty will commence on the day of delivery and receipt of the MSO by the City of Nashua, New Hampshire.

Training Requirements: Standard

Other Matters: 100 % Performance Bond

This contract is available for inter-local and other municipal corporations to utilize with the option of adding or deleting any manufacturer available options, including chassis models. Any addition or deletion may affect the unit price.

Payment Terms: As stated above.

[NOTE: If deferred payment arrangements are required, the Customer must make such financial arrangements through a financial institution acceptable to Dealer.] All taxes, excises and levies that Dealer may be required to pay or collect by reason of any present or future law or by any governmental authority based upon the sale, purchase, delivery, storage, processing, use, consumption, or transportation of the Product sold by Dealer to the Customer shall be for the account of the Customer and shall be added to the Purchase Price. All delivery prices or prices with freight allowance are based upon prevailing freight rates and, in the event of any increase or decrease in such rates, the prices on all unshipped Product will be increased or decreased accordingly. Delinquent payments shall be subject to a carrying charge of 1.5 percent per month or such lesser amount permitted by law. Dealer will not be required to accept payment other than as set forth in this Agreement. However, to avoid a late charge assessment in the event of a dispute caused by a substantial nonconformance with material Specifications (other than freight), the Customer may withhold up to five percent (5%) of the Purchase Price until such time that Dealer substantially remedies the nonconformance with material Specifications, but no longer than sixty (60) days after Delivery. If the disputed amount is the freight charge, the Customer may withhold only the amount of the freight charge until the dispute is settled, but no longer than sixty (60) days after Delivery. Dealer shall have and retain a purchase money security interest in all goods and products now or hereafter sold to the Customer by Dealer or any of its affiliated companies to secure payment of the Purchase Price for all such goods and products. In the event of nonpayment by the Customer of any debt, obligation or liability now or hereafter incurred or owing by the Customer to Dealer, Dealer shall have and may exercise all rights and remedies of a secured party under Article 9 of the Uniform Commercial Code (UCC) as adopted by the state of Massachusetts.

THIS PURCHASE DETAIL FORM IS EXPRESSLY SUBJECT TO THE PURCHASE AGREEMENT TERMS AND CONDITIONS DATED AS OF __________, 2019 BETWEEN DEALER AND CITY OF NASHUA NEW HAMPSHIRE WHICH TERMS AND CONDITIONS ARE HEREBY INCORPORATED IN, AND MADE PART OF, THIS PURCHASE DETAIL FORM AS THOUGH EACH PROVISION WERE SEPARATELY SET FORTH HEREIN, EXCEPT TO THE EXTENT OTHERWISE STATED OR SUPPLEMENTED BY DEALER HEREIN.
EXHIBIT B

WARRANTY

AS PROVIDED IN PROPOSAL #425 BY MINUTEMAN FIRE & RESCUE APPARATUS INC.
EXHIBIT C

DEALER PROPOSAL

AS PROVIDED IN PROPOSAL #425 BY MINUTEMAN FIRE & RESCUE APPARATUS INC.
January 31, 2019
Memo #19-116

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: COMPREHENSIVE LIGHTING DESIGN AND ELECTRICAL PLAN FOR DOWNTOWN RIVERFRONT (VALUE $100,000)
DEPARTMENT: 181 COMMUNITY DEVELOPMENT; FUND: GENERAL

Please see attached communication from Sarah Marchant, Community Development Division Director, dated January 29, 2019 for information related to this contract award.

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

The Community Development Division Director and the Purchasing Department recommend the award of this contract to Lumen Studio Inc. of Lowell, MA in an amount of $100,000.

Respectfully,

[Signature]
Dan Kooker
Purchasing Manager

Cc: S. Marchant J. Graziano
Date: January 29, 219

To: Jim Donchess, Mayor

From: Sarah Marchant, Community Development Director

Re: Finance Committee – Contract with Lumen Studio, Inc for Engineering Services for Comprehensive Lighting Design and Electrical Plan for Downtown Riverfront

The Downtown Riverfront Master Plan was approved in the fall of 2017 as the comprehensive vision for Nashua’s downtown riverfront. Moving that plan forward, the City issued RFP 0365-111918 to engage a lighting design and electrical engineering team to produce a detailed lighting design and electrical plan for the core downtown riverfront.

The goal of the project is to provide a quality, cost-effective, energy efficient, and low-maintenance pedestrian scale lighting system to connect the community to their riverfront. The plan should provide improved public safety; highlight the connectivity of trails, bridges, and walking paths; provide visual access to the river; and illuminate the beauty and recreational opportunities of the river and its riverbanks.

The City received 4 proposals from Colby Co. Engineering, Dwaal Lighting Design, Lumen Studio and Vincent Lighting Systems. The proposal from Vincent Lighting Systems only included a lighting design for the Cotton Transfer Bridge, instead of a comprehensive plan and as such was dropped from further evaluation. The remaining three proposals were evaluated and ranked by a team consisting of: Jim Donchess, Mayor; Andy Patrician, Assistant DPW Director; Nick Caggiano, Superintendent of Parks and Rec; Sarah Marchant, CDD Director; and Peter Kohalmi, Engineering. The criteria for evaluation of each proposal were: 1. Qualifications and experience of the project team, 2. Past performance and service on similar projects, 3. Proposed approach to the scope of work, and 4. Cost Proposal.

Based on their experience and expertise, past performance on similar projects, as well as competitive cost proposal, the team interviewed both Dwaal Lighting Design and Lumen Studio. The evaluation team ultimately chose Lumen Studio as the preferred contractor due to examples of past similar projects completed by this firm as well as the detailed approach and scope of work presented.

The Community Development Division recommends Lumen Studio as the vendor to develop a Comprehensive Lighting Design and Electrical Plan for the downtown riverfront at a fee of $100,000.
CONTRACT FOR PROFESSIONAL SERVICES

ENGINEERING SERVICES FOR COMPREHENSIVE LIGHTING DESIGN AND ELECTRICAL PLAN FOR DOWNTOWN RIVERFRONT

A CONTRACT BETWEEN

THE CITY OF NASHUA, 229 MAIN STREET, NASHUA, NH 03061-2019
AND
LUMEN STUDIO, INC. 175 CABOT ST, SUITE 310, LOWELL, MA 01854
and its successors, transferees and assignees (together “Professional Engineer”)

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

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

WHEREAS, Lumen Studio and the Team represented in the Response to RFP#0365-111918 are duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

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

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

   Exhibit A--General Conditions for Contracts
   Exhibit B--Scope of Services, Contract Time, Fee Schedule

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

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

2. WORK TO BE PERFORMED Except as otherwise provided in this contract, Professional Engineer shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described.
3. PERIOD OF PERFORMANCE. Professional Engineer shall perform and complete all work within the time periods set forth and may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Professional Engineer shall begin performance upon receipt of an Executed Contract and a valid Purchase Order issued from the City of Nashua.

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

One hundred thousand Dollars ($100,000.00)

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

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

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

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

1. Appropriate invoice forms. The forms shall include the project purchase order number, a listing of personnel hours and billing rates, and other expenditures for which payment is sought.

2. A progress report. The report shall include, for each monthly reporting period, a description of the work accomplished, problems experienced, upcoming work, any extra work carried out, and a schedule showing actual expenditures billed for the period, cumulative total expenditures billed and paid to date under the contract, and a comparison of cumulative total expenditures billed and paid to the approved budget.

The City of Nashua will pay for work satisfactorily completed by Professional Engineer. The City of Nashua will pay Professional Engineer within 30 days of approval by the City of Nashua of the submitted invoice forms and progress reports. The City of Nashua will make no payments until the invoice forms and progress reports have been submitted and approved.

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

6. NOTICES. All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:
CITY OF NASHUA REPRESENTATIVE:  
Community Development Division  
Sarah Marchant, Director  
229 Main Street, PO Box 2019  
Nashua, NH 03060

LUMEN STUDIO REPRESENTATIVE:  
Lumen Studio, Inc  
Christina L. Andriole, Principal  
175 Cabot St, Suite 310  
Lowell, MA 01854

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

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

______________________________  ________________________________
City of Nashua, NH (signature)  Lumen Studio, Inc. (signature)

______________________________  ________________________________
James Donchess, Mayor  (Printed Name and Title)  
(Printed Name and Title)

______________________________  ________________________________
Date  Date
| 1. Definitions | GC--2 |
| 2. Professional Engineer Status | GC--2 |
| 3. Standard Of Care | GC--2 |
| 4. City Of Nashua Representative | GC--3 |
| 5. Changes To Scope Of Work | GC--3 |
| 6. City Of Nashua Cooperation | GC--3 |
| 7. Discovery Of Conflicts, Errors, Omissions, Ambiguities, Or Discrepancies | GC--3 |
| 8. Termination Of Contract | GC--4 |
| 9. Dispute Resolution | GC--5 |
| 10. No Damages For Delay | GC--6 |
| 11. Insurance | GC--6 |
| 12. Indemnification | GC--7 |
| 13. Fiscal Contingency | GC--7 |
| 14. Compensation | GC--7 |
| 15. Compliance With Applicable Laws | GC--7 |
| 16. Nondiscrimination | GC--8 |
| 17. Endorsement | GC--8 |
| 18. Assignments, Transfer, Delegation, Or Subcontracting | GC--8 |
| 19. City Inspection Of Contract Materials | GC--9 |
| 20. Disposition Of Contract Materials | GC--9 |
| 21. Public Records Law, Copyrights, And Patents | GC--9 |
| 22. Final Acceptance | GC--10 |
| 23. Taxes | GC--10 |
| 24. Non-Waiver Of Terms And Conditions | GC--10 |
| 25. Rights And Remedies | GC--10 |
| 26. Prohibited Interests | GC--10 |
| 27. Third Party Interests And Liabilities | GC--11 |
| 28. Survival Of Rights And Obligations | GC--11 |
| 29. Severability | GC--11 |
| 30. Modification Of Contract And Entire Agreement | GC--11 |
| 31. Choice Of Law And Venue | GC--11 |
General Terms and Conditions

1. DEFINITIONS Unless otherwise required by the context, "Professional Engineer", and its successors, transferees and assignees (together "Professional Engineer") includes any of the Professional Engineer's consultants, sub consultants, contractors, and subcontractors.

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

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

3. STANDARD OF CARE Professional Engineer shall be responsible for the professional quality, technical accuracy, completion in accordance with a mutually agreed upon schedule, and coordination of all work performed under this contract. Professional Engineer warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Professional Engineer to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City of Nashua may have, Professional Engineer shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Professional Engineer's failure to perform in accordance with this standard of care. Any approval by the City of Nashua of any products or services furnished or used by Professional Engineer shall not in any way relieve Professional Engineer of the responsibility for professional and technical accuracy and adequacy of its work. City of Nashua review, approval, or acceptance of, or payment for any of Professional Engineer's work under this contract shall not operate as a waiver of any of the City of Nashua's rights or causes of action under this contract, and Professional Engineer shall be and remain liable in accordance with the terms of the contract and applicable law.

Professional Engineer shall furnish competent and skilled personnel to perform the work under this contract. The City of Nashua reserves the right to approve key personnel assigned by Professional Engineer to perform work under this contract. Approved key personnel shall not be taken off of the project by Professional Engineer without the prior written approval of the City of Nashua, except in the event of termination of employment. Professional Engineer shall, if requested to do so by the City of Nashua, remove from the job any personnel whom the City of Nashua determines to be incompetent, dishonest, or uncooperative.
4. **CITY OF NASHUA REPRESENTATIVE**  The City of Nashua may designate a City of Nashua representative for this contract. If designated, all notices, project materials, requests by Professional Engineer, and any other communication about the contract shall be addressed or be delivered to the City of Nashua Representative.

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

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

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

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

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

8. TERMINATION OF CONTRACT

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

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

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

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

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

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

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

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the City of Nashua with a list of all unperformed services.
3. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.

4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of Nashua of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City of Nashua any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.

5. Not resume work after the effective date of a notice of termination unless and until receipt of a written notice from the City of Nashua to resume performance.

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

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

C. GENERAL PROVISIONS FOR TERMINATION Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Professional Engineer shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Engineer assigned to the performance of the contract.

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

9. DISPUTE RESOLUTION The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and a Professional Engineer Representative. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute
as described above within 30 days, if requested in writing by either the City of Nashua or the Professional Engineer, the parties shall attempt to resolve the dispute, by entering in structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by the agreement of the parties. If the dispute cannot be settled within a period of thirty (30) calendar days with the mediator the parties’ reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

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

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

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

Professional Engineer shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Professional Engineer are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Professional Engineer under this contract. The City of Nashua shall not maintain any insurance on behalf of Professional Engineer. Professional Engineer shall require Subcontractors to carry appropriate and lawful amounts of insurance for the services they are providing. Professional Engineer will ensure compliance with this section and shall receive valid certificates of insurance from all Subcontractors as proof that coverage is in place.

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

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than $2,000,000 are imposed on bodily injury and property damage, Professional Engineer must maintain umbrella liability insurance of at least $1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve Professional Engineer of its responsibilities or limit the amount of its liability to the City of Nashua or other
persons, and Professional Engineer is encouraged to purchase such additional insurance, as it deems necessary.

- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Professional Engineer is responsible for and required to remedy all damage or loss to any property, including property of the City of Nashua, caused in whole or part by Professional Engineer or anyone employed, directed, or supervised by Professional Engineer.

12. **INDEMNIFICATION** Regardless of any coverage provided by any insurance, Professional Engineer agrees to indemnify and shall hold harmless the City of Nashua, its officials, employees and authorized representatives and their employees from and against any and all actions, legal or administrative proceedings, arbitrations, damages, liabilities, interest, reasonable attorney’s fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Professional Engineer or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Professional Engineer’s indemnity 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. Notwithstanding the above, under no circumstances shall Professional Engineer be responsible for the negligence or intentional acts of City of Nashua.

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

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

The City of Nashua shall provide notice to Professional Engineer in the event the City of Nashua fails to appropriate funds, and in such event Professional Engineer’s obligations under the contract shall immediately cease, except for completion of any services paid in advance if any.

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

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

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

Without limitation of the foregoing, Professional Engineer's attention is directed to “Title 41”Public Contracts and Property Management” C.F.R. Subtitle B “Other Provisions Relating to Public Contracts” Section 60 “Office of Federal Contract Compliance Programs, Equal Employment, Department of Labor” which, by this reference, is incorporated in this contract.

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

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

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

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

18. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING Professional Engineer shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.
19. CITY INSPECTION OF CONTRACT MATERIALS The books, records, documents and accounting procedures and practices of Professional Engineer related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

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

21. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS Professional Engineer expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Professional Engineer (including those remitted to the City of Nashua by Professional Engineer pursuant to paragraph 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 Professional Engineer in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Professional Engineer. The City of Nashua shall have the right to reproduce any such materials.

Professional Engineer agrees to indemnify and to hold harmless the City of Nashua, its representatives, and employees from any claim or action seeking to impose liability, costs, and reasonable attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Professional Engineer infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Professional Engineer infringes any patent.

Professional Engineer shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.
22. **FINAL ACCEPTANCE**  Upon completion of all work under the contract, Professional Engineer shall notify the City of Nashua in writing of the date of the completion of the work and request confirmation of the completion from the City of Nashua. Upon receipt of the notice, the City of Nashua shall confirm to Professional Engineer in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Engineer with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Engineer shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City of Nashua shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.

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

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

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

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

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

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

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 Professional Engineer. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

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.

Neither the City of Nashua nor Professional Engineer shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this contract or the performance of the services on this project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.
Exhibit B
Scope of Work

The project scope consists of the design and specification of the lighting and subsequent electrical, landscape, and civil support for two of the four identified quadrants in the City of Nashua Downtown Riverfront Master Plan, Final Report, dated August 2017: Quadrant 2: The Greeley House and Cotton Mill and Quadrant 3: Jackson Falls.

Within these quadrants, scope will include the following areas:
  - Walkway (Quadrant 2 & 3)
  - Historic Structures (Quadrant 2)
  - Cotton Transfer Bridge (Quadrant 2)
  - Floating Water Feature (Quadrant 2)
  - Parking Lot (Quadrant 3)

Scope will include providing lighting layouts in CAD in bases provided by City of Nashua, a fixture schedule and cuts package in PDF format, photometric calculations for all areas, assistance with developing and documenting all integrated lighting, and a provision of estimates of installed cost for lighting to the cost estimator. The Professional Engineer will be responsible for the circuiting and final energy code conformance statement. The fixture schedule and notes will be inserted by the Professional Engineer directly into their contract documents.

PROCESS
This proposal assumes the following process:

SCHEMATIC DESIGN PHASE (DRAFT LIGHTING DESIGN)
  - Review of work to date.
  - Attend initial project kick-off meeting.
  - Attend site visit, as required, to see all areas in project scope.
  - Develop a Schematic Design Report outlining lighting recommendations for project.

PUBLIC ENGAGEMENT
  - Attend public meeting hosted by the City of Nashua to hear community feedback for Riverfront lighting design and utilize this feedback to develop preliminary lighting design plan.

PRELIMINARY PLAN
  - Prepare preliminary lighting design and electrical package: including fixture cuts (fixtures and controls), fixture schedule, and scaled lighting layouts.
  - Develop 2-3 Photoshop sketch renderings to assist in communicating the lighting design intent.
  - Provide preliminary circuiting intent diagrams and/or control intent narrative.
  - Prepare a preliminary electrical load report, identifying proposed fixtures with associated wattages, dimming protocols, load types, and voltage requirements.
  - Perform in-house verification of lighting design to assure compliance with Energy Code.
  - Provide input to cost estimate for lighting and controls (assumed to be by others).
  - Prepare photometric studies.
• Present to City of Nashua, Board of Alderman, or subcommittees, as required. (2 meetings assumed)
• Revise as required. (2 rounds assumed)

FINAL PLAN
• Prepare final lighting design and electrical package: including fixture cuts (fixtures and controls), fixture schedule, and scaled lighting layouts.
• Provide final circuiting intent diagrams and/or control intent narrative.
• Prepare a final electrical load report, identifying proposed fixtures with associated wattages, dimming protocols, load types, and voltage requirements.
• Perform in-house verification of lighting design to assure compliance with Energy Code.
• Provide input to cost estimate for lighting and controls (assumed to be by others).
• Prepare final photometric studies.
• Present to City of Nashua, Board of Alderman, or subcommittees, as required. (2 meeting assumed)
• Revise as required (2 rounds assumed)

EXCLUSIONS
Except as noted above, value engineering, energy code conformance calculations and conformance statements, LEED conformance and documentation, custom fixture design, cost estimating, renderings, Revit drafting, additional photometric studies, daylight modeling, daylight calculations, rebate paperwork, review and coordination of contractor-proposed “VE” substitutions, and mockup(s) are excluded from the scope. If required, these will be provided as extra services, after approval of a fee estimate. Significant departures from the process outlined above will result in a request for extra services, including, review by LS of lighting layouts not drawn by Lumen Studio.

FEE SCHEDULE
Billing will be monthly and will be proportional to the following schedule. Invoices are due within 30 days of the date of invoice.

<table>
<thead>
<tr>
<th>Project Element</th>
<th>Fee % By Consultant</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>LS</td>
</tr>
<tr>
<td>Schematic Design Phase</td>
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<tr>
<td>Public Engagement</td>
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</tr>
<tr>
<td>Preliminary Plan</td>
<td>30%</td>
</tr>
<tr>
<td>Final Plan</td>
<td>40%</td>
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<tr>
<td>Total Fee by Consultant</td>
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</tr>
<tr>
<td></td>
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TOTAL FEE                   $95,500.00
Total Expenses (Not to Exceed) $4,500.00

Contract Time
The contract time starts on the effective data and it is in effect until completion of the scope of work. The scope of work will be completed by October 31, 2019.

Exhibit A
January 31, 2019
Memo #19-117

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: UNLEADED FUEL CONTRACT (VALUE ESTIMATED $366,625)
DEPARTMENT: 186 TRANSPORTATION; FUND: GRANT AND VARIOUS
DEPARTMENT'S GENERAL FUNDS

Please see attached communication to Mayor Jim Donchess from Camille Pattison, Transportation Manager, dated January 30, 2019 for information related to this contract award.

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

The City is exercising the one year option in our FY19 contract to extend the contract for FY20. The extension is at a lower cost saving the City $0.10 per gallon or an estimated $17,500 in FY20.

The Transportation Manager and the Purchasing Department recommend the award of the contract with an estimated amount of $366,625 to Dennis K Burke Inc. of Taunton, MA.

Respectfully,

[Signature]
Dan Koken
Purchasing Manager

Cc: C. Pattison J. Graziano
Date: January 30, 2018

To: Jim Donchess, Mayor

From: Camille Pattison, Transportation Manager

Re: Finance Committee – Unleaded Fuel Contract

Nashua Transit is purchasing 6 new Champion Vans from Dattco that are gasoline powered to replace their current diesel powered vans. FTA requires that Nashua Transit have a fixed price contract for regular unleaded gasoline for the new vans. In FY18, we went out to bid for unleaded gasoline for all City departments. Dennis K Burke Inc was the winner bidder and we entered in a contract for FY19 with an option to extend for one additional year.

This contract is for unleaded fuel purchases for FY20. The FY20 Estimated Usage (citywide) is 175,000 gallons @ $2.095 per gallon or $366,625.

We request that the Finance Committee approve a contract with Dennis K Burke Inc. for FY20 unleaded gasoline in the amount of $2.095 per gallon.
SALES AGREEMENT CONFIRMATION

This will confirm the conversation of January 23, 2019 between seller and buyer in which the following agreement was reached.

**Product:** Unleaded Gasoline (87)

<table>
<thead>
<tr>
<th>Gallons</th>
<th>Price</th>
<th>Start Date</th>
<th>Ending Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>175,000</td>
<td>$2.095</td>
<td>July 1, 2019</td>
<td>June 30, 2020</td>
</tr>
</tbody>
</table>

***Please Note – This is an extension to the attached “Exhibit C”***

**TERMS:** Net 30 Days

**Delivery:** Price Includes Delivery

**Taxes:** Price Does NOT Include Taxes

Product to be delivered ratably. Overdeliveries are payable at seller’s prevailing delivery price(s). Under deliveries may be liquidated by Burke at a charge of less than $.0500 per gallon plus the NYMEX differential. This charge is not a penalty but Burke’s best effort to minimize cost for both Burke and the customer. Burke is solely responsible for the calculation. Customer is responsible for all applicable taxes and fees. Margin payment as determined by seller may be required in advance, upon receipt of this sales confirmation.

**Special Conditions:**
Seller shall not be liable for failure to perform any obligations under this agreement where such failure may be due to causes reasonably beyond seller’s control, including acts of God (e.g., storms, floods, lightning or earthquakes), fires, explosions, wars, civil unrest, labor disputes, transportation breakdowns, harbor closings, government restrictions (e.g., allocations, priorities or price controls) or any other such cause. Seller’s ability to supply petroleum products further is dependent on their continued availability from seller’s usual and anticipated supply sources. In the event such products are not readily available in sufficient quantities to meet seller’s total commitments, seller shall have the right to allocate in a fair and reasonable manner. No such occurrence shall relieve buyer of the obligation to pay in full for product actually delivered.

The General Terms and Conditions of Dennis K. Burke, Inc. are incorporated by reference. This confirmation is the operative instrument with respect to the referenced transaction. If any of the above is contrary to your understanding of our agreement, please notify Dennis K. Burke, Inc. immediately. In the event no such notification is received by the close of business on the next working day following this transmission, the provisions set forth herein shall be binding upon both parties.

We appreciate the opportunity to conclude this transaction with your company. By signing this agreement and returning it to us you are confirming that you have the authority to bind your company to this agreement.

Date Range: The term of the Agreement shall be subject to Buyer’s consumption of the minimum amount of gallons as required above. The date range as indicated on the Sales Agreement shall be effective only upon Buyer’s full consumption of the minimum amount of gallons required for each product, respectively. Buyer and Seller agree to fulfill gallon requirements at the price stated within the Agreement beyond the date range indicated in the Agreement, if necessary.

**Buyer**

**Date**

**For:** Dennis K. Burke, Inc.  

**Date**

*Please sign and fax or e-mail back to: (617) 226-4569 or contracts@burkeoil.com*