1. PRESIDENT LORI WILSHIRE CALLS ASSEMBLY TO ORDER

2. PRAYER OFFERED BY CITY CLERK PATRICIA PIECUCH

3. PLEDGE TO THE FLAG LED BY ALDERMAN-AT-LARGE BRANDON MICHAEL LAWS

4. ROLL CALL

5. REMARKS BY THE MAYOR

6. RESPONSE TO REMARKS OF THE MAYOR

7. RECOGNITIONS

8. READING OF MINUTES OF PREVIOUS MEETINGS

   Special Board of Aldermen ................................................................. 02/19/2019
   Board of Aldermen Mayor’s State-of-the-City Address................................. 02/19/2019
   Board of Aldermen..................................................................................... 02/19/2019

9. COMMUNICATIONS REQUIRING ONLY PROCEDURAL ACTIONS AND WRITTEN REPORTS FROM LIAISONS

   From: Len Fournier, Superintendent, Woodlawn/Pinewood Cemeteries
   Re: Request for Joint Convention with the Woodlawn/Pinewood Cemeteries Board of Trustees

9(a). PERIOD FOR PUBLIC COMMENT RELATIVE TO ITEMS EXPECTED TO BE ACTED UPON THIS EVENING

9(b). COMMUNICATIONS REQUIRING FINAL APPROVAL

   From: Celia K. Leonard, Deputy Corporation Counsel
   Re: Environmental Indemnity and Release Agreement

10. PETITIONS

11. NOMINATIONS, APPOINTMENTS AND ELECTIONS

    Appointments by the Mayor

12. REPORTS OF COMMITTEE

    Finance Committee...................................................................................... 02/20/2019

13. CONFIRMATION OF MAYOR’S APPOINTMENTS

UNFINISHED BUSINESS – RESOLUTIONS

R-18-073, Amended

   Endorsers: Alderman-at-Large Brian S. McCarthy
              Alderwoman-at-Large Shoshanna Kelly
              Alderman-at-Large Michael B. O’Brien, Sr.
              Alderman Jan Schmidt
              Alderman Tom Lopez
              Alderman-at-Large Brandon Michael Laws
              Alderwoman Mary Ann Melizzi-Golja

   PROPOSING AN AMENDMENT TO THE CITY CHARTER RELATIVE TO FILLING VACANCIES ON ELECTED BOARDS BY MAJORITY VOTE OF THE REMAINING MEMBERS OF THAT BOARD

   Amended and Tabled pending Public Hrg scheduled for 3/12/2019 at 7 PM in the Chambers
R-19-110
Endorsers: Mayor Jim Donchess
Alderman-at-Large David C. Tencza
Alderman Michael B. O’Brien, Sr.
Alderman-at-Large Shoshanna Kelly
Alderman June M. Caron
Alderman Tom Lopez
Alderman-at-Large Brandon Michael Laws
Alderman Patricia Klee
Alderman Linda Harriott-Gathright
Alderman-at-Large Michael B. O’Brien, Sr.
Alderman-at-Large Lori Wilshire

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A LEASE AGREEMENT WITH MAKEIT LABS, CORP. FOR 25 CROWN STREET

• Finance Committee Recommends: Final Passage

UNFINISHED BUSINESS – ORDINANCES

NEW BUSINESS – RESOLUTIONS

R-19-113
Endorsers: Mayor Jim Donchess
Alderman-at-Large Shoshanna Kelly

ADOPTING ENVIRONMENT AND ENERGY COMMITTEE RECOMMENDATIONS

NEW BUSINESS – ORDINANCES

O-19-039
Endorser: Alderman Patricia Klee

AUTHORIZING STOP SIGNS AT THE INTERSECTION OF FAIRMOUNT STREET AND CHARLES STREET

PERIOD FOR GENERAL PUBLIC COMMENT

REMARKS BY THE MEMBERS OF THE BOARD OF ALDERMEN

Committee announcements:

ADJOURNMENT
February 19, 2019

Nashua Board of Alderman  
Attn: Susan Lovering  
City Hall  
Nashua, NH 03060  

Dear Susan,

Would you please schedule a Joint Convention with the Alderman to re-nominate Daniel Buslovich and Howard Frizzell to new five year terms as Trustees of Woodlawn/Pinewood Cemeteries.

Thank You,

Len Fournier  
Superintendent  
Woodlawn/Pinewood Cemeteries  

CC: Niles Jensen, Chairmen of Trustees
CITY OF NASHUA
OFFICE OF CORPORATION COUNSEL

Memorandum

To:      Board of Aldermen
CC:      Sue Lovering, Legislative Affairs Manager

From:   Celia K. Leonard, Deputy Corporation Counsel

Date:    February 20, 2019

RE:      Environmental Indemnity and Release Agreement

The City acquired L Putnam Street, Tax Map 62, Lot 83, on the corner of Amherst and Putnam Street ("Parcel") in February 1975 for an early alignment of the Broad Street Parkway. The Parcel was not used for the as-built alignment of the Parkway and was declared surplus by Resolution R-11-134. The City sold the Parcel at auction on December 12, 2014 to the highest bidder, Mr. Larry Kittle.

The Parcel was identified as an “asbestos disposal site” ("ADS") at least as of November 2007 in documentation submitted to the City and therefore subject to New Hampshire law and regulations regarding ADS. Due to the passage of time and a lack of awareness, the Parcel was sold without the required asbestos notice in the chain of title, and without the required asbestos information in the marketing literature.

Mr. Kittle engineered and permitted 3 2-family buildings on the Parcel and in the process learned of the asbestos from the NH DES. He desired to keep the Parcel even after learning of the asbestos if he could engineer and permit a viable cost effective alternative and if he was reimbursed, at least in part, for costs associated with the first permitting process and the purchase. Mr. Kittle paid market rate for a “clean” site and has paid taxes on that value. He has since received approval for 2 3-family buildings on the Parcel and would like to finalize the attached agreement.

This property has been off the tax roll since the mid-70’s. With this agreement, the City will be spared the additional time and expense of having to repurchase and remarket the Parcel with appropriate disclosures. To have more housing options developed in the city and producing taxes on the lot is an accomplishment. Lastly, it is worth noting that Mr. Kittle has been amendable and courteous throughout this process.

I am requesting the approval of the full Board of Aldermen for the Mayor to execute the attached agreement. The funds will come out of the Broad St. Parkway Account 1061.60.
Environmental Indemnity and Release Agreement

THIS AGREEMENT is made as of the __ day of ________, 2019 ("Effective Date") by and between the City of Nashua, a New Hampshire municipal corporation, with an address of 229 Main Street, Nashua, NH 03061 ("City") and Larry Kittle, with an address of 166 Amherst Street, Merrimack, NH 03054, ("Buyer").

WHEREAS, City acquired L Putnam Street, Tax Map 62, Lot 83 ("Parcel 83") by deed of Roland Soucy and Katherine Soucy dated February 12, 1975, and recorded in the Hillsborough County Registry of Deeds at Book 2389, Page 518;

WHEREAS, Buyer was the highest bidder at a City auction on December 12, 2014, for two (2) certain tracts or parcels of land located in the City of Nashua, County of Hillsborough and State of New Hampshire, being more particularly described as 78 Amherst Street, Tax Map 62, Lot 85 ("Parcel 85") and Parcel 83;

WHEREAS, Buyer paid $75,367.74 plus an auctioneer’s fee of $7,536.77 for a total of $82,904.51 for Parcel 83;

WHEREAS, by Quitclaim Deed dated January 14, 2015, City deeded the parcels to Buyer, said deed being recorded in the Hillsborough County Registry of Deeds at Book 8721, Page 2511;

WHEREAS, Buyer was granted variances by the City’s Zoning Board of Adjustment on July 28, 2015, and a lot line relocation and three lot subdivision by the City’s Planning Board on December 3, 2015, to construct three (3) two-family buildings on Parcel 83 and to move the driveway for Parcel 85;

WHEREAS, on or around December 17, 2016, Buyer notified City that asbestos was found on Parcel 83 where he recently had started to prepare the land for the new duplexes;

WHEREAS, after inquiry, City discovered that Parcel 83 was listed as “Amherst Street (Former ADS 258)” Master Id: 59711 (aka “Amherst Street and Putnam Street”) on the publicly available “Onestop” on-line database of the New Hampshire Department of Environmental Services as an “Asbestos Disposal Site (Inactive), with a “Preliminary Assessment/Site Investigation Report” dated November 13, 2007;

WHEREAS, under NH RSA 141-E:2, III, Parcel 83 is an “Asbestos disposal site,” with asbestos waste buried prior to July 10, 1981, and therefore subject to Administrative Rules Env-Sw 2100;

WHEREAS, state rules require disclosure of buried asbestos to potential buyers and recording notice of the presence of buried asbestos within the chain of title to the property in the Hillsborough County Registry of Deeds (see Env-Sw 2104.08), which notice was not provided;
WHEREAS, Buyer’s Purchase Agreement and Deposit Receipt stated that the parcels were being sold “AS IS, WHERE IS” without any warranty as to their use or condition whatsoever and subject to all matters of record which may impact the use of the parcels;

WHEREAS, Buyer wishes to retain title to Parcel 83 and develop the property but has incurred expenses, including purchase price, taxes, and engineering costs, and will incur mitigation costs to address the asbestos;

WHEREAS, City is desirous of responsible development; and

WHEREAS, the parties desire to compromise, settle, buy complete peace from, and terminate any and all known and unknown disputes, claims, controversies, demands, actions, causes of action, and litigation as exist between them arising from or in any way related to the transfer of title for Parcel 83 and the asbestos therein, and in order to avoid the risk, nuisance time, and expense of any litigation.

NOW, THEREFORE, in consideration of the recitals stated above, which are hereby incorporated into this Agreement and made a part hereof, and in consideration of the mutual promises, covenants, agreements, representations and warranties contained herein, the receipt and sufficiency of which are hereby acknowledged, it is agreed between the parties as follows:

1. Payment and Recording of Notice. City shall pay Buyer $83,081.81 within 10 businesses days of Buyer executing this Agreement. Buyer shall execute concurrently with this Agreement, and the City shall cause to be recorded in the Hillsborough County Registry of Deeds, a notice of asbestos substantially in the form attached hereto as Exhibit A.

2. General Release of Claims by the City of Nashua. In consideration of the mutual promises, covenants, agreements, and representations contained herein, the City, on behalf of itself and its officers, employees, officials, representatives, agents and assigns, fully release Larry Kittle, and his successors, heirs and assigns, from all known and unknown claims, causes of action, suits, litigation, demands, and obligations of every kind, including claims for damages, attorneys’ fees and any other form of relief available at law or in equity, which the City has or may have by means of any matter, cause, or thing whatsoever from the beginning of time to the Effective Date of this Agreement. Without limiting the generality of the foregoing, this release includes all matters arising out of or in connection with the transfer of title of Parcel 83 from the beginning of time to the Effective Date of this Agreement, including, but not limited to any and all claims which could have been set forth regarding asbestos on the parcel.

3. General Release of Claims by Larry Kittle. In consideration of payment described in Paragraph 1 above, and the mutual promises, covenants, agreements, and representations contained herein, Larry Kittle, on behalf of himself and his successors, heirs and assigns, agents, and insurers, fully release the City and its officers, employees, officials, representatives, agents and assigns, from all known and unknown claims, causes of action, suits, litigation, demands, and obligations of every kind, including claims for damages, attorneys’ fees and any other form of relief available at law or in equity, which Larry Kittle has or may have by means of any matter, cause, or thing whatsoever from the beginning of time to the Effective Date
of this Agreement. Without limiting the generality of the foregoing, this release includes all matters arising out of or in connection with the transfer of title of Parcel 83 from the beginning of time to the Effective Date of this Agreement, including, but not limited to any and all claims which could have been set forth regarding asbestos on the parcel.

4. **Parcel 83.** The parties agree that Parcel 83 was transferred to Buyer "As is and Where is" and "With All Faults" and City made no representations or warranties regarding the absence or presences of environmental hazards, including but not limited to chemicals, solid waste, hazardous waste, and hazardous substances, including but not limited to asbestos, which may be on, in, or under Parcel 83, and City makes no representations or warranties regarding the compliance of prior uses on or present conditions of Parcel 83 under applicable federal, state and local environmental laws.

Buyer acknowledges that he has been given the opportunity to make a reasonable investigation of the prior uses and existing conditions of Parcel 83 and that City has made a good faith disclosure of such prior uses and existing conditions of which City is aware, including but not limited to supplying all written reports prepared for the City regarding Parcel 83. The "caveat emptor" motive applied to its purchase, Buyer understands his obligation to inspect Parcel 83 and is willing to continue owning Parcel 83 in fee "AS-IS."

5. **Specific Release of Environmental Claims by Larry Kittle.**

A. As used herein, "Environmental Laws" includes the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., as amended; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 et seq., as amended; the Clean Air Act ("CAA"), 42 U.S.C. 7401 et seq., as amended; the Clean Water Act ("CWA"), 33 U.S.C. 1251 et seq., as amended; the Occupational Safety and Health Act ("OSHA"), 29 U.S.C. 655 et seq., and all rules and regulations promulgated pursuant to any of the above statutes, and any other federal, state, local or municipal laws, statutes, regulations, rules or ordinances imposing liability or establishing standards of conduct for protection of the environment.

B. Buyer hereby agrees to release, hold harmless, indemnify and defend City and its officers, employees, officials, representatives, agents and assigns, and from any and all claims, demands, and causes of action of whatsoever nature, including without limitation, all claims, demands, administrative actions and causes of action for contribution, indemnity, strict liability, or negligence, assessment, fines, penalties, or fault of any kind, on the part of City, and also including without limitation, any judgement or settlement, all costs expenses, and attorneys' fees and costs paid by or incurred by City in defending or that in any way relate to or arise out of any alleged noncompliance under any Environmental Laws including natural resources damages whether asserted by any natural person, government, or any other entity or organization.

6. **No Admission.** The parties agree that any consideration given or paid with respect to this Agreement is in compromise of disputed claims and that the giving or payment of consideration in exchange for the general release of claims is not, and will not be construed as, an admission of liability or wrongdoing on the part of any party, which deny any liability or
wrongdoing as to each and every claim which has been or which may have been asserted against it.

7. **Covenant Not to Sue.** The parties acknowledge that bringing any action in any venue for claims released in Paragraphs 2, 3 and 5 above will be a breach of this Agreement and, the parties covenant not to bring any such claims. In the event that any party does bring an action in violation of this Agreement, the lawsuit or claim will be immediately dismissed; and, notwithstanding the fact that the terms of this Agreement shall otherwise remain in full force and effect, the party that initiated the legal action will pay to the other party all of the costs, expenses, and attorney fees incurred in defending against such a lawsuit or claim.

8. **Consultation with Counsel.** In executing this Agreement, the parties acknowledge that they have been advised to consult with counsel, and that they have executed this Agreement knowingly, voluntarily and without undue influence or duress. The parties expressly consent to each and every term and provision of this Agreement.

9. **Integration Clause; Amendment, Governing Law.** This Agreement contains the complete, final, and exclusive embodiment of the entire understanding between the parties. This Agreement is entered into without reliance on any promise, representation, agreement or understanding, oral or written, between and among the parties relating to the subject matter of this Agreement, other than those expressly contained herein. No amendment of this Agreement shall be valid or effective unless made in writing and executed by the parties hereto subsequent to the Effective Date of this Agreement. This Agreement shall be enforced in accordance with the laws of the State of New Hampshire, and the Parties agree that any litigation to enforce the provisions of this Agreement will take place in the Superior Court, Hillsborough Southern District, New Hampshire. In the event of litigation regarding this Agreement, the parties expressly submit to the jurisdiction of the state courts located in New Hampshire.

10. **Costs and Fees.** Except as specifically set forth herein, the parties will bear their own costs, expenses, and attorneys’ fees, whether taxable or otherwise, incurred in or arising out of or in any way related to the matters released herein.

11. **Construction.** The parties acknowledge that they each had an equal opportunity to control the language in this Agreement, and that this Agreement was mutually drafted. The parties agree that in no event shall this Agreement be presumptively construed against any party.

12. **Severability.** If any portion of this Agreement is void or deemed unenforceable for any reason, the remaining portions shall survive and remain in effect, with any necessary modification to become a part hereof and treated as though contained in this original Agreement.

13. **Countersignatures.** This Agreement may be signed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same instrument.
CITY OF NASHUA, a New Hampshire municipal corporation

By: __________________________
Name: James W. Donchess
Title: Mayor
Date: ________________

BUYER

______________________________
Larry Kittle
Date: ________________
Exhibit A

CHAIN OF TITLE NOTICE OF ASBESTOS WASTE

Pursuant to the requirements of RSA 141-E:23, IV and 40 CFR 61.151(e), notice is hereby provided that asbestos-containing waste materials are disposed of on the property identified below.

The disposal site is subject to state and federal regulations, including but not limited to 40 CFR part 61, subpart M and rules adopted pursuant thereto, as amended, and RSA 141-E and rules adopted pursuant thereto in Env-Sw2100, as amended. The requirements include but are not limited to: cover and access control requirements; restrictions regarding the excavation or other disturbance of the waste; other activity and use restrictions necessary to maintain the integrity of the cover; monitoring and maintenance requirements; and certain recordkeeping, reporting, notification, and disclosure requirements. For additional information, contact the:

New Hampshire Department of Environmental Services  
29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3644

Property Location:

L Putnam Street, Tax Map 62, Lot 83, City of Nashua, County of Hillsborough, State of New Hampshire

Current Property Owner(s) & Signature(s):

Larry Kittle, of 166 Amherst Street, Merrimack, NH 03054


Signature: ___________________________ Date: ___________________, 2019
Print Name: Larry Kittle

Environmental Indemnity and Release Agreement  
Page 6 of 6
Board of Assessors
Mary Lou Blaisdell, Alternate (Reappointment)  Term to Expire: April 24, 2021
32 Webster Street
Nashua, NH 03064

Cultural Connections Committee
Suzanne Harvey (New Appointment)  Term to Expire: March 1, 2022
8 Crawford Lane
Nashua, NH 03063

I respectfully request that these appointments be confirmed.

Jim Donchess
Mayor