FINANCE COMMITTEE
APRIL 17, 2019

ROLL CALL

PUBLIC COMMENT

PRESENTATION

Melanson Heath & Company - 2018 Annual Audit and Comprehensive Annual Finance Report (CAFR)

COMMUNICATIONS

From: John L. Griffin, CFO/Comptroller
Re: Melanson Heath Presentation – April 17, 2019

From: Dan Kooker, Purchasing Manager
Re: Contract for NPD Window Project (Value: $134,500); Department: 150 Police; Fund: Bond

From: Dan Kooker, Purchasing Manager
Re: Contract for Independent Consultant Services (Value: $22,000); Department: 183 Economic Development; Fund: Tax Increment Financing District

From: Dan Kooker, Purchasing Manager
Re: Contract for Legal Counsel Services for NMTC (Value: $56,500); Department: 183 Economic Development; Fund: Performing Arts Center

From: Dan Kooker, Purchasing Manager
Re: Fiscal Agent Agreement with City Arts Nashua (Value: $0); Department: 183 Economic Development; Fund: None

From: Tim Cummings, Economic Development Director
Re: Notice of Change in Contract for Residential Brokerage Services with Louise Brochu

From: Tim Cummings, Economic Development Director
Re: Memorandum of Agreement with Spectacle Management

UNFINISHED BUSINESS – None

NEW BUSINESS – RESOLUTIONS

R-19-129
Endorsers: Mayor Jim Donchess
Alderman-at-Large Ben Clemons
Aldermanwoman Mary Ann Melizzi-Golja
Aldermanwoman-at-Large Shoshanna Kelly
Alderman June M. Caron
Alderman Tom Lopez
Alderman-at-Large Brandon Michael Laws
Alderman Patricia Klee

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

AUTHORIZING THE MAYOR TO ENTER INTO A SUCCESSOR “CONCESSION AGREEMENT” WITH GRANITE DIAMOND, LLC

Endorsers: Mayor Jim Donchess
Alderman Patricia Klee
Alderman-at-Large Brandon Michael Laws
Alderman Tom Lopez
Alderman-at-Large Shoshanna Kelly
Alderman-at-Large David C. Tencza
Alderman Jan Schmidt

AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH SPECTACLE MANAGEMENT, INC.

NEW BUSINESS – ORDINANCES – None

RECORD OF EXPENDITURES

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT
TO: Members of the Board of Aldermen
FROM: John L. Griffin, CFO/Comptroller
DATE: April 9, 2019
RE: Melanson Heath Presentation – April 17, 2019

The purpose of this communication is to inform you that Mayor Donchess has scheduled a presentation by Melanson Heath on Wednesday April 17, 2019 in the Aldermanic Chambers. This presentation will be the first agenda item for the Finance Committee that evening.

Mr. Scott McIntire of Melanson Heath, will review the results of the FY2018 Annual Audit as well as the attached Governance Letter. It would be most helpful if you could bring your copy of the FY2018 Comprehensive Annual Financial Report (CAFR) with you as Mr. McIntire will be frequently referring to the CAFR as part of his remarks.

CC: Mayor Jim Donchess
    Kimberly Kleiner, Chief of Staff
City of Nashua, New Hampshire
229 Main Street
Nashua, New Hampshire 03061

Dear Honorable Mayor and Board of Aldermen:

We have audited the financial statements of the City of Nashua, New Hampshire as of and for the year ended June 30, 2018 and have issued our report thereon dated December 26, 2018. Professional standards require that we advise you of the following matters relating to our audit.

**Our Responsibility in Relation to the Financial Statement Audit**

As communicated in our engagement letter, our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of the City solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

**Planned Scope and Timing of the Audit**

We conducted our audit consistent with the planned scope and timing we previously communicated to you.
Compliance with All Ethics Requirements Regarding Independence

The engagement team and others in our Firm have complied with all relevant ethical requirements regarding independence. Safeguards that have been applied to eliminate threats to independence or reduce them to an acceptable level include annual certification by all Firm staff of independence, or when circumstances change during the year.

Qualitative Aspects of the Entity’s Significant Accounting Practices

Significant Accounting Policies

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the City is included in the notes to the financial statements. There have been no initial selection of accounting policies and no changes in significant accounting policies or their application during the year ended June 30, 2018. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Significant Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management’s current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management’s current judgments.

The most sensitive accounting estimates affecting the financial statements are:

- Estimated lives and depreciation methods for depreciable assets.
- Collectability of receivables.
- Net OPEB liability.
- Net pension liability.
- Accrued interest.

Management’s estimates of the above are based on various criteria. We evaluated the key factors and assumptions used to develop these estimates and determined that it is reasonable in relation to the basic financial statements taken as a whole and in relation to the applicable opinion units.
Financial Statement Disclosures

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. We noted no particularly sensitive disclosures affecting the City’s financial statements.

Identified or Suspected Fraud

We have not identified or obtained information that indicates that fraud may have occurred.

Significant Difficulties Encountered during the Audit

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

Uncorrected and Corrected Misstatements

As an added service to the City, we assisted in compiling the government-wide financial statements, including consolidating various funds into governmental activities, converting to the accrual basis of accounting, and recording all long-term assets, long-term liabilities, and net position classifications. This consolidation and conversion process was based on information from the City’s accounting records.

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole and each applicable opinion unit. We have not identified any uncorrected misstatements.

In addition, professional standards require us to communicate to you all material, corrected misstatements that were brought to the attention of management as a result of our audit procedures. There were no identified material misstatements, either individually or in the aggregate, to the financial statements taken as a whole or to the applicable opinion units.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to the City’s financial statements or the auditors’ report. No such disagreements arose during the course of the audit.
Representations Requested from Management

We have requested certain written representations from management, which are included in the letter dated December 26, 2018.

Management’s Consultations with Other Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

Other Significant Matters, Findings or Issues

In the normal course of our professional association with the City, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, operating and regulatory conditions affecting the entity, and operational plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as the City’s auditors.

Other Information in Documents Containing Audited Financial Statements

Pursuant to professional standards, our responsibility as auditors for other information in documents containing the City’s audited financial statements does not extend beyond the financial information identified in the audit report, and we are not required to perform any procedures to corroborate such other information. However, in accordance with such standards, we have read the information and considered whether such information, or the manner of its presentation, was materially inconsistent with the presentation in the financial statements.

Our responsibility also includes communicating to you any information which we believe is a material misstatement of fact. Nothing came to our attention that caused us to believe that such information, or its manner of presentation, is materially inconsistent with the information, or manner of its presentation, appearing in the financial statements.

This report is intended solely for the information and use of the Mayor and Board of Aldermen and management of the City and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

Melanson Heath

December 26, 2018
April 11, 2019
Memo #19-140

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CONTRACT FOR NPD WINDOW PROJECT (VALUE: $134,500)
DEPARTMENT: 150 POLICE; FUND: BOND

Please see attached communications from Karen A. Smith, Business Manager dated April 3, 2019 for the information related to this purchase.

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

This contract is contingent upon BOA approval of the bond (April 23rd BOA meeting).

The Nashua Police Department and the Purchasing Department recommend the award of this contract for purchase of replacement windows in the amount of $134,500 from D.L. King & Associates of Nashua, NH.

Respectfully,

Dan Koozen
Purchasing Manager

Cc: K Smith A Lavoie
Intradepartmental Communication

To:   Dan Kookan, Purchasing Manager

From: Karen A. Smith, Business Manager

Subject: Nashua Police Department Windows Project

The Nashua Police Department is seeking professional services to install Kawneer windows as specified in NPD Bid Specifications IFB1075-010319 attached. The bid is for 47 casement windows that are approximately 39 years old in need of replacement with new windows to match windows currently installed within the rest of the building. Bids were received from the below listed vendors.

<table>
<thead>
<tr>
<th>VENDOR NAME</th>
<th>ADDRESS</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>D.L. King &amp; Associates</td>
<td>27 Tanglewood Dr</td>
<td>$134,500</td>
</tr>
<tr>
<td></td>
<td>Nashua, NH</td>
<td></td>
</tr>
<tr>
<td>Timberline Glass &amp; Mirror</td>
<td>108 Main St Plaistow, NH</td>
<td>$112,012</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Incomplete bid package received</td>
</tr>
</tbody>
</table>

The Nashua Police Department recommends the order to D.L. King & Associates of Nashua, NH in the amount of $134,500 contingent upon final approval of R-19-127 by the Board of Aldermen and Mayoral approval to issue and sell bonds for funding for Police Department building improvements.

Sincerely,

Karen A. Smith
Business Manager
Dan Kooken  
Central Purchasing  
229 Main Street  
Nashua NH 03061

Dan,

D.L. King and Associates, Inc. is pleased to submit the following bid for the Project, Window Replacements – Nashua Police Department (NPD) IFB1075-010319.

**D.L. King’s Bid: $134,500.00**

Scope of Work per attached invitation to bid.

Specify the manufacturer and installation warranties for the windows and installation:

The window manufacturer is Kawneer. Kawneer offers a Two-Year Manufacturer’s Warranty. D.L. King will provide and 1-year warranty on labor and material.

Specify the lead time to receive the windows:

The windows have approximately a 10-12 week lead time.

Specify the installation time frame:

Install will take approximately 4-6 weeks.

Specify their experience installing similar casement windows:

Manchester Armory Project – Installed 89 replacement windows
Nashua City Hall Window Replacement – Installed 120 replacement windows
Nashua Sullivan Terrace Window Replacement – Installed 240 replacement windows

Specify what previous casement windows they have installed:

Manchester Armory Project – Winco Series 3250 Window
Nashua City Hall Window Replacement – New England Window Systems - Inline Series 325 Window
Nashua Sullivan Terrace Window Replacement – Champion Window and Door – 2500DH Series

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**General Contractor & Construction Manager, EDWOSB, NH DOT DBE**
Specify contact names, telephone numbers, and business names that you have installed casement windows to (3 contacts are preferred):

Manchester Armory Project
Branden S. Hunter
NHARNG Project Manager, Construction & Facilities Management Office (CFMO)
Phone: 603-715-3552

Nashua City Hall Window Replacement
Jay Hunnewell
Nashua City Hall Building Manager
Phone: 603-966-7674

Nashua Sullivan Terrace Window Replacement
Scott Costa
Nashua Housing Authority - Assistant Executive Director
Phone: 603-883-5661

Specify any exclusion of exception to this bid specification:

We request Substantial Completion to be 4-6 weeks after receiving the new windows for install.

Please feel free to contact us with any questions.

Curt Spencer

D.L. King and Associates, Inc.
November 26, 2019

Invitation for Bids

Window Replacements-Nashua Police Department (NPD)
IFB1075-010319

The City of Nashua, Police Department, is seeking bids for a Window replacement project at the Nashua Police Department (NPD), 0 Panther Drive, Nashua, NH 03060.

The building has 47 casement windows that are approximately 39 years old and are in need of replacement with new windows to match windows currently installed within the rest of the building.

INSTRUCTIONS TO BIDDERS:

The City is now accepting submittals electronically via Bid Express. Please review the attachments, Bid Express Vendor Guide and Vendor Set-up Guide for more information. If a Bidder chooses to submit a paper copy, they must submit three (3) copies (one (1) original and two (2) copies) in sealed envelope(s) or package(s) clearly marked “IFB1075-010319 NPD Window Replacement”. Bids must be submitted in the format provided and address the item(s) specified in the bid package. Regardless of the method of submission, bids must be received no later than 3:00 pm on Thursday, January 3, 2019 at Central Purchasing, 229 Main Street, Nashua, Room 128, NH, 03061. Please do not submit an electronic bid and a paper bid.

Postmarks or other timestamps will not be accepted in lieu of actual delivery. The Bidder can use whatever delivery mechanism it chooses as long as it remains clear that the Bidder is responsible for submissions prior to the date and time. Further details are available on the City’s web site, www.nashuanh.gov, under Services; Bid Opportunities; Current Bids and on the Bid Express website; (Refer to Document IFB1075-010319 NPD Window Replacement). Bids will be opened in public on the due date and time. Results of the bid opening will be posted on the City’s web site, www.nashuanh.gov, under Services; Bid Opportunities; Bid Results and on the Bid Express website; (Refer to Document IFB1075-010319 NPD Window Replacement) within twenty-four (24) hours of the opening.

A MANDATORY pre-bid conference to discuss the project is scheduled to begin promptly on Thursday, December 06, 2018 at 11:00 AM at the Nashua Police Department, 0 Panther Drive, Nashua, NH 03060. You or your representatives are required to attend this meeting if you intend to submit a bid. The meeting is an opportunity for the City to provide an overview of the project and its objectives, and for participants to request additional information directly from City staff managing or participating in the project.
To be eligible for an award, a bidder must be deemed “responsible”. A responsible bidder 1) has the ability, capacity and skill to provide the goods or services required; 2) can provide the goods or services within the time frame specified; 3) has a satisfactory record of integrity, reputation, judgment and experience; 4) has sufficient financial resources to provide the goods or services; 5) has an ability to provide future maintenance and support as required; and 6) has developed a positive track record within the City of Nashua to the extent the bidder has previously provided goods or services.

Delivery of bids shall be at the vendor’s expense. The time of receipt shall be considered when a bid has been officially documented by the department, in accordance with its established policies, as having been received at the location designated above. The City of Nashua accepts no responsibility for mislabeled mail. Any and all damage that may occur due to shipping shall be the vendor’s responsibility.

Postmarks or other timestamps will not be accepted in lieu of actual delivery. The firm can use whatever delivery mechanism it chooses as long as it remains clear that the firm is responsible for submissions prior to the date and time.

The City of Nashua assumes no liability for payment of costs and expenses incurred by any bidder in responding to this request for bids. All bids become the sole property of the City of Nashua. This request for bids is not a contract and alone shall not be interpreted as such but rather serves as an instrument through which bids are solicited.

The project timeline is as follows:

<table>
<thead>
<tr>
<th>Action</th>
<th>Date</th>
<th>Time/Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory Pre-bid Meeting</td>
<td>12/06/2018</td>
<td>11:00 am 0 Panther Drive,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Nashua, NH 03060</td>
</tr>
<tr>
<td>Deadline for Vendor Questions to be submitted in writing*</td>
<td>12/13/2018</td>
<td>12:00 NOON</td>
</tr>
<tr>
<td>Answers/Clarifications posted</td>
<td>12/20/2018</td>
<td>3:00 pm</td>
</tr>
<tr>
<td>Bids Due</td>
<td>01/03/2019</td>
<td>3:00 pm Purchasing Dept.</td>
</tr>
<tr>
<td>Bid Award</td>
<td>To be determined</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* All inquiries concerning this Invitation for Bids including, but not limited to, requests for clarifications, questions, and any changes to the IFB, shall be submitted in writing to the NPD’s project manager:

Gerry Pilon, Building Maintenance Supervisor
0 Panther Drive
Nashua, NH 03060
Email: PilonG@nashuapd.com

Vendors are encouraged to submit questions via email; however, the city assumes no liability for assuring accurate/complete email transmission/receipt and is not responsible to acknowledge receipt. Inquiries must be received by the NPD’s project manager (see above) no later than December 13th, 2018 at 12:00 NOON. Inquiries received later than this date shall not be considered properly submitted. The City will consider all

IFB1075-010319 NPD Window Replacements
timely-received questions and requests for change, and, if reasonable and appropriate, will issue an addendum to clarify or modify this IFB.

Answers to vendor submitted questions and other addenda will be posted under document IFB1075-010319 on the City of Nashua website: www.nashuahnh.gov, under Citizens Favorites, Current Bid Opportunities, no later than Wednesday, December 20th, 2018 at 3:00 PM.

Completion time for the project will be calculated as calendar days from the date specified in the “Notice to Proceed” as follows:

\[ \begin{align*}
\text{90} & \quad \text{calendar days for substantial completion} \\
\text{180} & \quad \text{calendar days for final completion.}
\end{align*} \]

Liquidated damages will be in the amount of:
- $500 for each calendar day of delay from the date established for substantial completion, and,
- $500 for each calendar day of delay from the date established for final completion.

The City of Nashua may reject any or all of the bids on any basis and without disclosure of a reason. The failure to make such a disclosure shall not result in accrual of any right, claim or cause of action by any unsuccessful bidder against the City of Nashua. The city reserves the right to waive any irregularities when the public interest will be served thereby. The city also reserves the right to negotiate any change or amendment in any bid without soliciting further bids if the action is necessary for the best interest of the City.

All bids are binding for sixty (60) days following the deadline for bids, or until the effective date of any resulting contract, whichever is later.

The successful bidder must maintain the following lines of coverage and policy limits for the duration of the contract. Any subcontractors used by the contractor are subject to the same coverage and limits and is a subcontractor to the CONTRACTOR and not the OWNER. It is the responsibility of the Contractor to update Certificates of Insurance during the term of the contract.

**The City of Nashua must be named as Additional Insured.**

Provide coverage for not less than the following amounts or greater:

- **General Liability:** $1,000,000 per Occurrence
  $2,000,000 Aggregate
- **Motor Vehicle Liability:** $1,000,000 Combined Single Limit
  **Coverage must include all owned, non-owned and hired vehicles.**
- **Workers’ Compensation Coverage according to Statute of the State of New Hampshire:** $100,000 / $500,000 / $100,000

IFB1075-010319 NPD Window Replacements
All bidders and subcontractors at every tier under the bidder will fully comply with NH RSA 281-A, "Workers' Compensation". It is the responsibility of the CONTRACTOR to submit to the OWNER, certificates of insurance for all other subcontractors prior to the start of the project. It is the responsibility of the CONTRACTOR to provide the OWNER with updated certificates of insurance for the CONTRACTOR and all subcontractors ten (10) days prior to expiration of coverage. The OWNER may, at any time, order the CONTRACTOR to stop work, suspend the contract or terminate the contract for non-compliance. All subcontractors are subject to the same insurance requirements as the CONTRACTOR.

No bid will be considered unless accompanied by a bid security in the form of a Bid Bond, in an amount not less than five percent (5%) of the bid.

The successful contractor will be required to post a 100% Performance Bond and a 100% Payment Bond within ten (10) days of Notice to Proceed.

Cost of bond premiums to be included in the Lump Sum Bid Proposal.

The City is exempt of all taxes. All bids must be FOB Nashua, NH. All bidders must comply with all applicable Equal Employment Opportunity laws and regulations.

Pursuant to NRO5-71 (A), the City of Nashua supports the concept of purchasing products which are biodegradable, can be or have been recycled, or are environmentally sound. Due consideration will be given to the purchase of such products. If you are bidding on any such products which qualify, please so indicate in a cover sheet by item number and description.

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

Please submit any questions on this Invitation for Bid in writing to Gerry Pilon at PilonG@nashuapd.com.

Respectfully,

Dan Kookan-Purchasing Manager
City of Nashua, NH
kookend@nashuahn.gov
Specifications

The project consists of the replacement of 47 casement windows at the Nashua Police Department that are approximately 39 years old. Some of the windows have had water damage from failures in the seals. The project includes, but is not limited to, the installation, removal and disposal of 47 windows casement windows. The windows are to be replaced with Kawneer Model 8225TL aluminum outswing casement windows color bronze, no substitutions. The windows will lock internally and have a crank type opener that is standard with the model. The windows will also include interior screens. 33 of the windows measure 32" X 72", the other 14 measure 32" X 32". Five of the 32" X 72" windows must be frosted glass for privacy. The installation of the windows will include all industry standards for installation to include perimeter trims, stools, accessories, shims and anchors, and perimeter sealing of all window units. All windows must be properly sealed from the exterior following industry standards for installation. Additionally furnish and install 8 32" X 72" and 11 32" X 32" Dark Bronze finished aluminum interior screens for existing Kawneer 8225TL windows within the building.

Bidders are responsible for ensuring that the measurements listed above are correct prior to ordering the windows.

Bidders must specify in their response:

Specify the manufacturer and installation warranties for the windows and installation.

Specify the lead time to receive the windows.

Specify the installation time frame.

Specify their experience installing similar casement windows.

Specify what previous casement windows they have installed.

Specify contact names, telephone numbers, and business names that you have installed casement windows to (3 contacts are preferred).

Specify any exclusion of exception to this bid specification.

Installation must be completed prior to July, 1st 2019

The successful bidder will be responsible:

For ensuring that the measurements listed above are correct prior to ordering the windows.

Detaching and removing existing identified 47 casement windows

Disposal of the 47 windows to be replaced.

Installation of all windows, including all costs associated with the installation, including lifts, ladders etc. to access 2nd and 3rd floor windows.

IFB1075-010319 NPD Window Replacements
Providing insulation to ensure the windows are properly weatherproofed.

Providing proper weather sealing during the installation process.

Ensuring all windows are properly weather sealed from the exterior and critter sealed.

Repairing any interior damage caused during the removal and/or installation process.
(Existing interior damage will not be the bidder’s responsibility.)
December 17, 2018

IFB1075-010319

NPD WINDOW REPLACEMENT

ADDENDUM #1

Information included in this document becomes a part of the original RFP.

If you are submitting a paper bid, please sign below to indicate receipt of this additional information and include this page with your bid submittal. If you are submitting a bid via Bid Express please be sure to acknowledge the addendum on the website before submitting your bid.

ADDENDUM 1 is being issued to update disposition of windows removed as shown on page 2.

All other aspects of the original document remain the same.

**Failure to acknowledge the addendum will result in the bid submittal being disqualified.**

Sincerely,

/ Dan Kooker
City of Nashua – Purchasing Manager
kookend@nashuanh.gov

Addendum #1 received and incorporated into bid submittal for IFB1075-010319.
Please sign and include this addendum in your bid package.

AUTHORIZED SIGNATURE

1/3/2011

DATE

D. K. King and Associates, Inc.
NAME OF FIRM

IFB1075-010319 ADDENDUM 1
The successful bidder will not be responsible for disposal of the 47 windows if removed with the glass intact. All intact windows will be retained by the department for their use. Any other debris associated with removal of the windows and installation of the new windows will be disposed of by the winning bidder.
December 20, 2018

IFB1075-010319
NPD WINDOW REPLACEMENT

ADDENDUM #2

Information included in this document becomes a part of the original RFP.

If you are submitting a paper bid, please sign below to indicate receipt of this additional information and include this page with your bid submittal. If you are submitting a bid via Bid Express please be sure to acknowledge the addendum on the website before submitting your bid.

ADDENDUM 2 is being issued to provide questions and answers from the Mandatory Pre-Bid Meeting and any submitted via e-mail since that time and to provide window specs from the manufacturer.

All other aspects of the original document remain the same.

Failure to acknowledge the addendum will result in the bid submittal being disqualified.

Sincerely,

Dan Kooken
City of Nashua – Purchasing Manager
kookend@nashuahn.gov

Addendum #2 received and incorporated into bid submittal for IFB1075-010319.
Please sign and include this addendum in your bid package.

[Signature]
(Authorized Signature)

1/3/2019
(Date)

D.L. King & Associates, Inc
(Name of Firm)
IFB1075-010319
NPD WINDOW REPLACEMENT

Addendum #2

Questions asked and answers provided at the 12/3/18 pre-bid meeting and tour:

1. Is there any interior trim work, or drywall that needs to be done? Windows appear to be removable from the outside which you will be able to see on the tour. Any pre-existing damage to drywall will be repaired by Nashua Police. Any new damage is the responsibility of the contractor. There is some damage to drywall from water damage which you can photograph and view on the tour.

2. Can we take pictures of the windows during the tour? Yes

3. How many screens? All the replacement windows will come with screens per the bid. The existing windows will also be fitted with Kawneer screens. There are 8 large windows and 11 small windows that need screens.

4. What is the completion date? July 1st, 2019

5. When do the bids close? January 3rd, 2019

6. Do any windows require shades? No

7. Do the windows being replaced pivot? Yes they pivot out.

8. Do the security screens in the cellblocks stay? Yes

9. What is the work schedule for the project? Monday-Friday

Questions submitted by e-mail since the 12/3/18 pre-bid meeting and answers:

1. Are background checks required for workers on-site? No

2. Has the existing caulking been tested for Asbestos and PCBs? No

3. Is there any asbestos or other hazardous material to be included in the scope of work? No

4. Please provide specification on the glass to be used? See attached specs in this document provided by Kawneer regarding the glass they use on the specified window

5. Please confirm, no shades are to be included in scope of work? No shades

6. Are there any off-hours work required for this project? No

7. Will City Waive Building Permit costs? Yes

8. Will City waive tipping fee at Landfill for disposal? Yes
PART 1 - GENERAL.

1.1 SECTION INCLUDES

A. Double-Glazed Solar Control Insulating Glass Units.

1.2 RELATED SECTIONS

A. Section 08850 - Glazing Accessories.

1.3 REFERENCES


1.4 DEFINITIONS

A. Sealed Insulating Glass Unit Surfaces:
   1. Surface No. 1: Exterior surface of outer lite.
   2. Surface No. 2: Interior surface of outer lite.
   4. Surface No. 4: Interior surface of inner lite.

B. Airspace: 1/2" Space between lites of an insulating glass unit with 90% argon fill.
1.5 SUBMITTALS

A. Comply with Section 01330 - Submittal Procedures.

B. Product Data: Submit manufacturer's product data, including performance characteristics and installation instructions.

C. Shop Drawings: Submit manufacturer's or fabricator's shop drawings, including plans, elevations, sections, and details, indicating glass dimensions, tolerances, types, thicknesses, and coatings.

D. Samples: Submit manufacturer's samples of each type, thickness, and coating.

E. Fabricator's Certification: Submit fabricator's certification by manufacturer.

F. Cleaning Instructions: Submit manufacturer's cleaning instructions.

G. Warranty: Submit manufacturer's standard 10 year warranty for sealed insulating glass units.

1.6 QUALITY ASSURANCE

A. Manufacturer's Qualifications: Minimum of 5 years of experience manufacturing solar control coated glass.

B. Fabricator's Qualifications:
   1. Minimum of 5 years of experience manufacturing sealed insulating glass units meeting ASTM E 2190.
   2. Certified by coated glass manufacturer.

C. Mock-Ups:
   1. Comply with Section 01450 - Quality Control.
   2. Obtain acceptance of mock-ups by Architect before proceeding with work.

1.7 DELIVERY, STORAGE, AND HANDLING

A. Delivery:
   1. Deliver glass to site in accordance with manufacturer's instructions.
   2. Deliver glass in manufacturer's or fabricator's original containers and packaging, with labels clearly identifying product name and manufacturer.

B. Storage:
   1. Store glass in accordance with manufacturer's instructions.
   2. Store glass in clean, dry area indoors.
   3. Protect from exposure to direct sunlight and freezing temperatures.
   4. Apply temporary coverings loosely to allow adequate ventilation.
   5. Protect from contact with corrosive chemicals.
   6. Avoid placement of glass edge on concrete, metal, and other hard objects.
   7. Rest glass on clean, cushioned pads at 1/4-points.

C. Handling:
   1. Handle glass in accordance with manufacturer's instructions.
   2. Protect glass from damage during handling and installation.
   3. Do not slide 1 lite of glass against another.
   4. Do not use sharp objects near unprotected glass.
PART 2 - PRODUCTS

2.1 MANUFACTURER


B. Substitutions:
   1. Not permitted.

2.2 FABRICATORS

A. Sealed Insulating Glass Units, Heat-Strengthened Glass, Tempered Glass, and Spandrel Glass:

2.3 SOLAR CONTROL INSULATING COATED GLASS

A. Double-Glazed Sputter-Coated Insulating Glass Units:
   2. Outboard lite: Sputter-coated clear float glass.
      a. Tempered Clear Float Glass: CPSC 16CR-1201; ANSI Z 97.1 Type 1, Class 1, Quality q3.
      c. Coating on Surface No. 2: Sun Guard Super Neutral 68 (SN 68).
      d. Glass Thickness: 6 mm (1/4 inch).
   3. Air Space: 12 mm (1/2 inch) wide, hermetically sealed, dehydrated air space with 90% argon fill.
   4. Inboard lite: Guardian Clear Tempered float glass.
      a. Tempered Clear Float Glass: ASTM C 1036 CPSC 16CFR-1201; ANSI Z 97.1, Type 1, Class 1, Quality q3.
      b. Glass Thickness: 6 mm (1/4 inch).
      d. Guardian IS20 Thermal barrier coating #4 surfave
   5. Glass Unit Performance Characteristics:
      a. Visible Light Transmittance: 66 percent
      b. Visible Light Reflectance Outdoors: 12 percent
      c. Direct Solar Energy Transmittance: 32 percent
      d. Direct Solar Energy Reflectance Outdoors: 33 percent
      e. Winter U-Value Nighttime: 0.20
      f. Solar Heat Gain Coefficient: 0.36
   6. Edge Seals: ASTM E 2188, with aluminum spacers, dual-sealed with a primary seal of polyisobutylene and a secondary seal of silicone sealant for glass-to-spacer seals.
   7. Sealant: Approved by glass manufacturer.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Examine areas to receive glass. Notify Architect of conditions that would adversely affect installation. Do not proceed with installation until unsatisfactory conditions are corrected.
3.2 PREPARATION
A. Verify glazing openings are correct size and within tolerance.
B. Verify glazing channels, recesses, and weeps are clean and free of obstructions.

3.3 GLAZING
A. Install glass in accordance with manufacturer's instructions, except where local codes or GANA Glazing Manual indicate more stringent requirements.

3.4 FIELD QUALITY CONTROL
A. Coated glass, when viewed from minimum of 10 feet, exhibiting slightly different hue or color not apparent in hand samples, will not be cause of rejection of glass units, as determined by Architect.
B. Verify glass is free of chips, cracks, and other inclusions that could inhibit structural or aesthetic integrity.

3.5 CLEANING
A. Clean glass promptly after installation in accordance with manufacturer's instructions.
B. Remove labels from glass surface.
C. Do not use harsh cleaning materials or methods that would damage glass.

3.6 PROTECTION
A. Protect installed glass from damage during construction.
B. Protect installed glass from contact with contaminating substances resulting from construction operations.
C. Remove and replace glass that is broken, chipped, cracked, abraded, or damaged in other ways during construction period, including natural causes, accidents, and vandalism.

END OF SECTION
BID BOND

CONTRACTOR:
(Name, legal status and address)
D L King & Associates, Inc.
27 Tanglewood Dr.
Nashua, NH 03062

OWNER:
(Name, legal status and address)
City of Nashua NH
229 Main St.
Nashua, NH 03060

SURETY:
(Name, legal status and principal place of business)
Everest Reinsurance Company
477 Martinsville Road
Liberty Corner, NJ 07938

BOND AMOUNT: 5% of the attached bid

PROJECT:
(Name, location or address, and Project number, if any)
Install replacement windows on the Nashua Police Department building - #IFB1075-010319

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety’s consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor’s bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
Signed and sealed this 17th day of December, 2018.

D L King & Associates, Inc.

(Principal) (Seal)

Donna L. King, President
(Title)

Everest Reinsurance Company

(Surety) Ann M. LaFond (Seal)

Attorney-In-Fact
(Title)

The Company executing this bond vouches that this document conforms to American Institute of Architects Document A310, 2010 edition
POWER OF ATTORNEY
EVEREST REINSURANCE COMPANY
DELWARE

KNOW ALL PERSONS BY THESE PRESENTS: That Everest Reinsurance Company, a corporation of the State of Delaware ("Company") having its principal office located at 477 Martinsville Road, Liberty Corner, New Jersey 07938, do hereby nominate, constitute, and appoint:

Harriet F. Hoffman, Deborah L. Corcoran, Ann M. LaFond, John C. Bernardin, Michael J. Regan

its true and lawful Attorney(s)-in-fact to make, execute, attest, seal and deliver for and on its behalf, as surety, and as its act and deed, where required, any and all bonds and undertakings in the nature thereof, for the penal sum of no one of which is in any event to exceed UNLIMITED, reserving for itself the full power of substitution and revocation.

Such bonds and undertakings, when duly executed by the aforesaid Attorney(s)-in-fact shall be binding upon the Company as fully and to the same extent as if such bonds and undertakings were signed by the President and Secretary of the Company and sealed with its corporate seal.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Board of Directors of Company ("Board") on the 28th day of July 2016:

RESOLVED, that the President, any Executive Vice President, and any Senior Vice President and Anthony Romano are hereby appointed by the Board as authorized to make, execute, seal and deliver for and on behalf of the Company, any and all bonds, undertakings, contracts or obligations in surety or co-surety with others and that the Secretary or any Assistant Secretary of the Company be and that each of them hereby is authorized to attest to the execution of any such bonds, undertakings, contracts or obligations in surety or co-surety and attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that the President, any Executive Vice President, and any Senior Vice President and Anthony Romano are hereby authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute, on behalf of the Company, bonds and undertakings in surety or co-surety with others, and that the Secretary or any Assistant Secretary of the Company be, and that each of them is hereby authorized to attest the execution of any such power of attorney, and to attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that the signature of such officers named in the preceding resolutions and the corporate seal of the Company may be affixed to such powers of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be thereafter valid and binding upon the Company with respect to any bond, undertaking, contract or obligation in surety or co-surety with others to which it is attached.

IN WITNESS WHEREOF, Everest Reinsurance Company has caused their corporate seals to be affixed hereto, and these presents to be signed by their duly authorized officers this 28th day of July 2016.

By: Anthony Romano, Vice President

Attest: Nicole Chase, Assistant Secretary

On this 28th day of July 2016, before me personally came Anthony Romano, known to me, who, being duly sworn, did execute the above instrument, that he knows the seal of said Company; that the seal affixed to the aforesaid instrument is such corporate seal and was affixed thereto, and that he executed said instrument by like order.

LINa BOISSELLE
Notary Public, State of New York
No 01905239736
Qualified in Queens County
Term Expires April 25, 2019

LINa BOISSELLE
Notary Public, State of New York
No 01905239736
Qualified in Queens County
Term Expires April 25, 2019

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company, at the Liberty Corner, this 28th day of July 2016.
April 11, 2019
Memo #19-141

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CONTRACT FOR INDEPENDENT CONSULTANT SERVICES (VALUE: $22,000)
DEPARTMENT: 183 ECONOMIC DEVELOPMENT; FUND: TAX INCREMENT FINANCING DISTRICT

Please see attached communication from Tim Cummings, Director of Economic Development dated April 10, 2019 for the information related to this purchase.

§ 5-83. Professional services. In the purchase of accounting, architectural, auditing, engineering, legal, medical and ambulance services and purchases of independent professional consultant services for personnel, data processing, actuarial, planning, management and other comparable purchases competitive bidding shall not be required. Competitive bidding is required in the procurement of insurance agents and consultants.

The Director of Economic Development and the Purchasing Department recommend approval of this contract in an amount of $22,000 to Meena Gyawali of Manchester, NH.

Respectfully,

[Signature]
Dan Kookan
Purchasing Manager

Cc: T Cummings J Graziano
To: James Donchess, Mayor  
From: T. Cummings, Economic Development Director  
Cc:  

Date: April 10, 2019  

Re: Request for Approval of Contract with Meena Gyawali  

Using funding aside as for the implementation of the Riverfront TIF before you is a contract for the services of Meena Gyawali, an experienced economic development professional who will help implement the TIF plan on a temporary basis.

The contract before you outlines a six-month duration, but in all actuality may be less. The scope of work is to focus our collective energies and efforts on issuing an RFQ and awarding a contract for design services to a multi-disciplinary firm that will design and implement key projects outlined in the Downtown Riverfront Master plan - including a Riverwalk project. There may be other ancillary related projects such as assisting the procurement of landscaping services, invasive species removal and other projects that will help advance the implementation of the TIF plan.

I am recommending approval of this $22,000 contract.
CONTRACT FOR INDEPENDENT CONTRACTOR

TITLE

A CONTRACT BETWEEN

THE CITY OF NASHUA, 229 MAIN STREET, CITY HALL, NASHUA, NH 03060
AND

and its successors, transferees and assignees (together “Independent Contractor”)

MEENAKSHI GYAWALI
Consultant

NAME AND TITLE OF INDEPENDENT CONTRACTOR

149 LODGE STREET, MANCHESTER, NH 03014
ADDRESS OF INDEPENDENT CONTRACTOR

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

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

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

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

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

   Exhibit A--General Conditions for Contracts
   Exhibit B--Scope 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, Independent Contractor shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described.

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

4. **COMPENSATION.** Independent Contractor agrees to perform the work for a total cost not to exceed **Dollars ($22,000)**

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

**City of Nashua, City Hall**
**Attn: Accounts Payable**
**229 Main Street**
**Nashua, NH 03060**

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, Independent Contractor agrees to provide the following with each request for payment:

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

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

The City of Nashua will pay for work satisfactorily completed by Independent Contractor. The City of Nashua will pay Independent Contractor 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:  REPRESEANTIVE:

Economic Development Division  Tim Cummings
229 Main Street  Director of Economic Development
Nashua, NH 03060

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 Independent Contractor may change the address or representative by giving written notice to the other party.

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

_________________________________  ________________________________
City of Nashua, NH (signature)  (signature)

Tim Cummings, Director of Economic Development  Meenakshi ("Meena") Gyawali, Consultant
(Printed Name and Title)  (Printed Name and Title)

_________________________________  _________________
Date  Date
EXHIBIT A
TABLE OF CONTENTS
GENERAL CONDITIONS

1. Definitions  GC--2
2. Independent Contractor 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, "Independent Contractor", and its successors, transferees and assignees (together “Independent Contractor”) includes any of the Independent Contractor's consultants, sub consultants, contractors, and subcontractors.

2. **Independent Contractor Status** The parties agree that Independent Contractor shall have the status of and shall perform all work under this contract as an Independent Contractor, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City of Nashua and Independent Contractor, and nothing in this contract shall create any contractual relationship between the City of Nashua and Independent Contractor's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Independent Contractor 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 Independent Contractor 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** Independent Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Independent Contractor warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Independent Contractor to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City of Nashua may have, Independent Contractor shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Independent Contractor'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 Independent Contractor shall not in any way relieve Independent Contractor 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 Independent Contractor'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 Independent Contractor shall be and remain liable in accordance with the terms of the contract and applicable law.

Independent Contractor 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 Independent Contractor to perform work under this contract. Approved key personnel shall not be taken off of the project by Independent Contractor without the prior written approval of the City of Nashua, except in the event of termination of employment. Independent Contractor 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 Independent Contractor, 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 Independent Contractor's performance under the contract. Independent Contractor 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 Independent Contractor should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Independent Contractor's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Independent Contractor for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Independent Contractor of the change.

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

Except as provided in this paragraph, Independent Contractor 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 Independent Contractor in the performance of its work under this contract and that such personnel will be available to Independent Contractor 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 Independent Contractor 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 Independent Contractor also agree to attend all meetings called by the City of Nashua or Independent Contractor to discuss the work under the Contract, and that Independent Contractor 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** Independent Contractor 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 Independent Contractor. All future questions Independent Contractor 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 Independent Contractor'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 Independent Contractor prior
to having received the City of Nashua's resolution shall be at Independent Contractor's risk and
expense. At all times, Independent Contractor shall carry on the work under this contract and
maintain and complete work in accordance with the requirements of the contract or determination
of the City of Nashua. Independent Contractor is responsible for requesting clarification or
interpretation and is solely liable for any cost or expense arising from its failure to do so.

8. TERMINATION OF CONTRACT

A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL. The City 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 Independent Contractor 10 day's written notice of its intent to do so.

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

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

B. TERMINATION FOR CAUSE This agreement may be terminated by the City of Nashua on 10
   calendar day's written notice to Independent Contractor in the event of a failure by Independent
   Contractor to adhere to any or all the terms and conditions of the contract or for failure to
   satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on
   the work in a timely and professional manner. Independent Contractor shall be given an opportunity
   for consultation with the City of Nashua prior to the effective date of the termination. Independent
   Contractor may terminate the contract on 10 calendar days written notice if, through no fault of
   Independent Contractor, the City of Nashua fails to pay Independent Contractor 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, Independent Contractor 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, Independent Contractor shall receive all amounts due and not previously paid to Independent Contractor for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City of Nashua by reasons of Independent Contractor's failure. Independent Contractor 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 Independent Contractor until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the Independent Contractor 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 Independent Contractor to adhere to any of the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on the work in a timely and professional manner, it is determined that Independent Contractor 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 Independent Contractor such that Independent Contractor receives total compensation in the same amount as it would have received in the event of a termination-at-will.

C. GENERAL PROVISIONS FOR TERMINATION Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. 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 Independent Contractor's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Independent Contractor'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 an Independent Contractor Representative. At all times, Independent Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of direction of the City of Nashua. If the parties are unable to resolve their dispute as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties’ reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.
10. **NO DAMAGES FOR DELAY** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Independent Contractor for damages because of hindrances or delays in the progress of the work from any cause, and Independent Contractor agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City of Nashua may provide.

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

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

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

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

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

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

13. **FISCAL CONTINGENCY** All payments under this contract are contingent upon the availability to the City of 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 Independent Contractor 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 Independent Contractor 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 Independent Contractor. Independent Contractor shall have no claim of any sort to the unexpended funds.

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

15. **COMPLIANCE WITH APPLICABLE LAWS** Independent Contractor, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Independent Contractor shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City 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, Independent Contractor agrees to the following terms. Independent Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Independent Contractor agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

Without limitation of the foregoing, Independent Contractor'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.

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

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

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

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

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

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

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

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

22. FINAL ACCEPTANCE Upon completion of all work under the contract, Independent Contractor 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 Independent Contractor in writing that the whole of the work was completed on the date indicated in the notice or provide Independent Contractor with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Independent Contractor shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City 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 Independent Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll
deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Independent Contractor 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** Independent Contractor 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. Independent Contractor 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 Independent Contractor. If any such interest comes to the attention of Independent Contractor at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua. Independent Contractor also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Independent Contractor 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 Independent Contractor (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, City of Nashua may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, Independent Contractor shall refund to the City of Nashua any profits realized under this contract, and Independent Contractor 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.

Independent Contractor warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Independent Contractor 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 Independent Contractor, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City of Nashua and Independent Contractor.
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 Independent Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

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.
EXHIBIT B

Proposal for Professional Services

Meenakshi Gyawali as an independent contractor for the City of Nashua shall provide the following:

Professional services in implementing specific projects identified in the Nashua Downtown Riverfront Development Plan and working to implement the newly expanded TIF District in downtown Nashua.

Scope of Services

The following are services that will be provided by the consultant:

- Review of the Downtown Riverfront Plan to identify specific projects to be completed
- Review of the TIF District documents and map to establish procedures that would insure the compliance with financial and legal requirements of the program
- Assist the City in the creation of RFQ and RFP documents to solicit engineers and contractors to bid on project(s) and in the selection process
- Preparation of contract documents
- Coordinate with other City departments and State agencies property owners as may be needed to accomplish the projects
- Coordinate with City staff to ensure that the TIF board is kept abreast of progress on the identified project on a quarterly basis
- Oversee all aspects of the project with the design / build team and city staff to ensure that the project is moving forward in a timely manner and within budget
- Such other services as required in order to implement or complete the plan.

Additional Stipulations

The fee for the assistance detailed above would be $60.00 hour. The total number of hours per month should not exceed 60, unless approved by the City and shall not exceed $21,600.

Any out of pocket expenses will be pre-approved by the City of Nashua’s Director of Economic Development prior to any expense being incurred.

At the end of the 90 days both parties will make a joint evaluation as to whether to continue the relationship and, if so, under what conditions.

This agreement may be terminated by either party with one week notice.
Meenakshi (Meena) Gyawali
149 Lodge Street
Manchester, NH 03104
Phone: 603-591-0420
mgyawali@gmail.com

Education: University of New Hampshire - Masters of Public Administration
University of Illinois - Bachelor of Urban and Regional Planning

Experience:
November 2011 – November 2018 Community Development Finance Authority, Concord NH
Director of Community Development

Responsible for overall management of projects from application phase, grant awards, and ensuring that all aspects of procurement, budget and time were being met.

- Assist municipalities and others with assembling a project from initiation, identifying other resources, creating a timeline, budget and partners that could assist in making the project successful. Coordination with project architects, general contractors and construction managers to help them with the federal and state regulations. Perform analysis of applications, including organizational capacity, community development purpose, assessment of financial viability, impact of proposed project, relative scoring and site visits. Problem solving on how alternate funding/financing might work.

- Manage contracts for approved projects and ensure that documents (sub-recipient agreements, loan documents, liens, procurement, bid reviews, wage compliance and outcomes reporting) were reviewed in a timely manner.

- Work with municipalities, non-profits and businesses to provide them with an understanding of resources offered by CDFA and determine the eligibility of their projects. Provide guidance and interpretation of CDBG rules to grantees and CDFA staff. Design and improve the application process, training modules, and the implementation guides in areas related to CDBG and State Tax Credits.

- Administration and monitoring of State Tax Credits and HUD CDBG funds granted. Preparation of federal reports, data collection, and other required documents.

- Led and assisted staff with various strategic planning initiatives, including 5 year and annual plans required to secure federal funds. Ongoing analysis of reporting, data collection and contracts to improve the process.

October 2009 – July 2011 City of Manchester, Economic Development Department
Business Development Coordinator

The role of the business development coordinator was to provide assistance to businesses in the areas of business planning, site search, loan and grant administration, analyzing community statistics and to help start, expand or relocate businesses in Manchester.
• **Resources:** Assist new and expanding businesses to secure funds and incentives including HUD section 108 loans, City revolving loan funds, Brownfields grants and state tax incentives. Applied for and successfully expanded the boundaries of HUB and CROP Zones designations in the City.

• **Business Planning and referral:** Assist in the areas of business planning, the creation or review of business plans, identifying sites for business location, referral of these businesses to appropriate agencies such as SCORE, Small Business Development Center, Business Incubator to help establish or grow business in Manchester.

• **Facade Improvement Grant and Revolving Loan:** Managed various grants and loans including the Facade Improvement Program and the Revolving Loan Program. For approved loans, created all loan closing documents, provided long term monitoring and mentoring, handled invoicing, accounts receivable, job data collection and fulfilling State, Federal and Local reporting requirements.

• **Partnerships:** Partnered with various City departments, elected officials, local businesses, Chamber of Commerce and state organizations to promote City’s economic development.

• **Planning and Economic Development Strategies:** Work with agencies such as the Chamber of Commerce, Manchester Development Corporation and Manchester Arts Commission to create strategies to implement various projects such as an affordable housing strategy, a downtown and gaslight district plan, economic development strategy and a case study for bicycle trails. Secured a $400,000 grant for Brownfields remediation efforts. Secured funds in the amount of $100,000 for the installation of three public sculptures. Lead the initiative to create an arts and culture economic impact strategy.

March 1999 – October 2009  
**City of Manchester - Department of Planning and Community Development Planner II**

• **Neighborhood Planning:** Led the City’s first neighborhood planning effort with various city departments, residents and business owners in creating and implementing revitalization strategies in neighborhoods. These included efforts to redevelop the Rimmon Heights Neighborhood, partnering with the Health department in the Healthy Living Active Living and Safe Routes to School projects, partnering with the local police department in their Weed and Seed strategy area. Participated in design review within design districts and managed the City’s façade improvement program by providing technical assistance and matching grant funds for small businesses.

• **Downtown and Arena Area Planning:** Worked to develop a new downtown plan for the City of Manchester, led a team in the development of the gaslight district design guidelines, and created new zoning ordinances.

• **Citywide Plans –** Lead initiatives or assisted department staff on various citywide plans including the City’s Master Plan, wayfinding, bicycle planning, safe routes to school, and 5-year plan for allocating federal resources.

• **Management of Federal and Local Grant Programs:** Monitoring and administrating federal and local funds granted to 40 local non-profits and departments; preparation of federal reports and annual plans such as the Action Plan and the Consolidated Plan. Management of IDIS system. Conducted public hearings related to grant funds.
Certificates: Economic Development Finance Professional Certificate through National Development Council

Computer skills: Microsoft Word, Excel, Access, PowerPoint, Beginner GIS, Various Grants Management Database Systems

Boards: Current Advisory Boards – The Way Home, NH Creative Communities Network. Past Advisory Boards and committees – Manchester Community College, PeopleFest NH, Sisters of Holy Cross Refugee Learning Center, Manchester MOVES, New Hampshire Citizens for the Arts, Healthy Eating Active Living Committee, Safe Routes to School, and Weed and Seed

Member of The Union Leader’s 40 under 40 Class of 2011. Leadership New Hampshire Class of 2016

References: Available upon request
April 11, 2019
Memo #19-142

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CONTRACT FOR LEGAL COUNSEL SERVICES FOR NMTC (VALUE: $56,500)
DEPARTMENT: 183 ECONOMIC DEVELOPMENT; FUND: PERFORMING ARTS CENTER

Please see attached communication from Tim Cummings, Director of Economic Development dated April 3, 2019 for the information related to this purchase.

§ 5-83. Professional services. In the purchase of accounting, architectural, auditing, engineering, legal, medical and ambulance services and purchases of independent professional consultant services for personnel, data processing, actuarial, planning, management and other comparable purchases competitive bidding shall not be required. Competitive bidding is required in the procurement of insurance agents and consultants.

The Director of Economic Development and the Purchasing Department recommend approval of this contract in an amount of $56,500 to Drummond Woodsum Attorneys at Law of Portland, ME.

Respectfully,

Dan Koochen
Purchasing Manager

Cc: T Cummings J Graziano
April 11, 2019
Memo #19-143

TO:       MAYOR DONCHESS
          FINANCE COMMITTEE

SUBJECT:  FISCAL AGENT AGREEMENT WITH CITY ARTS NASHUA (VALUE: $0)
          DEPARTMENT: 183 ECONOMIC DEVELOPMENT; FUND: NONE

Please see attached communication from Tim Cummings, Director of Economic Development dated April 10, 2019 for the information related to this purchase.

The Director of Economic Development and the Purchasing Department recommend approval of this request to name City Arts Nashua of Nashua, NH as Fiscal Agent for the Performing Arts Center.

Respectfully,

Dan Koooken
Purchasing Manager

Cc:       T Cummings   J Graziano
To: J. Donchess, Mayor/Chair of Finance Committee
From: T. Cummings, Economic Development Director
Cc: Members of the Finance Committee

Date: April 10, 2019

Re: Request for Approval of Fiscal Agent Agreement for the Performing Arts Center Project

The Office of Economic Development has been working with City Arts Nashua to develop a Fiscal Agent agreement relative to the capital campaign efforts for the future performing arts center.

The idea is to partner with an established 501 c3 entity while the development of a legal entity for this specific project occurs. This partnership with City Arts Nashua will allow the project to take advantage of the benefits of the tax exempt status while also developing a private (non-public) structure, which is highly desirable from the feedback we received during the fundraising feasibility study that occurred this past summer.

The Office of Economic Development recommends entering into this Fiscal Agent Agreement for with City Arts Nashua.
FISCAL AGENT AGREEMENT

This Agreement is made as of the ____ day of April, 2019 by and between the City of Nashua, a municipal corporation with a principal address of 229 Main Street, Nashua, NH 03061 (hereafter referred to as the “Sponsored Organization”) and City Arts Nashua, a New Hampshire 501(c)3 charitable organization with a principal address of PO Box 1603, Nashua, NH 03061 (hereafter referred to as the “Fiscal Agent”).

Purpose of Agreement

The Sponsored Organization has proposed that the Fiscal Agent sponsor and assist in the financial administration of the fundraising activities for a yet-to-be formed private nonprofit organization, which will support the operations Nashua Performing Arts Center (“the Project”). The City of Nashua is creating a strategic partnership with City Arts Nashua for the sole purpose of the administration and bookkeeping relative to the fundraising needs of the yet-to-be formed private nonprofit.

The Fiscal Agent has determined that sponsorship of the Project would be consistent with its goals, and wishes to make arrangements with the Sponsored Organization for the implementation and operation of the Project.

City Arts Nashua agrees to serve as the fiscal agent for the fundraising activities associated with a downtown Performing Arts Center to be located at 201 Main Street, Nashua, NH 03061 under the following stipulation(s):

1. The Fiscal Agent status is in relation to the administration of the fundraising activities for the Performing Arts Center only.

2. The Fiscal Agent hereby agrees to sponsor the Project and assume administrative, financial and legal responsibility for purposes of the requirements of funding organizations. The Sponsored Organization agrees to implement and operate the Project, in accordance with the terms of this agreement and with any requirements imposed by The Fiscal Agent.

3. The Project shall be operated in a manner consistent with the Fiscal Agent’s tax-exempt status and as described in this Agreement. No material changes in the purposes or activities of the Project shall be made without prior written permission of the Fiscal Agent and in accordance with any requirements imposed by The Fiscal Agent, nor shall the Sponsored Organization carry on activities or use funds in any way that jeopardizes the Fiscal Agent’s tax-exempt status.

4. The Sponsored Organization shall not, and shall not permit the Project to, attempt to influence legislation or participate or intervene in any political campaign on behalf (or in opposition to) any candidate for public office or otherwise engage in the carrying on of propaganda (within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986).
5. The Sponsored Organization is responsible for the complete administration of the Performing Arts Center’s building and creation.

6. The Sponsored Organization will provide the Fiscal Agent with reports describing the progress of the Project and the programs and services of the Project at each Fiscal Sponsor Board of Director’s meeting, but in no event no less than quarterly, starting April 1, 2019,

7. On behalf of the Sponsored Organization, the Fiscal Sponsor will establish and operate for the use of the Project a designated, separate bank account at a FDIC insured or NCUA insured financial institution with a physical branch in New Hampshire (“Account”). The Account will be segregated on the Fiscal Sponsor’s books. All amounts deposited into the Account will be used in its support, less administrative charges under this Agreement, if any, and subject to the conditions set forth herein. Interest attributable to the funds in the Account will accrue for the benefit of the Project. The Fiscal Sponsor will provide upon request up-to-date accounting of the Account to the Sponsored Organization.

8. The Fiscal Agent shall make deposits into the Account in a timely manner.

9. The Sponsored Organization will provide the Fiscal Agent with reports describing programs and services of the Project at each City Arts Nashua Board of Directors Meeting.

10. The Sponsored Organization will provide all information and prepare all reports, including interim and final reports, required by funding organizations with the Fiscal Agent’s assistance and final approval.

11. Fiscal Agent shall have authority over the financial administration of the Account and other assets received by it for support of the Project. Fiscal Agent will make disbursements from the Account to support the Project, subject to the terms and conditions of the Agreement in amounts and at times in Fiscal Agent’s discretion. All other authority and responsibility related to the Project shall be vested in and exercised by Sponsored Organization, including the duty to comply with the terms of this Agreement and with the terms of any agreements with funding sources, including the preparation of grant reports, although ultimate responsibility for administration of the restricted fund rests with Fiscal Agent. Any grant of noncash items shall be granted to Sponsored Organization on an “as is” basis without any warranty or representation about the condition of such items.

12. Fiscal Agent agrees that all grants, charitable contributions and gifts that it receives for the Project and Sponsored Organization will be reported as contributions to Fiscal Agent as required by law. Further, upon request of the donor, Sponsored Organization agrees to acknowledge receipt of any such grant, charitable contribution or gift in writing and to furnish evidence of Fiscal Agent’s Sponsor’s status as an exempt organization under Section 501(c)(3) to the donor. Fiscal Agent agrees to immediately notify Sponsored Organization of any change in its tax-exempt status.

13. Sponsored Organization will use all funds disbursed from the Account for the purposes of the Project and Sponsored Organization will repay Fiscal Agent any portion of any grant that is not spent or committed for those purposes. Any changes in the purpose for which Account funds are
spent must be approved in writing by Fiscal Agent before implementation. Sponsored Organization acknowledges and agrees that Fiscal Agent shall have no duty to use Fiscal Agent funds to pay expenses related to Sponsored Organization’s operations.

14. As compensation for the services provided by Fiscal Agent under this Agreement, Fiscal Agent shall be entitled to receive two percent (2%) of all income received up to a lifetime maximum of Forty Thousand Dollars ($40,000.00) by Fiscal Agent on behalf of the Project, such 2% to be paid from the Account to Fiscal Agent quarterly.

15. The Sponsored Organization designates Tim Cummings, Director of Economic Development to act as Authorizing Official. The Authorizing Official shall act as principal coordinator of the Project’s daily business with the Fiscal Agent, and shall have authority to sign disbursement requests to be submitted to the Fiscal Agent.

16. The Fiscal Agent and Sponsored Organization will maintain all financial records relating to the Project according to generally accepted accounting principles, retain records as long as required by law, and make records available to auditors as required by law.

17. The Fiscal Agent and the Sponsored Organization will reflect the activities of the Project, to the extent required, on their state and federal government tax returns and financial reports. All disbursements from the Account shall be treated as payments made to or on behalf of the Sponsored Organization to accomplish the purposes of the Project. The Sponsored Organization will provide the Fiscal Agent with proper documentation to accomplish this, including furnishing the Fiscal Agent with the Sponsored Organization’s Federal Employer Identification Number.

18. The Sponsored Organization will give proper credit to the Fiscal Agent in all publicity and marketing as decided upon in a case by case basis with the Chair of City Arts Nashua.

19. The Sponsored Organization retains all assets both tangible and intangible in nature. The Fiscal Agent acknowledges and waives any ownership of assets acquired during the duration of this Project and this Agreement.

20. Sponsored Organization shall indemnify, defend and hold harmless Fiscal Agent and its employees, officers, directors, successors and assigns (“Indemnified Parties”) from and against any and all liability that may be incurred by Fiscal Agent arising from Fiscal Agent’s acting as sponsor under this Agreement, except to the extent arising from the Indemnified Parties own negligence, willful misconduct or breach of the terms of this Agreement. This indemnity shall include all reasonable costs of collection, including reasonable attorneys’ fees, but shall be limited to the amount of funds held by or due to Fiscal Agent from the Sponsored Organization’s Account under this Agreement.

21. This Agreement shall expire one year after its execution unless it is agreed to by mutual written consent of both parties to extend.

22. Either party may terminate this Agreement by giving 60 days written notice to the other party. The other party shall not have the right to prevent termination, but legal and funding requirements
may affect the terms of the termination process, particularly if funds have been committed to or received by Fiscal Agent on behalf of Sponsored Organization but not yet fully expended. Upon termination of this Agreement, so long as there is another nonprofit corporation which is (i) tax exempt under IRC Section 501(c)(3), (ii) not classified as a private foundation under IRC Section 509(a), (iii) willing and able to sponsor the Project, and (iv) otherwise satisfactory to Fiscal Agent and Sponsored Organization (a “Successor”), the balance of assets held by Fiscal Agent in its restricted fund for the Project together with any other tangible and intangible assets held or liabilities incurred by Fiscal Agent in connection with the Project shall be transferred to Successor as soon as practicable after provision of the above notice. Sponsored Organization shall be eligible to be a Successor itself so long as Sponsored Organization has received a determination letter from the Internal Revenue Service indicating that Sponsored Organization meets the qualifications to be an IRC Section 501(c)(3) organization and is not classified as a private foundation under IRC Section 509(a). If no Successor is found within 60 days of such written notice, Fiscal Agent may dispose of the Project assets and liabilities in any manner consistent with applicable tax and charitable trust laws.

23. This Agreement shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this Agreement or referable in anyway 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.

24. This Agreement shall not be assigned in whole in part by either party without the express prior written consent of the other party. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns. This Agreement may not be amended, supplemented or modified except by an instrument in writing signed by both parties. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

In witness whereof, the parties hereto have executed this agreement on the day and year first written above.

Accepted for City of Nashua (The “Sponsored Organization”):

James W. Donchess, Mayor
<table>
<thead>
<tr>
<th>Witness Signature</th>
<th>Name</th>
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Accepted for **City Arts Nashua**, (The “Fiscal Agent”):

<table>
<thead>
<tr>
<th>Authorized Signer</th>
<th>Name</th>
<th>Title</th>
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| Witness Signature | Name |
To: James Donchess, Mayor
From: T. Cummings, Economic Development Director
Cc: Steve Bolton, Corporation Counsel

Date: April 3, 2019

Re: Contract for Legal Counsel Services for NMTC

The Office of Economic Development in partnership with the City’s Office of Corporation Counsel solicited proposals for New Market Tax Credit ("NMTC") legal services. Specifically, the services sought are to assist with the development of the deal structure, provide a legal opinion on the NMTC transaction and provide legal guidance as necessary to bring the NMTC transaction to a closure.

I along with Steve Bolton solicited proposals who have past experience closing NMTC transactions. Three firms responded and after Steve and I reviewed the proposals and evaluated each proposal based on the following criteria: qualifications and experience, past performance and service on similar projects, proposed approach to scope of work, responses in interviews and cost.

Drummond Woodsum was chosen unanimously for their comprehensive knowledge and their strong past experience working with municipalities, which translates into understanding the various perspectives and priorities of a municipal corporation.

I am recommending awarding a contract for NMTC legal services for in the amount not to exceed $55,000 with an additional $1,500 for miscellaneous expenses to Drummond Woodsum for a grand total of $56,500. However, the way the proposal is structured the city is only obligating to pay $5,000 for legal work necessary in advance and in preparation of a NMTC closing.

It should be noted that the way you typically pay for this type of service is at the time of the NMTC closing and it is bundled into the fees associated with the transaction. Should the transaction not commence the city is only obligated to $5,000, which will come from the consulting budget set aside by the Downtown Improvements Committee.
March 18, 2019

VIA EMAIL ONLY

Tim Cummings, Director of Economic Development
Steven A. Bolton, Esq., Corporation Counsel
City of Nashua
229 Main Street
Nashua, NH 03061-2019

Re: Nashua Performing Arts Center

Dear Tim and Steve:

Following up on my recent call with you, this letter contains our proposal regarding legal services involving the Nashua Performing Arts Center (the “Project”) and its financing through the Federal New Markets Tax Credit (“NMTC”) program. We appreciate the opportunity to submit a proposal to provide legal services for the Project to the City and its nonprofit affiliates to be formed for the NMTC transaction. From our conversations and the materials you’ve sent me, it is an exciting project and would be a wonderful addition to downtown Nashua.

This letter is a proposal for the City’s review and consideration. If there are aspects of the proposal on which you have questions or on which you want to discuss possible changes, please let me know.

My previous letter dated February 20 (copy enclosed) provided detailed information about our professional background and experience in NMTC transactions. As mentioned on our call, I would lead our team here on this project and would involve other professionals here as needed to deliver the services as efficiently as possible. Although I am not admitted to the Bar in New Hampshire, many of my colleagues are and we would involve New Hampshire-admitted attorneys when needed.

We have discussed a proposal for our services in which we would be compensated based on our time spent charged at hourly rates subject to a not-to-exceed cap under the terms and conditions described in this letter. In order to effectively set out this proposal, this letter describes the scope of services we would provide, the applicable rates and the amount of that cap. Please bear in mind that this cap is designed to allow the City to budget for these services and is not a fixed fee. If the transaction goes smoothly the total fee could be less than that cap.

We also recognize that the City is most at risk financially prior to the receipt of notice that the Project will receive a NMTC allocation. As I mentioned on the call, we are willing to share that risk with the City by agreeing to limited fees (as more fully described below) if the Project does not receive an allocation.
Our services in connection with the Project under the terms of this fee arrangement will consist of the following tasks:

1. Advising the City regarding the structure of the proposed NMTC transaction financing (including with reference to bond financing, leases, appropriate use of proceeds) to ensure compliance with NMTC requirements. We expect to work with a recognized NMTC accounting firm which will be retained to prepare the projections;

2. Working with the City and its economic development / NMTC consultant to present the Project to Community Development Entities in seeking an NMTC allocation and presenting the Project to potential tax credit investors and in evaluating / negotiating proposals;

3. Providing strategic advice on the formation of nonprofits to be formed as part of the NMTC transaction structure to ensure they meet the multiple objectives required and meet NMTC requirements;

4. Assisting with formation and preparation of organizational documents for one or more nonprofit entities to participate in the NMTC transaction;

5. Preparing resolutions, certificates and other corporate documents necessary for the approval and closing of the NMTC transaction;

6. Working with board members of nonprofits entities (and municipal officials if needed) to explain the NMTC transaction that they will be considering for approval;

7. Negotiating and preparing the leverage loan documents;

8. Reviewing and negotiating the documents by which the NMTC investor funds the transaction;

9. Reviewing and negotiating the put and call and tax credit indemnification documents;

10. Developing, preparing and negotiating with the investor and CDE the provisions of the QLICI loan documents

11. Conducting required due diligence and preparing the qualified active low-income community business (“QALICB”) tax opinion customarily provided by developer’s or sponsor’s counsel; and
12. Conducting required due diligence and preparing non-tax legal opinions on the entities and leverage loan transactions customarily provided by developer’s or sponsor’s counsel.

The transaction caps assume that the transaction will be structured such that the NMTC will be allocated to a single investor and that a closing will be concluded with the first investor with which the City and its affiliates enters into a term sheet or letter of intent. If a replacement for this first investor is needed for any reason, we would need to re-negotiate the transaction cap with the City and its affiliates.

Our compensation will be determined based on hourly rates subject to a not-to-exceed cap for the above-described services. The hourly rates for this engagement will be our standard hourly rates less a discount of ten percent (10%). So, for example, my hourly rate will be $342 instead of the $380 referenced in my earlier letter. In addition, we will not charge for any travel time or mileage to attend meetings in Nashua.

The not-to-exceed cap for the above-described services is Fifty-Five Thousand Dollars ($55,000), assuming that no different transaction structure, unforeseen circumstances or delays occur in closing the transaction. Such items could include, for example, additional sources of financing, having a NMTC allocation from more than one CDE or lender / investor and/or due diligence or legal opinion requirements that are more than is customary for NMTC transactions. If such items arise, it is expected that the City and we would re-negotiate this cap.

Our legal fees will be payable at the closing of the NMTC transaction assuming it successfully closes. If the NMTC transaction does not successfully close, our legal fees would be payable thirty (30) days after the determination not to move forward with the NMTC transaction.

Further, in recognition of the risks to the City prior to being notified that the Project has received a NMTC allocation, we propose an additional risk sharing arrangement. We understand that all or part of the tasks listed in (1)-(3) above will need to be performed prior to the receipt of a NMTC allocation. In the event that the City is not notified that a NTMC allocation is available for the Project, and as a result the City determines not to move forward with the NMTC financing, we will limit our total fees to a maximum payable by the City of Five Thousand Dollars ($5,000).

The tasks listed in (4)-(12) will only be undertaken if the City is notified that a NMTC allocation is available for the Project.

We understand that legal services for real estate acquisition and transfer matters, leasing matters, land use and permitting matters and bond matters are to be provided by the City’s Corporation Counsel. Our proposal does not include any of those services or any other services beyond those listed in (1)-(12) above. If the City later determines that it would like our services in any of those or other matters related to the Project, we would be pleased to discuss working with the
City of Nashua  
March 18, 2019  
Page 4  

City on those matters at the discounted hourly rate described in this letter but our work on those would not be subject to the cap described in this letter.

In addition to the fees for services described above, the City will pay or reimburse us for state or other governmental filing fees to organize and/or maintain the entities which will participate in the transactions described, photocopying, faxes, telephone services and other out-of-pocket disbursements to third parties in connection with the Project. For budgeting purposes, we expect that the amounts described in this paragraph will be $1,500 or less.

We also discussed that this firm or our affiliate, Classic Title Co., is available to provide any required title services or insurance that will be required in this transaction.

Either the City or Drummond Woodsum may terminate this agreement [other than the City’s responsibility to pay previously earned fees and charges] if the City has not been notified by September 30, 2019 that a NMTC allocation is available for the Project.

The services provided under this fee arrangement will be considered complete upon the closing of the Project’s NMTC financing unless the agreement is terminated prior to that time.

Please sign both originals of this letter enclosed to acknowledge that you have read the above agreement before signing it, and to evidence your agreement to the terms of this fee agreement.

We are pleased to serve as your counsel and we look forward to working with you on this project.

Very truly yours,

DRUMMOND WOODSUM & MACMAHON

By:  

John S. Kaminski

SEEN AND AGREED TO:

CITY OF NASHUA

By:  

Name:
Title:
To: James Donchess, Mayor
From: T. Cummings, Economic Development Director
Cc:

Date: April 4, 2019

Re: Notice of Change in Contract for residential brokerage services with Louise Brochu

The Office of Economic Development issued RFP 0019-060418 to request proposals for to provide marketing and brokerage services to the City of Nashua, through the Officer of Economic Development related to following residential property late last summer.

Two specific properties are to be sold: 11 Baldwin Street and 9 Hillcrest Avenue both properties where at one time part of the Broad Street Parkway project. The City awarded the business to Louise Brochu in the fall.

This memo is being provided to update and provide notice to the Finance Committee that Louise Brochu changed brokerage firms last winter and is now with Cameron Prestige instead of Keller Williams whom we originally entered into contract. Upon learning of the above development my office placed the contract on hold until Louise was operating under the new brokerage firm and to allow for the spring to arrive where a better selling price would be achieved.

At this time, Louise is now established and working in her new brokerage firm and we are satisfy to move forward.
To: J. Donchess, Mayor/Chair of Finance Committee  
From: T. Cummings, Economic Development Director  
Cc: Members of the Finance Committee

Date: April 4, 2019

Re: Memorandum of Agreement with Spectacle Management

The Office of Economic Development issued RFP 0275-102418 to request proposals for operations and management services of the future performing arts center. The idea is to procure on behalf of the future performing arts center a 3rd party private sector entity that would manage the day-to-day operations, book acts/performances and provide technical expertise as necessary for the benefit of the community. We received 1 proposal from Spectacle Management.

A sub group of the PAC Steering Committee met with Spectacle Management and then the entire Steering Committee met with Spectacle Management to discuss, interview and assess how Spectacle Management would possibly manage the facility.

The overall PAC Steering Committee recommend to the Board of Aldermen in December of 2018 that the city engage Spectacle Management based on Spectacle stellar competent track record as being a qualified operator. It should be noted, since this summer in good faith Spectacle Management has worked alongside the PAC Steering Committee to design and continue developing a feasible project that will make the city proud.

Relative to the process, this MOA is the 1st step in a multi-step contracting process. This initial MOA was developed to give both parties a comfort level that once a design is further along a more detailed operator agreement will be put into place.

The Office of Economic Development recommends entering into this MOA for operational services with Spectacle Management.