FINANCE COMMITTEE

JUNE 3, 2020

7:00 PM Call in Number: 1-978-990-5298 Access Code: 273974

If there is a problem with the audio, please dial *603-821-2049* to advise

---

ROLL CALL

COMMUNICATIONS

From: Dan Kooken, Purchasing Manager
Re: Contract for 2020 Pavement Preservation Program (Value: $242,477) Department: 160 Admin/Engineering; Fund: Bond

From: Dan Kooken, Purchasing Manager
Re: Contract for 2020 Sidewalk Program (Value: $171,759) Department: 161 Streets; Fund: Capital

From: Dan Kooken, Purchasing Manager
Re: Change Order No. 1 to the 2020 Sewer Replacement Project (Value: $975,125) Department: 169 Wastewater; Fund: Bond

From: Dan Kooken, Purchasing Manager
Re: Change Order No. 2 to the 2019 Paving Program (Value: $94,510) Department: 160 Admin/Engineering; Fund: Trust

From: Dan Kooken, Purchasing Manager
Re: MVR, Tax, Assessing, City Clerk Remodel Due to COVID 19 (Value: $32,500) Department: 129 City Buildings; Fund: GOFEER

UNFINISHED BUSINESS

NEW BUSINESS – RESOLUTIONS

NEW BUSINESS – ORDINANCES

RECORD OF EXPENDITURES

GENERAL DISCUSSION

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT

THE CITY OF NASHUA

Administrative Services

Purchasing Department

"The Gate City"

May 28, 2020
Memo #20-106

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CONTRACT FOR 2020 PAVEMENT PRESERVATION PROGRAM (VALUE: $242,477)
DEPARTMENT: 160 ADMIN/ENGINEERING; FUND: BOND

Please see the attached communication from Daniel Hudson, P.E., City Engineer, dated May 28, 2020 for information related to this contract.

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

The City Engineer, Board of Public Works (May 28, 2020 BPW meeting) and the Purchasing Department recommend the approval of this contract in an amount of **$242,477** to **Sealcoating, Inc.** of **Braintree, MA.**

Respectfully,

Dan Kooken
Purchasing Manager

Cc: D Hudson L Fauteux

229 Main Street • Nashua, New Hampshire 03061 • Phone (603) 589-3330 • Fax (603) 589-3233

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: May 28, 2020

From: Daniel Hudson, P.E., City Engineer
Engineering Department

Re: 2020 Pavement Preservation Program - Crack Sealing

C. Motion: To approve the award of the construction contract with for the 2020 Pavement Preservation Program (Crack Sealing) to Sealcoating, Inc. of Braintree, MA in an amount of $242,477. Funding through Department: 160 Admin/Engineering; Fund: Bond; Activity: Paving.

Attachment: 2020 Pavement Preservation Program Crack Sealing Map

Discussion: The 2020 Pavement Crack Sealing Program is expected to crack seal approximately 34 miles of streets. This will include cleaning and sealing of construction and random cracks in the street. Once the cracks are free from debris, dirt, or vegetation, crack sealant will be applied through a high pressure hose line and applicator shoe.

Formation of cracks in the roads is inevitable and will develop as the asphalt pavement undergoes oxidation and deterioration. Once the cracks are sealed with an approved sealant, it slows the rate of their formation in pavements over time and decreases the amount of moisture penetrating the asphalt layers.

The streets selected in this program are in reasonably good condition (Pavement Condition Index [PCI] in the range of 60 to 90). This type of treatment is more of a routine maintenance with the goal of extending the pavement life and delaying the need for more extensive treatments. Majority of the streets that are selected in this program are residential streets and few are arterial/major roads.

The contract was advertised on March 6, 2020 and non-mandatory pre-bid meeting was held on March 11, 2019. However, no contractor attended. The bid due date has been extended to May 15th due to Covid-19. Given below is the list of the bids:

Sealcoating, Inc. of Braintree, MA	$ 242,477
Superior Sealcoat, Inc., Wilmington, MA	$ 509,527

Sealcoating, Inc. of Braintree, MA is the qualified low bidder. References have been checked and were found to be acceptable.

2020 PAVEMENT PRESERVATION PROGRAM

IFB0265-040320

Construction Specifications
and
Contract Documents

STATE OF NEW HAMPSHIRE
DANIEL HUDSON
No. 10522
LICENSED
PROFESSIONAL ENGINEER
03/05/2020

Prepared By:

City of Nashua, New Hampshire
Division of Public Works
Engineering Department

March 2020

TABLE OF CONTENTS

DIVISIONS

1. INVITATION FOR BID .....

2. INSTRUCTIONS FOR BIDDERS.....

3. BID FORM, BID BOND, SCHEDULE OF VALUES, CONTRACTOR'S QUALIFICATIONS .....

4. PERFORMANCE AND PAYMENT BONDS, CERTIFICATE OF LIABILTY INSURANCE .....

5. AGREEMENT .....

6. GENERAL CONDITIONS .....

7. PROSECUTION OF WORK .....

8. EXHIBITS .....

   A. Notice of Award
   B. Notice to Proceed
   C. Change Order
   D. Certificate of Substanial Completion
   E. Certificate of Final Completion
   F. Consent of Surety
   G. Contractor's Affidavit
   H. Contractor's Final Completion and Waiver of Lien

9. TECHNICAL SPECIFICATIONS .....

   A. NHDOT Supplemental Specifications (2016 Edition) – updated July 6, 2018
   B. Technical Specifications

DIVISION 1

INVITATION FOR BID

THE CITY OF NASHUA

Financial Services

Purchasing Department

"The Gate City"

March 16, 2020

IFB0265-040320

2020 PAVEMENT PRESERVATION PROGRAM

ADDENDUM #1

Information in this document becomes a part of the original Invitation to Bid.

Addendum #1 is issuing a Preservation Map and revising the Bid to change the Bid Due Date from 04/03/2020 to 04/10/2020.

All other aspects of the original document remain the same.

Please sign below to indicate receipt of this additional information and include this page with your IFB submittal.

Thank you,

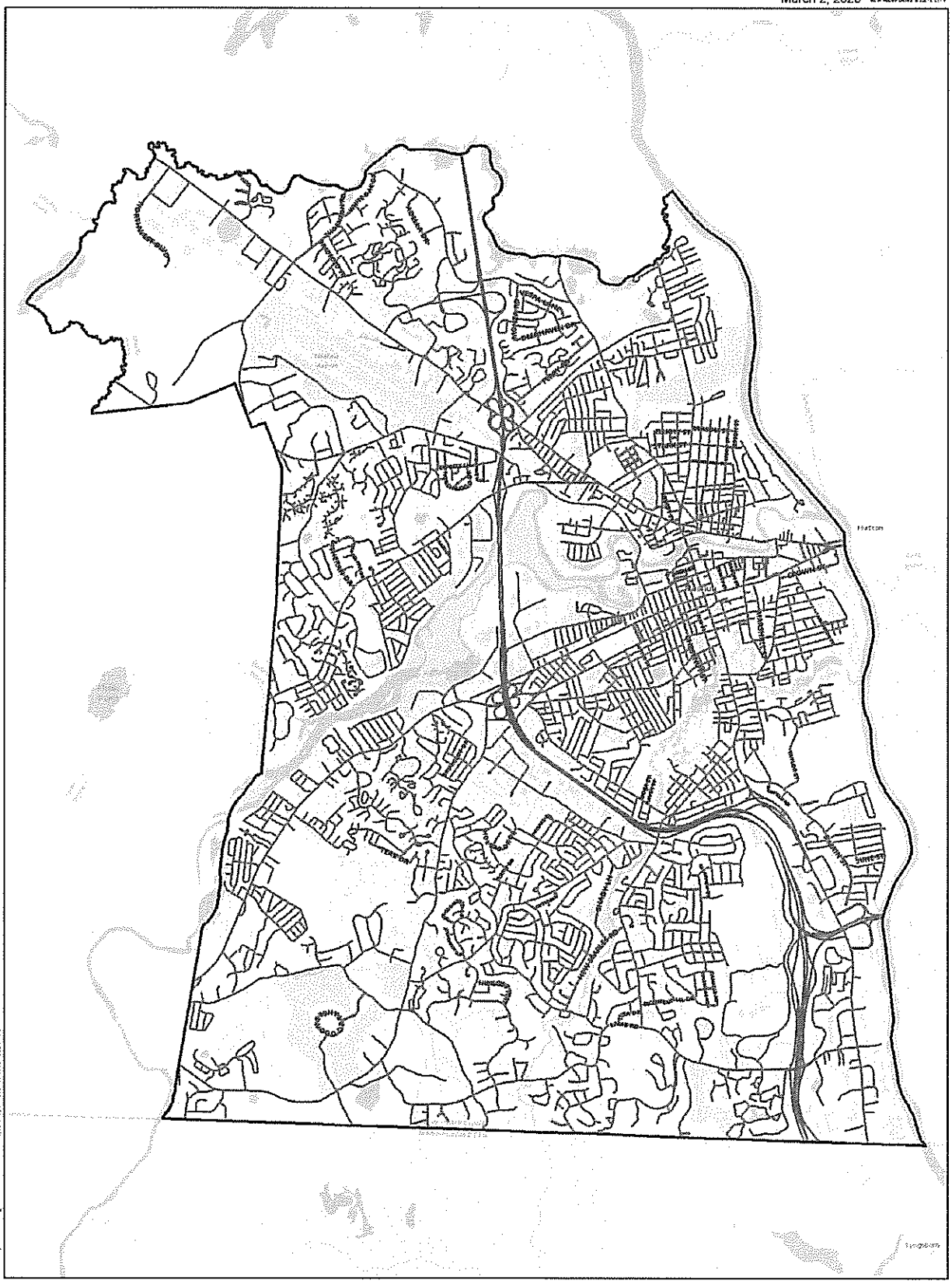
Dan Kooken
Purchasing Manager
kookend@nashuanh.gov

Addendum # 1 received and incorporated into our submittal for IFB0265-040320.

Please sign and include this addendum in your proposal package.

(Authorized Signature) Richard L. Goodick, Vice President
Sealcoating, Inc. d/b/a indus

March 2, 2020 Nashua



0 1,750 3,500 7,000 Feet

Legend

- Proposed Preservation
- Existing Streets
- Town Boundary

Proposed Street Preservation | City of Nashua

Source: Nashua DPW, NHGRANIT, ESRI

THE CITY OF NASHUA
Administrative Services
Purchasing Department

"The Gate City"

April 8, 2020

IFB0265-040320

2020 PAVEMENT PRESERVATION PROGRAM

ADDENDUM #2

Information in this document becomes a part of the original Invitation to Bid.

Addendum #2 is changing the Bid Due Date from Friday, April 10, 2020 at 3:00 p.m. to Friday, May 15, 2020 at 3:00 p.m.

All other aspects of the original document remain the same.

Please sign below to indicate receipt of this additional information and include this page with your IFB submittal.

Thank you,

Dan Kooken
Purchasing Manager
kookend@nashuanh.gov

Addendum #2 received and incorporated into our submittal for IFB0265-040320.

Please sign and include this addendum in your proposal package.

(Authorized Signature) Richard L. Goodick

May 15, 2020
(Date)

Sealcoating, Inc. d/b/a indus
(Name of Firm)

THE CITY OF NASHUA

Administrative Services

Purchasing Department

"The Gate City"

May 1, 2020

IFB0265-040320

2020 PAVEMENT PRESERVATION PROGRAM

ADDENDUM #3

Information in this document becomes a part of the original Invitation to Bid.

Addendum #3 is allowing this Bid to be submitted via email or Bid Express since Nashua City Hall is scheduled to be closed through 5/15/2020 now.

If emailing your Bid please send to Dan Kooken, City of Nashua Purchasing Manager at the email address shown below:

kookend@nashuanh.gov

Bid Due Date remains Friday, May 15, 2020 at 3:00 p.m. Bid results will be posted on the City of Nashua website www.nashuanh.gov by close of business. Bid copies will be sent to the Engineering Department for review.

All other aspects of the original document remain the same.

Please sign below to indicate receipt of this additional information and include this page with your IFB submittal.

Thank you,

Dan Kooken
Purchasing Manager
kookend@nashuanh.gov

Addendum #3 received and incorporated into our submittal for IFB0265-040320.

Please sign and include this addendum in your proposal package.

(Authorized Signature) Richard L. Goodick, Vice President

May 15, 2020
(Date)

Sealcoating, Inc. d/b/a indus
(Name of Firm)

229 Main Street • Nashua, New Hampshire 03061 • Phone (603) 589-3330 • Fax (603) 589-3233

March 6, 2020

INVITATION TO BID

2020 PAVEMENT PRESERVATION PROGRAM
IFB0265-040320

The City of Nashua, NH invites qualified firms to submit bids for the 2020 Pavement Preservation Program Contract. The work will be at various street locations throughout the City of Nashua and consists primarily of crack sealing. The Contract will be awarded following approval by both the Board of Public Works and the Finance Committee.

The City of Nashua reserves the right to substitute work of similar nature or to add additional work subject to the contract amendment process.

Contractor shall ensure that its activities and activities of its employees are in strict compliance with the Environmental Protection Agency, all applicable federal, state and local statutes, ordinances, regulations and rules, including without limitation, the Federal OSHA of 1970, as amended and the standards and regulations issued hereunder, and all other statues, ordinances, regulations, rules, standards and requirements of common law in relation to industrial hygiene and safety, and the protection of health and the environment.

The City of Nashua would like to emphasize the importance of construction work zone safety. The City of Nashua has adopted the provisions of the Manual on Uniform Traffic Control Devices (MUTCD) for work zone safety. Unless otherwise indicated in this contract, the contract shall follow the requirements of the MUTCD at all roadway construction work zones.

The anticipated Commencement date for the contract is on or about **May 18, 2020**. Project will begin once a written **"Notice to Proceed"** is issued.

Completion times for the project will be as follows:

Substantial completion shall be by **August 21, 2020. Substantial completion is defined in Section 1.01 of the General Terms and Conditions.**

Contract completion shall be by **September 30, 2020**.

INFORMATION FOR 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 **one (1) original and two (2) copies** c/o Central Purchasing, 229 Main Street, Nashua, Room 11 – Basement Floor, Nashua, NH, 03061, in sealed envelopes clearly marked **"IFB0265-040320 2020 Pavement Preservation Program"**. Regardless of the method of submission, bids must be received no later than 3:00 pm on Friday, April 03, 2020. Bids will be opened and publicly read at that time. Results showing all bidders' identities and their respective bid amounts will be available on our website, www.nashua.gov under Services; Bid Opportunities; Bid Results, (Refer to Document **IFB0265-040320**), within twenty-four (24) hours after the opening.

Beginning Friday, March 06, 2020 bid documents will be available electronically from the City of Nashua website: www.nashuanh.gov, under Services, Bid Opportunities; Current Bids; (Refer to Document **IFB0265-040320**). **Please note paper copies will not be available.**

No bid documents are available at the Central Purchasing.

A **Non-Mandatory** pre-bid conference will be held at **10:00 am on Wednesday, March 11, 2020** at the City of Nashua Division of Public Works, 9 Riverside Street, Nashua, NH 03062. The meeting is an opportunity for the City of Nashua to provide an overview the project objectives, and for participants to request additional information directly from City of Nashua staff managing or participating in the project. Bidders are encouraged to attend and participate in the conference.

Bids must be submitted in the format provided and address the items specified in the bid package.

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 of Nashua reserves the right to waive any irregularities when the public interest will be served thereby.

The City of Nashua 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 of Nashua.

Delivery of the 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 the 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.

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 with the City of Nashua to the extent the BIDDER has previously provided goods or services.

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.

All bids are binding for ninety (90) days following the deadline for bids, or until the effective date of any resulting contract, whichever is later.

The contract that the City will be executing with the successful bidder can be found in the Construction Specifications and Contract Documents.

The project timeline is as follows:

	Date	Time/Location
Bid Documents	Friday, March 06, 2020	City Website and Bid Express
Non-Mandatory Pre-bid Meeting	Wednesday, March 11, 2020	10AM DPW Engineering 9 Riverside Street, Nashua, NH
Deadline for Questions to be submitted in writing	Wednesday, March 18, 2020	3PM
Answers/clarifications posted	Monday, March 23, 2020	NOON
Bid Due	Friday, April 03, 2020	3:00 PM Purchasing Department

Vendors are encouraged to submit questions via email; however, the City of Nashua assumes no liability for assuring accurate/complete email transmission/receipt and is not responsible to acknowledge receipt. **Inquiries** must be **submitted in writing**, citing the IFB title, IFB number, Page, Section, and received **no later than 3PM on Wednesday, March 18, 2020.**

Mark Saunders
Senior Staff Engineer
Email: SaundersM@NashuaNH.gov

The City of Nashua will consider all 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 **IFB0265-040320** the City of Nashua website; www.nashuanh.gov, under Services; Bid Opportunities; Current Bids; (Refer to Document **IFB0265-040320) no later than 12 NOON on Monday, March 23, 2020.**

The successful bidder must maintain the following lines of coverage and policy limits for the duration of the contract. Any subcontractors used by the successful bidder are subject to the same coverage and limits and is a subcontractor of the successful bidder and not the City of Nashua. It is the responsibility of the successful bidder to update Certificates of Insurance during the term of the contract. Liability limits are as follows:

- 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

The City of Nashua must be named as an additional insured on all liability certificates.

All bidders and subcontractors at every tier under the bidder will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

It is the responsibility of the Contractor to submit to the City of Nashua certificates of insurance for the Contractor and all other subcontractors prior to the start of the project. It is the responsibility of the Contractor to provide the City of Nashua with updated certificates of insurance for the Contractor and all subcontractors 10 days prior to the expiration of coverage.

The City of Nashua 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.

The successful bidder **will** be required to post a 100% Performance Bond and a 100% Payment Bond in an amount equal to the Contract Award.

Cost of bond premiums to be incorporated into the bid item costs.

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

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 of Nashua. Therefore, this bid request is void as to anyone who is in default on said payments.

The City of Nashua supports the concept of purchasing products that 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 that qualify, please so indicate in a cover sheet by item number and description.

Respectfully,

Amy Girard
City of Nashua Purchasing Agent II
girarda@nashuanh.gov
Phone: 603-589-3330

DIVISION 2

INSTRUCTIONS FOR BIDDERS

TABLE OF CONTENTS
INSTRUCTIONS FOR BIDDERS

Page

Article 1 - Defined Terms 2
Article 2 - Copies of Bidding Documents 2
Article 3 - Qualifications of Bidders. 2
Article 4 - Pre-bid Conference 2
Article 5- Site and Other Areas 2
Article 6 - Interpretations and Addenda 2
Article 7 - Bid Security 3
Article 8 - Contract Times 3
Article 9 - Liquidated Damages 3
Article 10 - Subcontractors, Suppliers and Others 3
Article 11 - Preparation of Bid 4
Article 12 - Basis of Bid; Evaluation of Bids 4
Article 13 - Submittal of Bid 5
Article 14 - Modification and Withdrawal of Bid 5
Article 15 - Opening of Bids 5
Article 16 - Bids to Remain Subject to Acceptance 6
Article 17- Award of Contract 6
Article 18 - Contract Security 6
Article 19 - Signing of Agreement 6
Article 20 - Retainage 7
Article 21 – Appeal by Bidders 7

INSTRUCTIONS FOR BIDDERS

ARTICLE 1 DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:

A. *Bidder* – The individual or entity who submits a Bid directly to OWNER.

B. *Issuing Office* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

C. *Successful Bidder* – The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.

ARTICLE 2 COPIES OF BIDDING DOCUMENTS

2.01 Bidding Documents are available electronically City's web site, www.nashuanh.gov, under Services; Bid Opportunities; Current Bids. Hard copies **are not** available.

2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

ARTICLE 3 QUALIFICATIONS OF BIDDERS.

3.01 To demonstrate Bidder's qualifications to perform the Work, each Bidder must submit a completed Construction Contractor's Qualification for Engineered Projects.

ARTICLE 4 PRE-BID CONFERENCE

4.01 A **NON-MANDATORY** pre-bid conference will be held on the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid. Bidders are required to attend this meeting if you intend to submit a bid. The conference is an opportunity for OWNER and ENGINEER Representatives to overview the project and objectives, and for participants to request additional information directly from City of Nashua staff managing or participating in the project. OWNER will transmit to all prospective Bidders of record such Addenda, as OWNER considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 5 SITE AND OTHER AREAS

5.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.

ARTICLE 6 INTERPRETATIONS AND ADDENDA

6.01 All questions about the meaning or intent of the Bidding Documents are to be directed to ENGINEER. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda and posted on the City of Nashua website. Deadlines for submission of questions can be found on the project timeline contained within the Invitation

for Bids. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.02 Addenda may also be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ENGINEER. Bidders are requested to sign each Addenda issued to indicate receipt of this additional information and must include the signed cover page with Bidders bid submittal.

ARTICLE 7 BID SECURITY

7.01 A Bid must be accompanied by Bid security made payable to OWNER in an amount of five percent (5%) of Bidder's maximum Bid price and in the form of a Bid Bond (on form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.

7.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 10 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of seven days after the Effective Date of the Agreement or 91 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

7.03 Bid security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 8 CONTRACT TIMES

8.01 The number of **calendar** days within which, or the dates by which, the Work is to be (a) substantially completed and (b) also completed and ready for final payment are set forth in the Agreement.

ARTICLE 9 LIQUIDATED DAMAGES

9.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 10 SUBCONTRACTORS, SUPPLIERS AND OTHERS

10.01 Each Bidder must submit a completed List of Subcontractors on the Form furnished with the completed Bid Form. The apparent Successful Bidder, and any other Bidder so requested, shall within seven days after the Bid opening submit to OWNER supplemental information in the form of an experience statement with the pertinent information regarding similar projects and other evidence of qualification of each Subcontractor, Supplier, person or organization if requested by OWNER or ENGINEER. IF OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, OWNER may, before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution and OWNER may consider such price adjustment in evaluating Bids and making the contract award.

10.02 If apparent Successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for

forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Article 6.06 of the General Conditions.

10.03 CONTRACTOR shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom CONTRACTOR has reasonable objection.

ARTICLE 11 PREPARATION OF BID

11.01 The Bid Form is included with the Bidding Documents.

11.02 All blanks on the Bid Form and Bid Schedule(s) must be completed by printing in ink or typed and the Bid signed. A bid price shall be indicated for each Bid item listed therein.

11.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

11.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown below the signature.

11.05 A bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.

11.06 A Bid by an individual shall show the Bidder's name and official address.

11.07 A Bid by a joint venture shall be executed by each joint ventured in the manner indicated on the Bid Form. The official address of the joint venture must be shown below the signature.

11.08 All names must be typed or printed in black ink below the signatures.

11.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.

11.10 The address and telephone number for communications regarding the Bid must be shown.

11.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located. Bidder's state contractor license number for the state of the Project, if any, must also be shown on the Bid Form.

ARTICLE 12 BASIS OF BID; EVALUATION OF BIDS

12.01 *Unit Price*

A. Bidders shall submit a Bid on a unit price or lump sum basis for each item of Work listed in the Bid schedule.

B. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price Bid for each item. The final quantities

and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

12.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowance, if any, named in the Contract Documents as provided in paragraph 11.02 of the General Conditions.

ARTICLE 13 SUBMITTAL OF BID

13.01 The City of Nashua website provides a copy of the Bidding Documents, applicable drawings or specifications, and a sample contract for execution, Each prospective Bidder must complete and submit a submission package of documents that includes:

- Bid Form in its entirety, Pages BF-1 thru BF-7;
- Bid Schedule of Values;
- Bid Bond;
- Construction Contractor's Qualification Statement; and
- Signed cover page of each OWNER issued Addendum .

13.02 A bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to City of Nashua, c/o Central Purchasing, 229 Main Street, Room 11 – Basement Floor, Nashua, NH, 03061.

ARTICLE 14 MODIFICATION AND WITHDRAWAL OF BID

14.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

14.02 If, within twenty-four hours after Bids are opened any Bidder files a duly signed written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, **OWNER may, in its sole discretion, choose to not accept the Bid and return the same to Bidder.** Thereafter, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 15 OPENING OF BIDS

15.01 Bids will be opened at the time and place indicated in the advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids through posting on the City's website.

ARTICLE 16 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

16.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 17 AWARD OF CONTRACT

17.01 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced or conditional Bids. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. OWNER may also reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder. OWNER also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder.

17.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

17.03 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

17.04 In evaluating Bidders, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions..

17.05 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers individuals, or entities to perform the Work in accordance with the Contract Documents.

17.06 If the Contract is to be awarded, OWNER will award the Contract to lowest Bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interests of the Project.

ARTICLE 18 CONTRACT SECURITY

18.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to Performance and Payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by such Bonds.

ARTICLE 19 SIGNING OF AGREEMENT

19.01 When OWNER gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents, which are identified in the Agreement attached thereto. The Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER, including the Performance and Payment Bonds and the Certificate of Insurance. Within 10 days thereafter, OWNER shall deliver one fully signed counterpart to Successful Bidder with a complete set of drawings with appropriate identification.

19.02 A fully executed City of Nashua Purchase Order will accompany the fully signed counterpart to successful Bidder.

ARTICLE 20 RETAINAGE

20.01 Provisions concerning retainage and Contractors' rights to deposit securities in lieu of retainage are set forth in the Contract Agreement, ***Article 6.02 Progress Payments; Retainage.***

ARTICLE 21 APPEAL BY BIDDERS

21.01 Any bidder may appeal a pending bid award prior to award by OWNER. The appellant must:

A. Submit a written protest to the OWNER's Purchasing Manager within five (5) workdays after the bid opening.

B. Describe, in the written protest, the issues to be addresses on appeal.

C. Post, with the written protest, a bond with a surety meeting the requirements of General Condition 5.02 authorized to do business in this state or submit other security in a form approved by OWNER who will hold the bond or security until a determination is made on the appeal.

D. Post the bond or other security in the amount of 25% of the total dollar value of the appellant's bid, up to a maximum bond or other security amount of 250,000.00.

E. Not seek any type of judicial intervention until OWNER has rendered its final decision on the protest.

21.02 Owner will stop award actions until after the OWNER's Purchasing Manager has responded in writing to the protest. If the appellant is not satisfied with the response, the appellant may then protest to the Board of Public Works, who will render a final decision for the OWNER. No bid protests will be heard by the Board of Public Works unless bidder has followed the appeal process.

21.03 If an appeal is granted, the full amount of the posted bond or security will be returned to the appellant. If the appeal is denied or not upheld, a claim may be made against the bond for expenses suffered by the OWNER because of the unsuccessful appeal.

21.04 OWNER is not liable for any costs, expenses, attorney's fees, loss of income, or other damages sustained by the appellant in a bid process.

DIVISION 3

BID FORM
SCHEDULE OF VALUES
BID BOND
CONTRACTOR'S QUALIFICATIONS

BID FORM

PROJECT IDENTIFICATION: 2020 SIDEWALK PROGRAM

CONTRACT IDENTIFICATION AND NUMBER: IFB0851-032620

THIS BID IS SUBMITTED TO:

City of Nashua
Central Purchasing
229 Main Street, City Hall
Room 11 – Basement Floor
Nashua, NH 03061

1.01 The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

2.01 BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 60 days after the day of Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of OWNER.

3.01 In submitting this Bid, BIDDER represents, as set forth in the Agreement, that:

A. BIDDER has examined and carefully studied the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged.

Addendum No.	Addendum Date
1	March 16, 2020
2	April 8, 2020
3	May 1, 2020

B. BIDDER has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

C. BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.

D. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by BIDDER, and safety precautions and programs incident thereto.

E. BIDDER does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.

F. BIDDER is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.

G. BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.

H. BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to BIDDER.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work for which this Bid is submitted.

4.01 BIDDER further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any individual or entity to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

5.01 The requirements of the New Hampshire Revised Statutes Annotated shall apply to this project. The BIDDER is responsible for compliance with all applicable statutes. The entire set of the Revised Statutes Annotated is available online at:

http://gencourt.state.nh.us/rsa/html/indexes/default.html

6.01 BIDDER will complete the Work in accordance with the Contract Documents for the following prices:

SEE ATTACHED SCHEDULE OF VALUES

A. Unit Prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

B. BIDDER acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

7.01 BIDDER agrees that the Work will be substantially completed and completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

7.02 BIDDER accepts the provisions of the Agreement for liquidate damages in the event of failure to complete the Work within the times specified in the Agreement.

8.01 The following documents are attached to and made a condition of this Bid:

A. Bid Form, in its entirety, Pages BF-1 thru BF-7;

B. Bid Schedule of Values;

C. Bid Bond; and

D. Construction Contractor's Qualification Statement.

9.01 Communications concerning this Bid shall be addressed to:
(Contractor's mailing address to be filled in by Bidder)

Sealcoating, Inc d/b/a indus
825 Granite Street
Braintree, MA 02184

10.01 The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

Submitted by:

Name of Organization: Sealcoating, Inc d/b/a indus
Name of Individual: Richard L. Goodick
Title: Vice President
Address: 825 Granite Street
Braintree, MA 02184

Telephone: 781-428-3400

Submitted to:

Name: City of Nashua c/o Central Purchasing
Address: 229 Main Street
Room 11-Basement Floor
Nashua, NH 03061
Telephone: 603-589-3330

SUBMITTED on May 15, 20 20

A Corporation

Corporation Name: Sealcoating, Inc. d/b/a indus (SEAL)

Date and State of Incorporation: December 6, 1957, Massachusetts

List of Executive Officers

Name	Title
Elizabeth Wuori	President
Richard L. Goodick	Vice President
April Durant	Clerk/Secretary

Type (General Business, Professional, Service, Limited Liability): Service

By: _____

(Signature -- attach evidence of authority to sign)

Name (typed or printed): Richard L. Goodick

Title: Vice President (Corporate Seal)

Attest: _____

(Signature of Corporate Secretary)

Business Address: 825 Granite Street
Braintree, MA 02184

Phone No.: 781-428-3400 Fax No.: 781-428-3430

Date of Qualification to do business is December 6, 1957

A Joint Venture

Joint Venture Name: _____ (SEAL)

Date and State of Organization: _____

Name, Address and Form of Organization of Joint Venture Partners: (Indicate managing partner by an asterisk *)

indus
roads. bridges. airports.

Certificate of Corporate Vote

At a meeting of the Board of Directors of SEALCOATING, INC. DBA INDUS held on January 21, 2020, at which all the Directors were present or waived notice, it was

VOTED: That Elizabeth Wuori, President of this Company and Richard L. Goodick, Vice President of this Company, be and he hereby are authorized to execute bids, contracts and bonds in the name and behalf of said Company, and affix its corporate seal thereto; and such execution of any contract or obligation in this company's name on its behalf by such President and Vice President, under seal of the Company, shall be valid and binding upon this Company.

A true copy

ATTEST: April Durant
Clerk/Secretary

Place of business: Braintree, MA
Date of this contract: April 10, 2020

I hereby certify that I am the clerk of SEALCOATING, INC. DBA INDUS that Elizabeth Wuori and Richard L. Goodick are respectively the duly elected President and Vice President of said Company, and that the above vote has not been amended or rescinded and remains in full force and effect as of this date.

April Durant
April Durant, Clerk

LIST OF SUBCONTRACTORS
(to be submitted with bid)

The name and address of each subcontractor who will be paid at least five percent (5%) of the prime contractor's total bid shall be listed below. To be deemed a responsive bid, this form must be submitted even if no subcontractors are required to be listed. In that case, the bidder should state "None" (or similar language stating that no subcontractors need to be listed) in the space below. (Refer to General Condition 6.09.H)

Name	Address of Subcontractor	Portion of Work
NONE		

City of Nashua

2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
ABBOTT ST	MERRIMACK ST	NASHVILLE ST	1108	28	31024	$1,483.00
ACTON ST	PINE ST	HUNT ST	962	28	26936	$1,285.00
ADELLA DR	TINKER RD	DEAD END	1392	28	38976	$1,867.00
ALPINE ST	HAINES ST	KING ST	251	22	5522	$271.00
AMHERST TER	AMHERST ST	BROAD ST	418	18	7524	$359.00
ANDERS LN	S MAIN ST	DEAD END	784	25	19600	$943.00
ARLINGTON ST	120' S OF WILLIAMS ST	BURKE ST	1488	38	56544	$2,681.00
ASHBY CIR	SKYLINE DR	CUL-DE-SAC	235	26	6110	$291.00
AYER RD	BLOOMINGDALE DR	100' S OF RYAN WAY	557	24	13368	$641.00
BADGER ST	WEST HOLLIS ST	KINSLEY ST	773	20	15460	$737.00
BAILEY ST	BROAD ST	GREENLAY ST	855	34	29070	$1,390.00
BAKER ST	MILK ST	HILLSIDE DR	452	22	9944	$471.00
BARTLETT AVE	CONCORD ST	WELLINGTON ST	1223	28	34244	$1,631.00
BAYBERRY CIRCLE	CHERRYWOOD DR	CUL-DE-SAC	490	25	12250	$584.00
BEASOM ST	CONCORD ST	EDSON ST	1691	22	37202	$1,795.00
BELFAST ST	COBURN AVE	PEMBERTON RD	374	27	10098	$482.00
BELKNAP ST	BRIDGE ST	EAST HOLLIS ST	740	30	22200	$1,059.00
BERKSHIRE ST	AMHERST ST	PINE HILL AVE	549	24	13176	$628.00

City of Nashua
2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
BEVERLEE DR	HILLS FERRY RD	DEAD END	1474	25	36850	$1,766.00
BIBLE WAY	BIRCH HILL DR	CUL-DE-SAC	769	28	21532	$1,013.00
BICENTENNIAL DR	EAST DUNSTABLE RD	THOREAU DR	2195	28	61460	$2,939.00
BRADFORD ST	THORNTON RD	SUNAPEE ST	1668	27	45036	$2,143.00
BRIARCLIFF DR	WHITE PLAINS DR	FORDHAM DR	1689	32	54048	$2,520.00
BRICK MANOR DR	BROAD ST	CUL-DE-SAC	386	27	10422	$528.00
BRIDGE ST WB	600' E OF BRIDGE ST	BRIDGE ST	539	30	16170	$780.00
BROOKLINE ST	GORDON ST	CUSHING AVE	770	25	19250	$918.00
CARDIFF RD	NEWMAN DR	WESTWOOD DR	1007	30	30210	$1,597.00
CARNATION CIR	FORSYTHIA DR	CUL-DE-SAC LOOP	509	25	12725	$626.00
CARTER CIR	CUSTOM ST	CUL-DE-SAC	210	28	5880	$300.00
CENTRAL ST	100' E OF ASH ST	WALNUT ST	660	46	30360	$1,448.00
CHAPEL HILL DR	BROAD ST	DURHAM ST	1552	27	41904	$1,986.00
CHARLOTTE ST	CHARLOTTE AVE	BEAUVIEW AVE	630	30	18900	$889.00
CHAUCER RD	SPENCER DR	COLERIDGE RD	1653	28	46284	$2,233.00
CHESTNUT ST	FACTORY ST	WEST HOLLIS ST	1251	42	52542	$2,232.00
CHOKEBERRY LN	CHERRYWOOD DR	CUL-DE-SAC	680	25	17000	$829.00
CHURCH ST	COURT ST	HARTSHORN AVE	283	30	8490	$416.00

City of Nashua
2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
CLEARVIEW DR	MASEFIELD RD	CUL-DE-SAC	1383	28	38724	$1,871.00
COLERIDGE RD	SPENCER DR	WHITMAN DR	1384	28	38752	$1,868.00
COMMERCIAL ST	TEMPLE ST	HUDSON ST	792	38	30096	$1,435.00
CONNECTICUT AVE	MASSACHUSETTS DR	VIRGINIA DR	505	30.5	15402.5	$751.00
COURT ST	PARK ST	TEMPLE ST	490	26	12740	$594.00
COURTLAND ST	CONCORD ST	TOLLES ST	1653	25	41325	$1,952.00
CRESTWOOD LANE	MIDDLE DUNSTABLE RD	CUL-DE-SAC LOOP	914	28	25592	$1,203.00
CROWN ST	ALLDS ST	700' E OF HOBBS AV	2327	34	79118	$3,796.00
CURTIS DR	RIDGE RD	CUL-DE-SAC	781	30	23430	$1,146.00
CUSTOM ST	TENBY DR	HARRIS RD	1203	28	33684	$1,601.00
CYPRESS LN	RUGBY RD	HIGH PINE AVE	1503	28	42084	$2,017.00
DAMPER CIR	TINKER RD	CUL-DE-SAC LOOP	973	28.5	27730.5	$1,361.00
DARTMOUTH ST	DOUGLAS ST	SARGENTS AVE	819	27	22113	$1,043.00
DEDHAM ST	BROAD ST	RANDOLPH ST	388	30	11640	$555.00
DEERHAVEN DR	MANCHESTER ST	MONZA RD	2704	29	78416	$3,736.00
DENVER DR	UPSTONE DR	DEAD END	446	30	13380	$651.00
DORA ST	LUND RD	CUL-DE-SAC	984	30	29520	$1,445.00
DUMAINE AVE	AMHERST ST SB	1100' S OF AMHERST ST SB	1090	26	28340	$1,478.00

City of Nashua
2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
DURHAM ST	DOVER ST	DUBLIN AVE	1119	28.5	31891.5	$1,521.00
EAST OTTERSON ST	MAIN ST	HARBOR AVE	1336	28	37408	$1,801.00
EATON ST	LEDGE ST	WEST HOLLIS ST	487	30	14610	$691.00
EDGEWOOD AVE	ASHLAND ST	AMHERST ST	728	28.5	20748	$980.00
EDSON ST	EAST STARK ST	DEAD END	1082	30	32460	$1,561.00
ELAINE DR	FLINTLOCKE DR	CUL-DE-SAC	1012	28	28336	$1,369.00
ELLIOTT ST	CONCORD ST	FARLEY ST	1455	29	42195	$2,003.00
ELM ST	WEST HOLLIS ST	MULBERRY ST	408	31.5	12852	$618.00
ELM ST	KINSLEY ST	OTTERSON ST	732	27	19764	$927.00
FAWN LN	NOVA RD	TODD RD	717	28	20076	$977.00
FERRY RD	MANCHESTER ST	SAINT LAURENT ST	3921	30	117630	$5,556.00
FIRESIDE CIR	TINKER RD	CUL-DE-SAC	370	28	10360	$528.00
FLAGSTONE DR	CYPRESS LN	HIGH PINE AVE	683	30	20490	$970.00
FOUNDRY ST	QUINCY ST	MASON ST	484	17	8228	$418.00
FULTON ST	LAKE ST	DEAD END	660	20	13200	$640.00
GORDON ST	ADAMS ST	MANCHESTER ST	864	26	22464	$1,056.00
GOSSELIN RD	WESTGATE CROSSING	TEAK DR	896	28	25088	$1,211.00
GOVERNORS LN	RIDGE RD	CUL-DE-SAC LOOP	913	28	25564	$1,245.00

City of Nashua

2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
GRANITE ST	LOCK ST	SUMMER ST	628	20	12560	$591.00
HAINES ST	ARLINGTON ST	GILLIS ST	879	32	28128	$1,328.00
HARTSHORN AVE	CHURCH ST	DEAD END	177	28	4956	$278.00
HEARTHSIDE DR	TINKER RD	CUL-DE-SAC	654	28	18312	$896.00
HIBISCUS WAY	FORSYTHIA DR	CHERRYWOOD DR	2050	28	57400	$4,058.00
HIGH PINE AVE	PINE HILL RD	DEAD END	1814	28	50792	$1,378.00
HIGH ST	WALNUT ST	MAIN ST	880	36	31680	$1,511.00
HIGHLAND PL	HIGHLAND ST	DEAD END	193	21	4053	$204.00
HILL ST	ADAMS ST	BROOKLINE ST	691	26.5	18311.5	$873.00
HOLBROOK DR	YARMOUTH DR	BRICKYARD LN	2127	28	59556	$2,858.00
HOLDEN RD	PINE HILL RD	DEAD END	574	28	16072	$755.00
HOWARD ST	SPRUCE ST	250' S OF WORCESTER ST	594	39	23166	$1,105.00
HUDSON ST	COMMERCIAL ST	ALLDS ST	497	40	19880	$973.00
HYACINTH DR	MCKENNA DR	CUL-DE-SAC	1482	28	41496	$2,023.00
HYDRANGEA RD	CHERRYWOOD DR	CUL-DE-SAC	449	24	10776	$532.00
INDIAN ROCK RD	PINE HILL RD	530' N OF PINE HILL RD	531	29	15399	$734.00
INTERVALE ST	BITIRNAS ST	TAMPA ST	1034	23	23782	$1,114.00
JUDITH DR	EAST DUNSTABLE RD	STANLEY LN	715	28	20020	$940.00

City of Nashua
2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
JUNE ST	ELGIN ST	DUDLEY ST	1324	28	37072	$1,762.00
KERRY LN	RALEIGH DR	RALEIGH DR	770	28	21560	$1,028.00
KIRK ST	AMHERST ST	BROAD ST	557	21	11697	$558.00
LAMB RD	MIDDLE DUNSTABLE RD	EAST DUNSTABLE RD	1322	23.5	31067	$1,482.00
LEMOINE ST	WILDER ST	PINE ST	319	20	6380	$304.00
LISA DR	LAMB RD	EAST DUNSTABLE RD	1167	27	31509	$1,492.00
LOGAN RD	NORTHWOOD DR	NORTHWOOD DR	830	30	24900	$1,183.00
LONE STAR DR	NEW SEARLES RD	CUL-DE-SAC	616	28	17248	$853.00
LUCIER ST	LOCK ST	MORGAN ST	360	20	7200	$343.00
LUTHERAN DR	BROAD ST	DURHAM ST	2957	28	82796	$3,862.00
LYNDE ST	ROCKLAND ST	WEBSTER ST	293	24	7032	$345.00
MACDONALD DR	MCKENNA DR	MCKENNA DR	2198	28	61544	$2,966.00
MARSHALL ST	BOWERS ST	HARBOR AVE	1970	26	51220	$2,433.00
MASON ST	EAST PEARL ST	EAST HOLLIS ST	1029	26	26754	$1,291.00
MCCOY AVE	SAINT LAURENT ST	DEAD END	273	30	8190	$391.00
MEADOWBROOK DR	HARRIS RD	PALISADE DR	899	30	26970	$1,274.00
MECHANIC ST	WATER ST	FACTORY ST	358	23	8234	$398.00
MELROSE ST	DEAD END (W)	DEAD END (E)	942	28	26376	$1,258.00

City of Nashua
2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
MONZA RD	TINKER RD	DEERHAVEN DR	2179	30	65370	$3,125.00
MORRILL ST	LOCK ST	WHITNEY ST	212	18	3816	$182.00
MURPHY DR	350' N OF NORTHEASTERN BLVD	DEAD END	617	34	20978	$1,015.00
NASHVILLE ST	ABBOTT ST	CONCORD ST	291	25	7275	$347.00
NEW SEARLES RD	EAST DUNSTABLE RD	SEARLES RD	4047	30	121410	$5,742.00
NORTH GROTON ST	SEVENTH ST	FIRST ST	1228	23	28244	$1,334.00
NORTHWEST BLVD	650' S OF AMHERST ST SB	CUL-DE-SAC	4211	32	134752	$6,512.00
NORTHWOOD DR	DUNLOGGIN RD	CYPRESS LN	3036	30	91080	$4,361.00
NORTON ST	LATON ST	SUMMER ST	672	22	14784	$710.00
NYE AVE	ALLDS ST	DEAD END	385	23	8855	$416.00
OLDFIELD RD	CLEMENT ST	DEAD END	1025	26	26650	$1,306.00
ONEIDA CIR	LYNN ST	CUL-DE-SAC	306	28	8568	$453.00
ORCHARD AVE	MAIN ST	FIFIELD ST	1117	26	29042	$1,385.00
PAIGE AVE	TOLLES ST	DEAD END	363	23	8349	$398.00
PEARSON AVE	MAIN ST	DEAD END	433	25	10825	$527.00
POLLARD RD	ROBINHOOD RD	NOTTINGHAM DR	1364	28	38192	$1,832.00
POND VIEW CIR	TINKER RD	CUL-DE-SAC	545	28	15260	$736.00
POSITIVE PL	GRAND AVE	DEAD END	561	24	13464	$647.00

City of Nashua

2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
PRINCETON RD	ROBY RD	HILLS FERRY RD	744	28	20832	$979.00
QUINCY ST	EAST PEARL ST	EAST HOLLIS ST	969	26	25194	$1,226.00
RAILROAD SQ	CLINTON ST	CANAL ST	446	50	22300	$840.00
RAINBOW DR	SALMON BROOK DR	CUL-DE-SAC	619	28	17332	$844.00
RANDOLPH ST	DEDHAM ST	PIERMONT ST	319	29	9251	$449.00
RAVEN ST	LUND RD	CUL-DE-SAC	989	32	31648	$1,537.00
REDWOOD CIR	GOSSELIN RD	WESTGATE CROSSING	365	21	7665	$361.00
RITTER ST	KINSLEY ST	ROSS ST	978	24	23472	$1,113.00
ROCKY HILL DR	FLINTLOCKE DR	CONANT RD	1087	28.5	30979.5	$1,486.00
RUGBY RD	DUNLOGGIN RD	HUNTERS LN	845	35	29575	$1,410.00
S MAIN ST	OSGOOD RD	DEAD END	3134	27.5	86185	$4,043.00
SACRED HEART DR	BALCOM ST	NATIONAL ST	226	37	8362	$381.00
SAINT CAMILLE ST	SAINT LAZARE ST	INGALLS ST	396	30	11880	$1,933.00
SAINT LAURENT ST	BLOOMINGDALE DR	RTE 3	1331	28	37268	$1,735.00
SANDSTONE DR	HEARTHSIDE DR	DAMPER CIR	1208	28	33824	$1,573.00
SAWMILL RD	WAVERLY ST	DEAD END	595	26	15470	$764.00
SCHOOL ST	WALNUT ST	HIGH ST	684	38	25992	$1,262.00
SHADY LN	PALISADE DR	NEW SEARLES RD	3094	31	95914	$4,531.00

City of Nashua
2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
SHATTUCK ST	CROSS ST	TOLLES ST	565	28	15820	$746.00
SHETLAND RD	LANGHOLM DR	LANGHOLM DR	926	26	24076	$1,146.00
SOUHEGAN DR	TITAN WAY	CUL-DE-SAC	926	29	26854	$1,271.00
SOUTHGATE DR	EAST DUNSTABLE RD	DEAD END	379	28	10612	$522.00
SPALDING AVE	SPALDING ST	DEAD END	416	23	9568	$462.00
STABLE RD	GOVERNORS LN	CUL-DE-SAC	354	28	9912	$491.00
STANLEY LN	JENSEN ST	CUL-DE-SAC	1078	28	30184	$1,457.00
STARK ST	RESERVOIR ST	CONCORD ST	1607	28	44996	$2,137.00
SULLIVAN ST	BROAD ST	AMHERST ST	1129	24	27096	$1,286.00
SUMMER ST	KENDRICK ST	TOLLES ST	803	28	22484	$1,095.00
SUMMIT ST	TAYLOR ST	DEAD END	480	31	14880	$726.00
SUNSHINE CT	HAMPTON DR	CUL-DE-SAC	383	28	10724	$529.00
SWIFT DR	WHITMAN RD	CHAUCER RD	697	28	19516	$943.00
TANGLEWOOD DR	GILSON RD	TANGLEWOOD DR	4537	28	127036	$6,092.00
TAYLOR ST	1225' N OF FAIRWAY ST	FAIRWAY ST	1225	26.5	32462.5	$1,575.00
TEAK DR	JOLORI LN	CUL-DE-SAC	2354	28	65912	$3,126.00
TEMPLE ST	150' E OF TEMPLE PL	WILLIAMS CT	513	33.5	17185.5	$801.00
TENTH ST	LEDGE ST	WILL ST	633	30	18990	$906.00

City of Nashua
2020 Pavement Preservation Program

SCHEDULE OF VALUES

Street Name	From	To	Approx. Length (LF)	Approx. Width (LF)	Approx. Area (LF)	Lump Sum Price
THORNTON RD	AMHERST ST NB	TOWN LINE	3684	26	95784	$4,566.00
VERMONT AVE	VIRGINIA DR	MASSACHUSETTS DR	498	30	14940	$700.00
VESPA LANE	MONZA RD	VALIANT LN	2205	26	57330	$2,723.00
WADLEIGH ST	GILMAN ST	LEWIS ST	440	22	9680	$468.00
WHITE AVE	EAST PEARL ST	WORCESTER ST	409	21	8589	$400.00
WHITE OAK DR	TINKER RD	THORNTON RD	2183	28	61124	$2,899.00
WHITTEMORE PL	COX ST	CUL-DE-SAC	370	25	9250	$460.00
WILLOW ST	LEDGE ST	DEAD END	149	22	3278	$131.00
WINTER ST	CHARLES ST	GREEN ST	624	18	11232	$472.00
WOOD ST	LATON ST	DEAD END	2612	30	78360	$3,751.00
WOODWARD AVE	KINSLEY ST	GILMAN ST	352	30	10560	$495.00
YALE RD	PRINCETON RD	COLGATE RD	452	28	12656	$596.00
YVONNE ST	WEST HOLLIS ST	DEAD END	241	25	6025	$300.00

TOTAL BID PRICE (IN FIGURES) $ 242,477

TOTAL BID IN WORDS Two Hundred Forty Two Thousand Four Hundred Seventy Seven dollars and

Zero cents

2020 PAVEMENT PRESERVATION PROGRAM

IFB0265-040320

SCHEDULE OF VALUES

SIGNATURE PAGE

Contractor: Sealcoating, Inc. d/b/a indus

Address: 825 Granite Street, Braintree, MA 02184

Authorized Signature: Richard L. Goodick, Vice President

Date: May 15, 2020

Phone: 781-428-3400

Email Address: alan.viall@indusinc.com

indus
roads. bridges. airports.

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

BY: _____
Richard L. Goodick

TITLE: Vice President

DATE: May 15, 2020

indus
roads. bridges. airports.

STATE TAX ATTESTATION FORM

Pursuant to M.G.L. Ch. 62C, Sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

Sealcoating, Inc. d/b/a indus
Corporate Name (Mandatory)

04-3520246
Federal Identification Number

BY: Richard L. Goodick

TITLE: Vice President

DATE: May 15, 2020

BID BOND

Conforms with The American Institute of Architects, A.I.A. Document No. A-310

KNOW ALL BY THESE PRESENTS, That we, Sealcoating Inc. DBA indus

825 Granite Street, Braintree, Massachusetts 02184

as Principal, hereinafter called the Principal,

and the Fidelity and Deposit Company of Maryland,

of 100 High Street - Suite 1400, Boston, MA 02110, a corporation duly organized under

the laws of the State of Illinois, as Surety, hereinafter called the Surety, are held and firmly bound unto

City of Nashua, NH as Obligee, hereinafter called the Obligee,

in the sum of 5% of Bid Amount

Dollars ($ 5% of Bid Amount), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Contract # IFB0265-040320 2020 Pavement Preservation Program

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee 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.

Signed and sealed this 3rd day of April, 2020.

Witness

Sealcoating Inc. DBA indus (Seal)
Principal

Richard L. Goodick, Vice President Title

Witness

Fidelity and Deposit Company of Maryland

By Ellen J. Young Attorney-in-Fact

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **ROBERT D. MURRAY, Vice President,** in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Frank J. SMITH, Donna M. ROBIE, Christina D. HICKEY and Ellen J. YOUNG, all of Natick, Massachusetts, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND,** this 18th day of April, A.D. 2019.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: _____
Assistant Secretary
Dawn E. Brown

_____
Vice President
Robert D. Murray

State of Maryland
County of Baltimore

On this 18th day of April, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **ROBERT D. MURRAY, Vice President, and DAWN E. BROWN, Assistant Secretary,** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2019

POA-F

CONSTRUCTION CONTRACTOR'S QUALIFICATION STATEMENT

1. On Schedule A, attached, list major engineered construction projects completed by this organization in the past five (5) years. (If joint venture, list each participant's projects separately).

2. On Schedule B, attached, list current projects under construction by this organization, (If joint venture, list each participant's projects separately).

3. Name of Surety Company and name, address, and phone number of agent.

   Fidelity and Deposit Company of Maryland

   100 High Street, Suite 1400

   Boston, MA 02110

4. Is your organization a member of a controlled group of corporations as defined in I.R.C. Sec. 1563?

   ☐ Yes ☒ No

   If yes, show names and addresses of affiliated companies.

5. Furnish on Schedule C, attached, details of the construction experience of the principal individuals of your organization directly involved in construction operations.

6. Has your organization ever failed to complete any construction contract awarded to it?

   ☐ Yes ☒ No

   If yes, describe circumstances and provide details on attachment.

7. Has any Corporate officer, partner, joint venture participant or proprietor ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principal of another organization?

   ☐ Yes ☒ No

   If yes, describe circumstances and provide details on attachment.

8. In the last five years, has your organization ever failed to substantially complete a project in a timely manner?

   ☐ Yes ☒ No

   ☐ Yes ☐ No

   If yes, describe circumstances and provide details on attachment.

9. Does your organization now have any legal suits or arbitration claims pending or outstanding against it or any officers?

   ☐ Yes ☒ No

   If yes, describe circumstances and provide details on attachment.

10. Has your organization had a contract partially or completely terminated for default (cause) within the past five years?

☐ Yes ☒ No

If yes, describe circumstances and provide details on attachment.

11. List the licensed categories of work that your company normally performs with its own workforce. Crack Sealing, Micro Surfacing, Pavement Restoration

12. If required, can your organization provide a bid bond for this project?

☒ Yes ☐ No

13. What is your approximate total bonding capacity?

☐ $500,000 to $2,000,000

☐ $2,000,000 to $5,000,000

☐ $5,000,000 to $10,000,000

☒ $10,000,000 or more

14. Describe the permanent safety program you maintain within your organization. Use attachment if necessary.

With a department dedicated to Safety led by a full time Certified Safety Profession, Sealcoating, Inc. d/b/a indus'permanent safety program is designed to maitain compliance with all Federal and State Laws, OSHA and MUTC as the continuously evolve. Bty design, our program prioritizes the saftey of our employees and the general public while meeting the demands of a rigorous production schedule.

15. Furnish the following information with respect to an accredited banking institution familiar with your organization.

Name of Bank	Eastern Bank
Address	265 Franklin Street. Floor 2, BOS 203
	Boston, MA 02110
Account Manager	James L. Murphy, Vice President
Telephone	617-897-1069

I hereby certify that the information submitted herewith, including any attachment is true to the best of my knowledge and belief.

By: Richard L. Goodick

Title: Vice President

Dated May 15, 2020

New Hampshire DOT
Department of Transportation

Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

William Cass, P.E.
Assistant Commissioner

March 11, 2020

Sealcoating, Inc., dba indus
825 Granite Street
Braintree, MA 02184

Your request for prequalification in order that you may bid on construction projects advertised and let by this Department has been reviewed and analyzed by the Prequalification Committee. The Department assigns ratings in various classifications, some of which are listed below:

Road Construction	Bridge Construction
Site	Utilities
Water	Sewer
Traffic Signals	Highway Lighting
Building Construction	Bridge Painting
Mechanical	Electrical
Asbestos Removal	Paving

Eligibility for bidding on a particular project will be determined by the Prequalification Committee at the time that the request for plans, specifications and a proposal is made. Their decision will be based on the magnitude and complexity of the project in question and on the requesting firm's capability to successfully prosecute to completion the particular project.

Your firm has been rated on a project-by-project basis for those projects in the following classifications: **Pavement restoration, micro surfacing, crackseal, sealcoating and rumble strips.** Your prequalification will expire on **March 31, 2021.**

All prequalification information supplied to this office will be held in strict confidence and used for no other purpose than for prequalification for bidding on projects advertised and let by this Department.

Sincerely,

Michelle Drouin

Michelle Drouin
Prequalification Administrator

Schedule A – List of Major Engineered Construction Projects Completed in the Past Five (5) Years

Name, Location and Description of Project	Owner	Design Engineer	Date Completed	Contract Price	Reference/Contact & Address & Phone

PLEASE SEE ATTACHED

Indus Crack Sealing References - Last 5 Years

Job (Recent List)	Address 1	Account	State	Zip Code	Person	Phone Full Number	Contract Start Date	Start Date	Contract Exp Date	Revised Contract Amount ($)
02-15-0043: Northampton PG & Fibers 2015	Department of Public Works	Northampton, MA; City of	MA	01060-2066	Felix Harvey		03/24/2015			$ 139,838.65
02-15-0051: Seekonk PCRM Crackseal 2015	Department of Public Works	Seekonk, MA: Town of	MA	02771	Robert Lamoureux	508 336-7407	04/01/2015	05/04/2015	03/31/2018	$ 219,051.00
02-15-0053: Franklin PCRM Crackseal	Department of Public Works	Franklin, MA;Town of	MA	02038	Carlos Rebelo	508 520-4910	03/16/2015		12/31/2015	$ 228,511.26
02-15-0059: Sandwich PCRM Cracksealing BCC 2015	Highway Department	Sandwich, Town of	MA	02563	Paul Tilton	508 833-8002	03/11/2015	04/27/2015	03/31/2016	$ 171,404.28
02-15-0060: Yarmouth BCC PCRM Crackfilling 2015	Highway Department	Yarmouth, MA: Town of	MA	02637	Jim Henderson	508 385-7438	04/01/2015	05/01/2015	03/31/2016	$ 219,849.76
02-15-0061: Harwich BCC PCRM Crack Filling 2015	Department of Highways & Maintenance	Harwich,MA: Town of	MA	02645	Chris Nickerson	508 430-7555	04/01/2015	04/13/2015	03/31/2016	$ 107,445.00
02-15-0158: Fitchburg FRC/PCRM Cracks 2015	Department of Public Works	Fitchburg, MA; City of	MA	01420	Gary Withington	978 829-1901	05/20/2015		05/20/2017	$ 135,691.50
02-15-0161: Methuen FRC Crack Sealing 2015	Department of Public Works	Methuen, MA;City of	MA	01844	Jay Bonanno	978 983-8865	07/01/2015		06/30/2016	$ 197,250.00
02-15-0172: Manchester NH PCRM FY15	Department of Public Works	Manchester, NH; City of	NH	03103-5596	Todd Connors	603 624-6444	06/18/2015		06/18/2016	$ 178,235.54
02-15-0179: Norwalk CT PG Crackseal 2015	125 East Avenue	Norwalk, CT; City of	CT	06851	Drew Berndlmaier	203 854-7791	05/04/2015		12/31/2015	$ 194,165.50
02-15-0184: Dartmouth PG Crackseal LS 2015	Department of Public Works	Dartmouth,MA;Town of	MA	02748-1106	Diane Vieira	508 999-0740x202	06/04/2015			$ 101,645.00
02-15-0206: Easton, MA PCRM Crackseal	Department of Public Works	Easton, MA:Town of	MA	02375	David Field	508 230-0800	07/20/2015		06/30/2016	$ 240,284.00
02-15-0239: RIDOT Ltd. Access 2015-CR-054	Division of Purchases	Rhode Island Dept. of Transportation	RI	02908-5855	Michael Hull	401 222-2468 x4301	07/17/2015	08/16/2015	09/30/2015	$ 223,930.80
02-16-0002: New Haven CT PCRM Crackseal	Department of Public Works	New Haven, CT: City of	CT	06513	Jeffrey Pescosolido	203 946-6135	10/05/2015		10/04/2016	$ 202,559.37
02-16-0041: Hingham, MA PCRM Cracksealing 2016	Department of Public Works	Hingham, MA; Town of	MA	02043	Harry Sylvester	781 741-1430	02/25/2016	04/04/2016	12/31/2016	$ 100,875.00
02-16-0042: Southbury CT PCRM Cracks 2016	501 Main Street South	Southbury, CT; Town of	CT	06488	Jim Sugden	203 262-0621	09/01/2015	04/04/2016	10/31/2016	$ 349,302.57
02-16-0055: Middletown CT PCRM Crackseal (CRCOG)	Department of Public Works	Middletown, CT: City of	CT	06457	Tom Nigosanti	860 638-4850	09/24/2015	04/04/2016	09/30/2016	$ 189,999.99
02-16-0059: Dennis BCC PCRM Crackseal 2016	Highway Department	Dennis, MA:Town of	MA	02660-3414	Tom Andrade	508 760-6166	04/01/2015		03/20/2017	$ 109,870.02
02-16-0062: Norwalk CT PG Crackseal 2016	125 East Avenue	Norwalk, CT; City of	CT	06851	Drew Berndlmaier	203 854-7791	05/04/2015		09/30/2016	$ 300,466.27
02-16-0070: Yarmouth, MA PCRM (BCC) 2016	Highway Department	Yarmouth, MA: Town of	MA	02637	Jim Henderson	508 385-7438	04/01/2015	04/11/2016	03/30/2017	$ 143,042.64
02-16-0082: RI 2016-CR-019 Crackseal Ltd A	Division of Purchases	Rhode Island Dept. of Transportation	RI	02908-5855	Michael Hull	401 222-2468 x4301	04/01/2016	07/18/2016	09/02/2016	$ 200,533.38
02-16-0087: Franklin, MA PCRM 2016	Department of Public Works	Franklin, MA;Town of	MA	02038	Tim Walsh	508 520-4910	04/01/2016	05/30/2016	12/31/2016	$ 202,118.21
02-16-0096: Manchester NH PCRM Gal 2016	Department of Public Works	Manchester, NH; City of	NH	03103-5596	Todd Connors	603 624-6444	06/18/2015		06/30/2017	$ 205,783.16
02-16-0130: Coventry, RI PCRM (RIDOT) 2016	Department of Public Works	Coventry, RI: Town of	RI	02816-8911	Kevin McGee	401 615-7083	09/25/2013		08/29/2019	$ 231,318.88
02-16-0153: HarrisonNY PRCM Crackseal 2016	1 Heineman Place	Harrison, NY; Town of	NY	10528	Anthony Robinson	914 670-3229	04/01/2016	05/23/2016	03/31/2018	$ 302,040.24
02-16-0175: Wethersfield CT PCRM Crackseal	Engineering Department	Wethersfield, CT; Town of	CT	06109	Don Moisa	860 721-2852	09/01/2015		10/31/2016	$ 100,582.04
02-16-0179: Waterford, CT (ConnDAS) PCRM	Department of Public Works	Waterford, CT: Town of	CT	06385-2886	Kristin Zawacki	860 442-0553	09/01/2015		10/31/2016	$ 172,314.09
02-16-0190: Westwood, MA PCRM 2016	Dept. of Public Works	Westwood, MA:Town of	MA	02090	Brendan Ryan	781 320-1038			06/30/2017	$ 154,768.50
02-16-0212: Ledyard, CT PG (CRCoG) 2016	741 Colonel Ledyard Highway	Ledyard, CT:Town of	CT	06339	Steven Masalin	860 464-1100			09/30/2016	$ 127,042.72
02-16-0226: Cheshire CT PCRM Crackseal	Town Hall	Cheshire, CT; Town of	CT	06410	George Noewatne	203 271-6650	08/01/2016	08/01/2016	07/31/2017	$ 102,633.36
02-16-0244: Hamden CT PCRM Crackseal	Department of Public Works	Hamden, CT; Town of	CT	06518	Michael Siciliano	203 287-2600		08/08/2016	10/31/2016	$ 119,992.80
02-16-0251: Agawam, MA PCRM Crackseal	Department of Public Works	Agawam, MA: Town of	MA	01001-1837	Michael Albro	413 726-2803			06/30/2017	$ 122,588.73
02-16-0257: Stonington, CT PG (CRCoG) 2016	Department of Public Works	Stonington, CT: Town of	CT	06378	Tom Curioso				09/30/2016	$ 141,536.16
02-16-0292: Marlborough PCRM Gal 2016	Department of Public Works	Marlborough, MA; City of	MA	01752	Ashley Miller	508 624-6910			09/16/2016	$ 107,038.04
02-16-0302: Meriden CT PG Crackseal 2016	City Hall	Meriden, CT; City of	CT	06450	Howard Weissberg	203 630-4018	08/29/2016		06/30/2017	$ 186,088.50
02-16-0335: CT DOT DIST #3 Rubber Crack	2800 Berlin Turnpike	Connecticut DOT DIST #3	CT	06131	Mel Hernandez	203 389-3034		10/11/2016	10/31/2016	$ 167,334.50
02-17-0011: Fairfield CT PG Crackseal 2017	Department of Public Works	Fairfield, CT; Town of	CT	06824	Scott Bartlett	203 256-3176	01/01/2017	04/03/2017	12/31/2017	$ 215,754.96
02-17-0025: Taunton, MA PG (SERSG) 2017	90 Ingell Street	Taunton,MA: City of	MA	02780	Bruce Emond	508 821-1434	02/01/2017	08/07/2017	01/31/2018	$ 191,318.18
02-17-0049: Manchester, NH: PCRM 2017	Department of Public Works	Manchester, NH; City of	NH	03103-5596	Keith Coviello	603 624-6444	06/18/2015		06/30/2018	$ 361,297.29
02-17-0058: Lexington Pre-Micro PCRM 2017	Department of Public Works	Lexington, MA;Town of	MA	02420	Michael Sprague	781 274-8304	06/03/2016		06/01/2018	$ 100,607.68
02-17-0066: Westport,CT Public School PCRM	110 Myrtle Avenue	Westport, CT; Board of Education	CT	06880	Ted Hunyadi	203 341-1271	01/01/2017	04/10/2017	12/31/2017	$ 163,534.31
02-17-0086: Southbury,CT PCRM Crackseal	501 Main Street South	Southbury, CT; Town of	CT	06488	Jim Sugden	203 262-0621	07/13/2016	04/17/2017	12/31/2016	$ 247,949.52
02-17-0089: Monroe, CT PG Crackeal 2017	Public Works Department	Monroe, CT; Town of	CT	06468	Chris Nowacki	203 452-2814	01/01/2017		12/31/2017	$ 142,195.08
02-17-0122: Harrison NY PCRM Crackseal	1 Heineman Place	Harrison, NY; Town of	NY	10528	Anthony Robinson	914 670-3229	04/01/2016		03/31/2018	$ 123,682.32
02-17-0125: Agawam PCRM Crackseal	Department of Public Works	Agawam, MA: Town of	MA	01001-1837	Michael Albro	413 726-2803			06/30/2017	$ 118,962.36
02-17-0147: Beverly PCRM LS 2017	Public Services Department	Beverly, MA;City of	MA	01915	Sean Ciancarelli	978 605-2358	07/18/2017		07/17/2018	$ 137,240.00

Job (Recent List)	Address 1	Account	State	Zip Code	Person	Phone Full Number	Contract Start Date	Start Date	Contract Exp Date	Revised Contract Amount ($)
02-17-0163: RIDOT/Ltd. Access/2017-CR-027	Division of Purchases	Rhode Island Dept. of Transportation	RI	02908-5855	Thompson Akanji	401-222-2468 x 4614	08/13/2017	08/13/2017	09/15/2017	$ 499,995.00
02-17-0181: Newton PCRM 2017	DPW, City Hall	Newton, MA;City of	MA	02459	Kevin McCabe	617 796-1039				$ 206,007.13
02-17-0182: Nashua, NH: PCRM Cracks 2017	Department of Public Works	Nashua, NH;City of	NH	03062	Todd Welch	603 589-3126	05/01/2017		10/31/2017	$ 247,624.64
02-17-0185: Cheshire CT PCRM Crackseal	Town Hall	Cheshire, CT; Town of	CT	06410	Daniel Bombero	203 271-6650	08/01/2016		07/31/2018	$ 121,998.90
02-17-0194: New Bedford, MA PG 2017	Department of Public Works	New Bedford,MA: City of	MA	02740	Manny Silva	508 979-1400			06/13/2018	$ 169,997.24
02-17-0206: Dartmouth, MA PCRM 2017	Department of Public Works	Dartmouth,MA;Town of	MA	02748-1106	Paul Pacheco	508 910-1701	07/01/2017		06/30/2018	$ 137,530.00
02-17-0215: Northampton, MA PCRM Crackseal	Department of Public Works	Northampton, MA; City of	MA	01060-2066	David Veleta	413 587-1570			11/15/2017	$ 115,455.65
02-17-0229: Marlborough PCRM 2017	Department of Public Works	Marlborough, MA; City of	MA	01752	Mark Dascoli	508 624-6910	08/01/2017		09/11/2017	$ 118,460.80
02-17-0316: New Haven, CT PCRM Crackseal	Department of Public Works	New Haven, CT; City of	CT	06513	Jeffrey Pescosolido	203 946-6135	10/05/2015		10/04/2016	$ 103,678.92
02-17-0360: MDOT D#4/Crack Sealing #102347	519 Appleton Street	MassDOT Highway Division (Dist #4)	MA	02476	Heher Mohammed	781 641-8300	01/25/2018		01/25/2020	$ 2,749,174.55
02-18-0003: Stoughton MA PCRM Crackseal	Department of Public Works	Stoughton, MA;Town of	MA	02072-1840	Richard Jasmin	781 344-2112	11/01/2017		10/31/2018	$ 118,995.65
02-18-0012: Needham PCRM 2018	DPW Garage	Needham, MA;Town of	MA	02492	Erik Lannigan	781 455-7534	03/01/2016		12/31/2018	$ 107,401.15
02-18-0025: Manchester, NH: PCRM 2018	Department of Public Works	Manchester, NH; City of	NH	03103-5596	Kevin Sheppard	603 624-6444	06/18/2015		06/30/2019	$ 282,197.42
02-18-0050: Easton PCRM GAL 2018	Department of Public Works	Easton, MA:Town of	MA	02375	Gregory Swan	508 230-0800x802			06/30/2019	$ 101,356.92
02-18-0052: Ledyard, CT PG (CRCoG) 2018	741 Colonel Ledyard Highway	Ledyard, CT:Town of	CT	06339	Steven Masalin	860 464-1100	10/01/2017		09/30/2018	$ 109,306.40
02-18-0063: Millbury PCRM GAL	Municipal Office Building	Millbury, MA;Town of	MA	01527	Keith Nastasia	508 865-9143	04/02/2018		12/31/2018	$ 152,237.88
02-18-0071: Dartmouth PCRM GAL	Department of Public Works	Dartmouth,MA;Town of	MA	02748-1106	David Hickox	508 999-0740	07/01/2017		06/30/2019	$ 115,840.00
02-18-0076: Hudson PCRM GAL	Department of Public Works	Hudson, MA;Town of	MA	01749	Rick O'Neil	978 562-9333	04/09/2018		09/30/2018	$ 206,721.95
02-18-0083: N.Canaan, CT PCRM (Micro) LB	77 Main Street	New Canaan, CT; Town of	CT	06840	Tiger Mann	203 594-3056	04/18/2018			$ 120,498.75
02-18-0095: Shelton,CT PCRM (GAL)	Department of Public Works	Shelton, CT; City of	CT	06484-3267	George Stachowicz	203 710-7923	08/10/2017			$ 101,340.88
02-18-0103: Harrison, NY PCRM GAL (OGS)	1 Heineman Place	Harrison, NY; Town of	NY	10528	Anthony Robinson	914 670-3229	04/01/2018		03/31/2020	$ 207,840.95
02-18-0121: West Springfield, MA PG (LS)	Department of Public Works	West Springfield, MA:Town of	MA	01089	Robert Colson	413 263-3231			08/30/2018	$ 109,447.00
02-18-0122: Fairfield, CT PG LB	Department of Public Works	Fairfield, CT; Town of	CT	06824	Scott Bartlett	203 256-3176	01/01/2018		12/31/2019	$ 305,181.69
02-18-0131: Agawam, MA PCRM GAL	Department of Public Works	Agawam, MA: Town of	MA	01001-1837	Christopher Golba	413 821-0600x8623			06/30/2018	$ 104,533.11
02-18-0136: Beverly (PCRM) LS	Public Services Department	Beverly, MA;City of	MA	01915	Sean Ciancarelli	978 605-2358	07/01/2018		06/30/2019	$ 106,701.00
02-18-0139: Sandwich PCRM GAL (CI) (BCC)	Highway Department	Sandwich, Town of	MA	02563	Paul Tilton	508 833-8002	04/01/2017		03/31/2019	$ 129,502.00
02-18-0145: Franklin PCRM GAL	Department of Public Works	Franklin, MA;Town of	MA	02038	Carlos Rebelo	508 520-4910	05/15/2018		12/31/2018	$ 109,710.22
02-18-0155: Norwalk, CT PG GAL	125 East Avenue	Norwalk, CT; City of	CT	06851	Drew Berndlmaier	203 854-7791	06/20/2018		08/17/2018	$ 288,054.02
02-18-0163: Lexington PCRM Crackseal	Department of Public Works	Lexington, MA;Town of	MA	02420	Michael Sprague	781 274-8304	05/24/2018		10/15/2018	$ 100,117.82
02-18-0189: Providence PCRM LF (RIDOT)	Department of Public Works	Providence, RI: City of	RI	02903	Craig Hochman	401 680-7515			08/29/2019	$ 153,587.98
02-18-0224: New Bedford PG LF	Department of Public Works	New Bedford,MA: City of	MA	02740	Manny Silva	508 979-1400	06/13/2017		05/31/2019	$ 126,740.60
02-18-0248: Newport PCRM (LF) RIDOT	280 Spring Street	Newport, RI:City of	RI	02840-6815	David Kurowski	401 845-5482			06/30/2019	$ 114,469.94
02-18-0260: Quincy PCRM (DY)	Department of Public Works	Quincy, MA: City of	MA	02169-2572	Paul Costello	617 376-1937			12/31/2018	$ 255,673.85
02-18-0286: Monroe, CT PG LB (Fairfield)	Public Works Department	Monroe, CT; Town of	CT	06468	Bill Phillips	203 452-2814	01/01/2018		12/31/2018	$ 166,789.65
02-18-0312: Marlborough PCRM GAL	Department of Public Works	Marlborough, MA; City of	MA	01752	Mark Dascoli	508 624-6910	08/22/2018		09/14/2018	$ 136,690.45
02-18-0328: New Haven, CT PCRM LB (CRCoG)	Department of Public Works	New Haven, CT: City of	CT	06513	Jeffrey Pescosolido	203 946-6135	10/01/2017		09/30/2018	$ 100,245.86
02-18-0362: Lowell PCRM (GAL)	Department of Public Works	Lowell, MA;City of	MA	01851	Richard Biagini	978 674-4070	08/22/2018		06/28/2019	$ 128,900.03
02-19-0007: Southbury, CT PCRM GAL	501 Main Street South	Southbury, CT; Town of	CT	06488	Jim Sugden	203 262-0621	07/13/2016	04/02/2019	12/31/2019	$ 380,357.18
02-19-0023: Manchester, NH PCRM (GAL)	Department of Public Works	Manchester, NH; City of	NH	03103-5596	Kevin Sheppard	603 624-6444	06/18/2015		06/18/2019	$ 133,212.46
02-19-0046: MEDOT Reg. 5/ Crack #18995.52	16 State House Station	Maine Dept. of Transportation	ME	04333	Ryan Sullivan	207 446-0118	06/04/2019	07/08/2019	10/05/2019	$ 145,351.00
02-19-0055: Quincy, MA PCRM (DY)	Department of Public Works	Quincy, MA: City of	MA	02169-2572	Jeffrey Vradenburg	617 376-1902		04/01/2019	12/31/2019	$ 148,263.96
02-19-0056: Yarmouth, PCRM (GAL) BCC	Highway Department	Yarmouth, MA: Town of	MA	02637	Robert Angell	5083982231x1290	04/01/2019	05/06/2019	03/31/2020	$ 126,832.88
02-19-0067: No Reading Tri-Town (CI) PG	Department of Public Works	North Reading, MA;Town of	MA	01864-1298	Chris Deming	978 664-6071	04/01/2018		03/31/2020	$ 179,681.41
02-19-0070: Harrison, NY PCRM GAL (OGS)	1 Heineman Place	Harrison, NY; Town of	NY	10528	Anthony Robinson	914 670-3229	04/01/2018	04/22/2019	03/31/2020	$ 403,725.26
02-19-0080: Taunton (PG) GAL (SERSG)	90 Ingell Street	Taunton,MA: City of	MA	02780	Bruce Emond	508 821-1434	02/01/2019		01/31/2020	$ 427,231.00
02-19-0089: MEDOT#3/Crack 18995.32	16 State House Station	Maine Dept. of Transportation	ME	04333	Bob Laroche	207 624-3000	07/22/2019	07/22/2019	10/19/2019	$ 124,200.18
02-19-0090: Dartmouth PCRM GAL 2019	Department of Public Works	Dartmouth,MA;Town of	MA	02748-1106	Paul Pacheco	508 910-1701	07/01/2017		06/30/2020	$ 120,450.00
02-19-0094: Dutchess County, NY PG GAL	626 Dutchess Turnpike	Dutchess County, NY	NY	12603	Gary Cooper	845 486-2901	04/01/2019		12/31/2019	$ 130,415.04
02-19-0096: Smithfield (PCRM) GAL	64 Farnum Pike	Smithfield, RI:Town of	RI	02917	Charles Walsh	401 233-1034 x103			06/30/2020	$ 107,656.14
02-19-0099: MEDOT#2/Crack 18995.22	16 State House Station	Maine Dept. of Transportation	ME	04333			08/05/2019	08/05/2019	10/05/2019	$ 112,289.08
02-19-0100: Newton, MA (PCRM) GAL	DPW, City Hall	Newton, MA;City of	MA	02459			03/16/2018		12/15/2019	$ 139,042.88
02-19-0105: Easton, CT PG LB	Department of Public Works	Easton, CT; Town of	CT	06612	Edward Nagy	203 268-0714	08/08/2015	04/16/2019	11/30/2019	$ 126,185.39
02-19-0109: Lexington, MA PCRM GAL	Department of Public Works	Lexington, MA;Town of	MA	02420	Michael Sprague	781 274-8304	04/05/2019		04/05/2020	$ 114,061.86

Job (Recent List)	Address 1	Account	State	Zip Code	Person	Phone Full Number	Contract Start Date	Start Date	Contract Exp Date	Revised Contract Amount ($)
02-19-0114: New Canaan, CT PCRM LB	77 Main Street	New Canaan, CT; Town of	CT	06840	Tiger Mann	203 594-3056	04/02/2018		12/31/2019	$ 123,753.29
02-19-0132: Canton, MA (PG) GAL (SERSG)	Department of Public Works	Canton, MA:Town of	MA	02021	William Walsh	781 821-5025	02/01/2019		01/31/2020	$ 105,514.66
02-19-0144: Manchester, NH PCRM (GAL)	Department of Public Works	Manchester, NH; City of	NH	03103-5596	David Winslow	603 792-5329			05/01/2020	$ 157,884.28
02-19-0201: Nashua NH PCRM (LS)	Department of Public Works	Nashua, NH;City of	NH	03062	Stephen Dookran	603 589-3120	05/10/2019		10/31/2019	$ 143,865.00
02-19-0228: VTDOT/Statewide STP Crak (38)	Contract Administration	Vermont Agency of Transportation	VT	05633	Daryl Bassett	802 828-2641	08/26/2019	09/09/2019	11/15/2019	$ 644,435.00
02-19-0232: MDOT D#4/Crack Sealing #107114	519 Appleton Street	MassDOT Highway Division (Dist #4)	MA	02476	Cody Holemo	781 641-8300x48446	08/09/2019	10/21/2019	08/09/2021	$ 335,770.00
02-19-0236: Bridgeport, CT PG LB (Frfld)	Public Facilities	Bridgeport, CT; City of	CT	06604	Craig Nadrizny		01/01/2018		12/31/2019	$ 199,998.63
02-19-0302: New Haven, CT PCRM LB (CRCoG)	Department of Public Works	New Haven, CT: City of	CT	06513	Jeffrey Pescosolido	203 946-6135	10/01/2018		09/30/2019	$ 104,181.84
02-19-0369: Marlborough, MA PCRM (GAL)	Department of Public Works	Marlborough, MA; City of	MA	01752	Mark Dascoli	508 624-6910			09/20/2019	$ 113,207.25
02-19-0408: Chelsea, MA PCRM (GAL) 2019	Department of Public Works	Chelsea, MA;City of	MA	02150	Bertram Taverna	617 466-4205			06/30/2020	$ 125,578.50
02-19-0492: RocklandCounty,NY PG GAL (OGS)	23 New Hempstead Road	Rockland County NY Highway Department	NY	10956	John Munroe	845 638-5065	11/06/2019	11/12/2019	03/31/2020	$ 106,612.10

Schedule B – List of Current Projects Under Construction

Name, Location and Description of Project	Owner	Design Engineer	Contract Price	Amount Completed	Date of Scheduled Completion	Reference/Contact & Address & Phone

PLEASE SEE ATTACHED

Work Under Contract

Job (Recent List)	Address 1	Account	State	Zip Code	Person	Phone Full Number	Contract Exp Date	Extendable To Date	Revised Contract Amount ($)
02-16-0064: Sandwich PCRM Crackseal BBC 2016	Highway Department	Sandwich, Town of	MA	02563	Paul Tilton	508 833-8002	03/30/2017		$ 153,995.88
02-17-0248: MDOT Dist. 1/Crack/99077	270 Main Street	MassDOT Highway Division (Dist #1)	MA	01240	Grant Haywood	413 637-5701	08/16/2019		$ 569,397.50
02-17-0320: Southbridge, MA PCRM Crackseal	Department of Public Works	Southbridge,MA; Town of	MA	01550	Matthew Desjardin	508 764-5403	06/30/2018	06/30/2020	$ 17,232.00
02-17-0333: Upton PCRM Gal 2018	Department of Public Works	Upton, MA;Town of	MA	01568	John Johnson	508 529-3067	06/30/2020		$ 59,695.52
02-18-0069: Spencer PG (GAL)	Department of Public Works	Spencer, MA; Town of	MA	01562	Eben Butler	508 885-7506	06/30/2018	06/30/2019	$ 92,149.00
02-18-0176: Trumbull, CT PG LB (Fairfield)	Department of Public Works	Trumbull, CT: Town of	CT	06611	Tom Baldwin	203 452-5070	12/31/2019	12/31/2021	$ 47,107.35
02-18-0242: Springfield, MA PG (GALS)	Department of Public Works	Springfield, MA:City of	MA	01108	Nick Ottomaniello	413 787-6579	08/01/2018		$ 168,875.00
02-18-0247: Whately, MA-FRCOG PCRM (GAL)	4 Sandy Lane	Whately,MA: Town of	MA	01373	Keith Bardwell	413 665-2983	08/30/2019		$ 14,433.54
02-18-0277: Lanesborough: BRGPP -PG (GALS)	83 North Main Street	Lanesborough,MA: Town of	MA	01237	William Decelles	413 443-1921	06/30/2019		$ 19,650.87
02-18-0303: Westhampton - HCOG (PCRM/Gals)		Westhampton,MA: Town of	MA	01027	David Blakesley	413 527-0136	06/30/2019		$ 29,991.71
02-18-0322: Westfield, MA PCRM (Gals)	27 Sackett Street	Westfield, MA; City of	MA	01085	David Billips	413 572-6243	08/31/2019		$ 44,996.94
02-18-0339: Rutland, MA PG (Gallons)	Department of Public Works	Rutland, MA:Town of	MA	01543-1412	Gary Kelleher	508 886-4105	06/30/2019		$ 49,993.20
02-18-0356: Rutland, VT PCRM (Gallons)	City of Rutland	Rutland, VT;City of	VT	05702-0969	James Rotondo	802 773-1813	11/30/2017	11/30/2020	$ 19,996.16
02-18-0358: Northampton, MA PCRM (Gallons)	Department of Public Works	Northampton, MA; City of	MA	01060-2066	David Veleta	413 587-1570	11/15/2018		$ 49,994.40
02-19-0038: Southwick, MA PCRM (Gal)	Department of Public Works	Southwick, MA:Town of	MA	01077	Randy Brown	413 569-3375	06/30/2019		$ 34,991.25
02-19-0210: Walpole, MA (PG) GAL	Department of Public Works	Walpole, MA Town of	MA	02081	Drew Hand	508 660-7328	06/30/2020		$ 35,270.00
02-19-0234: New Bedford (PG) LF	Department of Public Works	New Bedford,MA: City of	MA	02740	Manny Silva	508 979-1400	06/01/2020		$ 98,000.00
02-19-0242: Westhampton,MA (HCOG) PCRM-Gal		Westhampton,MA: Town of	MA	01027	David Blakesley	413 527-0136	06/30/2020		$ 32,994.00
02-19-0253: District 1/Crack #107714	270 Main Street	MassDOT Highway Division (Dist #1)	MA	01240	Grant Haywood	413 637-5701	08/21/2021		$ 430,400.50
02-19-0281: Harwich (PCRM) GAL (BCC)	Department of Highways & Maintenance	Harwich,MA: Town of	MA	02645	Chris Nickerson	508 430-7555	03/31/2020	03/31/2021	$ 49,996.60
02-19-0292: Stockbridge, MA-BRGPP PCRM/GAl	Department of Public Works	Stockbridge,MA: Town of	MA	01262	Leonard Tisdale	413 298-5506	06/30/2020		$ 19,904.00
02-19-0294: Charlemont, MA-FRCOG PG/Gal	Factory Road, P.O. Box 53	Charlemont, MA: Town of	MA	01339	Gordon Hathaway	413 339-4335 ext 2	06/30/2020		$ 21,060.00
02-19-0374: Holyoke, MA - PCRM (LS)	Department of Public Works	Holyoke, MA; City of	MA	01040	Michael McManus	413 322-5645			$ 82,545.00
02-19-0401: Newton, MA PCRM GAL	DPW, City Hall	Newton, MA;City of	MA	02459	Frank Nichols	617 796-1020	11/15/2019		$ 92,850.00
02-19-0424: Ashburnham, MA PCRM (SY)	Public Works Department	Ashburnham, MA:Town of	MA	01430	Stephen Nims	978 827-4120	06/30/2020	06/30/2022	$ 39,000.00
02-19-0448: Warwick, MA-FRCOG PCRM/Gals	12 Athol Road	Warwick, MA:Town of	MA	01378	Larry Delaney	978 544-6349	06/30/2020		$ 39,072.00
02-19-0455: Claremont, NH PCRM (Day+Gal)	Town Hall	Claremont, NH ; City of	NH	03743	Jeremy Clay	603 542-7020	06/01/2020		$ 20,232.00
02-19-0471: Hinsdale, MA-BRGPP PCRM/GAL	39 South Street	Hinsdale, MA;Town of	MA	01235	Bud Hall	413 655-2304	06/30/2020		$ 39,808.00
02-19-0493: Nashua, NH PCRM (LS) Day Rate	Department of Public Works	Nashua, NH;City of	NH	03062	Mark Saunders	603 589-3147	06/01/2020		$ 23,485.00
02-20-0008: Heritage Village PCRM LS	719 East Hill Road	Heritage Village Master Association	CT	06488	Steve Albert	203 264-9644	12/31/2020		$ 10,794.53

INDUS
Crack Seal Equipment Listing

Equipment	Year	Make	Model	Description	Serial Number	Registration	Co.
Pick Ups & Autos							
01-12	2014	DODGE	RAM C2500	2014 Dodge 2500 Pick Up	3C6TR4RT4EG228909	R40327	2
01-13	2014	DODGE	RAM 2500	2014 Dodge 2500 Pick Up	3C6TR4HT0EG228910	R40326	2
Crack Trucks							
04-06	2017	Freightlnr	M2-106	2017 Frghtlnr Rbr Crack Truck	1FVACXCY4HHHX4620	10990 APN 94423	2
04-07	1998	INT'L	4700 4x2	1998 Int'l 4700 RbrCrack Truck	1HTSCAAM6WH559962	10991 APN75318	2
04-10	1998	Int'l	4700	1998 Int'l 4700 RbrCrack Truck	1HTSCAAM8WH507880	10992 APN 40716	2
04-12	2004	INT'L	4400 SBA	2004 Int'l 4400 RbrCrack Truck	1HTMKAAN34H679638	10993 APN 62959	2
04-18	2013	Freightlnr	M2-106	2013 Frghtliner M2 Crack Truck	1FVHCYBSXDHFE2885	10994 19107027403 APN 88963	2
04-19	2013	Freightlnr	M2-106	2013 Frghtliner M2 Crack Truck	1FVHCYBS1DHFE2886	10995 19107027503 APN 88962	2
04-20	2015	2015	M2-106	2015 Frghtliner M2 Crack Truck	1FVHCYCY2FHGF1900	10996 19107028003 APN 19895	2
04-21	2015	Freightlnr	M2-106	2015 Frghtliner M2 Crack Truck	1FVHCYCY4FHGF1901	10997 19107028703 APN 91894	2
04-22	2015	Freighlinr	M2-106	2015 Frghtliner M2 Crack Truck	1FVHCYCY4GHGV3931	10998 19107029303 APN 96425	2
04-23	2016	Freightlnr	M2106	2016 Freightliner Crack Truck	1FVHCYCY6GHGV3932	10999 19107030003 APN 96658	2
04-24	2016	Freightlnr	M2-106	2016 Frghtliner M2 Crack Truck	1FVHCYCY8GHHE4261	11000 19107030403 APN 96164	2
04-25	2016	Freightlnr	M2-106	2016 Frghtliner M2 Crack Truck	1FVHCYCY6GHHE4260	11001 19107030803 96165	2
04-26	2017	Freightlnr	M2-106	2017 Frghtliner M2 Crack Truck	3ALHCYCY9HDJE5003	11002 19107031203 APN 6023A	2
04-27	2017	Freightlnr	M2-106	2017 Frghtliner M2 Crack Truck	3ALHCYCY0HDJE5004	11003 19107031803 APN 6022A	2
04-28	2020	Freightlnr	M2-106	2020 Frghtliner M2 Crack Truck	3ALHCYD29LDLW0274	11052	2
04-29	2020	Freightlnr	M2-106	2020 Frghtliner M2 Crack Truck	3ALHCYD20LDLW0275	11053	2
Tankers							
5-02	2016	Freightlnr	M1-106	2016 Frghtlnr AC Tanker(Crack)	1FVHCYCY2GHGV3930	11004 95228	2
5-03	2008	Freightlnr	M2106	2008 Freightliner Tanker CIR	1FVHCYBS88HAB6390	1005 9123A	2
5-04	2003	Internatnl	7400	2003 Int'l Micro Tack Truck	1HTWCAAR53J063729	11006 90214	2
5-05	2004	FORD	F-750	2004 Ford F-750 Spray Tank	3FRXF76844V590836	11007 APN 62960	2
5-06	2019	Wstern Str	47005B	2019 Western Star-CIR PG Truck	5KKMAXDV1LLLLC3290	11008 19R026549 9122A	2

Equipment	Year	Make	Model	Description	Serial Number	Registration	Co.
Tankers							
05-07	1995	FORD	LNT9000	1995 Ford LNT AC Tanker	1FDYW90L5SVA16471	11009 APN 53529	2
05-09	2009	Kenworth	T-270	2009 Kenworth T-270 Hook	2NKHHM6X69M256097	N30319	2
05-10	2008	Freightlnr	M2	2008 Freightliner Water Truck	1FVHCYBS78HZ19390	11010 APN 1524A	2
05-11	2008	Freightlnr	M2	2008 Freightliner Water Truck	1FVHCYBS08HZ78765	11011 9380A	2
05-12	2021	Western Str	4700SB	2021 Western Star Tanker CIR		11054	2
05-13	2021	Freightlnr	M2-106	2021 Freightliner Tanker		11055	2
05-15	1988	FORD	CF7000	1988 Ford CF7000 AC Tank Truck	9BFXH70P8JDM03897	11012 APN 48796	2
Trailer							
15-36	2008	Ver Mac	ST4815 ArB	2008 Ver Mac ST4815 Arrowboard	2S9US21128S132497	A12771	2
Compressor							
30-01	2007	Ingrsl-Rnd	P90BWIRU	2007 Ingersol-Rand Comp(01-10)	SCZP90UTM7Y107474		2
30-02	1997	IMC	5.5 HP	1997 IMC 5.5 HP Air Compressor	19000C120		2
30-03	2008		185CFM	2008 185CFM Compressor (CSI)	398551		2
30-04	2007		185CFM	2007 185CFM Compressor (CSI)	388139		2
30-05	1999		185CFM	1999 185CFM Compressor (CSI)			2
30-06	2014	Boss	210	2014 Compressor Boss (04-06)	112320		2
30-07	1998	LeRoi	185 CFM	LeRoi 185 CFM Compressor(4-07)	3319X101		2
30-08	2018	Boss	185 CFM	Boss 185 CFM Compressor(02-13)	10GR581912170756T		2
30-10	2005	ATLAS COPC	XAS 96UJD	Atlas Copco Compressor (04-10)	USA012796		2
30-12	2005	ATLAS COPC	XAS 96UJD	Atlas Copco CFM Compresr(4-12)	USA007526		2
30-13	2006	Atlas Copc	XAS 96 JDU	Atlas Copco Compr(06-13)	8972422304		2
30-14	2006	ATLAS COPC	XAS 96 JDU	Atlas-Copco Compr (06-14)	USA015311		2
30-15	2018	PTO	185 CFM	185 CFM Compressor (06-15)			2
30-18	2012	Atlas Copc	XAS185(300	Atlas Copco Compressor (04-18)	4500A0702CR025488		2
30-19	2012	Atlas Copc	XAS185JDU7	Atlas Copco Compressor (04-19)	HOP025487		2
30-20	2014	Boss	210 DUS JD	Boss Compressor (04-20)	109874		2
30-21	2014	BOSS	210 DUS JD	Boss Compressor (04-21)	109875		2
30-22	2014	Boss	DUS210 JD4	Boss Compressor (04-22)	111077		2
30-23	2014	Boss	DUS210 JD4	Boss Compressor (04-23)	111078		2
30-24	2015	Boss	DUS JD4045	Compressor Truck 04-24	111100		2
30-25	2015	Boss	DUS JD4045	Compressor 04-25)	111165		2
30-26	2015	Boss	DUS JD4045	Boss Compressor (04-26)	112319		2
30-27	2015	Boss	DUS JD4045	Boss Compressor (04-27)	111099		2
30-80	2018	BOSS	BA440	Boss Air Compressor (02-08)			2
Tankers							
40-04	2013	Etnyre	C. 1500 GA	Etnyre 1500 AC Tanker 05-04	1HTWCAAR53U063729		2
40-05	2003	ETNYRE	2000 GAL	2000 GAL Etnyre Distrib(05-05)	S3472		2
40-06	2016	BEARCAT	400 GAL	2016 Bearcat Truck 04-06	4020516		2
40-07	1998	BearCat	BK350D	Bearcat BK350 Melter (04-07)	30198		2
40-10	1998	BearCat	BK250	Bearcat BK250 Melter (04-10)	20298		2
40-12	2003	BearCat	BK400	BearCat 400 GAL Melter (04-12)	40303		2
40-18	2012	Shop Built	DJR 1100	1100 Gal Melter (04-18)			2
40-19	2012	Shop Built	DJR 1100	1100 Gal Melter (04-19)			2
40-20	2013	Shop Built	DJR 1100	1100 Gal Melter (04-20)	000020		2
40-21	2013	Shop Built	DJR 1100	1100 Gal Melter (04-21)	000021		2
40-22	2015	Shop Built	DJR1100	1100 Gal Melter (04-22)	000022		2
40-23	2015	Shop Built	DJR1100	1100 Gal Melter (04-23)	00023		2
40-24	2015	Shop Built	DJR 1100	1100 gal Melter (04-24)	00024		2
40-25	2015	Shop Built	DJR 1100	1100 gal Melter (04-25)	00025		2
40-26	2027		DJR 1100	1100 Gal Melter (04-26)	DJR 00026		2

Equipment	Year	Make	Model	Description	Serial Number	Registration	Co.
Tankers							
50-27	2017		DJR 1100	1100 Gal Melter (04-27)	DJR 000026		2
50-28	2020		1100	1100 Gal Melter (04-28)	000028		2
50-29	2020		1100	1100 Gal Melter (04-29)	000029		2
50-40	1999	KEISER-MOR	SKID MOUNT	Keiser-Morris 60gl Meltr 05-04			2
Sweepers							
70-01	1999	TENNANT	355	1999 Tennant Sweeper/Rider	355-2184		2
70-02	2016	Tennant	800 Pow Rd	2016 Tennant Sweeper	M800-8316		2
70-08	1985	Tennant		1985 Tennant Power Sweeper	AA2296		2

indus
roads. bridges. airports.

City of Nashua , NH
Pavement Preservation Program
IFB0265-040320
Bid Opening Date: April 10, 2020

The following are the trade names for crack sealant our company intends to use for the modified crack sealer. Also provided are the names of our manufacturers/suppliers.

Asphalt Binder:	Modified Asphalt	
Manufacturer:	Bitumar 171 Brownstone Ave. Portland, CT 06480 Phone: (860) 209-5769	Tri-Products All States Materials Group 325 Amherst Road, Rte. 116 Sunderland, MA 01375 Phone: (413) 665-7021
Polyester Fibers	8% Polyester Fibers Advanced Fiber Solutions 403 Powderhorn Road Laurens, SC 29360 Phone: (800) 351-5410	

Schedule C - Construction Experience of Principal Individuals Involved in Construction Operations

Name	Position	Date started with this organization	Date started working in construction	Prior positions and experience in construction

PLEASE SEE ATTACHED

indus

Background and Experience of Principal Members of indus

Name & Title	Experience & Background
Elizabeth Wuori President Treasurer Manager 65 Ward Street Hingham, MA 02043	2/2000 – Present, President, Sealcoating, Inc. DBA indus. Over 40 years of administrative, financial and managerial experience with Indus. Extensive knowledge of the pavement maintenance industry. Ms. Wuori began as an administrative clerk at Sealcoating, Inc., now indus, in 1974 and has advanced through various positions including Office Manager, Corporate Clerk, and Treasurer to her current position of President and Owner of Sealcoating, Inc. Ms. Wuori holds a Bachelor of Arts degree from Smith College and a Master of Science in Accountancy from Bentley College.
Richard Goodick 95 Hornbeam Road Duxbury, MA 02332	Over 35 years pavement maintenance experience; including extensive experience on major pavement maintenance contracts for Mass. Highway Department, Massport, and various municipalities.
April Durant Controller/IT Manager Clerk/Secretary 61 Surrey Drive Cohasset, MA 02025	6/2000 – Present, Controller/IT Manager. Over 30 years of administrative, insurance, bonding and financial experience with Sealcoating, Inc. Extensive knowledge of pavement maintenance industry, including broad knowledge of insurance and bonding requirements. Ms. Durant came on as a contract administrator for Sealcoating, Inc., now indus, in 1987. Over the past 28 years she has advanced to her present position of Controller/IT Manager, Clerk/Secretary. Ms. Durant holds a Bachelor of Arts degree from Bates College and a Master of Science in Accountancy from Bentley College.
Ken Costello Superintendent 323 Robinson Street Raynham, MA 02767	In 1985 Ken began work at Sealcoating, Inc., now indus, as a laborer on a crack sealing crew. In 1995 he was promoted to Foreman for a crack sealing crew. In April of 2015 Ken was appointed Superintendent of Sealcoating, Inc. crack seal division. As Superintendent he oversees the operation of 10 crack seal crews working throughout the New England area. Ken has over 30 years of experience on various pavement maintenance and crack seal contracts for Rhode Island DOT, Mass. Highway Dept., Massport, and various municipalities.

DIVISION 4

PAYMENT BOND
PERFORMANCE BOND
CERTIFICATE OF INSURANCE

CONSTRUCTION PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____ , hereinafter called Principal,
(Corporation, Partnership or Individual)

and _____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called **OWNER** and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns, in the total aggregate penal sum of _____ Dollars, ($ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the **OWNER**, dated the _____ day of _____ 20 _____ , a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the **WORK** provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such **WORK**, and for all labor cost incurred in such WORK including that be a subcontractor, and to any mechanic or material man lienholder whether it acquires its lien by operation of State or Federal Law; then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the subcontractors, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the **WORK** to be performed thereunder or the **SPECIFICATIONS** accompanying the same shall in any way affect its obligation on this **BOND**, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the **WORK** or to the **SPECIFICATIONS**.

PROVIDED, FURTHER that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL shall have given written notice to any two of the following: The PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date on which PRINCIPAL ceased work on said CONTRACT, it being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED FURTHER, that no final settlement between the **OWNER** and the **CONTRACTOR** shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of
(number)
which shall be deemed an original,
this _____ day of _____ , 20 ____ .

ATTEST:

_____
Principal

By: _____
(Principal) Secretary

(SEAL) **BY** _____

_____
(Address)

_____

By: _____
Witness as to Principal

_____
(Address)

_____
(Surety)

ATTEST: **BY** _____
Attorney - in - Fact

By _____
Witness as to Surety

_____
(Address)

_____

_____
(Address)

_____

NOTE: Date of **BOND** must not be prior to date of Contract.
If **CONTRACTOR** is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing **BONDS** must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of New Hampshire.

CONSTRUCTION PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____ , hereinafter called Principal,
(Corporation, Partnership or Individual)

and _____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called **OWNER**, in the total aggregate penal sum of _____ Dollars, $ (_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the **OWNER**, dated the _____ day of _____ 20 ___ , a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extension thereof which may be granted by the **OWNER**, with or without notice to the Surety and during the one year guaranty period, and if the **PRINCIPAL** shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the **OWNER** from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the **OWNER** all outlay and expense which the **OWNER** may incur in making good any default, then this obligation shall be void: otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to **WORK** to be performed thereunder or the specifications accompanying same shall in any way affect its obligation on this **BOND**, and it does hereby waive notice of any such change, extension of time alteration or addition to the terms of the contract or to the **WORK** or to the specifications.

PROVIDED, FURTHER, that it is expressly agreed that this **BOND** shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the **PRINCIPAL** and the **SURETY** to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this **BOND** and whether referring to this **BOND**, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the **OWNER** and the **CONTRACTOR** shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed _____ counterparts, each one of
(number)

which shall be deemed an original,
this _____ day of _____ , 20 ____ .

ATTEST:

_____
Principal

By: _____
(Principal) Secretary

(SEAL) **BY** _____

_____
(Address)

By: _____
Witness as to Principal

_____
(Address)

_____

_____
(Surety)

ATTEST: **BY** _____
Attorney - in - Fact

By _____
Witness as to Surety

_____
(Address)

_____

_____

_____
(Address)

NOTE: Date of **BOND** must not be prior to date of Contract.
If **CONTRACTOR** is Partnership, all partners should execute BOND

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of New Hampshire

INSERT CERTIFICATE OF LIABILITY INSURANCE

DIVISION 5

AGREEMENT

STANDARD FORM OF AGREEMENT

BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the _____ day of _____in the year 20**20** by and between the City of Nashua, New Hampshire (hereinafter called **OWNER**) and **Sealcoating, Inc, d/b/a INDUS** and its successors, transferees and assignees together (hereinafter called **CONTRACTOR**).

OWNER and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 **CONTRACTOR** shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

The work will be at various street locations throughout the City of Nashua and consists primarily crack sealing.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by: ***Division of Public Works***
Engineering Department
9 Riverside Street
Nashua, NH 03062

who is hereinafter called **ENGINEER** and who is to act as **OWNER**'s representative, assume all duties and responsibilities, and have the rights and authority assigned to **ENGINEER** in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion*

The anticipated start date of the contract is on or about **May 18, 2020**. Project will begin once a written **"Notice to Proceed"** is issued. **Substantial Completion** shall be by **August 21, 2020.** Completion. **Final Completion** shall be by **September 30, 2020.**

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **FIVE HUNDRED TWENTY** dollars **($520)** for each **calendar** day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.02 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER **FIVE HUNDRED TWENTY** dollars **($520)** for each **calendar** each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

B. In the event that the **CONTRACTOR** fails to pay **OWNER** the specified liquidated damages amount within **thirty (30) days** of **CONTRACTOR** being notified of said damages, **OWNER** may deduct the amount of the assessed liquidated damages from the final payment or retention withheld pursuant to Article 14 of the General Conditions.

ARTICLE 5 - CONTRACT PRICE

5.01 Subject to additions and deductions by Change Order, the **OWNER** shall pay **CONTRACTOR**, in accordance with the Contract Documents, the Contract Sum of:

TWO HUNDRED FORTY-TWO THOUSAND FOUR HUNDRED SEVENTY-SEVEN and 00/100 DOLLARS

($242,477)

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

A. for all Unit Price Work, an amount equal to the sum of the established Unit Price for each separately identified item of Unit Price Work times the estimated quantity of that item, as indicated in the attached Bid Schedule;

B. as provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by **ENGINEER** as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. **CONTRACTOR** shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by **ENGINEER** as provided in the General Conditions.

B. Applications for Payment under this agreement shall be submitted as follows:

- Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

- Paper Copies via US Mail to:

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

Please do not submit invoices both electronically and paper copy.

In addition, and to facilitate the proper and timely payment of applications, the **OWNER** requires that all submitted invoices contain a valid **PURCHASE ORDER NUMBER**

6.02 *Progress Payments; Retainage*

A. *Progress Payments*. The **OWNER** will once each month make a progress payment to the **CONTRACTOR** on the basis of an estimate of the total amount of work done to the time of the estimate and its value as prepared by the **CONTRACTOR** and approved by the **ENGINEER**. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

B. *Retainage*. The **OWNER** will retain a portion of the progress payment, each month, in accordance with the following procedures:

1. The **OWNER** will establish an escrow account in the bank of the **OWNER**'s choosing. The account will be established such that interest on the principal will be paid to the **CONTRACTOR**. The principal will be the accumulated retainage paid into the account by the **OWNER**. The principal will be held by the bank, available only to the **OWNER**, until termination of the contract.

2. Until the work is 50% complete, as determined by the **ENGINEER**, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage will be deposited in the escrow account established above.

3. After the work is 50% complete, and provided the **CONTRACTOR** has satisfied the **ENGINEER** in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount will be withheld. The escrow account will remain at the same balance throughout the remainder of the project.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, **OWNER** shall hold 2% retainage during the **1 (one) year** warranty period and release it only after the project has been accepted.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

7.01 In order to induce **OWNER** to enter into this Agreement **CONTRACTOR** makes the following representations:

A. **CONTRACTOR** has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. **CONTRACTOR** has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. **CONTRACTOR** is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. **CONTRACTOR** has carefully studied all (if any): (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. **CONTRACTOR** is entitled to rely upon the general accuracy of the "technical data" as provided in paragraph 4.2 of the General Conditions. **CONTRACTOR** acknowledges that such reports and drawings are not Contract Documents and may not be complete for **CONTRACTOR**'s purposes. **CONTRACTOR** acknowledges that **OWNER** and **ENGINEER** do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

F. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by **CONTRACTOR**, and safety precautions and programs incident thereto.

G. **CONTRACTOR** does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

H. **CONTRACTOR** is aware of the general nature of work to be performed by **OWNER** and others at the Site that relates to the Work as indicated in the Contract Documents.

I. **CONTRACTOR** has correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

J. **CONTRACTOR** has given **ENGINEER** written notice of all conflicts, errors, ambiguities or discrepancies that **CONTRACTOR** has discovered in the Contract Documents, and the written resolution thereof by **ENGINEER** is acceptable to **CONTRACTOR**.

K. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.1 Contents

A. 1. The Contract Documents are defined in Article 1 of the General Condition as amended herein.

2. The following documents are incorporated by reference or otherwise indicated:

a. New Hampshire Department of Transportation "Standard Specifications for Road and Bridge Construction", latest edition, incorporated by reference or unless otherwise indicated;

b. "Manual of Uniform Traffic Control Devices", latest edition, incorporated by reference;

c. City of Nashua, Standard Specifications for Sewers and Drains, Revised, Approved and Adopted June 15, 1992, incorporated by reference;

d. City of Nashua, Standard Specifications for Road Construction, Approved and Adopted June 11, 1986, incorporated by reference;

e. City of Nashua, Standard Specifications for Sidewalk Construction, Approved and Adopted August 28, 1995, incorporated by reference; and

f. City of Nashua Ordinance O-03-219 (Amended), Approved November 14, 2003.

ARTICLE 9 - MISCELLANEOUS

9.01 Terms

A. Terms used in this will have the meanings indicated in the General Conditions.

9.02. Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Successors and Assigns

A. **OWNER** and **CONTRACTOR** each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon **OWNER** and **CONTRACTOR**, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 Choice of Law and Venue

A. This agreement 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

Address for giving notices to **OWNER**:	Address for giving notices to **CONTRACTOR**:
Mark Saunders, Senior Staff Engineer	Sandra MacKinnon
Division of Public Works	Sealcoating, Inc, d/b/a INDUS
Engineering Department	825 Granite Street
9 Riverside Street	Braintree, MA 02184
Nashua, NH 03062	

IN WITNESS WHEREOF, **OWNER** and **CONTRACTOR** have signed this Agreement in triplicate. One counterpart each has been delivered to **OWNER**, **CONTRACTOR** and **ENGINEER**. All portions of the Contract Documents have been signed, initialed or identified by **OWNER** and **CONTRACTOR** or identified by **ENGINEER** on their behalf.

CITY OF NASHUA – OWNER

_____
James W. Donchess, Mayor City of Nashua

Date:_____

CONTRACTOR:

By:_____
Sealcoating, Inc, d/b/a INDUS (Authorized Representative)

Print Name: _____

Date: _____

DIVISION 6

GENERAL CONDITIONS

TABLE OF CONTENTS
FOR
GENERAL CONDITIONS

Page

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY 4
1.01 Defined Terms 4
1.02 Terminology 7

ARTICLE 2 - PRELIMINARY MATTERS 8
2.01 Delivery of Bonds 8
2.02 Copies of Documents 8
2.03 Commencement of Contract Times; Notice to Proceed 8
2.04 Starting the Work 8
2.05 Before Starting Construction 8
2.06 Preconstruction Conference 9
2.07 Initial Acceptance of Schedules 9

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE 9
3.01 Intent 9
3.02 Reference Standards 10
3.03 Reporting and Resolving Discrepancies 10
3.04 Amending and Supplementing Contract Documents 11
3.05 Reuse of Documents 11

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS 11
4.01 Availability of Lands 11
4.02 Subsurface and Physical Conditions 12
4.03 Differing Subsurface or Physical Conditions 12
4.04 Underground Facilities 13
4.05 Reference Points 15
4.06 Hazardous Environmental Condition at Site 15

ARTICLE 5 - BONDS AND INSURANCE 16
5.01 Performance, Payment, and Other Bonds 16
5.02 Licenses Sureties and Insurers 16
5.03 Certificates of Insurance 17
5.04 CONTRACTOR's Liability Insurance 17
5.05 Property Insurance 18
5.06 Waiver of Rights 19

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES 19
6.01 Supervision and Superintendence 19
6.02 Labor; Working Hours 19
6.03 Services, Materials, and Equipment 20
6.04 Progress Schedule 20
6.05 Substitutes and "Or-Equals" 20
6.06 Concerning Subcontractors, Suppliers, and Others 22
6.07 Patent Fees and Royalties 23
6.08 Permits 23

6.09 Laws and Regulations....23
6.10 Taxes....26
6.11 Use of Site and Other Areas....26
6.12 Record Documents....26
6.13 Safety and Protection....27
6.14 Safety Representative....28
6.15 Hazard Communication Programs....28
6.16 Emergencies....29
6.17 Shop drawings and Samples....29
6.18 Continuing the Work....30
6.19 CONTRACTOR's General Warranty and Guarantee....30
6.20 Indemnification....31

ARTICLE 7 - OTHER WORK....31
7.01 Related Work at Site....31
7.02 Coordination....32

ARTICLE 8 - OWNER'S RESPONSIBILITIES....32
8.01 Communications to Contractor....32
8.02 Replacement of ENGINEER....32
8.03 Furnish Data....32
8.04 Pay Promptly When Due....32
8.05 Lands and Easements; Reports and Tests....33
8.06 Insurance....33
8.07 Change Orders....33
8.08 Inspections, Tests, and Approvals....33
8.09 Limitations on OWNER's Responsibilities....33
8.10 Undisclosed Hazardous Environmental Condition....33
8.11 Evidence of Financial Arrangements....33

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION....33
9.01 OWNER's Representative....33
9.02 Visits to Site....33
9.03 Project Representative....34
9.04 Clarifications and Interpretations....34
9.05 Authorized Variations in Work....34
9.06 Rejecting Defective Work....34
9.07 Shop Drawings, Change Orders and Payments....34
9.08 Determinations for Unit Price Work....35
9.09 Decisions on Requirements of Contract Documents and Acceptability of Work....35
9.10 Limitations on ENGINEER's Authority and Responsibilities....35

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS....36
10.01 Authorized Changes in the Work....36
10.02 Unauthorized Changes in the Work....36
10.03 Execution of Change Orders....36
10.04 Notification to Surety....36
10.05 Disputes – Not Insurance Related....36

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK.37
11.01 Cost of the Work....37
11.02 Cash Allowances....40
11.03 Unit Price Work....40

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES40
12.01 Change of Contract Price 40
12.02 Change of Contract Times 41
12.03 Delays beyond CONTRACTOR's Control 41
12.04 Delays within CONTRACTOR's Control 42
12.05 Delays beyond OWNER's and CONTRACTOR's Control 42
12.06 Delay Damages 42

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK 42
13.01 Notice of Defects 42
13.02 Access to Work 42
13.03 Tests and Inspections 42
13.04 Uncovering Work 43
13.05 OWNER May Stop the Work 44
13.06 Correction or Removal of Defective Work 44
13.07 Correction Period 44
13.08 Acceptance of Defective Work 45
13.09 OWNER May Correct Defective Work 45

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION 45
14.01 Schedule of Values 45
14.02 Progress Payment 46
14.03 CONTRACTOR'S Warranty of Title 48
14.04 Substantial Completion 48
14.05 Partial Utilization 48
14.06 Final Inspection 49
14.07 Final Payment 49
14.08 Final Completion Delayed 50
14.09 Waiver of Claims 50

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION 50
15.01 Termination, Abandonment, or Suspension at Will 49
15.02 Termination for Cause 50
15.03 General Provisions for Termination 51

ARTICLE 16 - DISPUTE RESOLUTION 51
16.01 Methods and Procedures 51

ARTICLE 17 - MISCELLANEOUS 52
17.01 Giving Notice 52
17.02 Computation of Times 52
17.03 Cumulative Remedies 52
17.04 Survival of Obligations 52
17.05 Controlling Law 52
17.06 Access to Records 52
17.07 Road Closures 52
17.08 Prohibited Interests 53

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications, the Drawings and the Purchases Order as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date Of the Agreement.

Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCB's*--Polychlorinated biphenyls.

33. *Petroleum*-- Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for

which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided in the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 ***Terminology***

A. *Intent of Certain Terms or Adjectives*

1. Whenever in the Contract Documents the terms "as allows," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. *Day*

1. The work "day" shall constitute a calendar day of regular working hours except Saturdays, Sundays and any legal holiday.

C. *Defective*

1. The word "defective," when modifying the work "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or 'Provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to 5 copies of the Contract Documents as are reasonably necessary for execution of the Work. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence on the day indicated in the Notice to Proceed

2.04 *Starting the Work*

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. CONTRACTOR's *Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. A preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 ***Preconstruction Conference***

A. Within 20 days after the Contract times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 ***Initial Acceptance of Schedules***

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefore.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 ***Intent***

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 ***Reference Standards***

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Document.

3.03 ***Reporting and Resolving Discrepancies***

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

2. In case of discrepancy, calculated dimensions will govern over scaled dimensions, Drawings will govern over Standard Specifications, and Construction Specifications will govern over both Drawings and Standard Specifications. The CONTRACTOR shall take no advantage of any apparent error or omission in the Drawings or Construction Specifications, and the ENGINEER will be permitted to make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract Documents.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. The provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment, or (ii) a Change Order; order B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one of more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

D. If corporate or private property interferes with the Work, CONTRACTOR shall notify, in writing, the OWNER's of such property, advising them of the nature of the interference and shall arrange to cooperate with them for the protection or disposition of such property. CONTRACTOR shall furnish the ENGINEER with copies of such notifications and with copies of any agreements between the CONTRACTOR and the property OWNER's concerning such protection or disposition.

E. CONTRACTOR shall take all necessary precautions for the protection of corporate or private property, such as walls and foundations of buildings, vaults, underground structures of public utilities, underground drainage facilities, overhead structures of public utilities, trees, shrubbery, crops, and fences contiguous to the Work, of which the Contract does not provide for removal. CONTRACTOR shall protect and carefully preserve all official survey monuments, property marks, section markers, and Geological Survey Monuments, or other similar monuments, until OWNER, or authorized Surveyor or agent has witnessed or otherwise referenced their location or relocation. CONTRACTOR shall notify the ENGINEER of the presence of any such survey or property monuments as soon as they are discovered.

F. CONTRACTOR shall be responsible for the damage or destruction of property of any character resulting from neglect, misconduct, or omission in its manner or method of execution or the non-execution of the work, or caused by defective work or the use of unsatisfactory materials, and such responsibility shall not be released until the work shall have been completed and accepted and the requirements of the Construction Specifications complied with.

G. Whenever public or private property is so damaged or destroyed, the CONTRACTOR shall at its own expense, restore such property to a condition equal to that existing before such damage or injury was done by repairing, rebuilding, or replacing it as may be directed, or the CONTRACTOR shall otherwise make good such damage or destruction in an acceptable manner. If the CONTRACTOR fails to do so, the ENGINEER may, after giving the CONTRACTOR notice in writing, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof shall be deducted from any compensation due, or which may become due, the CONTRACTOR under its Contract.

4.02 ***Subsurface and Physical Conditions***

A. *Reports and Drawings:*

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:*

CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

C. *Potential for Hazardous Materials:*

Work may include excavation through, and removal of, soils potentially containing undocumented asbestos-containing or other hazardous materials. Should the CONTRACTOR, while performing work under this Contract, uncover hazardous materials, as defined in federal, state and local regulations, he/she shall immediately notify the Engineer. No further disturbance of the area shall occur until the Engineer has collected and analyzed a representative sample of the suspected material. The area shall be cordoned off and covered with 6-mil polyethylene sheeting and await further directions from the Engineer.

4.03 ***Differing Subsurface or Physical Conditions***

A. *Notice:* If CONTRACTOR believes that any subsurface or physical conditions at or contiguous to the Site that is uncovered or revealed either:

1. Is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. Is of such a nature as to require a change in the Contract Documents; or

3. Differs materially from that shown or indicated in the Contract Documents; or

4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. ENGINEER's *Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER'S findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. Such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. With respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and Contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefore as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 ***Underground Facilities***

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or

ENGINEER by the OWNER's of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. The cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. Reviewing and checking all such information and data,

b. Locating all Underground Facilities shown or indicated in the Contract Documents.

c. Coordination of the Work with the OWNER's of such Underground Facilities, including OWNER, during construction, and

d. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A). identify the OWNER of such Underground Facility and give written notice to that OWNER and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

3. CONTRACTOR shall notify the following underground utility locating service at least three full working days prior to beginning work: **Dig Safe System, Inc. 1-800-344-7233.**

A list of the major public utilities servicing the work area follows. The list indicates the name and telephone number of the responsible authority of the various utilities which should be notified if conflicts or emergencies arise during the progress of the work.

Electricity – Eversource	**1-800-662-7764**
Natural Gas – Liberty Energy	**1-603-222-3705**
Water – Pennichuck Water Works	**1-603-882-5191**
Telephone –Fairpoint Communications	**1-603-645-3500**
Cable TV – Comcast	**1-888-633-4266**
Fire Alarm Cable – Nashua Fire Department	**1-603-594-3641**

4. At points where the CONTRACTOR's operations are adjacent to public and private utilities, CONTRACTOR shall not commence work until CONTRACTOR has made all arrangements necessary for the protection of utilities.
5. CONTRACTOR shall coordinate and cooperate with the OWNER's of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

4.05 ***Reference Points***

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 ***Hazardous Environmental Condition at Site***

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice:

(i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefore as provided in paragraph 10.05.

F. If after receipt of such written a notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER'S own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licenses Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverage's so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

B. All Sureties and Insurance Companies shall be authorized to do business in the State of New Hampshire and shall have an A.M. Best rating of "A(FSC-VIII)" or better. In the event that the Insurer fails to maintain an A.M. Best rating "A(FSC-VIII)" or better, the CONTRACTOR shall immediately retain a Surety which does meet the above requirements.

5.03 ***Certificates of Insurance***

A. CONTRACTOR shall deliver to OWNER 10 days prior to Work, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain.

5.04 ***CONTRACTOR's Liability Insurance***

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is required by OWNER which will provide protection from claims which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. Include as additional insured (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER.

2. The CONTRACTOR 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 of the CONTRACTOR and not the OWNER. It is the responsibility of the CONTRACTOR to update Certificates of Insurance during the term of the contract. Provide coverage for not less than the following amounts or greater:

General Liability
$1,000,000 per Occurrence
$2,000,000 Aggregate
City of Nashua Additional Insured

Motor Vehicle Liability ***coverage must include all owned, non-owned and hired vehicles.**
$1,000,000 Combined Single Limit
Automobile Liability
City of Nashua Additional Insured

Workers' Compensation Coverage according to Statute of the State of New Hampshire:
$100,000 / $500,000 / $100,000

All bidders and subcontractors at every tier under the bidder will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

It is the responsibility of the contractor to submit to the City of Nashua certificates of insurance for all subcontractors prior to the start of the project. It is the responsibility of the contractor to provide the City with updated certificates of insurance for the contractor and all subcontractors 10 days prior to the expiration of coverage. The City 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.

3. Include completed operations insurance;

4. Include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. Remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.07; and

7. With respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

C. CONTRACTOR agrees to maintain all required insurance coverage throughout the entire term of the contract. If CONTRACTOR does not maintain coverage throughout the entire term of the contract, CONTRACTOR agrees that OWNER may, at any time the coverage is not maintained by CONTRACTOR, order the CONTRACTOR to stop work, suspend the contract, or terminate the contract. CONTRACTOR further agrees, if applicable, as a precondition to the performance of any work under this contract and as a precondition to any obligation of the OWNER to make any payment under this contract to provide the OWNER with a certificate of a qualified insurer.

5.05 ***Property Insurance***

A. CONTRACTOR must purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost of the Work. This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

3.cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that the materials and equipment have been included in an application for payment recommended by ENGINEER; and

4. allow for partial utilization of the Work by OWNER:

5. include testing and startup; and

6. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. CONTRACTOR shall be responsible for any deductible or self-insured retention. The risk of loss within the identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain

it at the purchaser's own expense. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions.

C. All the policies of insurance (and the certificates or other evidence of the policy) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days after written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

5.06 ***Waiver of Rights***

A. CONTRACTOR intends that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered by the policy. All CONTRACTOR policies must contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insured there under. CONTRACTOR waive all rights against OWNER each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 ***Supervision and Superintendence***

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 ***Labor; Working Hours***

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday,

Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

C. The following list of streets may not be opened or worked in between the hours of 7:00 AM and 9:00 AM and 3:00 PM and 6:00 PM, Monday through Friday of each week:

Amherst Street
Broad Street
Canal Street
Concord Street
D. W. Highway
East Dunstable Road
East Hollis Street
Kinsley Street
Main Street

6.03 ***Services, Materials, and Equipment***

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 ***Progress Schedule***

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 ***Substitutes and "Or-Equals"***

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. "Or-Equal" Items:

If in ENGINEER'S sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. In the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items*

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures::* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop drawing for an "or equal". ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 ***Concerning Subcontractors, Suppliers, and Others***

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 ***Patent Fees and Royalties***

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 ***Permits***

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility Owner's for capital costs related thereto, such as plant investment fees.

6.09 ***Laws and Regulations***

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary

responsibility to make certain the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in paragraph 10.05.

D. CONTRACTOR shall comply with all local laws, ordinances, and statutes, all provisions of the Revised Statutes Annotated, all provisions of the federal Davis-Bacon Act for projects with federal funding, and all regulations promulgated under either statute. Copies of the "City of Nashua Prevailing Wage Rates for Public Works", as determined by U.S. Department of Labor and "General Wage Determinations," as determined by the U.S. Department of Labor, are available for inspection at the City of Nashua Division of Public Works, 9 Riverside Street, Nashua, New Hampshire. If the provisions of the Davis-Bacon Act apply, all employees of the CONTRACTOR must be paid not less than the wage which is the greater of the Federal wage determinations. The hourly and daily rate of wages to be paid each class of mechanics and workers must be posted on the project site in a place generally visible to the employees.

E. If the Davis-Bacon Act applies, CONTRACTOR shall furnish to the OWNER within seven days after payment date of the weekly payroll period, a statement of wages paid for each of the CONTRACTOR's employees or a payroll report. If the Davis-Bacon Act applies, CONTRACTOR shall furnish to the OWNER within seven days after payment date of the weekly payroll period, a statement of wages paid for each of any subcontractor's employees or a payroll report for each subcontractor. The statement or report must include the CONTRACTOR's certification of compliance with the requirements of the supplementary condition. CONTRACTOR agrees that failure to comply with the portion of this supplementary condition requiring CONTRACTOR to furnish a certified statement of wages or payroll report will, in addition to any other retention allowed under this contract or under state or federal law, allow the OWNER to unilaterally, without notice to CONTRACTOR, retain an amount of up to 10% from each progress payment until the OWNER determines CONTRACTOR has complied with the provisions of this supplementary condition.

F. If the Davis-Bacon Act applies to work to be performed under this contract, CONTRACTOR shall furnish to the OWNER within seven days after payment date of the weekly payroll period, a statement of wages paid for each of CONTRACTOR's employees and for each of any subcontractor's employees or a payroll report from CONTRACTOR and from each subcontractor. Each statement or report must include the certification by CONTRACTOR of compliance with the provisions of the Davis-Bacon Act.

G. Workers' Compensation Coverage.

1. CONTRACTOR agrees as a precondition to the performance of any work under this contract and as a precondition to any obligation of the OWNER to make any payment under this contract to provide the OWNER with a certificate of a qualified insurer. CONTRACTOR agrees that notice of any lapse in coverage or nonpayment of coverage that the CONTRACTOR is required to maintain should be mailed to:

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

2. CONTRACTOR agrees to maintain required workers' compensation coverage throughout the entire term of the contract. If CONTRACTOR does not maintain coverage throughout the entire term of the contract, CONTRACTOR agrees that OWNER may, at any time the coverage is not maintained by CONTRACTOR, order the CONTRACTOR to stop work, suspend the contract, or terminate the contract. For each six-month period this contract is in effect, CONTRACTOR agrees, prior to the expiration of the six-month period, to provide another written request to its insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If

CONTRACTOR does not make the request or does not provide the certificate before the expiration of the six-month period, CONTRACTOR agrees that OWNER may order the CONTRACTOR to stop work, suspend the contract, or terminate the contract.

H. To be deemed a responsive bid, the list of subcontractor form must be submitted even if no subcontractors are required to be listed. Submittal is as follows:

1. Each bid submitted to any officer, department, board or commission for the construction of any public work or improvement must include:

a. The name of each subcontractor who will provide labor or a portion of the work or improvement to the CONTRACTOR for which he will be paid an amount exceeding 5 percent of the prime CONTRACTOR's total bid. Within 2 hours after the completion of the opening of the bids, the general contractors who submitted the three lowest bids must submit a list of the name of each subcontractor who will provide labor or a portion of the work or improvement to the CONTRACTOR for which he will be paid an amount exceeding 1 percent of the prime CONTRACTOR's total bid or $50,000, whichever is greater, and the number of the license issued to the subcontractor. If a general CONTRACTOR fails to submit such a list within the required time, his bid shall be deemed not responsive.

b. A description of the portion of the work or improvement which each subcontractor named in the bid will complete.

2. The CONTRACTOR shall list in his bid the name of a subcontractor for each portion of the project that will be completed by a subcontractor.

3. A CONTRACTOR whose bid is accepted shall not substitute any person for a subcontractor who is named in the bid, unless:

a. The awarding authority objects to the subcontractor, requests in writing a change in the subcontractor and pays any increase in costs resulting from the change; or

b. The substitution is approved by the awarding authority and:

(i) The subcontractor, after having a reasonable opportunity, fails or refuses to execute a written contract with the CONTRACTOR which was offered to the subcontractor with the same terms that all other subcontractors on the project were offered;

(ii) The named subcontractor files for bankruptcy or becomes insolvent; or

(iii) The named subcontractor fails or refuses to perform his subcontract within a reasonable time or is unable to furnish a performance bond and payment bond.

I. If blasting or use of explosives is necessary for prosecution of Work, the CONTRACTOR shall provide the ENGINEER with a blasting plan in compliance with OSHA, State, and local regulations, laws, ordinances, and requirements. CONTRACTOR shall exercise the utmost care not to endanger life or property. CONTRACTOR shall be responsible for all damage resulting from the use of explosives. CONTRACTOR shall notify each property OWNER and utility company having structures or facilities in proximity to the site of the work of its intentions to use explosives. Such notice shall be given sufficiently in advance to enable the utility companies to take such steps as they may deem necessary to protect their property from injury.

6.10 ***Taxes***

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work

6.11 ***Use of Site and Other Areas***

A. Limitation on Use of Site and Other Areas

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the OWNER or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such OWNER or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

B. Removal of Debris During performance of the Work:

During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning:

Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures:

CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

E. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such OWNER or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

6.12 ***Record Documents***

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders,
Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

B CONTRACTOR shall mark up one set of paper prints to show the As-built conditions. They shall include all the information shown on the Contract Drawings and a record of all deviations, modifications, or changes from those Drawings, however minor, which were incorporated in the Work, all additional work not appearing on the Contract Drawings and all changes which are made after final inspection of the Contract Work. These As-built marked prints shall be kept current and available on the job site at all times. All changes from the Contract Drawings which are made in the Work or additional information which might be uncovered in the course of construction shall be accurately and neatly recorded as they occur by means of details and notes. No construction work shall be concealed until it has been inspected, approved, and recorded. The As-built marked prints will be jointly inspected for accuracy and completeness by the ENGINEER'S representative and a responsible representative of the CONTRACTOR prior to submission of the monthly pay estimate. Failure to keep the As-built marked prints on a current basis shall be sufficient justification to suspend pay estimates. The drawings shall show the following information, but not be limited to:

1. The location of any utility lines or other installations of any kind or description known to exist within the construction area. The location includes dimensions of permanent features.

2. The location and identification of all surface installations within 100 feet of the construction work.

3. The location and dimensions of any changes within the building or structure.

4. Correct grade or alignment of roads, structures, or utilities if any changes were made from Contract Drawings.

5. Correct elevations if changes were made in site grading.

6. Changes in details or design or additional information obtained from working drawings specified to be prepared or furnished by the CONTRACTOR including but not limited to fabrication, erection, installation plans and placing details, pipe sizes, insulation material, dimensions or equipment foundations, etc.

7. The topography and grades of all drainage installed or affected as a part of the Work.

8. All changes or modifications which result from the final inspection.

The As-built marked prints shall be delivered to the ENGINEER at the time of final inspection for ENGINEER's review and approval. All approval and acceptance of As-built drawings shall be accomplished before final payment is made to the CONTRACTOR.

6.13 *Safety and Protection*

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. All persons on the Site or who may be affected by the Work;

2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify OWNER of adjacent property and of Underground Facilities and other utility Owner's when prosecution of the Work may affect them, and shall cooperate

with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER'S Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

C. Occupational Safety and Health Standards: CONTRACTOR's methods of construction and safety requirements, including but not limited to trench excavation and shoring where applicable, shall conform to the requirements of the Occupational Safety and Health Standards for the Construction Industry. The document entitled "Occupational Safety and Health Standards for the Construction Industry" (29 CFR PART 1926) with Amendments as of February 1, 1998, including 29 CFR part 1910 General Industry Safety and Health Standards Applicable to Construction, is not attached to the Contract Documents. Said requirements as identified and established above are incorporated herein by reference.

D. Power Lines: No equipment of any kind shall be used or permitted within such proximity to the conductors of the Public Services of New Hampshire power lines as to be in violation of the safe working clearance prescribed by the National Electrical Safety Code.

E. Protection of Utilities: The CONTRACTOR shall verify all utility locations prior to the start of construction. This shall include, but not necessarily limited to: irrigation and drainage ditches, culverts, water lines, sewer lines, telephone cables, cable television, gas lines and electric lines. Prior to the start of construction the CONTRACTOR shall call Dig Safe System, Inc. 1-800-344-7233 (two full working days' notice required). The failure of any utility to subscribe to DIGS shall not relieve the CONTRACTOR from the responsibility of protection of that utility on the site. Any physical structure (i.e. curbs, sidewalks, paving, buildings, landscape improvements, utilities, etc., damaged by the CONTRACTOR shall be repaired or replaced in a condition equal to or better than the condition prior to the damage. Such repair or replacement shall be accomplished at the CONTRACTOR's expense without additional compensation from the OWNER.

F. CONTRACTOR shall ensure that its activities and activities of its employees, agents and subcontractors, and their employees and agents (including all sub-subcontractors), are in strict compliance with all Environmental Protection Agency, New Hampshire Department of Environmental Services, and Department of Transportation regulations and all other applicable federal, state and local statutes, ordinances, regulations and rules, including without limitation, the Federal Occupational Safety and Health Act of 1970 (OSHA) as amended and the standards and regulations issued thereunder, and all other statutes, ordinances, regulations, rules, standards and requirements of common law in relation to industrial hygiene and safety, and the protection of health and the environment.

6.14 *Safety Representative*

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Work Site is subject to safety inspection by the City Safety Representative at any and all times.

6.15 *Hazard Communication Programs*

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, Change Order will be issued.

6.17 *Shop drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

   a. All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

   b. All materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

   c. All information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

   d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents,

such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. *ENGINEER's Review*

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2.ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. Normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by ENGINEER;

2. Recommendation by ENGINEER or payment by OWNER OF ANY PROGRESS OR FINAL PAYMENT;

3. The issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereof by OWNER;

4. Use or occupancy of the Work or any part thereof by OWNER;

5. Any acceptance by OWNER or any failure to do so;

6. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. Any inspection, test, or approval by others; or

8. Any correction of defective Work by OWNER.

6.20 ***Indemnification***

A. Regardless of the coverage provided by any insurance, Contractor agrees to indemnify and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Contractor's indemnity 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.

B. In any and all claims against OWNER or ENGINEER, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:
The preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications.

ARTICLE 7 - OTHER WORK

7.01 ***Related Work at Site***
A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefore, or have other work performed by utility Owner's. If such other work is not noted in the Contract Documents, then:

1. Written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefore as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility OWNER (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility OWNERs and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility OWNERs and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 ***Coordination***

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. The individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. The specific matters to be covered by such authority and responsibility will be itemized; and

3. The extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 ***Communications to Contractor***

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 ***Replacement of ENGINEER***

A. In case of termination of the employment of ENGINEER, OWNER shall appoint and whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 ***Furnish Data***

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 ***Pay Promptly When Due***

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 ***Lands and Easements; Reports and Tests***

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 ***Insurance***

See Article 5.

8.07 ***Change Orders***

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 ***Inspections, Tests, and Approvals***

A. OWNER's responsibility in respect to certain inspections tests, and approvals is set forth in paragraph 13.03.B.

8.09 ***Limitations on OWNER's Responsibilities***

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, of the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 ***Undisclosed Hazardous Environmental Condition***

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06

8.11 ***Evidence of Financial Arrangements***

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 ***OWNER's Representative***

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 ***Visits to Site***

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 ***Project Representative***

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereof of such other individual or entity will be as provided in the supplementary Conditions.

9.04 ***Clarifications and Interpretations***

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefore as provided in paragraph 10.05.

9.05 ***Authorized Variations in Work***

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

9.06 ***Rejecting Defective Work***

A ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 ***Shop Drawings, Change Orders and Payments***

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to change orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 ***Determinations for Unit Price Work***

A ENGINEER will have authority to determine the actual quantities and classifications of items of Unit Price Work performed by CONTRACTOR, and the written decisions of ENGINEER on such matters will be final, binding on OWNER and CONTRACTOR and not subject to appeal (except as modified by ENGINEER to reflect changed factual conditions).

9.09 ***Decisions on Requirements of Contract Documents and Acceptability of Work***

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not be liable in connection with any interpretation or decision rendered in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 ***Limitations on ENGINEER's Authority and Responsibilities***

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates or inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 ***Authorized Changes in the Work***

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment or a Change Order. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Change Order, a Claim may be made therefore as provided in paragraph 10.05.

10.02 ***Unauthorized Changes in the Work***

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 ***Execution of Change Orders***

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. Changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Change Order ; and

3. Changes in the Contract Price and Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 ***Notification to Surety***

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 ***Disputes – Not Insurance Related***

A. Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 10 days) after the start of the event giving rise thereto. Notice of the amount or extent of the dispute, or other matter with supporting data shall be delivered to the ENGINEER, Risk Management Department and the other party to the Contract within 60 days after the start of such event. A dispute for an adjustment in Contract Price shall be prepared in accordance with the provisions in paragraph 12.01.B. A dispute for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each dispute shall be accompanied by claimant's written statement that the

adjustment disputed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. ENGINEER'S Decision: ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such dispute, or other matter will be final and binding upon CONTRACTOR unless:

1. An appeal from ENGINEER'S decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. If no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have the respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the dispute in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the submittal of the opposing party, if any.

D. No dispute for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of the Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs of employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of

surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

6. Rental rates shall be determined as follows:

a. The base rates shall be those established in publications and revisions thereto entitled "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment" as published by K-III, 1735 Technology Drive, Suite 401, San Jose, CA 95110-1313, Phone (408) 467-6700.

b. Attachments (e.g. tractor with ripper and dozer or tractor with loader and backhoe) will be included in the hourly rental rate only when deemed essential to the work as determined the Engineer. When multiple attachments are approved for use and are being used interchangeably, the attachment having the higher rental rate shall be the only one included for payment.

c. No direct payment will be made for necessary accessories (including replenishing blades, augers, teeth, hoses, bits, etc.) if not listed in the Rental Rate Blue Book.

d. No compensation will be allowed for shop tools having a daily rental rate of less than $10 as set forth in Section 18 of the Rental Rate Blue Book.

i. If ordered to use equipment not listed in the aforementioned publications, the Engineer will establish a rental rate for such equipment. CONTRACTOR shall furnish cost data that might assist in the establishment of such rental rate.

ii. Payment will be made for the actual time that such equipment is in operation on the work.

iii. Authorized standby time for idle equipment shall be paid at 50% of the specified rate, less the estimated operating cost per hour. No markup will be added for overhead and profit.

iv. Rental rate paid as above provided shall include the cost of fuel, oil, lubrication, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. CONTRACTOR shall provide the Engineer with a complete Force Account Equipment Listing for each piece of equipment utilized.

e. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

f. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

g. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work, provided such losses and damages have resulted from causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

h. The cost of utilities, fuel, and sanitary facilities at the Site.

i. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

j. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim

k. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expense, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overheard or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. CONTRACTOR's Fee: When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. Documentation: Whenever the cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A. and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER as itemized cost breakdown together with supporting data.

11.02 ***Cash Allowances***

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 ***Unit Price Work***

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of the Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subjects to the provisions of paragraph 9.08

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 ***Change of Contract Price***

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents an agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. CONTRACTOR's Fee: The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. For costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a. is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. No fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. The amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. When both addition and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e inclusive.

12.02 ***Change of Contract Times***

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 ***Delays beyond CONTRACTOR's Control***

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 ***Delays within CONTRACTOR's Control***

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 ***Delays beyond OWNER's and CONTRACTOR's Control***

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 ***Delay Damages***

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. Delays caused by or within the control of CONTRACTOR; or

2. Delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, flood, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone from whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 ***Notice of Defects***

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 ***Access to Work***

A. OWNER, ENGINEER, ENGINEER'S Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interest will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 ***Tests and Inspections***

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. For inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. That costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. As otherwise specifically provided in the Contract Documents.

4. That costs incurred by OWNER due to retesting, re-inspection, or standby time due to unacceptable materials, or workmanship provided by the CONTRACTOR, or due to poor scheduling by the CONTRACTOR of tests of inspections, will be deducted from the payments to the CONTRACTOR. CONTRACTOR shall stop work as necessary to allow for inspections and tests by OWNER and ENGINEER.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER'S and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

G. The OWNER intends to provide inspection for the project. The inspector will be available during a forty (40) hour period during the week from Monday through Friday. In the event the CONTRACTOR receives permission from the OWNER and elects to work more than forty hours during the week or more than 10 hours in one day, or on a Saturday, Sunday, or legal holiday, the CONTRACTOR shall be responsible for all inspection, engineering and testing costs incurred during that period. For all inspection and testing work performed on Saturday, Sunday, or legal holidays, the minimum chargeable time shall be four (4) hours. The OWNER reserves the right to deduct these inspection, engineering, and testing costs directly from the CONTRACTOR'S payments.

13.04 ***Uncovering Work***

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR'S expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefore as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly

attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

13.05 ***OWNER May Stop the Work***

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause of such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 ***Correction or Removal of Defective Work***

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 ***Correction Period***

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting there from. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting there from) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 ***Acceptance of Defective Work***

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefore as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 ***OWNER May Correct Defective Work***

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefore as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 ***Schedule of Values***

A. The schedule of values established as provided in paragraph 2.01.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 ***Progress Payment***

A. Review of Applications.

1. Prior to submittal of Application for Payment to OWNER (but not more often than once a month), the CONTRACTOR shall submit the monthly progress estimate to the ENGINEER for review and approval.

2. ENGINEER will, within 10 working days after receipt of each progress estimate, either indicate in writing a recommendation of payment or indicate in writing ENGINEER's reasons for refusing to recommend payment and return the progress estimate to CONTRACTOR. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

3. ENGINEER's recommendation of any payment requested in a progress estimate will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying date and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. The Work has progressed to the point indicated;

b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08 and to any other qualifications stated in the recommendation); and

c. The conditions precedent to CONTRACTOR's being entitled to such payment appears to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

4. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

5. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

6. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. The Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. The Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

B. Applications for Payments.

1. CONTRACTOR shall submit to OWNER the ENGINEER recommended Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER. Any request for partial or final payment shall specifically list the work completed. Requests for payment for services performed under this agreement shall be submitted as stipulated in ***Article 6 - Payment and Procedures*** in the Agreement.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be stipulated in the Agreement.

C. Payment Becomes Due

1. Not more than 30 days after presentation of the application for payment to OWNER with ENGINEER's recommendation, the amount recommended will become due, and when due will be paid by OWNER to CONTRACTOR.

D. Reduction in Payment.

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. Claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. There are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 ***CONTRACTOR'S Warranty of Title***

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 ***Substantial Completion***

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefore. If after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 ***Partial Utilization***

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 ***Final Inspection***

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 ***Final Payment***

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application of Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 ***Final Completion Delayed***

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 ***Waiver of Claims***

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 ***Termination, Abandonment, or Suspension at Will***

The OWNER, 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 OWNER chooses to terminate, abandon, or suspend all or part of the project, it shall provide 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, 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 OWNER 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 OWNER 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 OWNER to resume performance.

In the event of a termination, abandonment, or suspension at will, CONTRACTOR shall receive all amounts due and not previously paid to 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.

15.02 ***Termination for Cause***

This agreement may be terminated by the OWNER on 10 calendar day's written notice to CONTRACTOR in the event of a failure by 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 OWNER, to complete or make sufficient progress on the work in a timely and

professional manner. CONTRACTOR shall be given an opportunity for consultation with the OWNER prior to the effective date of the termination. CONTRACTOR may terminate the contract on 10 calendar days written notice if, through no fault of CONTRACTOR, the OWNER fails to pay CONTRACTOR for 45 days after the date of approval by the OWNER of any Application for Payment.

Upon receipt of notice of termination for cause, CONTRACTOR shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the OWNER 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 OWNER 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 OWNER 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 OWNER to resume performance.

In the event of a termination for cause, CONTRACTOR shall receive all amounts due and not previously paid to 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 OWNER by reasons of CONTRACTOR's failure. CONTRACTOR shall not be relieved of liability to the OWNER for damages sustained from the failure, and the OWNER may withhold any payment to the CONTRACTOR until such time as the exact amount of damages due to the OWNER is determined. All claims for payment by the CONTRACTOR must be submitted to the OWNER within 30 days of the effective date of the notice of termination.

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

15.03 ***General Provisions for Termination***

Upon termination of the contract, the OWNER may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event CONTRACTOR shall cease conducting business, the OWNER shall have the right to solicit applications for employment from any employee of the CONTRACTOR assigned to the performance of the contract.

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

ARTICLE 16 - DISPUTE RESOLUTION

16.01 ***Methods and Procedures***

A. 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 OWNER Representative and a CONTRACTOR Representative. At all times, CONTRACTOR shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the OWNER. 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.

ARTICLE 17 - MISCELLANEOUS

17.01 ***Giving Notice***

A. Whenever any provision of the Contact Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 ***Computation of Times***

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 ***Cumulative Remedies***

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation or, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, by special warranty or guarantee, or by other provisions of the contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 ***Survival of Obligations***

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, will survive final payment, completion, and an acceptance of the Work or termination or completion of the Agreement.

17.05 ***Controlling Law***

A. 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

17.06 Access to Records

A. At all times during regular business hours, CONTRACTOR shall provide full and free access to the OWNER, ENGINEER, and State of New Hampshire to any books, documents, papers, and records related to the work for the purpose of examination, audit, and duplication. The CONTRACTOR shall maintain all required accounts, records, and books for three years after final completion of the work.

17.07 Road Closures and Traffic Delays

A. Partial or full closure of streets in order to facilitate construction will be permitted, or required by the Engineer in accordance with the following:

1. If the CONTRACTOR proposes a closure, the CONTRACTOR notifies the OWNER in writing at least 5 days prior to the proposed closure of his intent to close the road.

2. At least 5 days prior to the proposed closure, the CONTRACTOR shall submit a detour traffic plan for each location being detoured.
3. The CONTRACTOR shall install standard traffic control devices in accordance with the Detour Signage plan provided in the bid documents and the Manual on Uniform Traffic Control Devices (MUTCD.)

4. The detour signage shall be covered when the road closure is not in effect.

B. CONTRACTOR shall notify the following agencies of any traffic delays or road closures three days in advance of the work:

Nashua Police Department:	**(603) 594-3500**
Nashua Fire Department:	**(603) 594-3652**
School Bus Garage:	**(603) 594-4300**
Nashua Solid Waste Department	**(603) 589-3410**
Nashua Building Department	**(603) 589-3080**

17.08 Prohibited Interests

A. CONTRACTOR shall not allow any officer or employee of the OWNER to have any indirect or direct interest in this contract or the proceeds of this contract CONTRACTOR warrants that no officer or employee of the OWNER has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of CONTRACTOR. If any such interest comes to the attention of CONTRACTOR at any time, a full and complete disclosure of the interest shall be immediately made in writing to the OWNER. CONTRACTOR also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. CONTRACTOR further warrants that no person having such an interest shall be employed in the performance of this contract. If OWNER determines that a conflict exists and was not disclosed to the OWNER, it may terminate the contract at will or for cause in accordance with Article 15.02.

B. In the event 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 may terminate the contract at will or for cause in accordance with paragraph 9. Upon termination, Contractor shall refund to the City any profits realized under this contract, and Contractor shall be liable to the City for any costs incurred by the City in completing the work described in this contract. At the discretion of the City, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

C. Contractor warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Contractor to any officer or employee of the City 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 determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with Article 15.02.

D. 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 under this contract or at law.

DIVISION 7

PROSECUTION OF WORK

PROSECUTION OF WORK

DESCRIPTION OF WORK

The contract work includes the limits on the various streets listed in the Schedule of Values. The specified pavement treatment is crack sealing.

The City reserves the right to remove streets from the list, extend or reduce limits on individual streets, or revise the specified pavement treatment on individual streets.

The City may also add additional streets to the contract work.

Should the net projection of the value of changes to the contract work exceed the authorized amount, the Owner will present a contract amendment proposal to the Contractor.

INTERIM MILESTONES FOR SUBSTANTIAL COMPLETION

The entire length of all roadway segments shall be substantially completed by August 21, 2020.

WORK HOURS

Reference is made to *Section 6.02 Labor; Working Hours* of the General Conditions.

Normal working hours shall be from 7:00 AM to 5:00 PM Monday through Friday. No weekend, holiday or night work will be allowed without advance written approval of the City Engineer.

Streets listed in *General Conditions Section 6.02C*, may not be opened or worked in between the hours of 7:00 AM to 9:00 AM and 3:00 PM to 6:00 PM, Monday through Friday of each week.

Requests for work beyond those hours normally allowed on weekdays shall be made by the Contractor at least 72 hours in advance.

Requests for work on Saturdays, Sundays and holidays shall be made at least one week in advance.

Contractor should not assume requests for hours beyond the hours and days normally allowed will be approved. Requests will be considered on a case by case basis.

CONTRACTOR'S REPRESENTATIVE

The Contractor shall designate a representative who will be available to respond to emergency calls by the Owner at any time day and night and on weekends and holidays should such a situation arise.

Should the City determine action by the City is needed or other costs are incurred because the Contractor's Representative is not available, the City will back-charge the Contractor for associated expenses.

SCHEDULING AND COORDINATION

Reference is made to *General Conditions Section 2.05, Before Starting Construction* and *General Conditions Section 6.04, Progress Schedule.*

Prior to the start of construction, the Contractor shall submit a comprehensive schedule to the Engineer for review and acceptance.

The schedule will identify the number of crews and completion dates for all critical elements of work.

Detailed updates of the schedule shall be submitted to the Engineer for review and acceptance on at least a weekly interval.

The Contractor shall not increase the number of crews assigned to the work as identified in the schedule without providing at least one week advanced notice to the Engineer.

SUPERINTENDENCE OF THE WORK

Reference is made to *General Conditions Section 6.01, Supervision and Superintendence.*

Contractor shall provide appropriate onsite superintendence of all aspects of the work whether performed by the Contractor or by subcontractors.

Qualified Superintendent(s) shall be assigned for all crews. The Contractor shall provide contact information for all Superintendents.

COOPERATION WITH REFUSE PICKUP

The Contractor shall determine the schedule for trash pickup by contacting the **City of Nashua's Solid Waste Department**. The Contractor shall cooperate and make arrangements to insure that trash pickup is not delayed or obstructed in any way. This may involve the Contractor bringing trash barrels to the front or backside of the work area for pickup by the Solid Waste Department and then returning the barrels back to each house.

A. Notice of Award
B. Notice to Proceed
C. Change Order
D. Certificate of Substantial Completion
E. Certificate of Final Completion
F. Consent of Surety
G. Contractor's Affidavit
H. Contractor's Final Completion and Waiver of Lien

DIVISION 8

EXHIBITS

NOTICE OF AWARD

DATED: _____

TO: _____
(Bidder)

ADDRESS: _____

OWNER'S CONTRACT NO. : _____

PROJECT: _____
(Insert name of Contract as it appears in the Bidding Document)

You are notified that your Bid dated _____ for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a contract for

_____

_____

_____
(Indicate total Work, alternatives or sections or Work awarded)

The Contract Price of your contract is

_____ ($ _____)

The proposed Agreement that the OWNER expects to execute, accompanies this Notice of Award.

1. You must deliver to the OWNER a fully executed counterpart of the proposed Agreement that the OWNER expects to execute.

2. You must deliver to the OWNER the Contract Security (Bonds), as specified in the General Conditions (Article 8.03), and Certificate of Liability Insurance, as specified in General Conditions (Article 5).

3. (List other conditions precedents).

_____

_____

_____

Failure to comply with these conditions within the time specified will entitle **OWNER** to consider your bid in default, to annul this Notice of Award and to declare your Bid Security forfeited.

By _____
(FOR THE CITY OF NASHUA)

_____
(TITLE)

NOTICE TO PROCEED

DATED: _____

TO: _____
(Contractor)

ADDRESS: _____

OWNER'S CONTRACT NO._____

PROJECT:_____
(Insert name of Contract as it appears in the Bidding Document)

You are notified that the Contract Times under the above contract will commence to run on _____, 20___. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the dates of Substantial Completion and Final Completion are _____and _____, respectively.

Also before you may start any Work at the site you must:

_____
(Add other requirements)

_____

_____

By _____
(For the City of Nashua)

_____
(Title)

CHANGE ORDER

No. _____

PROJECT: _____

OWNER'S CONTRACT NO: _____

EXECUTED CONTRACT DATE: _____

DATE OF ISSUANCE: _____ EFFECTIVE DATE: **Upon City Approval**

OWNER: **City of Nashua, NH**

OWNER's Purchase Order NO.: _____

CONTRACTOR: _____

ENGINEER: _____

You are directed to make the following changes in the Contract Documents:

Description:

Summary

CHANGE IN CONTRACT PRICE:	**CHANGE IN CONTRACT TIMES:**
Original Contract Price $	Original Contract Times Final completion: Ready for final payment:
Net changes from previous Change Orders $	Net change from previous Change Orders
Contract Price prior to this Change Order $	Contract Times prior to this Change Order Final completion: Ready for final payment:
Net Increase (decrease) of this Change Order $	Net Increase (decrease) of this Change Order
Contract Price with all approved Change Orders $	Contract Times with all approved Change Orders Final completion: Ready for final payment:

RECOMMENDED:	ACCEPTED:	APPROVED:
By: _____ Engineer (Authorized Signature) Date: _____	By: _____ Name Contractor (Authorized Signature) Date: _____	By: _____ Mayor Jim Donchess Owner (Authorized Signature) Date: _____

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT: _____

OWNER'S CONTRACT NO: _____

DATE OF ISSUANCE: _____

OWNER: _____ City of Nashua, NH _____

OWNER's Purchase Order NO.: _____

CONTRACTOR: _____

ENGINEER: _____

_____

The Work to which this Certificate applies has been inspected by authorized representative of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

_____
(DATE OF SUBSTANTIAL COMPLETION)

A Tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within _____days of the above date of Substantial Completion.

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

EXECUTED BY ENGINEER:	ACCEPTS THIS CERTIFICATE OF SUBSTANTIAL COMPLETION:	ACCEPTS THIS CERTIFICATE OF SUBSTANTIAL COMPLETION:
By: _____	By: _____	By: _____
_____	Daniel Hudson, P.E.	_____
(Authorized signature)	Owner Representative	Contractor (Authorized Signature)
Title: _____	Title: City Engineer, City of Nashua	Title: _____
Date:	Date:	Date:

CERTIFICATE OF FINAL COMPLETION

PROJECT: _____

OWNER'S CONTRACT NO: _____

DATE OF ISSUANCE: _____

OWNER: City of Nashua, NH

OWNER's Purchase Order NO.: _____

CONTRACTOR: _____

ENGINEER: _____

_____

The Work to which this Certificate applies has been inspected by authorized representative of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

_____
(DATE OF FINAL COMPLETION)

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents. The Warranty for all Work completed expires one year from the date of this Final Completion.

	EXECUTED BY ENGINEER:	ACCEPTS THIS CERTIFICATE OF FINAL COMPLETION:	ACCEPTS THIS CERTIFICATE OF FINAL COMPLETION:
By:	_____	By: _____	By: _____
	_____	Daniel Hudson, P.E.	_____
	(Authorized signature)	(Owner Representative)	Contractor (Authorized Signature)
Title:	_____	Title: City Engineer, City of Nashua	Title: _____
Date:		Date:	Date:

CONSENT OF SURETY FOR FINAL PAYMENT

OWNER's Project No.: _____

Project: _____

Type of Contract: _____ Amount of Contract (including Change Orders): _____

CONTRACTOR: _____

Contract For: _____ Contract Date: _____

In accordance with the provisions of the above named contract between the OWNER and the CONTRACTOR, the following named Surety Company:

_____

_____

_____

On the Payment Bond of the following named CONTRACTOR:

_____

_____

_____

Hereby approves of final payment to the CONTRACTOR, and further agrees that said final payment to the CONTRACTOR shall not relieve the Surety Company named herein of any of its obligations to the following named OWNER; as set forth in said Surety Company's bond:

_____

_____

_____

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand and seal

this _____ day of _____, of 20_____.

_____
(Name of Surety Company)

_____
(Signature of Authorized Representative)

_____
(Title)

(Affix corporate seal here)

CONTRACTOR'S AFFIDAVIT

STATE OF:_____

COUNTY OF:_____

Before me, the undersigned, a _____
(Notary Public, Justice of Peace, Alderman)
in and for said County and State personally appeared,

_____
(Individual, Partner or duly authorized representative of corporate contractor)
who being duly sworn according to law deposes and says that the cost of all the Work, and outstanding claims and indebtedness of whatever nature arising out of the performance of the contract between

City of Nashua, New Hampshire _____ of 229 Main Street, Nashua, NH 03060 _____
(Owner) (Address)

and

_____ of _____
(Contractor) (Address)

Dated _____ for the construction of the _____
and necessary appurtenant installations have been paid in full.

_____
(Individual, Partner or duly authorized representative of corporate contractor)

_____
(Title)

(Individual, Partner, or duly authorized representative of corporate contractor)

Sworn to and subscribed before me this _____ day of _____, 2020

_____
(Notary Public)

CONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN

Project: _____

Owner	Contractor
Owner: City of Nashua, New Hampshire	Name: _____
Address: 229 Main Street	Address: _____
Nashua, New Hampshire 03060 City State Zip	_____ City State Zip
	Contractor License: _____
	Contract Date: _____

TO ALL WHOM IT MAY CONCERN:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Contractor hereby waives, discharges, and releases any and all liens, claims, and rights to liens against the above-mentioned project, and any and all other property owned by or the title to which is in the name of the above-referenced Owner and against any and all funds of the Owner appropriated and available for the construction of said project, and any and all warrants drawn upon or issued against any such funds or monies, which the undersigned Contractor may have or may hereafter acquire or process as a result of the furnishing of labor, materials, and/or equipment, and the performance of Work by the Contractor on or in connection with said project, whether under and pursuant to the above-mentioned contract between the Contractor and the Owner pertaining to said project or otherwise, and which said liens, claims or rights of lien may arise and exist.

The undersigned further hereby acknowledges that the sum of

_____

Dollars ($_____) constitutes the entire ***unpaid*** balance due the undersigned in Connection with said project whether under said contract or otherwise and that the payment of said sum to the Contractor will constitute payment in full and will fully satisfy any and all liens, claims, and demands which the Contractor may have or assert against the Owner in connection with said contract or project.

Dated this _____day of _____20__

_____
Contractor

Witness to Signature

By_____ Title_____

DIVISION 9

TECHNICAL SPECIFICATIONS

A. NHDOT Supplemental Specifications (2016 Edition) – updated July 6, 2018
B. Technical Specifications

NHDOT SUPPLEMENTAL SPECIFICATIONS (2016 EDITION) – UPDATED JULY 6, 2018

The following Construction Specifications amend, revise, supplement and/or otherwise modify the New Hampshire Department of Transportation's STANDARD SPECIFICATIONS FOR ROADWAY AND BRIDGE CONSTRUCTION (2016 edition as amended).

The following table is a list of all of the Supplemental Specifications that have been adopted by the NHDOT as additions or revisions to the ***"Standard Specifications for Road and Bridge Construction"***, March 2016 Edition as of the date of this proposal. Some of the Supplemental Specifications are included and made a part of this proposal. The Bidder is responsible to examine each item to determine its effect, if any, on the contract.

NHDOT Supplemental Specifications (2016 Edition) - updated July 6, 2018

Section	Description	Revision	Last Revision Date	Current Revision Date
Division 100				
101	Definitions and Terms	101.79 - Revises Frequency of Updates (06/06/17) 101.116-119 - Revises Definitions of Weather Days and Working Days (04/02/18)	06/06/17	04/02/18
106.04	Qualified Products List	Revises Frequency of Updates		06/06/17
107.01	Legal Relations and Responsibility to Public	107.01 - Revises References to DES Rules and Regulations		07/06/18
108.09	Prosecution and Progress	108.09 - Amends the Requirements for Liquidated Damages		07/06/18
109.04	Differing Site Conditions, Changes and Extra Work	Revises Rental Rate Blue Book Online Requirements (04/02/18)	01/06/12	04/02/18
Division 200				
211.3.4	Vibration Monitoring	Adds reference to pre- and post-construction survey requirements		04/05/17
Division 300				
Division 400				
401	Plant Mix Pavements - General	2.5.1 - Adds winter binder to the design control points (04/05/17) 2.10 – No greater than 1% TRB (06/06/17) 3.4.1 - Revises Cold Feeder Requirements (07/06/18) 3.4.7.1 - Revises Recycled Materials Weighing Procedures (07/06/18)	07/06/18	11/07/18

		3.4.11 - 3.4.15 - Describes the Introduction of Recycled Materials at a Batch Plant and Controls Minimum Dry Time for Recycled Aggregates (07/06/18) 3.5.2 & 3.5.2.1 - Revises Recycled Materials Requirements (07/06/18) 3.10.10.1 – Removes penalty for failing tack (06/06/17) 3.12 – Allows a reduction in use of pneumatic-tired rollers (06/06/17) 3.17.1.3 - Revises the NETTCP QA Technologist requirements (11/07/18) 3.17.3.1.1 – Revises HMA gradation specification limits, completes addition of winter binder, removes allowance for Aim change after two sub-lots (06/06/17) 4.1.1 – Removes reference to Night Items (06/06/17)		
403.1.3	Night Item Removal	Removes all references to Night Items in Section 403		06/06/17
410	Bituminous Surface Treatment	2.1 - Adopts new AASHTO Specifications for Emulsions (04/13/16) 3.4.1.1 - Revises pavement conditions, application rate for tack (01/04/17) 2.1.1, 2.1.2, 3.2, 3.3, 3.4 – Identifies tack sampling and penalties for non-conformance (06/06/17) 3.2 & 3.5.2 - Amends Distribution Equipment and Initiates an Annual Tack Truck Inspection Program (07/06/18)	06/06/17	07/06/18
411	Pneumatic Tired Roller	3.5.5 - Requires the use of pneumatic tired rollers on all Section 411 paving (06/06/17) 5.1.1 - Ensures Tack Used for PMST and Leveling Course is a Pay Item (07/06/18) Removes Pay Items (04/02/18)	04/02/18	07/06/18
417	Rumble Strip Inlay	2.1 & 3.7 - Specifies PMST as the asphalt inlay to fill in rumble strips		04/02/18
Division 500				
520	Portland Cement Concrete	3.1.6.2.1.2 A - Revise NETTCP QA Technologist requirements (11/07/18) 3.8.1.1 - Revises the acceptable concrete delivery temp to 90 degrees Fahrenheit (04/02/18)	04/02/18	11/07/18

530	Waterproofing Concrete Surfaces	Deletes Section 530		05/21/18
538	Barrier Membrane	3.3.5 - Updates the laydown temperature range		09/15/16
563	Bridge Fence	1.2, 1.3, 2.2, 2.6 & 2.8 - Allows aluminum ties for attaching fencing to bridge rail		09/15/16
568	Structural Timber	2.2, 3.4.4 & 3.4.5 - Adds specific references to AWPA Standards & wooden piles		04/02/18
582	Preformed Joint Filler	2.4 - Revises Preformed Joint Filler Requirements		04/02/18
Division 600				
603	Plastic Pipe	2.3, 2.6 & 2.7 - Updated to include Polypropylene Pipe and associated UV Requirements 2.13 - Added for Contractor's Option	04/13/16	06/02/16
605	Plastic Pipe	2.3 & 2.2 - Updated to include Polypropylene Pipe		04/13/16
606	Guardrail	2.2 - Adds specific references to AWPA Standards & wooden piles		04/02/18
608	Detectable Warning Devices	2.6 - Updates Detectable Warning Device Requirements		04/02/18
609	Curbs	2.4.1.1 - Allows the substitution of PG 76-28 binder in lieu of fibers		04/02/18
615	Cofferdam for Sign Installation	5.1.5 - Revises payment for sheeting and shoring for sign structures		04/02/18
645	Erosion Control	1.1 - Matting Section Revised and Pay Items Revised (04/02/18) 1.1 - 'Stabilization' changed to 'matting' Incorporates BFM, FRM and SMM into the Standard Specs (07/06/18) 1.2.1 - Add Erosion Control Plans to list of items to furnish for SWPPP (11/07/18) 3.1.5 - Update construction dates for allowable area of exposed, unstabilized soil (11/07/18)	07/06/18	11/07/18
Division 700				
702	Bituminous Materials	Amends Table 702-1 & 702-2 and Adds Test Method	04/13/16	05/11/16

TECHNICAL SPECIFICATIONS

Technical Specifications

A. SCOPE

The work covered by this section of the specification consists of furnishing all materials, labor, transportation, equipment necessary, and traffic control including flaggers to perform all operations in connection with the cleaning, sterilizing, removing vegetation, and sealing of construction and random cracks in bituminous concrete pavements with an approved sealant material. The Contractor shall furnish all materials, labor, traffic control, equipment, and transportation necessary for work in accordance with the latest approved City of Nashua Standard Specification for Road Construction, or the latest approved NHDOT Standard Specifications for Road and Bridge Construction Section 413 - Hot Poured Crack Sealant. The most stringent specification shall apply.

B. MATERIAL

Material shall be of the hot-poured type and be a product as included on the NHDOT Qualified Products List – Hot Poured Crack Sealant, Type II (Item 413.1).

C. EQUIPMENT

Equipment used in the performance of the work shall be subject to approval by the Engineer, and maintained in a satisfactory working condition at all times.

Air Compressor: Air compressors shall be capable of furnishing not less than 100 cubic feet of air per minute at not less than 90 lbs. per square inch pressure at the nozzle. The compressor shall be equipped with traps that will maintain the compressed air free of oil and water.

Melting Kettle: Melting kettles shall be of the double-boiler, indirect fired type. The kettle shall be equipped with a metal shield beneath the firebox to protect the pavement. The space between the inner and outer shells shall be filled with a suitable heat transfer oil or substitute having a flash point of not less than 530°F. The kettle shall be equipped with a satisfactory means of agitating the joint sealer to maintain a uniform temperature. This may be accomplished by continuous stirring with mechanically operated paddles and/or by a circulating gear pump attached to the heating unit. Kettles equipped with a rocking type agitation shall not be used. The kettle shall be equipped with a thermostatic control calibrated between 200°F and 550°F.

Hot-Air Lances: Hot-air lances for blowing clean and drying cracks shall be an approved propane gas burner and compressed air device that does not allow the flame to touch the pavement.

D. CONSTRUCTION

Preparation of Cracks: All cracks shall be hot-air lanced cleaned of dirt, vegetation, foreign material, and loose edges.

Preparation and Placement of Sealant

The hot-poured sealant shall be maintained in the kettle and applied at the temperature range specified by the manufacture.

The hot poured sealant shall be applied to the cracks by wand applicator within 2 minutes following hot-air lance cleaning. The diameter of the applicator shoe is not to exceed 3.5 inches.

All cracks to be treated shall be filled to 1/16" to 1/8" below the pavement surface and have 1.5" band on either side of the crack with hot-poured sealant with the sealant left slightly concave. Filling flush, overfilling, and over banding of cracks will not be allowed. Sealant shall tightly bond to the pavement. The sealant bond to the pavement shall be checked after it had sufficiently cooled. If the sealant does not bond to the pavement, sealant shall be removed and crack sealing operations discontinued until debonding problem is corrected.

No hot-air lance cleaning or crack sealing shall be performed when the pavement and cracks are wet or the ambient temperature is below 50°F.

The contractor must have a full kettle of sealant mixed, heated to the proper application temperature, and ready for testing at the start of each work day. Once that batch of sealant is emptied from the kettle, crack sealing operations will cease for the remainder of the day. No new materials will be allowed to be added to the kettle during the work day under any circumstances.

The contents of the kettle shall be emptied at the end of each day and shall not be reused.

The sealant shall be allowed to cool sufficiently to prevent lifting, sticking, and tracking prior to returning the pavement segment to traffic. When traffic requires immediate use of the roadway, a boiler slag aggregate shall be broadcast over the cracks to prevent the sealant from being picked up.

All workmanship shall be of the highest quality, and any excess of spilled sealant shall be removed from the pavement by approved methods and discarded.

E. PERFORMANCE

The contractor must submit the manufacture and product specifications to the Engineer certifying conformance to this specification and preform a 200 foot test strip in the field prior to the commencing work under the contract.

Manufacturer's certificate of material compliance shall be furnished to the Engineer certifying conformance to the above material specifications.

D. TRAFFIC CONTROL – Flaggers, Uniformed Officer, & Maintenance of Traffic

Traffic control shall be included in the lump sum price per street.

While completing the bid form to enter cost to crack seal each street, the contractor shall also include the cost to manage traffic through or around the work as ordered by the Engineer. The Contractor shall supply qualified flaggers as per the latest approved NHDOT Standard Specifications for Road Construction.

This work shall consist of providing and maintaining safe and passable traffic accommodations for public traffic and furnishing, erecting and maintaining necessary traffic signs, barricades, lights, signals, delineators, concrete barriers, signs, and other traffic control warning devices through the work zone.

General

The Contractor shall furnish all labor, materials, equipment and transportation necessary for the required maintenance of traffic needs based on the Contractors daily operations in accordance with the latest approved NHDOT Standard Specifications for Road and Bridge Construction, and the latest approved MUTCD.

Signage

At a minimum, the Contractor's crew shall, at all times carry the following to be used as the need may arise:

- 2 ROAD WORK AHEAD (MUTCD W20-1)
- 2 ONE LANE ROAD AHEAD (MUTCD W20-4)
- 2 DIRECTIONAL ARROW SIGN (MUTCD W1-6)
- 2 FLAGGER SIGN (MUTCD W20-7)

Contractor shall provide 2 variable message signs for use on major roads.

Permits:

Contractor shall be responsible for getting approved street opening permits, submitting traffic control plans for all major streets, obtaining lane closure or detour approval permits, and obtaining emergency work permits.

F. MEASUREMENT AND PAYMENT

The unit of measurement will be per completed street, as determined by the Engineer. Payments shall be at the lump sum price per street as set forth in the contract and shall include full compensation for furnishing all materials, labor, transportation, equipment necessary, traffic control including flaggers, and all else needed to complete the work under this item.

THE CITY OF NASHUA
Financial Services
Purchasing Department

"The Gate City"

May 28, 2020
Memo #20-107

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CONTRACT FOR 2020 SIDEWALK PROGRAM (VALUE: $171,759)
DEPARTMENT: 161 STREETS; FUND: CAPITAL

Please see the attached communication from Daniel Hudson, City Engineer dated May 28, 2020 for 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.

The City Engineer, Board of Public Works (May 28, 2020 meeting) and the Purchasing Department recommend the award of this contract in an amount of **$171,759** to **RWC Enterprises** of **Nashua, NH.**

Respectfully,

Dan Kooken
Purchasing Manager

Cc: D Hudson L Fauteux

229 Main Street • Nashua, New Hampshire 03061 • Phone (603) 589-3330 • Fax (603) 589-3233

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: May 28, 2020

From: Daniel Hudson, P.E., City Engineer
Engineering Department

Re: 2020 Sidewalk Program

D. Motion: To approve the award of the construction contract for the 2020 Sidewalk Program to RWC Enterprises of Nashua, NH in an amount of $171,759. Funding through Department: 161 Streets; Fund: Capital; Activities: Sidewalk Improvements and City Infrastructure Improvements.

Attachment: Sidewalk Program Map

Discussion: The 2020 Sidewalk Program is expected to reconstruct approximate 900 linear feet of sidewalk on the south side of East Hollis Street from CVS to Harbor Avenue. This will include construction of concrete pedestrian sidewalk, resetting curb, and ADA compliance improvements at Medical Center Drive.

The existing sidewalk is in poor condition after years of patch work repairs and overlays. Some granite curb is damaged or missing, and the existing road crossings are not ADA compliant. This portion of East Hollis Street will be paved by Brox later in the summer.

The contract was advertised on March 10, 2020 and only a single bid received as follows:

RWC Enterprises	$ 171,759

RWC Enterprises of Nashua, NH is the qualified low bidder. References have been checked and were found to be acceptable.

2020 Sidewalk Program

IFB0851-032720

Construction Specifications
and
Contract Documents

Prepared By:

City of Nashua, New Hampshire
Division of Public Works
Engineering Department

STATE OF NEW HAMPSHIRE
MATTHEW E. FRANZ
No. 15752
LICENSED
PROFESSIONAL ENGINEER

March 2020

TABLE OF CONTENTS

DIVISIONS

1. INVITATION FOR BID .....

2. INSTRUCTIONS FOR BIDDERS.....

3. BID FORM, BID BOND, SCHEDULE OF VALUES, CONTRACTOR'S QUALIFICATIONS .....

4. PERFORMANCE AND PAYMENT BONDS, CERTIFICATE OF LIABILTY INSURANCE .....

5. AGREEMENT .....

6. GENERAL CONDITIONS .....

7. PROSECUTION OF WORK .....

8. EXHIBITS .....

   A. Notice of Award
   B. Notice to Proceed
   C. Change Order
   D. Certificate of Substanial Completion
   E. Certificate of Final Completion
   F. Consent of Surety for Final Payment
   G. Contractor's Affidavit
   H. Contractor's Final Release and Waiver of Lien

9. TECHNICAL SPECIFICATIONS .....

   A. NHDOT Supplemental Specifications (2016 Edition) – updated July 6, 2018
   B. Special Provisions

THE CITY OF NASHUA
Financial Services
Purchasing Department

"The Gate City"

March 12, 2020

IFB0851-032720
2020 SIDEWALK PROGRAM

ADDENDUM #1

Information in this document becomes a part of the original Invitation for Bids.

Addendum #1 is being issued to correct a date error that was discovered after the Invitation for Bids was posted to the City of Nashua's website.

All other aspects of the original document remain the same.

Please sign below to indicate receipt of this additional information and include this page with your IFB submittal.

Thank you,

Amy Girard
City of Nashua Purchasing Agent II
girarda@nashuanh.gov
Phone: 603-589-3332

Addendum # 1 received and incorporated into our submittal for IFB0851-032720.

Please sign and include this addendum in your proposal package.

(Authorized Signature)

5/11/2020
(Date)

RWC enterprises
(Name of Firm)

IFB0851-032720

ADDENDUM #1

2020 SIDEWALK PROGRAM

Addendum #1 is being issued to correct a date error discovered in the City's Invitation for Bids

The original Invitation For Bid, dated March 10, 2020, is hereby amended as follows:

1. Page 1 – INFORMATION FOR BIDDERS: **DELETE** the third sentence "Regardless of the method of submission, bids must be received no later than **3:00 pm on Friday, April 03, 2020.**" and INSERT "Regardless of the method of submission, bids must be received no later than **3:00 pm on Friday, March 27, 2020.**"

THE CITY OF NASHUA
Administrative Services
Purchasing Department

"The Gate City"

March 17, 2020

IFB0851-032720

2020 SIDEWALK PROGRAM

ADDENDUM #2

Information in this document becomes a part of the original Invitation to Bid.

Addendum #2 is changing the Bid Due Date from Friday, March 27, 2020 at 3:00 p.m. to Friday, April 10, 2020 at 3:30 p.m.

All other aspects of the original document remain the same.

Please sign below to indicate receipt of this additional information and include this page with your IFB submittal.

Thank you,

Dan Kooken
Purchasing Manager
kookend@nashuanh.gov

Addendum #2 received and incorporated into our submittal for IFB0851-032720.

Please sign and include this addendum in your proposal package.

(Authorized Signature)

5/11/2020
(Date)

RWC Enterprises
(Name of Firm)

THE CITY OF NASHUA

Administrative Services

Purchasing Department

"The Gate City"

April 8, 2020

IFB0851-032720

2020 SIDEWALK PROGRAM

ADDENDUM #3

Information in this document becomes a part of the original Invitation to Bid.

Addendum #3 is changing the Bid Due Date from Friday, April 10, 2020 at 3:30 p.m. to Friday, May 15, 2020 at 3:30 p.m.

All other aspects of the original document remain the same.

Please sign below to indicate receipt of this additional information and include this page with your IFB submittal.

Thank you,

Dan Kooken
Purchasing Manager
kookend@nashuanh.gov

Addendum #3 received and incorporated into our submittal for IFB0851-032720.

Please sign and include this addendum in your proposal package.

(Authorized Signature)

5/11/2020
(Date)

RWC enterprises
(Name of Firm)

229 Main Street • Nashua, New Hampshire 03061 • Phone (603) 589-3330 • Fax (603) 589-3233

THE CITY OF NASHUA
Administrative Services
Purchasing Department

"The Gate City"

May 1, 2020

IFB0851-032720

2020 SIDEWALK PROGRAM

ADDENDUM #4

Information in this document becomes a part of the original Invitation to Bid.

Addendum #4 is allowing this Bid to be submitted via email or Bid Express since Nashua City Hall is scheduled to be closed through 5/15/2020 now.

If emailing your Bid please send to Dan Kooken, City of Nashua Purchasing Manager, at the email address shown below:

kookend@nashuanh.gov

Bid Due Date remains Friday, May 15, 2020 at 3:00 p.m. Bid results will be posted on the City of Nashua website www.nashuanh.gov by close of business. Bid copies will be sent to the Engineering Department for review.

All other aspects of the original document remain the same.

Please sign below to indicate receipt of this additional information and include this page with your IFB submittal.

Thank you,

Dan Kooken
Purchasing Manager
kookend@nashuanh.gov

Addendum #4 received and incorporated into our submittal for IFB0851-032720.

Please sign and include this addendum in your proposal package.

(Authorized Signature)

5/11/2020
(Date)

RWC Enterprises
(Name of Firm)

229 Main Street • Nashua, New Hampshire 03061 • Phone (603) 589-3330 • Fax (603) 589-3233

THE CITY OF NASHUA
Financial Services
Purchasing Department

"The Gate City"

March 10, 2020

INVITATION FOR BID

2020 Sidewalk Program
IFB0851-032720

The City of Nashua, Division of Public Works, is seeking bids to reconstruct pedestrian sidewalks with new and reset granite curbing on a portion of East Hollis Street from 242 Main Street (CVS Pharmacy) to Harbor Avenue. The Contractor will provide all labor, equipment, and material to construct the improvements shown on the **"2020 Sidewalk Program"** plans, provided with this Invitation to Bid. The Contractor will be responsible for providing traffic control as needed during all working and non-working hours.

Contractor shall ensure that its activities and activities of its employees are in strict compliance with the Environmental Protection Agency, all applicable federal, state and local statutes, ordinances, regulations and rules, including without limitation, the Federal OSHA of 1970, as amended and the standards and regulations issued hereunder, and all other statues, ordinances, regulations, rules, standards and requirements of common law in relation to industrial hygiene and safety, and the protection of health and the environment.

The City of Nashua would like to emphasize the importance of construction work zone safety. The City of Nashua has adopted the provisions of the Manual on Uniform Traffic Control Devices (MUTCD) for work zone safety. Unless otherwise indicated in this contract, the contract shall follow the requirements of the MUTCD at all roadway construction work zones.

The anticipated Commencement date for the contract is on or about **May 18, 2020.** Project will begin once a written **"Notice to Proceed"** is issued.

Completion times for the project will be as follows:

Substantial completion shall be by **August 7, 2020. Substantial completion is defined in Section 1.01 of the General Terms and Conditions.**

Contract completion shall be by **August 21, 2020.**

INFORMATION FOR 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 **one (1) original and two (2) copies** c/o Central Purchasing, 229 Main Street, Nashua, Room 11 – Basement Floor, Nashua, NH, 03061, in sealed envelopes clearly marked **"IFB0851-032720 2020 Sidewalk Program"**. Regardless of the method of submission, bids must be received no later than 3:00 pm on Friday, April 03, 2020. Bids will be opened and publicly read at that time. Results showing all bidders' identities and their respective bid amounts will be available on our website, www.nashua.gov under Services; Bid Opportunities; Bid Results, (Refer to Document **IFB0851-032720**), within twenty-four (24) hours after the opening.

Beginning Tuesday, March 10, 2020 bid documents will be available electronically from the City of Nashua website: www.nashuanh.gov, under Services, Bid Opportunities; Current Bids; (Refer to Document **IFB0851-032720**). **Please note paper copies will not be available.**

No bid documents are available at the Central Purchasing.

A **NON-MANATORY pre-bid conference** will be held at **10:00 am, Monday, March 16, 2020** at the City of Nashua Division of Public Works, 9 Riverside Street, Nashua, NH 03062. The meeting is an opportunity for the City of Nashua to provide an overview of the project objectives. Bidders are encouraged to attend and participate in the conference.

Bids must be submitted in the format provided and address the items specified in the bid package.

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 of Nashua reserves the right to waive any irregularities when the public interest will be served thereby.

The City of Nashua 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 of Nashua.

Delivery of the 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 the 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.

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 with the City of Nashua to the extent the BIDDER has previously provided goods or services.

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.

All bids are binding for ninety (90) days following the deadline for bids, or until the effective date of any resulting contract, whichever is later.

The contract that the City will be executing with the Successful Bidder can be found in the Construction Specifications and Contract Documents – Division 5.

The project timeline is as follows:

	Date	Time/Location
Bid Documents	Tuesday, March 10, 2020	On City of Nashua Website Only
Non Mandatory Pre-bid Meeting	Monday, March 16, 2020	10:00 am DPW Engineering 9 Riverside Street, Nashua, NH
Deadline for Questions to be submitted in writing	Wednesday, March 18, 2020	3:00 pm
Answers/clarifications posted	Friday, March 20, 2020	3:00 pm
Bid Due	Friday, March 27, 2020	3:00 pm Purchasing Department 229 Main Street Room 11 – Basement Floor Nashua, NH, 03061

Vendors are encouraged to submit questions via email; however, the City of Nashua assumes no liability for assuring accurate/complete email transmission/receipt and is not responsible to acknowledge receipt. **Inquiries** must be **submitted in writing**, citing the IFB title, IFB number, Page, Section, and received **no later than Wednesday, March 18, 2020 at 3:00 pm** to

Matt Franz, P.E.
Senior Staff Engineer
Email: FranzM@NashuaNH.gov

The City of Nashua will consider all 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 **IFB0851-032720** on the City of Nashua website; www.nashuanh.gov, under Services; Bid Opportunities; Current Bids; (Refer to Document **IFB0851-032720)** no later than **Friday, March 20, 2020 at 3:00 pm.**

The Successful Bidder must maintain the following lines of coverage and policy limits for the duration of the contract. Any subcontractors used by the Successful Bidder are subject to the same coverage and limits and is a subcontractor of the Successful Bidder and not the City of Nashua. It is the responsibility of the Successful Bidder to update Certificates of Insurance during the term of the contract. Liability limits are as follows:

- 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

The City of Nashua must be named as an additional insured on all liability certificates.

All bidders and subcontractors at every tier under the bidder will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

It is the responsibility of the Contractor to submit to the City of Nashua certificates of insurance for the Contractor and all other subcontractors prior to the start of the project. It is the responsibility of the Contractor to provide the City of Nashua with updated certificates of insurance for the Contractor and all subcontractors 10 days prior to the expiration of coverage. The City of Nashua 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.

The Successful Bidder **will** be required to post Payment and/or Performance Bonds in an amount equal to 100% of the contract amount and will be required to execute the Contract Agreement within ten (10) days following notification of award of the bid.

Cost of bond premiums to be incorporated into bid item costs.

The City of Nashua 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 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 of Nashua. Therefore, this bid request is void as to anyone who is in default on said payments.

The City of Nashua supports the concept of purchasing products that 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 that qualify, please so indicate in a cover sheet by item number and description.

Respectfully,

Amy Girard
City of Nashua Purchasing Agent II
girarda@nashuanh.gov
Phone: 603-589-3332

DIVISION 2

INSTRUCTIONS FOR BIDDERS

TABLE OF CONTENTS
INSTRUCTIONS FOR BIDDERS

Page

Article 1 - Defined Terms 2
Article 2 - Copies of Bidding Documents 2
Article 3 - Qualifications of Bidders. 2
Article 4 - Pre-bid Conference 2
Article 5- Site and Other Areas 2
Article 6 - Interpretations and Addenda 2
Article 7 - Bid Security 3
Article 8 - Contract Times 3
Article 9 - Liquidated Damages 3
Article 10 - Subcontractors, Suppliers and Others 3
Article 11 - Preparation of Bid 4
Article 12 - Basis of Bid; Evaluation of Bids 4
Article 13 - Submittal of Bid 5
Article 14 - Modification and Withdrawal of Bid 5
Article 15 - Opening of Bids 5
Article 16 - Bids to Remain Subject to Acceptance 6
Article 17- Award of Contract 6
Article 18 - Contract Security 6
Article 19 - Signing of Agreement 6
Article 20 - Retainage 7
Article 21 – Appeal by Bidders 7

INSTRUCTIONS FOR BIDDERS

ARTICLE 1 DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:

A. *Bidder* – The individual or entity who submits a Bid directly to OWNER.

B. *Issuing Office* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

C. *Successful Bidder* – The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.

ARTICLE 2 COPIES OF BIDDING DOCUMENTS

2.01 Bidding Documents are available electronically City's web site, www.nashuanh.gov, under Services; Bid Opportunities; Current Bids. Hard copies **are not** available.

2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

ARTICLE 3 QUALIFICATIONS OF BIDDERS.

3.01 To demonstrate Bidder's qualifications to perform the Work, each Bidder must submit a completed Construction Contractor's Qualification for Engineered Projects.

ARTICLE 4 PRE-BID CONFERENCE

4.01 A **NON-MANDATORY** pre-bid conference will be held on the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid. Bidders are required to attend this meeting if you intend to submit a bid. The conference is an opportunity for OWNER and ENGINEER Representatives to overview the project and objectives, and for participants to request additional information directly from City of Nashua staff managing or participating in the project. OWNER will transmit to all prospective Bidders of record such Addenda, as OWNER considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 5 SITE AND OTHER AREAS

5.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.

ARTICLE 6 INTERPRETATIONS AND ADDENDA

6.01 All questions about the meaning or intent of the Bidding Documents are to be directed to ENGINEER. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda and posted on the City of Nashua website. Deadlines for submission of questions can be found on the project timeline contained within the Invitation

for Bids. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.02 Addenda may also be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ENGINEER. Bidders are requested to sign each Addenda issued to indicate receipt of this additional information and must include the signed cover page with Bidders bid submittal.

ARTICLE 7 BID SECURITY

7.01 A Bid must be accompanied by Bid security made payable to OWNER in an amount of five percent (5%) of Bidder's maximum Bid price and in the form of a Bid Bond (on form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.

7.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 10 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of seven days after the Effective Date of the Agreement or 91 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

7.03 Bid security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 8 CONTRACT TIMES

8.01 The number of **calendar** days within which, or the dates by which, the Work is to be (a) substantially completed and (b) also completed and ready for final payment are set forth in the Agreement.

ARTICLE 9 LIQUIDATED DAMAGES

9.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 10 SUBCONTRACTORS, SUPPLIERS AND OTHERS

10.01 Each Bidder must submit a completed List of Subcontractors on the Form furnished with the completed Bid Form. The apparent Successful Bidder, and any other Bidder so requested, shall within seven days after the Bid opening submit to OWNER supplemental information in the form of an experience statement with the pertinent information regarding similar projects and other evidence of qualification of each Subcontractor, Supplier, person or organization if requested by OWNER or ENGINEER. IF OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, OWNER may, before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution and OWNER may consider such price adjustment in evaluating Bids and making the contract award.

10.02 If apparent Successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for

forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Article 6.06 of the General Conditions.

10.03 CONTRACTOR shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom CONTRACTOR has reasonable objection.

ARTICLE 11 PREPARATION OF BID

11.01 The Bid Form is included with the Bidding Documents.

11.02 All blanks on the Bid Form and Bid Schedule(s) must be completed by printing in ink or typed and the Bid signed. A bid price shall be indicated for each Bid item listed therein.

11.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

11.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown below the signature.

11.05 A bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.

11.06 A Bid by an individual shall show the Bidder's name and official address.

11.07 A Bid by a joint venture shall be executed by each joint ventured in the manner indicated on the Bid Form. The official address of the joint venture must be shown below the signature.

11.08 All names must be typed or printed in black ink below the signatures.

11.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.

11.10 The address and telephone number for communications regarding the Bid must be shown.

11.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located. Bidder's state contractor license number for the state of the Project, if any, must also be shown on the Bid Form.

ARTICLE 12 BASIS OF BID; EVALUATION OF BIDS

12.01 *Unit Price*

A. Bidders shall submit a Bid on a unit price or lump sum basis for each item of Work listed in the Bid schedule.

B. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price Bid for each item. The final quantities

and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

12.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowance, if any, named in the Contract Documents as provided in paragraph 11.02 of the General Conditions.

ARTICLE 13 SUBMITTAL OF BID

13.01 The City of Nashua website provides a copy of the Bidding Documents, applicable drawings or specifications, and a sample contract for execution, Each prospective Bidder must complete and submit a submission package of documents that includes:

- Bid Form in its entirety, Pages BF-1 thru BF-7;
- Bid Schedule of Values;
- Bid Bond;
- Construction Contractor's Qualification Statement; and
- Signed cover page of each OWNER issued Addendum .

13.02 A bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to City of Nashua, c/o Central Purchasing, 229 Main Street, Room 11 – Basement Floor, Nashua, NH, 03061.

ARTICLE 14 MODIFICATION AND WITHDRAWAL OF BID

14.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

14.02 If, within twenty-four hours after Bids are opened any Bidder files a duly signed written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, **OWNER may, in its sole discretion, choose to not accept the Bid and return the same to Bidder.** Thereafter, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 15 OPENING OF BIDS

15.01 Bids will be opened at the time and place indicated in the advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids through posting on the City's website.

ARTICLE 16 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

16.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 17 AWARD OF CONTRACT

17.01 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced or conditional Bids. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. OWNER may also reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder. OWNER also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder.

17.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

17.03 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

17.04 In evaluating Bidders, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions..

17.05 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers individuals, or entities to perform the Work in accordance with the Contract Documents.

17.06 If the Contract is to be awarded, OWNER will award the Contract to lowest Bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interests of the Project.

ARTICLE 18 CONTRACT SECURITY

18.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to Performance and Payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by such Bonds.

ARTICLE 19 SIGNING OF AGREEMENT

19.01 When OWNER gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents, which are identified in the Agreement attached thereto. The Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER, including the Performance and Payment Bonds and the Certificate of Insurance. Within 10 days thereafter, OWNER shall deliver one fully signed counterpart to Successful Bidder with a complete set of drawings with appropriate identification.

19.02 A fully executed City of Nashua Purchase Order will accompany the fully signed counterpart to successful Bidder.

ARTICLE 20 RETAINAGE

20.01 Provisions concerning retainage and Contractors' rights to deposit securities in lieu of retainage are set forth in the Contract Agreement, ***Article 6.02 Progress Payments; Retainage.***

ARTICLE 21 APPEAL BY BIDDERS

21.01 Any bidder may appeal a pending bid award prior to award by OWNER. The appellant must:

A. Submit a written protest to the OWNER's Purchasing Manager within five (5) workdays after the bid opening.

B. Describe, in the written protest, the issues to be addresses on appeal.

C. Post, with the written protest, a bond with a surety meeting the requirements of General Condition 5.02 authorized to do business in this state or submit other security in a form approved by OWNER who will hold the bond or security until a determination is made on the appeal.

D. Post the bond or other security in the amount of 25% of the total dollar value of the appellant's bid, up to a maximum bond or other security amount of 250,000.00.

E. Not seek any type of judicial intervention until OWNER has rendered its final decision on the protest.

21.02 Owner will stop award actions until after the OWNER's Purchasing Manager has responded in writing to the protest. If the appellant is not satisfied with the response, the appellant may then protest to the Board of Public Works, who will render a final decision for the OWNER. No bid protests will be heard by the Board of Public Works unless bidder has followed the appeal process.

21.03 If an appeal is granted, the full amount of the posted bond or security will be returned to the appellant. If the appeal is denied or not upheld, a claim may be made against the bond for expenses suffered by the OWNER because of the unsuccessful appeal.

21.04 OWNER is not liable for any costs, expenses, attorney's fees, loss of income, or other damages sustained by the appellant in a bid process.

DIVISION 3

BID FORM
SCHEDULE OF VALUES
BID BOND
CONTRACTOR'S QUALIFICATIONS

BID FORM

PROJECT IDENTIFICATION: **2020 SIDEWALK PROGRAM**

CONTRACT IDENTIFICATION AND NUMBER: **IFB0851-032720**

THIS BID IS SUBMITTED TO: City of Nashua
Central Purchasing
229 Main Street, City Hall
Room 128
Nashua, NH 03061-2019

1.01 The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

2.01 BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 60 days after the day of Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of OWNER.

3.01 In submitting this Bid, BIDDER represents, as set forth in the Agreement, that:

A. BIDDER has examined and carefully studied the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged.

Addendum No.	Addendum Date
#1	march 10 2020
#2	march 17 2020
#3	April 8 2020
#4	may 1 2020

B. BIDDER has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

C. BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.

D. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by BIDDER, and safety precautions and programs incident thereto.

E. BIDDER does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.

F. BIDDER is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.

G. BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.

H. BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to BIDDER.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work for which this Bid is submitted.

4.01 BIDDER further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any individual or entity to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

5.01 The requirements of the New Hampshire Revised Statutes Annotated shall apply to this project. The BIDDER is responsible for compliance with all applicable statutes. The entire set of the Revised Statutes Annotated is available online at:

http://gencourt.state.nh.us/rsa/html/indexes/default.html

6.01 BIDDER will complete the Work in accordance with the Contract Documents for the following prices:

SEE ATTACHED SCHEDULE OF VALUES

A. Unit Prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

B. BIDDER acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

7.01 BIDDER agrees that the Work will be substantially completed and completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

7.02 BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

8.01 The following documents are attached to and made a condition of this Bid:

A. Bid Form;

B. Schedule of Values;

C. Bid Bond;

D. A tabulation of Subcontractors, Suppliers and other individuals and entities required to be identified in this Bid; and

E. Construction Contractor's Qualification Statement.

9.01 Communications concerning this Bid shall be addressed to:
(Contractor's mailing address to be filled in by Bidder)

RWC enterprises
PO BOX 3721
Nashua NH 03061

10.01 The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

Submitted by:

Name of Organization: RWC enterprises
Name of Individual: Robert Champagne
Title: OWNER
Address: PO BOX 3721
Nashua NH 03061

Telephone: 603 765 5087

Submitted to:

Name: City of Nashua
Address: 229 main ST
Nashua NH 03060

Telephone _____

SUBMITTED on 5/15/2020, 20____

If BIDDER is:

An Individual

Name (typed or printed): Robert Champagne

By: _____ (SEAL)
(*Individual's Signature*)

Doing business as: RWC enterprises

Business address: P O BOX 3721 Nashua NH 03061

Email: RWCexCA@gmail.com

Phone No.: 603 7655087 Fax No.: _____

A Partnership

Partnership Name: _____ (SEAL)

Date and State of Organization

_____

_____

Names of Current General Partners

Name	Title

Type of Partnership

☐ General ☐ Publicly Traded

☐ Limited ☐ Other (describe): _____

By: _____
(*Signature of General Partner – attach evidence of authority to sign*)

Name (typed or printed): _____

Business address: _____

_____

Phone No.: _____ Fax No.: _____

A Corporation

Corporation Name: _____(SEAL)

Date and State of Incorporation: _____

_____

_____

List of Executive Officers

Name	Title

Type (General Business, Professional, Service, Limited Liability): _____

By: _____

(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____(Corporate Seal)

Attest: _____

(Signature of Corporate Secretary)

Business Address: _____

_____

Phone No.: _____ Fax No.: _____

Date of Qualification to do business is_____

A Joint Venture

Joint Venture Name: _____(SEAL)

Date and State of Organization: _____

_____

_____

Name, Address and Form of Organization of Joint Venture Partners: (Indicate managing partner by an asterisk *)

_____

_____

_____

By: _____

(Signature of joint ventured partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business Address: _____

_____

Phone No.: _____ Fax No.: _____

Address for receipt of official communications:

_____

_____

(Each joint ventured must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

LIST OF SUBCONTRACTORS
(to be submitted with bid)

The name and address of each subcontractor who will be paid at least five percent (5%) of the prime contractor's total bid shall be listed below. To be deemed a responsive bid, this form must be submitted even if no subcontractors are required to be listed. In that case, the bidder should state "None" (or similar language stating that no subcontractors need to be listed) in the space below. (Refer to General Condition 6.09.H)

Name	Address of Subcontractor	Portion of Work
all work in House		

City of Nashua, New Hampshire
Division of Public Works
IFB0851-032720
2020 Sidewalk Program

Item No.	Estimated Quantity	Units	Item Description	Unit Price in figures	Total Price in figures
203.3	625	CY	Unclassified Excavation		
			Dollars and Cents	$ 50	$ 31,250
304.3	150	CY	Crushed Gravel		
			Dollars and Cents	$ 25	$ 3750
403.12	35	Tons	Hot Bituminous Pavement, Hand Method		
			Dollars and Cents	$ 200	$ 7000
608.24	775	SY	4" Concrete Sidewalk		
			Dollars and Cents	$ 75	$ 58,125
608.26	15	SY	6" Concrete Sidewalk		
			Dollars and Cents	$ 100.00	$ 1500
608.54	6	SY	Detectable Warning Device		
			Dollars and Cents	$ 250	$ 1500
609.01	50	LF	Straight Granite Curb		
			Dollars and Cents	$ 60	$ 3000
609.02	50	LF	Curved Granite Curb		
			Dollars and Cents	$ 70	$ 3500
609.5	800	LF	Reset Granite Curb		
			Dollars and Cents	$ 50.00	$ 40,000.00

City of Nashua, New Hampshire
Division of Public Works
IFB0851-032720
2020 Sidewalk Program

Item No.	Estimated Quantity	Units	Item Description	Unit Price in figures	Total Price in figures
618.6	1	Allow	Uniformed Officers		
			One Thousand Eight Hundred Dollars and 00/100 Cents	$ 1,800.00	$ 1,800.00
618.7	200	HR	Flaggers		
			Dollars and Cents	$ 36.00/hr	$ 7200
619.1	1	LS	Maintenance of Traffic		
			Dollars and Cents	$ 1000	$ 1000.
628.1	200	LF	Sawed Concrete Pavement		
			Dollars and Cents	$ 6.00/ft	$ 1200
628.2	989	LF	Sawed Bituminous Pavement		
			Dollars and Cents	$ 6.00/ft	$ 5934.00
692	1	LS	Mobilization **(5% or less of Total Bid)**		
			Dollars and Cents	$ 5000	$ 5000

TOTAL BID PRICE IN FIGURES $ 171,759.00

TOTAL OF BID ITEMS (words) One hundred seventy one thousand Seven hundred and fifty nine and 00/100 Dollars and Cents

SCHEDULE OF VALUES

IFB0851-032720

2020 SIDEWALK PROGRAM

SIGNATURE PAGE

Contractor: RWC enterprises

Address: Po Box 3721 Nashua NH 03061

Authorized Signature:

Date: 5/15/2020

Phone: 603 765 5087

Email Address: RWCexc@gmail.Com

BID BOND
PENAL SUM FORM

BIDDER (Name and Address):
RWC Enterprises
PO Box 3721
Nashua, NH 06061

SURETY (Name and Address of Principal Place of Business):
The Ohio Casualty Insurance Company
175 Berkeley St
Boston, MA 02116

OWNER (Name and Address):
City of Nashua
Riverside Dr
Nashua, NH

BID
BID DUE DATE: May 15, 2020
PROJECT (Brief Description Including Location):
2020 Sidewalk Program
IFB0851-032720

BOND
BOND NUMBER: N/A
DATE: (Not later than Bid Due Date): May 15, 2020
PENAL SUM: Five Percent of Amount Bid (Words) — 5% (Figures)

IN WITNESS WHEREOF, Surety and Bidder, Intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause the Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

RWC Enterprises (Seal)
Bidder's Name and Corporate Seal

By: Owner
Signature and Title

Attest: _____
Signature and Title

SURETY

The Ohio Casualty Insurance Company (Seal)
Surety's Name and Corporate Seal

By: Gail M Perrin
Signature and Title
(Attach Power of Attorney)
Gail M. Perrin, Attorney-in-Fact

Attest: _____
Signature and Title

Note: (1) Above addresses are to be used for giving required notice.
(2) Any singular reference to Bidder, Surety, OWNER or other party shall be considered plural where applicable.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees. To confirm the validity of this Power of Attorney call 610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

Liberty Mutual. SURETY

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Gail M. Perrin of the city of Chicopee, state of MA its true and lawful attorney-in-fact, with full power and authority hereby conferred to sign, execute and acknowledge the following surety bond:

Principal Name: RWC Enterprises

Obligee Name: City of Nashua

Surety Bond Number: Bid Bond Bond Amount: See Bond Form

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of December, 2018.

LIBERTY MUTUAL INSURANCE COMPANY INCORPORATED 1912 MASSACHUSETTS
THE OHIO CASUALTY INSURANCE COMPANY INCORPORATED 1919 NEW HAMPSHIRE
WEST AMERICAN INSURANCE COMPANY INCORPORATED 1991 INDIANA

The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 12th day of December, 2018, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

TERESA PASTELLA COMMONWEALTH OF PENNSYLVANIA NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company do hereby certify that this power of attorney executed by said Companies is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 15th day of May, 2020.

LIBERTY MUTUAL INSURANCE COMPANY INCORPORATED 1912 MASSACHUSETTS
THE OHIO CASUALTY INSURANCE COMPANY INCORPORATED 1919 NEW HAMPSHIRE
WEST AMERICAN INSURANCE COMPANY INCORPORATED 1991 INDIANA

By: Renee C. Llewellyn, Assistant Secretary

CONSTRUCTION CONTRACTOR'S QUALIFICATION STATEMENT

1. On Schedule A, attached, list major engineered construction projects completed by this organization in the past five (5) years. (If joint venture, list each participant's projects separately).

2. On Schedule B, attached, list current projects under construction by this organization, (If joint venture, list each participant's projects separately).

3. Name of Surety Company and name, address, and phone number of agent.

   Ohio Casualty

4. Is your organization a member of a controlled group of corporations as defined in I.R.C. Sec. 1563?

   ☐ Yes ☑ No

   If yes, show names and addresses of affiliated companies.

5. Furnish on Schedule C, attached, details of the construction experience of the principal individuals of your organization directly involved in construction operations.

6. Has your organization ever failed to complete any construction contract awarded to it?

   ☐ Yes ☑ No

   If yes, describe circumstances and provide details on attachment.

7. Has any Corporate officer, partner, joint venture participant or proprietor ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principal of another organization?

   ☐ Yes ☑ No

   If yes, describe circumstances and provide details on attachment.

8. In the last five years, has your organization ever failed to substantially complete a project in a timely manner?

   ☐ Yes ☑ No

   ☐ Yes ☐ No

   If yes, describe circumstances and provide details on attachment.

9. Does your organization now have any legal suits or arbitration claims pending or outstanding against it or any officers?

   ☐ Yes ☑ No

   If yes, describe circumstances and provide details on attachment.

10. Has your organization had a contract partially or completely terminated for default (cause) within the past five years?

☐ Yes ☑ No

If yes, describe circumstances and provide details on attachment.

11. List the licensed categories of work that your company normally performs with its own workforce. Sewer, Water, Drainage, Paving, Curbing, Sidewalks

12. If required, can your organization provide a bid bond for this project?

☑ Yes ☐ No

13. What is your approximate total bonding capacity?

☒ $500,000 to $2,000,000

☐ $2,000,000 to $5,000,000

☐ $5,000,000 to $10,000,000

☐ $10,000,000 or more

14. Describe the permanent safety program you maintain within your organization. Use attachment if necessary.

Weekly Safety Meetings
Gear

15. Furnish the following information with respect to an accredited banking institution familiar with your organization.

Name of Bank: See Attached

Address:

Account Manager:

Telephone:

I hereby certify that the information submitted herewith, including any attachment is true to the best of my knowledge and belief.

Robert Champagne

By: _____

Title: Owner

Dated: 5/15/2020

This Page Intentionally Left Blank

Schedule A – List of Major Engineered Construction Projects Completed in the Past Five (5) Years

Name, Location and Description of Project	Owner	Design Engineer	Date Completed	Contract Price	Reference/Contact & Address & Phone
2014 Sewer Replacement	City of Nashua		2015	247,000	
2015 Castings program	City of Nashua		2015	100,000	
2017 Bridle path Reconstruction	Pennichuck water works		2017	$150,000	
2018 proctor + mulvanity paving	Pennichuck water works		2019	200,000	
2019 Ferrydalls ct water main Replacement	Pennichuck		2019	190,000	
2019 Salvail ct water main Replacement	Pennichuck		2019	190,000	
2019 Monica Dr sewer Replacement	City of Nashua		2019	197,000	

Schedule B – List of Current Projects Under Construction

Name, Location and Description of Project	Owner	Design Engineer	Contract Price	Amount Completed	Date of Scheduled Completion	Reference/Contact & Address & Phone
See Attached						

Schedule C - Construction Experience of Principal Individuals Involved in Construction Operations

Name	Position	Date started with this organization	Date started working in construction	Prior positions and experience in construction
See ATTATCHED				

RWC Enterprises/DBA Current Balance Sheet gc 5/12/2020

RWC Assets		
Own	2012 Volvo L90G	85,000
Own	2011 Leeboy 8500 Paver	75,000
Own	1978 Cat 966C	20,000
Own	2002 Kobelco ED 180 Blade Runner Excavator	65,000
Lease/Purch	2018 Bobcat E85 Excavator	104,000
Own	2016 Bobcat T740 Track Loader	50,000
Own	2013 Bobcat S650 Loader w/ Hyd Planer	30,000
Own	2002 Terex HR 32 Excavator	30,000
Own	1983 John Deer 750E Dozer	15,000
Loan	2005 Cat D5N Hightrack 6 way blade (owe 37m)	50,000
Own	2009 Hamm 110 Pble drum Vib 10 Ton Roller	34,000
Own	2002 Hyster 350 10 Ton Roller	8,000
Own	2010 Hamm 1200 Dbl drum 5 Ton Roller	25,000
Own	2010 Leeboy 400 5 Ton Roller	10,000
Own	2008 Roto Screen 454 Trommel Screener	55,000
Own	2002 Interstate 20 Ton Trailer	10,000
Own	2015 Bobcat Trailer	5,000
Own	2016 Bobcat Trailer	5,000
Own	Service Trailer , Welder,A/C, Snapon Tool box, Benches	80,000
Own	2008 Airman PD 185 Ton Air compressor	7,000
Own	2005 Trenchless Boring Tool	5,000
Own	2000 Ten Wheel Western Star Reconditioned	40,000
Own	2002 Triaxle Western Star	50,000
Own	2006 International 6 Wheel Plow, Wing Compu Spreader	40,000
Own	2001 International 6 Wheel Plow, Wing, Compu Spreader	20,000
Own	2000 International 6 wheel Plow, Wing, Compu Spreader	15,000
Own	1999 Ford L 8000 6 Wheel Plow, Wing, Compu Spreader	10,000
Loan	2011 Ford F 550 Dump Trk, Plow, Wing, Compu Spreader (owe $8m)	30,000
Loan	2016 Dodge 5500 (owe 30m)	40,000
Own	2018 Curb Paver	7,000
	Total	**1,020,000**

Key Personel	
Bob Champagne	Owner, Manager
Mike Champagne	Foreman
Brian Howe	Equipment Operator
Chris Houle	Truck Driver
Tim Geddes	Laborer
James	Laborer
Devin Champagne	Laborer
Gloria Courtemanche	Bookkeeper

RWC Enterprises/DBA Current Balance Sheet gc 5/12/2020 pg 2

Current Liabilities				
Brox Industries (gravel & hottop)				2,000
Maynard & Lessier (tire Co)				10,000
Redmond I (repair)				10,000
Credit Cards				0
Chrystler Capitol (trk loan)			$755.52/mo	$10,000
Ally Bank (5500 Dodge trk loan)			764.63/mo	32,000
Financial Pacific (D5N Dozer)			2269.99/mo	37,000
Wells Fargo Loader T740 loan			979.29/mo	10,000
Wells Fargo Mini Excavator /Lease			1249.81/mo	na
Recent Jobs				
Ferryalls Court	May-19	$125,000		
Salvail Circle	May-19	128,000		
Monica Dr.	Nov-19	178,000		
Total		431,000		
Work on Hand		Completion		
Aroma Joes , Amherst, NH		Jun-20	$247,000	
Country View/NH Core, Hoocksette		May-20	170,000	
Littleton, Ma/Forcier		May-20	40,000	
City of Nashua		Jun-20	50,000	
Driveway and parking , Weare NH		Jul-20	20,000	
Misc. Driveways and paving		Jun-20	60,000	
House Lot, Salem NH		Jul-20	30,000	
Randy King, Nashua		Aug-20	30,000	
		Total	**$647,000**	
Current Cash Balance				
Triangle Credit Union		$119,832		
St Mary's Bank		$75,000		
Total			$194,832.00	
Total Equipment Value			1,020,000	
Total /cash/equip			**$1,214,832.00**	

DIVISION 5

AGREEMENT

STANDARD FORM OF AGREEMENT

BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20**20** by and between the City of Nashua, New Hampshire (hereinafter called **OWNER**) and **RWC Enterprises** and its successors, transferees and assignees together (hereinafter called **CONTRACTOR**).

OWNER and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 **CONTRACTOR** shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

The work will be to reconstruct pedestrian sidewalks with new and reset granite curbing on a portion of East Hollis Street from 242 Main Street (CVS Pharmacy) to Harbor Avenue.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by: ***Division of Public Works***
Engineering Department
9 Riverside Street
Nashua, NH 03062

who is hereinafter called **ENGINEER** and who is to act as **OWNER**'s representative, assume all duties and responsibilities, and have the rights and authority assigned to **ENGINEER** in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion*

The anticipated start date of the contract is on or about **May 18, 2020**. Project will begin once a written **"Notice to Proceed"** is issued. **Substantial Completion** shall be by **August 7, 2020**. Completion. **Final Completion** shall be by **August 21, 2020**.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **FIVE HUNDRED TWENTY** dollars **($520)** for each **calendar** day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.02 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER **FIVE HUNDRED TWENTY** dollars **($520)** for each **calendar** each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

B. In the event that the **CONTRACTOR** fails to pay **OWNER** the specified liquidated damages amount within **thirty (30) days** of **CONTRACTOR** being notified of said damages, **OWNER** may deduct the amount of the assessed liquidated damages from the final payment or retention withheld pursuant to Article 14 of the General Conditions.

ARTICLE 5 - CONTRACT PRICE

5.01 Subject to additions and deductions by Change Order, the **OWNER** shall pay **CONTRACTOR**, in accordance with the Contract Documents, the Contract Sum of:

ONE HUNDRED SEVENTY-ONE THOUSAND SEVEN HUNDRED FIFTY-NINE and 00/100 DOLLARS

($171,759.00

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

A. for all Unit Price Work, an amount equal to the sum of the established Unit Price for each separately identified item of Unit Price Work times the estimated quantity of that item, as indicated in the attached Bid Schedule;

B. as provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by **ENGINEER** as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. **CONTRACTOR** shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by **ENGINEER** as provided in the General Conditions.

B. Applications for Payment under this agreement shall be submitted as follows:

- Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

- Paper Copies via US Mail to:

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

Please do not submit invoices both electronically and paper copy.

In addition, and to facilitate the proper and timely payment of applications, the **OWNER** requires that all submitted invoices contain a valid **PURCHASE ORDER NUMBER**

6.02 *Progress Payments; Retainage*

A. *Progress Payments.* The **OWNER** will once each month make a progress payment to the **CONTRACTOR** on the basis of an estimate of the total amount of work done to the time of the estimate and its value as prepared by the **CONTRACTOR** and approved by the **ENGINEER**. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

B. *Retainage.* The **OWNER** will retain a portion of the progress payment, each month, in accordance with the following procedures:

1. The **OWNER** will establish an escrow account in the bank of the **OWNER**'s choosing. The account will be established such that interest on the principal will be paid to the **CONTRACTOR**. The principal will be the accumulated retainage paid into the account by the **OWNER**. The principal will be held by the bank, available only to the **OWNER**, until termination of the contract.

2. Until the work is 50% complete, as determined by the **ENGINEER**, retainage shall be 10% of the monthly payments claimed. The computed amount of retainage will be deposited in the escrow account established above.

3. After the work is 50% complete, and provided the **CONTRACTOR** has satisfied the **ENGINEER** in quality and timeliness of the work, and provided further that there is no specific cause for withholding additional retainage no further amount will be withheld. The escrow account will remain at the same balance throughout the remainder of the project.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, **OWNER** shall hold 2% retainage during the **1 (one) year** warranty period and release it only after the project has been accepted.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

7.01 In order to induce **OWNER** to enter into this Agreement **CONTRACTOR** makes the following representations:

A. **CONTRACTOR** has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. **CONTRACTOR** has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. **CONTRACTOR** is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. **CONTRACTOR** has carefully studied all (if any): (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. **CONTRACTOR** is entitled to rely upon the general accuracy of the "technical data" as provided in paragraph 4.2 of the General Conditions. **CONTRACTOR** acknowledges that such reports and drawings are not Contract Documents and may not be complete for **CONTRACTOR**'s purposes. **CONTRACTOR** acknowledges that **OWNER** and **ENGINEER** do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

F. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by **CONTRACTOR**, and safety precautions and programs incident thereto.

G. **CONTRACTOR** does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

H. **CONTRACTOR** is aware of the general nature of work to be performed by **OWNER** and others at the Site that relates to the Work as indicated in the Contract Documents.

I. **CONTRACTOR** has correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

J. **CONTRACTOR** has given **ENGINEER** written notice of all conflicts, errors, ambiguities or discrepancies that **CONTRACTOR** has discovered in the Contract Documents, and the written resolution thereof by **ENGINEER** is acceptable to **CONTRACTOR**.

K. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.1 Contents

A. 1. The Contract Documents are defined in Article 1 of the General Condition as amended herein.

2. The Drawings are entitled ***"2020 Sidewalk Program "***, prepared by the City of Nashua, Division of Public Works, Engineering Department, dated March 3, 2020, consisting of 10 Sheets.

3. The following documents are incorporated by reference or otherwise indicated:

a. New Hampshire Department of Transportation "Standard Specifications for Road and Bridge Construction", latest edition, incorporated by reference or unless otherwise indicated;

b. "Manual of Uniform Traffic Control Devices", latest edition, incorporated by reference;

c. City of Nashua, Standard Specifications for Sewers and Drains, Revised, Approved and Adopted June 15, 1992, incorporated by reference;

d. City of Nashua, Standard Specifications for Road Construction, Approved and Adopted June 11, 1986, incorporated by reference;

e. City of Nashua, Standard Specifications for Sidewalk Construction, Approved and Adopted August 28, 1995, incorporated by reference; and

f. City of Nashua Ordinance O-03-219 (Amended), Approved November 14, 2003.

ARTICLE 9 - MISCELLANEOUS

9.01 Terms

A. Terms used in this will have the meanings indicated in the General Conditions.

9.02. Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Successors and Assigns

A. **OWNER** and **CONTRACTOR** each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon **OWNER** and **CONTRACTOR**, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 Choice of Law and Venue

A. This agreement 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

Address for giving notices to **OWNER**:	Address for giving notices to **CONTRACTOR**:
Matt Franz, P.E., Senior Staff Engineer	Robert Champagne
Division of Public Works	RWC Enterprises
Engineering Department	P.O. Box 3721
9 Riverside Street	Nashua, NH 03061
Nashua, NH 03062	

IN WITNESS WHEREOF, OWNER and **CONTRACTOR** have signed this Agreement in triplicate. One counterpart each has been delivered to **OWNER, CONTRACTOR** and **ENGINEER**. All portions of the Contract Documents have been signed, initialed or identified by **OWNER** and **CONTRACTOR** or identified by **ENGINEER** on their behalf.

CITY OF NASHUA – OWNER

_____

James W. Donchess, Mayor City of Nashua

Date:_____

CONTRACTOR:

By:_____

RWC Enterprises (Authorized Representative)

Print Name: _____

Date: _____

DIVISION 6

GENERAL CONDITIONS

TABLE OF CONTENTS
FOR
GENERAL CONDITIONS

Page

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY....4
1.01 Defined Terms....4
1.02 Terminology....7

ARTICLE 2 - PRELIMINARY MATTERS....8
2.01 Delivery of Bonds....8
2.02 Copies of Documents....8
2.03 Commencement of Contract Times; Notice to Proceed....8
2.04 Starting the Work....8
2.05 Before Starting Construction....8
2.06 Preconstruction Conference....9
2.07 Initial Acceptance of Schedules....9

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE....9
3.01 Intent....9
3.02 Reference Standards....10
3.03 Reporting and Resolving Discrepancies....10
3.04 Amending and Supplementing Contract Documents....11
3.05 Reuse of Documents....11

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS....11
4.01 Availability of Lands....11
4.02 Subsurface and Physical Conditions....12
4.03 Differing Subsurface or Physical Conditions....12
4.04 Underground Facilities....13
4.05 Reference Points....15
4.06 Hazardous Environmental Condition at Site....15

ARTICLE 5 - BONDS AND INSURANCE....16
5.01 Performance, Payment, and Other Bonds....16
5.02 Licenses Sureties and Insurers....16
5.03 Certificates of Insurance....17
5.04 CONTRACTOR's Liability Insurance....17
5.05 Property Insurance....18
5.06 Waiver of Rights....19

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES....19
6.01 Supervision and Superintendence....19
6.02 Labor; Working Hours....19
6.03 Services, Materials, and Equipment....20
6.04 Progress Schedule....20
6.05 Substitutes and "Or-Equals"....20
6.06 Concerning Subcontractors, Suppliers, and Others....22
6.07 Patent Fees and Royalties....23
6.08 Permits....23

6.09 Laws and Regulations....23
6.10 Taxes....26
6.11 Use of Site and Other Areas....26
6.12 Record Documents....26
6.13 Safety and Protection....27
6.14 Safety Representative....28
6.15 Hazard Communication Programs....28
6.16 Emergencies....29
6.17 Shop drawings and Samples....29
6.18 Continuing the Work....30
6.19 CONTRACTOR's General Warranty and Guarantee....30
6.20 Indemnification....31

ARTICLE 7 - OTHER WORK....31
7.01 Related Work at Site....31
7.02 Coordination....32

ARTICLE 8 - OWNER'S RESPONSIBILITIES....32
8.01 Communications to Contractor....32
8.02 Replacement of ENGINEER....32
8.03 Furnish Data....32
8.04 Pay Promptly When Due....32
8.05 Lands and Easements; Reports and Tests....33
8.06 Insurance....33
8.07 Change Orders....33
8.08 Inspections, Tests, and Approvals....33
8.09 Limitations on OWNER's Responsibilities....33
8.10 Undisclosed Hazardous Environmental Condition....33
8.11 Evidence of Financial Arrangements....33

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION....33
9.01 OWNER's Representative....33
9.02 Visits to Site....33
9.03 Project Representative....34
9.04 Clarifications and Interpretations....34
9.05 Authorized Variations in Work....34
9.06 Rejecting Defective Work....34
9.07 Shop Drawings, Change Orders and Payments....34
9.08 Determinations for Unit Price Work....35
9.09 Decisions on Requirements of Contract Documents and Acceptability of Work....35
9.10 Limitations on ENGINEER's Authority and Responsibilities....35

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS....36
10.01 Authorized Changes in the Work....36
10.02 Unauthorized Changes in the Work....36
10.03 Execution of Change Orders....36
10.04 Notification to Surety....36
10.05 Disputes – Not Insurance Related....36

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK.37
11.01 Cost of the Work....37
11.02 Cash Allowances....40
11.03 Unit Price Work....40

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES40
12.01 Change of Contract Price 40
12.02 Change of Contract Times 41
12.03 Delays beyond CONTRACTOR's Control 41
12.04 Delays within CONTRACTOR's Control 42
12.05 Delays beyond OWNER's and CONTRACTOR's Control 42
12.06 Delay Damages 42

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK 42
13.01 Notice of Defects 42
13.02 Access to Work 42
13.03 Tests and Inspections 42
13.04 Uncovering Work 43
13.05 OWNER May Stop the Work 44
13.06 Correction or Removal of Defective Work 44
13.07 Correction Period 44
13.08 Acceptance of Defective Work 45
13.09 OWNER May Correct Defective Work 45

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION 45
14.01 Schedule of Values 45
14.02 Progress Payment 46
14.03 CONTRACTOR'S Warranty of Title 48
14.04 Substantial Completion 48
14.05 Partial Utilization 48
14.06 Final Inspection 49
14.07 Final Payment 49
14.08 Final Completion Delayed 50
14.09 Waiver of Claims 50

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION 50
15.01 Termination, Abandonment, or Suspension at Will 49
15.02 Termination for Cause 50
15.03 General Provisions for Termination 51

ARTICLE 16 - DISPUTE RESOLUTION 51
16.01 Methods and Procedures 51

ARTICLE 17 - MISCELLANEOUS 52
17.01 Giving Notice 52
17.02 Computation of Times 52
17.03 Cumulative Remedies 52
17.04 Survival of Obligations 52
17.05 Controlling Law 52
17.06 Access to Records 52
17.07 Road Closures 52
17.08 Prohibited Interests 53

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications, the Drawings and the Purchases Order as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date Of the Agreement.

Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCB's*--Polychlorinated biphenyls.

33. *Petroleum*-- Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for

which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided in the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 *Terminology*

A. *Intent of Certain Terms or Adjectives*

1. Whenever in the Contract Documents the terms "as allows," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. *Day*

1. The work "day" shall constitute a calendar day of regular working hours except Saturdays, Sundays and any legal holiday.

C. *Defective*

1. The word "defective," when modifying the work "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or 'Provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to 5 copies of the Contract Documents as are reasonably necessary for execution of the Work. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence on the day indicated in the Notice to Proceed

2.04 *Starting the Work*

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. CONTRACTOR's *Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. A preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 ***Preconstruction Conference***

A. Within 20 days after the Contract times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 ***Initial Acceptance of Schedules***

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefore.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 ***Intent***

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 ***Reference Standards***

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Document.

3.03 ***Reporting and Resolving Discrepancies***

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

2. In case of discrepancy, calculated dimensions will govern over scaled dimensions, Drawings will govern over Standard Specifications, and Construction Specifications will govern over both Drawings and Standard Specifications. The CONTRACTOR shall take no advantage of any apparent error or omission in the Drawings or Construction Specifications, and the ENGINEER will be permitted to make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract Documents.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. The provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment, or (ii) a Change Order; order B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one of more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

D. If corporate or private property interferes with the Work, CONTRACTOR shall notify, in writing, the OWNER's of such property, advising them of the nature of the interference and shall arrange to cooperate with them for the protection or disposition of such property. CONTRACTOR shall furnish the ENGINEER with copies of such notifications and with copies of any agreements between the CONTRACTOR and the property OWNER's concerning such protection or disposition.

E. CONTRACTOR shall take all necessary precautions for the protection of corporate or private property, such as walls and foundations of buildings, vaults, underground structures of public utilities, underground drainage facilities, overhead structures of public utilities, trees, shrubbery, crops, and fences contiguous to the Work, of which the Contract does not provide for removal. CONTRACTOR shall protect and carefully preserve all official survey monuments, property marks, section markers, and Geological Survey Monuments, or other similar monuments, until OWNER, or authorized Surveyor or agent has witnessed or otherwise referenced their location or relocation. CONTRACTOR shall notify the ENGINEER of the presence of any such survey or property monuments as soon as they are discovered.

F. CONTRACTOR shall be responsible for the damage or destruction of property of any character resulting from neglect, misconduct, or omission in its manner or method of execution or the non-execution of the work, or caused by defective work or the use of unsatisfactory materials, and such responsibility shall not be released until the work shall have been completed and accepted and the requirements of the Construction Specifications complied with.

G. Whenever public or private property is so damaged or destroyed, the CONTRACTOR shall at its own expense, restore such property to a condition equal to that existing before such damage or injury was done by repairing, rebuilding, or replacing it as may be directed, or the CONTRACTOR shall otherwise make good such damage or destruction in an acceptable manner. If the CONTRACTOR fails to do so, the ENGINEER may, after giving the CONTRACTOR notice in writing, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof shall be deducted from any compensation due, or which may become due, the CONTRACTOR under its Contract.

4.02 ***Subsurface and Physical Conditions***

A. *Reports and Drawings:*

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:*

CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

C. *Potential for Hazardous Materials:*

Work may include excavation through, and removal of, soils potentially containing undocumented asbestos-containing or other hazardous materials. Should the CONTRACTOR, while performing work under this Contract, uncover hazardous materials, as defined in federal, state and local regulations, he/she shall immediately notify the Engineer. No further disturbance of the area shall occur until the Engineer has collected and analyzed a representative sample of the suspected material. The area shall be cordoned off and covered with 6-mil polyethylene sheeting and await further directions from the Engineer.

4.03 ***Differing Subsurface or Physical Conditions***

A. *Notice:* If CONTRACTOR believes that any subsurface or physical conditions at or contiguous to the Site that is uncovered or revealed either:

1. Is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. Is of such a nature as to require a change in the Contract Documents; or

3. Differs materially from that shown or indicated in the Contract Documents; or

4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. ENGINEER's *Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER'S findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. Such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. With respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and Contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefore as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 ***Underground Facilities***

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or

ENGINEER by the OWNER's of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. The cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. Reviewing and checking all such information and data,

b. Locating all Underground Facilities shown or indicated in the Contract Documents.

c. Coordination of the Work with the OWNER's of such Underground Facilities, including OWNER, during construction, and

d. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A). identify the OWNER of such Underground Facility and give written notice to that OWNER and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

3. CONTRACTOR shall notify the following underground utility locating service at least three full working days prior to beginning work: **Dig Safe System, Inc. 1-800-344-7233.**

A list of the major public utilities servicing the work area follows. The list indicates the name and telephone number of the responsible authority of the various utilities which should be notified if conflicts or emergencies arise during the progress of the work.

Electricity – Eversource	**1-800-662-7764**
Natural Gas – Liberty Energy	**1-603-222-3705**
Water – Pennichuck Water Works	**1-603-882-5191**
Telephone –Fairpoint Communications	**1-603-645-3500**
Cable TV – Comcast	**1-888-633-4266**
Fire Alarm Cable – Nashua Fire Department	**1-603-594-3641**

4. At points where the CONTRACTOR's operations are adjacent to public and private utilities, CONTRACTOR shall not commence work until CONTRACTOR has made all arrangements necessary for the protection of utilities.
5. CONTRACTOR shall coordinate and cooperate with the OWNER's of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

4.05 ***Reference Points***

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 ***Hazardous Environmental Condition at Site***

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. Any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice:

(i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefore as provided in paragraph 10.05.

F. If after receipt of such written a notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER'S own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licenses Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverage's so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

B. All Sureties and Insurance Companies shall be authorized to do business in the State of New Hampshire and shall have an A.M. Best rating of "A(FSC-VIII)" or better. In the event that the Insurer fails to maintain an A.M. Best rating "A(FSC-VIII)" or better, the CONTRACTOR shall immediately retain a Surety which does meet the above requirements.

5.03 ***Certificates of Insurance***

A. CONTRACTOR shall deliver to OWNER 10 days prior to Work, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain.

5.04 ***CONTRACTOR's Liability Insurance***

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is required by OWNER which will provide protection from claims which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. Include as additional insured (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER.

2. The CONTRACTOR 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 of the CONTRACTOR and not the OWNER. It is the responsibility of the CONTRACTOR to update Certificates of Insurance during the term of the contract. Provide coverage for not less than the following amounts or greater:

General Liability
$1,000,000 per Occurrence
$2,000,000 Aggregate
City of Nashua Additional Insured

Motor Vehicle Liability ***coverage must include all owned, non-owned and hired vehicles.**
$1,000,000 Combined Single Limit
Automobile Liability
City of Nashua Additional Insured

Workers' Compensation Coverage according to Statute of the State of New Hampshire:
$100,000 / $500,000 / $100,000

All bidders and subcontractors at every tier under the bidder will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

It is the responsibility of the contractor to submit to the City of Nashua certificates of insurance for all subcontractors prior to the start of the project. It is the responsibility of the contractor to provide the City with updated certificates of insurance for the contractor and all subcontractors 10 days prior to the expiration of coverage. The City 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.

3. Include completed operations insurance;

4. Include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. Remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.07; and

7. With respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

C. CONTRACTOR agrees to maintain all required insurance coverage throughout the entire term of the contract. If CONTRACTOR does not maintain coverage throughout the entire term of the contract, CONTRACTOR agrees that OWNER may, at any time the coverage is not maintained by CONTRACTOR, order the CONTRACTOR to stop work, suspend the contract, or terminate the contract. CONTRACTOR further agrees, if applicable, as a precondition to the performance of any work under this contract and as a precondition to any obligation of the OWNER to make any payment under this contract to provide the OWNER with a certificate of a qualified insurer.

5.05 ***Property Insurance***

A. CONTRACTOR must purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost of the Work. This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

3.cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that the materials and equipment have been included in an application for payment recommended by ENGINEER; and

4. allow for partial utilization of the Work by OWNER:

5. include testing and startup; and

6. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. CONTRACTOR shall be responsible for any deductible or self-insured retention. The risk of loss within the identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain

it at the purchaser's own expense. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions.

C. All the policies of insurance (and the certificates or other evidence of the policy) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days after written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

5.06 ***Waiver of Rights***

A. CONTRACTOR intends that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered by the policy. All CONTRACTOR policies must contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insured there under. CONTRACTOR waive all rights against OWNER each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 ***Supervision and Superintendence***

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 ***Labor; Working Hours***

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday,

Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

C. The following list of streets may not be opened or worked in between the hours of 7:00 AM and 9:00 AM and 3:00 PM and 6:00 PM, Monday through Friday of each week:

Amherst Street
Broad Street
Canal Street
Concord Street
D. W. Highway
East Dunstable Road
East Hollis Street
Kinsley Street
Main Street

6.03 ***Services, Materials, and Equipment***

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 ***Progress Schedule***

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 ***Substitutes and "Or-Equals"***

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. "Or-Equal" Items:

If in ENGINEER'S sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. In the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items*

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures::* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop drawing for an "or equal". ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 ***Concerning Subcontractors, Suppliers, and Others***

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 ***Patent Fees and Royalties***

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 ***Permits***

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility Owner's for capital costs related thereto, such as plant investment fees.

6.09 ***Laws and Regulations***

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary

responsibility to make certain the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in paragraph 10.05.

D. CONTRACTOR shall comply with all local laws, ordinances, and statutes, all provisions of the Revised Statutes Annotated, all provisions of the federal Davis-Bacon Act for projects with federal funding, and all regulations promulgated under either statute. Copies of the "City of Nashua Prevailing Wage Rates for Public Works", as determined by U.S. Department of Labor and "General Wage Determinations," as determined by the U.S. Department of Labor, are available for inspection at the City of Nashua Division of Public Works, 9 Riverside Street, Nashua, New Hampshire. If the provisions of the Davis-Bacon Act apply, all employees of the CONTRACTOR must be paid not less than the wage which is the greater of the Federal wage determinations. The hourly and daily rate of wages to be paid each class of mechanics and workers must be posted on the project site in a place generally visible to the employees.

E. If the Davis-Bacon Act applies, CONTRACTOR shall furnish to the OWNER within seven days after payment date of the weekly payroll period, a statement of wages paid for each of the CONTRACTOR's employees or a payroll report. If the Davis-Bacon Act applies, CONTRACTOR shall furnish to the OWNER within seven days after payment date of the weekly payroll period, a statement of wages paid for each of any subcontractor's employees or a payroll report for each subcontractor. The statement or report must include the CONTRACTOR's certification of compliance with the requirements of the supplementary condition. CONTRACTOR agrees that failure to comply with the portion of this supplementary condition requiring CONTRACTOR to furnish a certified statement of wages or payroll report will, in addition to any other retention allowed under this contract or under state or federal law, allow the OWNER to unilaterally, without notice to CONTRACTOR, retain an amount of up to 10% from each progress payment until the OWNER determines CONTRACTOR has complied with the provisions of this supplementary condition.

F. If the Davis-Bacon Act applies to work to be performed under this contract, CONTRACTOR shall furnish to the OWNER within seven days after payment date of the weekly payroll period, a statement of wages paid for each of CONTRACTOR's employees and for each of any subcontractor's employees or a payroll report from CONTRACTOR and from each subcontractor. Each statement or report must include the certification by CONTRACTOR of compliance with the provisions of the Davis-Bacon Act.

G. Workers' Compensation Coverage.

1. CONTRACTOR agrees as a precondition to the performance of any work under this contract and as a precondition to any obligation of the OWNER to make any payment under this contract to provide the OWNER with a certificate of a qualified insurer. CONTRACTOR agrees that notice of any lapse in coverage or nonpayment of coverage that the CONTRACTOR is required to maintain should be mailed to:

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

2. CONTRACTOR agrees to maintain required workers' compensation coverage throughout the entire term of the contract. If CONTRACTOR does not maintain coverage throughout the entire term of the contract, CONTRACTOR agrees that OWNER may, at any time the coverage is not maintained by CONTRACTOR, order the CONTRACTOR to stop work, suspend the contract, or terminate the contract. For each six-month period this contract is in effect, CONTRACTOR agrees, prior to the expiration of the six-month period, to provide another written request to its insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If

CONTRACTOR does not make the request or does not provide the certificate before the expiration of the six-month period, CONTRACTOR agrees that OWNER may order the CONTRACTOR to stop work, suspend the contract, or terminate the contract.

H. To be deemed a responsive bid, the list of subcontractor form must be submitted even if no subcontractors are required to be listed. Submittal is as follows:

1. Each bid submitted to any officer, department, board or commission for the construction of any public work or improvement must include:

a. The name of each subcontractor who will provide labor or a portion of the work or improvement to the CONTRACTOR for which he will be paid an amount exceeding 5 percent of the prime CONTRACTOR's total bid. Within 2 hours after the completion of the opening of the bids, the general contractors who submitted the three lowest bids must submit a list of the name of each subcontractor who will provide labor or a portion of the work or improvement to the CONTRACTOR for which he will be paid an amount exceeding 1 percent of the prime CONTRACTOR's total bid or $50,000, whichever is greater, and the number of the license issued to the subcontractor. If a general CONTRACTOR fails to submit such a list within the required time, his bid shall be deemed not responsive.

b. A description of the portion of the work or improvement which each subcontractor named in the bid will complete.

2. The CONTRACTOR shall list in his bid the name of a subcontractor for each portion of the project that will be completed by a subcontractor.

3. A CONTRACTOR whose bid is accepted shall not substitute any person for a subcontractor who is named in the bid, unless:

a. The awarding authority objects to the subcontractor, requests in writing a change in the subcontractor and pays any increase in costs resulting from the change; or

b. The substitution is approved by the awarding authority and:

(i) The subcontractor, after having a reasonable opportunity, fails or refuses to execute a written contract with the CONTRACTOR which was offered to the subcontractor with the same terms that all other subcontractors on the project were offered;

(ii) The named subcontractor files for bankruptcy or becomes insolvent; or

(iii) The named subcontractor fails or refuses to perform his subcontract within a reasonable time or is unable to furnish a performance bond and payment bond.

I. If blasting or use of explosives is necessary for prosecution of Work, the CONTRACTOR shall provide the ENGINEER with a blasting plan in compliance with OSHA, State, and local regulations, laws, ordinances, and requirements. CONTRACTOR shall exercise the utmost care not to endanger life or property. CONTRACTOR shall be responsible for all damage resulting from the use of explosives. CONTRACTOR shall notify each property OWNER and utility company having structures or facilities in proximity to the site of the work of its intentions to use explosives. Such notice shall be given sufficiently in advance to enable the utility companies to take such steps as they may deem necessary to protect their property from injury.

6.10 ***Taxes***

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work

6.11 ***Use of Site and Other Areas***

A. Limitation on Use of Site and Other Areas

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the OWNER or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such OWNER or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

B. Removal of Debris During performance of the Work:

During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning:

Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures:

CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

E. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such OWNER or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

6.12 ***Record Documents***

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders,
Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

B CONTRACTOR shall mark up one set of paper prints to show the As-built conditions. They shall include all the information shown on the Contract Drawings and a record of all deviations, modifications, or changes from those Drawings, however minor, which were incorporated in the Work, all additional work not appearing on the Contract Drawings and all changes which are made after final inspection of the Contract Work. These As-built marked prints shall be kept current and available on the job site at all times. All changes from the Contract Drawings which are made in the Work or additional information which might be uncovered in the course of construction shall be accurately and neatly recorded as they occur by means of details and notes. No construction work shall be concealed until it has been inspected, approved, and recorded. The As-built marked prints will be jointly inspected for accuracy and completeness by the ENGINEER'S representative and a responsible representative of the CONTRACTOR prior to submission of the monthly pay estimate. Failure to keep the As-built marked prints on a current basis shall be sufficient justification to suspend pay estimates. The drawings shall show the following information, but not be limited to:

1. The location of any utility lines or other installations of any kind or description known to exist within the construction area. The location includes dimensions of permanent features.

2. The location and identification of all surface installations within 100 feet of the construction work.

3. The location and dimensions of any changes within the building or structure.

4. Correct grade or alignment of roads, structures, or utilities if any changes were made from Contract Drawings.

5. Correct elevations if changes were made in site grading.

6. Changes in details or design or additional information obtained from working drawings specified to be prepared or furnished by the CONTRACTOR including but not limited to fabrication, erection, installation plans and placing details, pipe sizes, insulation material, dimensions or equipment foundations, etc.

7. The topography and grades of all drainage installed or affected as a part of the Work.

8. All changes or modifications which result from the final inspection.

The As-built marked prints shall be delivered to the ENGINEER at the time of final inspection for ENGINEER's review and approval. All approval and acceptance of As-built drawings shall be accomplished before final payment is made to the CONTRACTOR.

6.13 ***Safety and Protection***

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. All persons on the Site or who may be affected by the Work;

2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify OWNER of adjacent property and of Underground Facilities and other utility Owner's when prosecution of the Work may affect them, and shall cooperate

with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER'S Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

C. Occupational Safety and Health Standards: CONTRACTOR's methods of construction and safety requirements, including but not limited to trench excavation and shoring where applicable, shall conform to the requirements of the Occupational Safety and Health Standards for the Construction Industry. The document entitled "Occupational Safety and Health Standards for the Construction Industry" (29 CFR PART 1926) with Amendments as of February 1, 1998, including 29 CFR part 1910 General Industry Safety and Health Standards Applicable to Construction, is not attached to the Contract Documents. Said requirements as identified and established above are incorporated herein by reference.

D. Power Lines: No equipment of any kind shall be used or permitted within such proximity to the conductors of the Public Services of New Hampshire power lines as to be in violation of the safe working clearance prescribed by the National Electrical Safety Code.

E. Protection of Utilities: The CONTRACTOR shall verify all utility locations prior to the start of construction. This shall include, but not necessarily limited to: irrigation and drainage ditches, culverts, water lines, sewer lines, telephone cables, cable television, gas lines and electric lines. Prior to the start of construction the CONTRACTOR shall call Dig Safe System, Inc. 1-800-344-7233 (two full working days' notice required). The failure of any utility to subscribe to DIGS shall not relieve the CONTRACTOR from the responsibility of protection of that utility on the site. Any physical structure (i.e. curbs, sidewalks, paving, buildings, landscape improvements, utilities, etc., damaged by the CONTRACTOR shall be repaired or replaced in a condition equal to or better than the condition prior to the damage. Such repair or replacement shall be accomplished at the CONTRACTOR's expense without additional compensation from the OWNER.

F. CONTRACTOR shall ensure that its activities and activities of its employees, agents and subcontractors, and their employees and agents (including all sub-subcontractors), are in strict compliance with all Environmental Protection Agency, New Hampshire Department of Environmental Services, and Department of Transportation regulations and all other applicable federal, state and local statutes, ordinances, regulations and rules, including without limitation, the Federal Occupational Safety and Health Act of 1970 (OSHA) as amended and the standards and regulations issued thereunder, and all other statutes, ordinances, regulations, rules, standards and requirements of common law in relation to industrial hygiene and safety, and the protection of health and the environment.

6.14 *Safety Representative*

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Work Site is subject to safety inspection by the City Safety Representative at any and all times.

6.15 *Hazard Communication Programs*

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, Change Order will be issued.

6.17 *Shop drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

   a. All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

   b. All materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

   c. All information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

   d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents,

such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. *ENGINEER's Review*

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2.ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. Normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by ENGINEER;

2. Recommendation by ENGINEER or payment by OWNER OF ANY PROGRESS OR FINAL PAYMENT;

3. The issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereof by OWNER;

4. Use or occupancy of the Work or any part thereof by OWNER;

5. Any acceptance by OWNER or any failure to do so;

6. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. Any inspection, test, or approval by others; or

8. Any correction of defective Work by OWNER.

6.20 ***Indemnification***

A. Regardless of the coverage provided by any insurance, Contractor agrees to indemnify and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Contractor's indemnity 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.

B. In any and all claims against OWNER or ENGINEER, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:
The preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications.

ARTICLE 7 - OTHER WORK

7.01 ***Related Work at Site***
A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefore, or have other work performed by utility Owner's. If such other work is not noted in the Contract Documents, then:

1. Written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefore as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility OWNER (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility OWNERs and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility OWNERs and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 ***Coordination***

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. The individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. The specific matters to be covered by such authority and responsibility will be itemized; and

3. The extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 ***Communications to Contractor***

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 ***Replacement of ENGINEER***

A. In case of termination of the employment of ENGINEER, OWNER shall appoint and whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 ***Furnish Data***

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 ***Pay Promptly When Due***

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 ***Lands and Easements; Reports and Tests***

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 ***Insurance***

See Article 5.

8.07 ***Change Orders***

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 ***Inspections, Tests, and Approvals***

A. OWNER's responsibility in respect to certain inspections tests, and approvals is set forth in paragraph 13.03.B.

8.09 ***Limitations on OWNER's Responsibilities***

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, of the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 ***Undisclosed Hazardous Environmental Condition***

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06

8.11 ***Evidence of Financial Arrangements***

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 ***OWNER's Representative***

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 ***Visits to Site***

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 ***Project Representative***

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereof of such other individual or entity will be as provided in the supplementary Conditions.

9.04 ***Clarifications and Interpretations***

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefore as provided in paragraph 10.05.

9.05 ***Authorized Variations in Work***

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

9.06 ***Rejecting Defective Work***

A ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 ***Shop Drawings, Change Orders and Payments***

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to change orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 ***Determinations for Unit Price Work***

A ENGINEER will have authority to determine the actual quantities and classifications of items of Unit Price Work performed by CONTRACTOR, and the written decisions of ENGINEER on such matters will be final, binding on OWNER and CONTRACTOR and not subject to appeal (except as modified by ENGINEER to reflect changed factual conditions).

9.09 ***Decisions on Requirements of Contract Documents and Acceptability of Work***

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not be liable in connection with any interpretation or decision rendered in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 ***Limitations on ENGINEER's Authority and Responsibilities***

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates or inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 ***Authorized Changes in the Work***

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment or a Change Order. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Change Order, a Claim may be made therefore as provided in paragraph 10.05.

10.02 ***Unauthorized Changes in the Work***

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 ***Execution of Change Orders***

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. Changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Change Order ; and

3. Changes in the Contract Price and Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 ***Notification to Surety***

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 ***Disputes – Not Insurance Related***

A. Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 10 days) after the start of the event giving rise thereto. Notice of the amount or extent of the dispute, or other matter with supporting data shall be delivered to the ENGINEER, Risk Management Department and the other party to the Contract within 60 days after the start of such event. A dispute for an adjustment in Contract Price shall be prepared in accordance with the provisions in paragraph 12.01.B. A dispute for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each dispute shall be accompanied by claimant's written statement that the

adjustment disputed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. ENGINEER'S Decision: ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such dispute, or other matter will be final and binding upon CONTRACTOR unless:

1. An appeal from ENGINEER'S decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. If no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have the respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the dispute in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the submittal of the opposing party, if any.

D. No dispute for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of the Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs of employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of

surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

6. Rental rates shall be determined as follows:

a. The base rates shall be those established in publications and revisions thereto entitled "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment" as published by K-III, 1735 Technology Drive, Suite 401, San Jose, CA 95110-1313, Phone (408) 467-6700.

b. Attachments (e.g. tractor with ripper and dozer or tractor with loader and backhoe) will be included in the hourly rental rate only when deemed essential to the work as determined the Engineer. When multiple attachments are approved for use and are being used interchangeably, the attachment having the higher rental rate shall be the only one included for payment.

c. No direct payment will be made for necessary accessories (including replenishing blades, augers, teeth, hoses, bits, etc.) if not listed in the Rental Rate Blue Book.

d. No compensation will be allowed for shop tools having a daily rental rate of less than $10 as set forth in Section 18 of the Rental Rate Blue Book.

i. If ordered to use equipment not listed in the aforementioned publications, the Engineer will establish a rental rate for such equipment. CONTRACTOR shall furnish cost data that might assist in the establishment of such rental rate.

ii. Payment will be made for the actual time that such equipment is in operation on the work.

iii. Authorized standby time for idle equipment shall be paid at 50% of the specified rate, less the estimated operating cost per hour. No markup will be added for overhead and profit.

iv. Rental rate paid as above provided shall include the cost of fuel, oil, lubrication, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. CONTRACTOR shall provide the Engineer with a complete Force Account Equipment Listing for each piece of equipment utilized.

e. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

f. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

g. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work, provided such losses and damages have resulted from causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

h. The cost of utilities, fuel, and sanitary facilities at the Site.

i. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

j. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim

k. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expense, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overheard or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. CONTRACTOR's Fee: When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. Documentation: Whenever the cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A. and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER as itemized cost breakdown together with supporting data.

11.02 ***Cash Allowances***

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 ***Unit Price Work***

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of the Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subjects to the provisions of paragraph 9.08

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 ***Change of Contract Price***

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents an agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. CONTRACTOR's Fee: The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. For costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a. is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. No fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. The amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. When both addition and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e inclusive.

12.02 ***Change of Contract Times***

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 ***Delays beyond CONTRACTOR's Control***

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 ***Delays within CONTRACTOR's Control***

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 ***Delays beyond OWNER's and CONTRACTOR's Control***

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 ***Delay Damages***

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. Delays caused by or within the control of CONTRACTOR; or

2. Delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, flood, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone from whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 ***Notice of Defects***

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 ***Access to Work***

A. OWNER, ENGINEER, ENGINEER'S Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interest will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 ***Tests and Inspections***

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. For inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. That costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. As otherwise specifically provided in the Contract Documents.

4. That costs incurred by OWNER due to retesting, re-inspection, or standby time due to unacceptable materials, or workmanship provided by the CONTRACTOR, or due to poor scheduling by the CONTRACTOR of tests of inspections, will be deducted from the payments to the CONTRACTOR. CONTRACTOR shall stop work as necessary to allow for inspections and tests by OWNER and ENGINEER.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER'S and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

G. The OWNER intends to provide inspection for the project. The inspector will be available during a forty (40) hour period during the week from Monday through Friday. In the event the CONTRACTOR receives permission from the OWNER and elects to work more than forty hours during the week or more than 10 hours in one day, or on a Saturday, Sunday, or legal holiday, the CONTRACTOR shall be responsible for all inspection, engineering and testing costs incurred during that period. For all inspection and testing work performed on Saturday, Sunday, or legal holidays, the minimum chargeable time shall be four (4) hours. The OWNER reserves the right to deduct these inspection, engineering, and testing costs directly from the CONTRACTOR'S payments.

13.04 ***Uncovering Work***

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR'S expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefore as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly

attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

13.05 ***OWNER May Stop the Work***

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause of such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 ***Correction or Removal of Defective Work***

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 ***Correction Period***

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting there from. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting there from) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 ***Acceptance of Defective Work***

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefore as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 ***OWNER May Correct Defective Work***

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefore as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 ***Schedule of Values***

A. The schedule of values established as provided in paragraph 2.01.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 ***Progress Payment***

A. Review of Applications.

1. Prior to submittal of Application for Payment to OWNER (but not more often than once a month), the CONTRACTOR shall submit the monthly progress estimate to the ENGINEER for review and approval.

2. ENGINEER will, within 10 working days after receipt of each progress estimate, either indicate in writing a recommendation of payment or indicate in writing ENGINEER's reasons for refusing to recommend payment and return the progress estimate to CONTRACTOR. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

3. ENGINEER's recommendation of any payment requested in a progress estimate will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying date and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. The Work has progressed to the point indicated;

b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08 and to any other qualifications stated in the recommendation); and

c. The conditions precedent to CONTRACTOR's being entitled to such payment appears to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

4. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

5. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

6. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. The Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. The Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

B. Applications for Payments.

1. CONTRACTOR shall submit to OWNER the ENGINEER recommended Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER. Any request for partial or final payment shall specifically list the work completed. Requests for payment for services performed under this agreement shall be submitted as stipulated in ***Article 6 - Payment and Procedures*** in the Agreement.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be stipulated in the Agreement.

C. Payment Becomes Due

1. Not more than 30 days after presentation of the application for payment to OWNER with ENGINEER's recommendation, the amount recommended will become due, and when due will be paid by OWNER to CONTRACTOR.

D. Reduction in Payment.

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. Claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. There are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 ***CONTRACTOR'S Warranty of Title***

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 ***Substantial Completion***

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefore. If after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 ***Partial Utilization***

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 ***Final Inspection***

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 ***Final Payment***

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application of Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 ***Final Completion Delayed***

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 ***Waiver of Claims***

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 ***Termination, Abandonment, or Suspension at Will***

The OWNER, 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 OWNER chooses to terminate, abandon, or suspend all or part of the project, it shall provide 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, 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 OWNER 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 OWNER 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 OWNER to resume performance.

In the event of a termination, abandonment, or suspension at will, CONTRACTOR shall receive all amounts due and not previously paid to 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.

15.02 ***Termination for Cause***

This agreement may be terminated by the OWNER on 10 calendar day's written notice to CONTRACTOR in the event of a failure by 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 OWNER, to complete or make sufficient progress on the work in a timely and

professional manner. CONTRACTOR shall be given an opportunity for consultation with the OWNER prior to the effective date of the termination. CONTRACTOR may terminate the contract on 10 calendar days written notice if, through no fault of CONTRACTOR, the OWNER fails to pay CONTRACTOR for 45 days after the date of approval by the OWNER of any Application for Payment.

Upon receipt of notice of termination for cause, CONTRACTOR shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the OWNER 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 OWNER 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 OWNER 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 OWNER to resume performance.

In the event of a termination for cause, CONTRACTOR shall receive all amounts due and not previously paid to 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 OWNER by reasons of CONTRACTOR's failure. CONTRACTOR shall not be relieved of liability to the OWNER for damages sustained from the failure, and the OWNER may withhold any payment to the CONTRACTOR until such time as the exact amount of damages due to the OWNER is determined. All claims for payment by the CONTRACTOR must be submitted to the OWNER within 30 days of the effective date of the notice of termination.

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

15.03 ***General Provisions for Termination***

Upon termination of the contract, the OWNER may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event CONTRACTOR shall cease conducting business, the OWNER shall have the right to solicit applications for employment from any employee of the CONTRACTOR assigned to the performance of the contract.

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

ARTICLE 16 - DISPUTE RESOLUTION

16.01 ***Methods and Procedures***

A. 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 OWNER Representative and a CONTRACTOR Representative. At all times, CONTRACTOR shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the OWNER. 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.

ARTICLE 17 - MISCELLANEOUS

17.01 ***Giving Notice***

A. Whenever any provision of the Contact Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 ***Computation of Times***

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 ***Cumulative Remedies***

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation or, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, by special warranty or guarantee, or by other provisions of the contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 ***Survival of Obligations***

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, will survive final payment, completion, and an acceptance of the Work or termination or completion of the Agreement.

17.05 ***Controlling Law***

A. 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

17.06 Access to Records

A. At all times during regular business hours, CONTRACTOR shall provide full and free access to the OWNER, ENGINEER, and State of New Hampshire to any books, documents, papers, and records related to the work for the purpose of examination, audit, and duplication. The CONTRACTOR shall maintain all required accounts, records, and books for three years after final completion of the work.

17.07 Road Closures and Traffic Delays

A. Partial or full closure of streets in order to facilitate construction will be permitted, or required by the Engineer in accordance with the following:

1. If the CONTRACTOR proposes a closure, the CONTRACTOR notifies the OWNER in writing at least 5 days prior to the proposed closure of his intent to close the road.

2. At least 5 days prior to the proposed closure, the CONTRACTOR shall submit a detour traffic plan for each location being detoured.
3. The CONTRACTOR shall install standard traffic control devices in accordance with the Detour Signage plan provided in the bid documents and the Manual on Uniform Traffic Control Devices (MUTCD.)

4. The detour signage shall be covered when the road closure is not in effect.

B. CONTRACTOR shall notify the following agencies of any traffic delays or road closures three days in advance of the work:

Nashua Police Department:	**(603) 594-3500**
Nashua Fire Department:	**(603) 594-3652**
School Bus Garage:	**(603) 594-4300**
Nashua Solid Waste Department	**(603) 589-3410**
Nashua Building Department	**(603) 589-3080**

17.08 Prohibited Interests

A. CONTRACTOR shall not allow any officer or employee of the OWNER to have any indirect or direct interest in this contract or the proceeds of this contract CONTRACTOR warrants that no officer or employee of the OWNER has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of CONTRACTOR. If any such interest comes to the attention of CONTRACTOR at any time, a full and complete disclosure of the interest shall be immediately made in writing to the OWNER. CONTRACTOR also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. CONTRACTOR further warrants that no person having such an interest shall be employed in the performance of this contract. If OWNER determines that a conflict exists and was not disclosed to the OWNER, it may terminate the contract at will or for cause in accordance with Article 15.02.

B. In the event 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 may terminate the contract at will or for cause in accordance with paragraph 9. Upon termination, Contractor shall refund to the City any profits realized under this contract, and Contractor shall be liable to the City for any costs incurred by the City in completing the work described in this contract. At the discretion of the City, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

C. Contractor warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Contractor to any officer or employee of the City 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 determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with Article 15.02.

D. 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 under this contract or at law.

DIVISION 7

PROSECUTION OF WORK

PROSECUTION OF WORK

This Prosecution of Work shall amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

1. DESCRIPTION OF WORK

This project involves the reconstruction of pedestrian sidewalks with new and reset granite curbing on a portion of East Hollis Street from 242 Main Street (CVS Pharmacy) to Harbor Avenue. The Contractor will provide all labor, equipment, and material to construct the improvements shown on the **"2020 Sidewalk Program"** plans.

The City reserves the right to remove sidewalk and ramp sections from the list, extend or shorten limits, or revise the specified treatment.

The City may also add additional sidewalks and ramps to the contract work.

Should the net projection of the value of changes to the contract work exceed the authorized amount, the Owner will present a contract amendment proposal to the CONTRACTOR.

2. CITY OF NASHUA OVERSIGHT AND INSPECTION

The City is the Engineer and Owner for this project and will provide a project representative to act as their agent overseeing the project. The CONTRACTOR must provide full access to the project site at all times to City personnel and agents of the City.

3. MILESTONES FOR SUBSTANTIAL COMPLETION

The entire length of all sidewalk and ramps shall be substantially complete by August 7, 2020.

4. WORK HOURS

Reference is made to *Section 6.02 Labor; Working Hours* of the General Conditions.

East Hollis Street work hours shall be 8:00 AM to 4:00 PM Monday through Friday of each week if the CONTRACTOR maintains a minimum of one lane in each direction at all times. Should the CONTRACTOR consider it necessary to reduce this requirement to alternating one- way use, work shall be limited to 9:00 AM - 3:00 PM, Monday through Friday of each week.

Streets listed in *General Conditions Section 6.02C*, may not be opened or worked in between the hours of 7:00 AM - 9:00 AM and 3:00 PM - 6:00 PM, Monday through Friday of each week.

Requests for work beyond those hours normally allowed on weekdays shall be made by the CONTRACTOR at least 72 hours in advance.

Requests for work on Saturdays, Sundays and holidays shall be made at least one week in advance, but are unlikely to be approved without significant mitigating circumstances.

CONTRACTOR should not assume requests for hours beyond the hours and days normally allowed will be approved. Requests will be considered on a case by case basis.

5. LIMITS OF WORK

Prior to the start of construction, the CONTRACTOR and Engineer shall field inspect the existing conditions of all proposed sidewalk and ramp reconstruction locations to determine the limits of work, including but not limited to the height of curb reveal and width of landscape restoration at the Right-of-Way (ROW) side of the sidewalk, for all proposed reconstruction areas.

6. SURVEY LAYOUT AND CONTROL

The City will provide initial layout of the ROW as needed.

The CONTRACTOR shall be responsible for the preservation of the ROW layout, including all benchmarks, and control points. If any of the control points are disturbed by the CONTRACTOR during the construction, the CONTRACTOR shall replace them at no expense to the OWNER. Damaged or destroyed points, bench marks or stakes, or any reference points damaged or made inaccessible by the progress of the construction shall be replaced or transferred by the CONTRACTOR, subject to verification by the ENGINEER. Replacement of any layout points shall be performed by or under the direction of a NH Licensed Land Surveyor.

The CONTRACTOR shall perform all necessary layout work in order to construct all elements of the Project as shown on the Plans and specified in the Contract. This work shall include, but shall not be limited to, stakeout necessary to establish lines and grades as earthwork operations progress; stakeout, layout and elevations as required for installing all items included in the work.

The CONTRACTOR shall perform all required layout work with competent, qualified personnel in a manner consistent with current survey/layout practices and acceptable to the ENGINEER. Any error, apparent discrepancy, or absence of data in the initial layout shall be referred to the ENGINEER in writing for correction or interpretation. The CONTRACTOR is solely responsible for the accuracy of the Work.

The ENGINEER may check all or any portion of the layout and stake-out made by the CONTRACTOR. Any necessary correction to the Work shall be made immediately by the CONTRACTOR. Such checking by the ENGINEER will not relieve the CONTRACTOR of any responsibilities for the accuracy or completeness of the work. No claim will be considered because of alleged inaccuracies unless the CONTRACTOR notifies the ENGINEER thereof in writing immediately upon discovery of the alleged inaccuracies and affords the ENGINEER a reasonable opportunity to check or verify the control in question.

7. STANDARD SPECIFICATIONS

The reference specifications for this project are the New Hampshire Department of Transportation (NHDOT) Standard Specifications for Road and Bridge Construction, latest edition including all addenda, and the City of Nashua Standard Specifications for Sidewalk Construction, latest edition including all addenda. Should there be a conflict the more stringent specification shall apply.

8. ADA COMPLIANCE

CONTRACTOR shall take measurements as needed before work commences at each ramp location to assure the CONTRACTOR has all controls needed to construct sidewalk improvements in compliance with ADA requirements.

City representatives will meet with the CONTRACTOR in advance of work at each ramp location to assure concurrence on the limits and extent of work needed to achieve ADA compliance.

If in the opinion of the CONTRACTOR, construction of an ADA complaint ramp is not possible at any location based on the concept presented on the Contract Drawings, the CONTRACTOR shall notify the Engineer in writing in advance of any construction activities at that location.

9. CONTRACTOR'S REPRESENTATIVE

The CONTRACTOR shall designate a representative who will be available to respond to emergency calls by the Owner at any time day and night and on weekends and holidays should such a situation arise.

Should the City determine action by the City is needed or other costs are incurred because the CONTRACTOR'S Representative is not available, the City will back-charge the CONTRACTOR for associated expenses.

10. SCHEDULING AND COORDINATION

Reference is made to *General Conditions Section 2.05, Before Starting Construction* and *General Conditions Section 6.04, Progress Schedule.*

Prior to the start of construction, the CONTRACTOR shall submit a comprehensive schedule to the Engineer for review and acceptance.

The schedule will identify the number of crews and completion dates for all critical elements of work.

11. SUPERINTENDENCE OF THE WORK

Reference is made to *General Conditions Section 6.01, Supervision and Superintendence.*

CONTRACTOR shall provide appropriate onsite superintendence of all aspects of the work whether performed by the CONTRACTOR or by subcontractors.

Qualified Superintendent(s) shall be assigned for all crews. The CONTRACTOR shall provide contact information for all Superintendents.

12. STAGING AREA/USE OF GROUNDS

A staging area has been identified at 143 Burke Street (owned by the City) for Contractor use, if desired, for sanitary facilities, bulletin board, staging, processing, employee parking, equipment storage, and stockpile area. The CONTRACTOR shall stockpile, handle, and transport materials to preserve their quality and fitness for the Work. Materials shall also be stored to facilitate inspection and may be subject to inspection and retesting before incorporation in the Work. The contractor shall be responsible for security of materials and equipment stored in the 143 Burke Street staging area.

Any area outside the limits of the project area (right-of-way within project limits) which the CONTRACTOR may require for storage of equipment and materials, or for other purposes necessary in the performance of the Work, shall be secured by the

CONTRACTOR at their own expense. Materials, including excavation intended for backfill, shall not be stored or stacked within any roadway clear zones, or in a manner that obstructs parking or adequate sight lines unless specifically permitted in writing by the Engineer. The CONTRACTOR is responsible for providing security as required and erosion controls at no cost to the City.

13. TRAFFIC CONTROL PLAN

Reference is also made to *Section 17.07 Road Closures and Traffic Delays* of the General Conditions.

The following are considered part of the Traffic Control Plan:

1. Section 618 and 619 of the Standard Specifications.
2. Work Zone Traffic Control Standard Sheets*
3. *Manual on Uniform Traffic Control Devices, (MUTCD), 2009 Edition, including all current updates and official interpretations.*
4. *Positive Protection Guidance for Work Zones (PPGWZ)**
5. *Flagger and Uniformed Officer Use in Work Zones Policy and Guidelines**

*Available online under *Doing Business with DOT>Contractors* at www.nhdot.com or through the NHDOT Contracts office (603-271-3732).

The CONTRACTOR shall provide necessary traffic control devices to ensure the safety of the workers, traveling public, and property owners on this project. The above referenced specifications, guidelines, and provisions herein provide minimum requirements; the CONTRACTOR may be directed to expand upon the Traffic Control Plan if conditions warrant.

All signs, channelizing devices and arrow boards as required by the *Manual on Uniform Traffic Control Devices*, including part six, as amended, and the above Standard Sheets shall be in place prior to moving any equipment.

The CONTRACTOR shall provide trained personnel, including Uniformed Officers and Flaggers in accordance with Section 618, to be responsible for the maintenance of traffic.

The CONTRACTOR shall be responsible to assure that all materials furnished and used for maintenance of traffic are certified for reflectivity. The CONTRACTOR shall replace damaged devices without additional compensation. Although the Engineer may direct the contractor to replace damaged devices, the CONTRACTOR has full

responsibility to inspect all materials and devices for maintenance of traffic and correct any deficiencies on a daily basis.

Regardless of action that may be taken or not taken by the Engineer, the CONTRACTOR shall be solely responsible for the appropriateness, reflectivity and condition of all materials provided as well as placement and maintenance of traffic control elements.

The CONTRACTOR shall submit a Traffic Control Plan prior to work on arterial roadways. This Traffic Control Plan will describe how the CONTRACTOR proposes to:

- Stage the work to maintain and control traffic during the demolition and reconstruction of curb and sidewalks.
- Maintain access to all residences and businesses through the duration of construction.
- Lane usage during various phases of work will be described. A minimum of 11- foot width shall be provided for all lanes open to traffic. Pedestrian traffic around the work area shall be maintained at all times.
- A minimum of one lane in each direction shall be provided at all times. Should the CONTRACTOR consider it necessary to reduce this requirement to alternating one- way use, the constraints justifying such a restriction must be explained fully. If approved at any location in this contract, the use of alternating one-way traffic will be for a short duration only.
- The CONTRACTOR shall describe in the Traffic Control Plan minimum conditions which will be provided at the end of working hours.
- Full lane use shall be maintained for weekend and holiday periods.

14. <u>REMOVAL OF DEBRIS AND SURPLUS MATERIAL</u>

Neither debris nor surplus material shall be deposited on private property or impede pedestrian ways. Debris and surplus material shall be removed from the project area as promptly as practical.

15. <u>PROTECTION OF LANDSCAPING</u>

CONTRACTOR shall take appropriate measures to protect trees, shrubs and other landscaping. Branches, limbs and roots shall not be cut except with permission of the Engineer. Where cutting is necessary, work shall be performed by qualified workers.

16. <u>RESTORATION OF EXISTING PROPERTY</u>

The CONTRACTOR shall be responsible for the preservation of all public and private

property, and shall use every precaution necessary to prevent damage thereto. If damage is done to public or private property, including the 143 Burke Street staging area, such property shall be promptly restored by the CONTRACTOR, at his/her expense, to a condition similar or equal to that existing before the damage was done, to the satisfaction of the Engineer.

A. Notice of Award
B. Notice to Proceed
C. Change Order
D. Certificate of Substantial Completion
E. Certificate of Final Completion
F. Consent of Surety for Final Payment
G. Contractor's Affidavit
H. Contractor's Final Release and Waiver of Lien

DIVISION 8

EXHIBITS

NOTICE OF AWARD

DATED: _____

TO: _____
(Bidder)

ADDRESS: _____

OWNER'S CONTRACT NO. : _____

PROJECT: _____
(Insert name of Contract as it appears in the Bidding Document)

You are notified that your Bid dated _____ for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a contract for

_____

_____

_____
(Indicate total Work, alternatives or sections or Work awarded)

The Contract Price of your contract is

_____ ($ _____)

The proposed Agreement that the OWNER expects to execute, accompanies this Notice of Award.

1. You must deliver to the OWNER a fully executed counterpart of the proposed Agreement that the OWNER expects to execute.

2. You must deliver to the OWNER the Contract Security (Bonds), as specified in the General Conditions (Article 8.03), and Certificate of Liability Insurance, as specified in General Conditions (Article 5).

3. (List other conditions precedents).

_____

_____

_____

Failure to comply with these conditions within the time specified will entitle **OWNER** to consider your bid in default, to annul this Notice of Award and to declare your Bid Security forfeited.

By _____
(FOR THE CITY OF NASHUA)

_____
(TITLE)

NOTICE TO PROCEED

DATED: _____

TO: _____
(Contractor)

ADDRESS: _____

OWNER'S CONTRACT NO._____

PROJECT:_____
(Insert name of Contract as it appears in the Bidding Document)

You are notified that the Contract Times under the above contract will commence to run on _____, 20___. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the dates of Substantial Completion and Final Completion are _____and _____, respectively.

Also before you may start any Work at the site you must:

_____
(Add other requirements)

_____

_____

By _____
(For the City of Nashua)

_____
(Title)

CHANGE ORDER

_____ No. _____

PROJECT: _____

OWNER'S CONTRACT NO: _____

EXECUTED CONTRACT DATE: _____

DATE OF ISSUANCE: _____ EFFECTIVE DATE: **Upon City Approval**

OWNER: **City of Nashua, NH**

OWNER's Purchase Order NO.: _____

CONTRACTOR: _____

ENGINEER: _____

You are directed to make the following changes in the Contract Documents:

Description:

Summary

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price $	Original Contract Times Final completion: Ready for final payment:
Net changes from previous Change Orders $	Net change from previous Change Orders
Contract Price prior to this Change Order $	Contract Times prior to this Change Order Final completion: Ready for final payment:
Net Increase (decrease) of this Change Order $	Net Increase (decrease) of this Change Order
Contract Price with all approved Change Orders $	Contract Times with all approved Change Orders Final completion: Ready for final payment:

RECOMMENDED:	ACCEPTED:	APPROVED:
By: _____ Engineer (Authorized Signature) Date: _____	By: _____ Name Contractor (Authorized Signature) Date: _____	By: _____ Mayor Jim Donchess Owner (Authorized Signature) Date: _____

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT: _____

OWNER'S CONTRACT NO: _____

DATE OF ISSUANCE: _____

OWNER: _____ City of Nashua, NH _____

OWNER's Purchase Order NO.: _____

CONTRACTOR: _____

ENGINEER: _____

_____

The Work to which this Certificate applies has been inspected by authorized representative of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

_____
(DATE OF SUBSTANTIAL COMPLETION)

A Tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within _____days of the above date of Substantial Completion.

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

EXECUTED BY ENGINEER:	ACCEPTS THIS CERTIFICATE OF SUBSTANTIAL COMPLETION:	ACCEPTS THIS CERTIFICATE OF SUBSTANTIAL COMPLETION:
By: _____	By: _____	By: _____
_____	Daniel Hudson, P.E.	_____
(Authorized signature)	Owner Representative	Contractor (Authorized Signature)
Title: _____	Title: City Engineer, City of Nashua	Title: _____
Date:	Date:	Date:

CERTIFICATE OF FINAL COMPLETION

PROJECT: _____

OWNER'S CONTRACT NO: _____

DATE OF ISSUANCE: _____

OWNER: _____ City of Nashua, NH _____

OWNER's Purchase Order NO.: _____

CONTRACTOR: _____

ENGINEER: _____

_____

The Work to which this Certificate applies has been inspected by authorized representative of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

_____
(DATE OF FINAL COMPLETION)

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents. The Warranty for all Work completed expires one year from the date of this Final Completion.

	EXECUTED BY ENGINEER:		ACCEPTS THIS CERTIFICATE OF FINAL COMPLETION:		ACCEPTS THIS CERTIFICATE OF FINAL COMPLETION:
By:	_____	By:	_____	By:	_____
	_____		Daniel Hudson, P.E.		_____
	(Authorized signature)		(Owner Representative)		Contractor (Authorized Signature)
Title:	_____	Title:	City Engineer, City of Nashua	Title:	_____
Date:		Date:		Date:	

CONSENT OF SURETY FOR FINAL PAYMENT

OWNER'S CONTRACT NO. : _____

PROJECT: _____

TYPE OF CONTRACT: _____

AMOUNT OF CONTRACT (INCLUDING CHANGE ORDERS): _____

CONTRACTOR: _____

CONTRACT FOR: _____

CONTRACT DATE: _____

In accordance with the provisions of the above named contract between the OWNER and the CONTRACTOR, the following named Surety Company:

_____
_____
_____

On the Payment Bond of the following named CONTRACTOR:

_____
_____
_____

Hereby approves of final payment to the CONTRACTOR, and further agrees that said final payment to the CONTRACTOR shall not relieve the Surety Company named herein of any of its obligations to the following named OWNER; as set forth in said Surety Company's bond:

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand and seal

this _____ day of _____, of 20_____.

_____
(Name of Surety Company)

_____
(Signature of Authorized Representative)

_____
(Title)

(Affix corporate seal here)

CONTRACTOR'S AFFIDAVIT

STATE OF:_____

COUNTY OF:_____

Before me, the undersigned, a _____
(Notary Public, Justice of Peace, Alderman)
in and for said County and State personally appeared,

_____
(Individual, Partner or duly authorized representative of corporate contractor)
who being duly sworn according to law deposes and says that the cost of all the Work, and outstanding claims and indebtedness of whatever nature arising out of the performance of the contract between

City of Nashua, New Hampshire _____ of 229 Main Street, Nashua, NH 03060
(Owner) (Address)

and

_____ of _____
(Contractor) (Address)

Dated _____ for the construction of the _____
and necessary appurtenant installations have been paid in full.

_____
(Individual, Partner or duly authorized representative of corporate contractor)

_____
(Title)

(Individual, Partner, or duly authorized representative of corporate contractor)

Sworn to and subscribed before me this _____ day of _____, 2020

_____
(Notary Public)

CONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN

Project: _____

Owner	Contractor
Owner: City of Nashua, New Hampshire	Name: _____
Address: 229 Main Street	Address: _____
Nashua, New Hampshire 03060 City State Zip	_____ City State Zip
	Contractor License: _____
	Contract Date: _____

TO ALL WHOM IT MAY CONCERN:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Contractor hereby waives, discharges, and releases any and all liens, claims, and rights to liens against the above-mentioned project, and any and all other property owned by or the title to which is in the name of the above-referenced Owner and against any and all funds of the Owner appropriated and available for the construction of said project, and any and all warrants drawn upon or issued against any such funds or monies, which the undersigned Contractor may have or may hereafter acquire or process as a result of the furnishing of labor, materials, and/or equipment, and the performance of Work by the Contractor on or in connection with said project, whether under and pursuant to the above-mentioned contract between the Contractor and the Owner pertaining to said project or otherwise, and which said liens, claims or rights of lien may arise and exist.

The undersigned further hereby acknowledges that the sum of

_____

Dollars ($_____) constitutes the entire ***unpaid*** balance due the undersigned in Connection with said project whether under said contract or otherwise and that the payment of said sum to the Contractor will constitute payment in full and will fully satisfy any and all liens, claims, and demands which the Contractor may have or assert against the Owner in connection with said contract or project.

Dated this _____day of _____20__

_____
Contractor

Witness to Signature

By_____ Title_____

DIVISION 9

TECHNICAL SPECIFICATIONS

A. NHDOT Supplemental Specifications (2016 Edition) – updated July 6, 2018
B. Special Provisions

NHDOT SUPPLEMENTAL SPECIFICATIONS (2016 EDITION) – UPDATED JULY 6, 2018

The following Construction Specifications amend, revise, supplement and/or otherwise modify the New Hampshire Department of Transportation's STANDARD SPECIFICATIONS FOR ROADWAY AND BRIDGE CONSTRUCTION (2016 edition as amended).

The following table is a list of all of the Supplemental Specifications that have been adopted by the NHDOT as additions or revisions to the ***"Standard Specifications for Road and Bridge Construction"***, March 2016 Edition as of the date of this proposal. Some of the Supplemental Specifications are included and made a part of this proposal. The Bidder is responsible to examine each item to determine its effect, if any, on the contract.

NHDOT Supplemental Specifications (2016 Edition) - updated July 6, 2018

Section	Description	Revision	Last Revision Date	Current Revision Date
Division 100				
101	Definitions and Terms	101.79 - Revises Frequency of Updates (06/06/17) 101.116-119 - Revises Definitions of Weather Days and Working Days (04/02/18)	06/06/17	04/02/18
106.04	Qualified Products List	Revises Frequency of Updates		06/06/17
107.01	Legal Relations and Responsibility to Public	107.01 - Revises References to DES Rules and Regulations		07/06/18
108.09	Prosecution and Progress	108.09 - Amends the Requirements for Liquidated Damages		07/06/18
109.04	Differing Site Conditions, Changes and Extra Work	Revises Rental Rate Blue Book Online Requirements (04/02/18)	01/06/12	04/02/18
Division 200				
211.3.4	Vibration Monitoring	Adds reference to pre- and post-construction survey requirements		04/05/17
Division 300				
Division 400				
401	Plant Mix Pavements - General	2.5.1 - Adds winter binder to the design control points (04/05/17) 2.10 – No greater than 1% TRB (06/06/17) 3.4.1 - Revises Cold Feeder Requirements (07/06/18) 3.4.7.1 - Revises Recycled Materials Weighing Procedures (07/06/18)	07/06/18	11/07/18

		3.4.11 - 3.4.15 - Describes the Introduction of Recycled Materials at a Batch Plant and Controls Minimum Dry Time for Recycled Aggregates (07/06/18) 3.5.2 & 3.5.2.1 - Revises Recycled Materials Requirements (07/06/18) 3.10.10.1 – Removes penalty for failing tack (06/06/17) 3.12 – Allows a reduction in use of pneumatic-tired rollers (06/06/17) 3.17.1.3 - Revises the NETTCP QA Technologist requirements (11/07/18) 3.17.3.1.1 – Revises HMA gradation specification limits, completes addition of winter binder, removes allowance for Aim change after two sub-lots (06/06/17) 4.1.1 – Removes reference to Night Items (06/06/17)		
403.1.3	Night Item Removal	Removes all references to Night Items in Section 403		06/06/17
410	Bituminous Surface Treatment	2.1 - Adopts new AASHTO Specifications for Emulsions (04/13/16) 3.4.1.1 - Revises pavement conditions, application rate for tack (01/04/17) 2.1.1, 2.1.2, 3.2, 3.3, 3.4 – Identifies tack sampling and penalties for non-conformance (06/06/17) 3.2 & 3.5.2 - Amends Distribution Equipment and Initiates an Annual Tack Truck Inspection Program (07/06/18)	06/06/17	07/06/18
411	Pneumatic Tired Roller	3.5.5 - Requires the use of pneumatic tired rollers on all Section 411 paving (06/06/17) 5.1.1 - Ensures Tack Used for PMST and Leveling Course is a Pay Item (07/06/18) Removes Pay Items (04/02/18)	04/02/18	07/06/18
417	Rumble Strip Inlay	2.1 & 3.7 - Specifies PMST as the asphalt inlay to fill in rumble strips		04/02/18
Division 500				
520	Portland Cement Concrete	3.1.6.2.1.2 A - Revise NETTCP QA Technologist requirements (11/07/18) 3.8.1.1 - Revises the acceptable concrete delivery temp to 90 degrees Fahrenheit (04/02/18)	04/02/18	11/07/18

530	Waterproofing Concrete Surfaces	Deletes Section 530		05/21/18
538	Barrier Membrane	3.3.5 - Updates the laydown temperature range		09/15/16
563	Bridge Fence	1.2, 1.3, 2.2, 2.6 & 2.8 - Allows aluminum ties for attaching fencing to bridge rail		09/15/16
568	Structural Timber	2.2, 3.4.4 & 3.4.5 - Adds specific references to AWPA Standards & wooden piles		04/02/18
582	Preformed Joint Filler	2.4 - Revises Preformed Joint Filler Requirements		04/02/18
Division 600				
603	Plastic Pipe	2.3, 2.6 & 2.7 - Updated to include Polypropylene Pipe and associated UV Requirements 2.13 - Added for Contractor's Option	04/13/16	06/02/16
605	Plastic Pipe	2.3 & 2.2 - Updated to include Polypropylene Pipe		04/13/16
606	Guardrail	2.2 - Adds specific references to AWPA Standards & wooden piles		04/02/18
608	Detectable Warning Devices	2.6 - Updates Detectable Warning Device Requirements		04/02/18
609	Curbs	2.4.1.1 - Allows the substitution of PG 76-28 binder in lieu of fibers		04/02/18
615	Cofferdam for Sign Installation	5.1.5 - Revises payment for sheeting and shoring for sign structures		04/02/18
645	Erosion Control	1.1 - Matting Section Revised and Pay Items Revised (04/02/18) 1.1 - 'Stabilization' changed to 'matting' Incorporates BFM, FRM and SMM into the Standard Specs (07/06/18) 1.2.1 - Add Erosion Control Plans to list of items to furnish for SWPPP (11/07/18) 3.1.5 - Update construction dates for allowable area of exposed, unstabilized soil (11/07/18)	07/06/18	11/07/18
Division 700				
702	Bituminous Materials	Amends Table 702-1 & 702-2 and Adds Test Method	04/13/16	05/11/16

SPECIAL PROVISIONS

2020 SIDEWALK PROGRAM

SPECIAL PROVISION

AMENDMENT TO SECTION 608 – SIDEWALKS

Item 608.54 – Detectable Warning Devices, Cast Iron

Add 1.2.1 to read:

1.2.1 This work shall include furnishing and application of a protective coating of powder coating powder paint, including bead blast surface preparation and zinc prime coat, as shown on the plans or as ordered by the Engineer, including any and all additional surface preparation required by the powder coating manufacturer for application to cast iron surfaces. Color to be approved by the Engineer prior to manufacture.

2020 SIDEWALK PROGRAM

AMENDMENT TO SECTION 609 – CURBS

Item 609.01 – Straight Granite Curb
Item 609.02 – Curved Granite Curb
Item 609.5 – Reset Granite Curb

Revise 3.1.4.1 to read:

3.1.4.1 Concrete Class A in accordance with Section 520 shall be substituted for aggregate base course and hot bituminous base courses in the curb patch on the roadway side of granite curb. Top of concrete in the curb patch shall be set two inches (2") below the proposed pavement patch.

Revise 5.3 to read:

5.3 Concrete Class A placed adjacent to the curb for a maximum width of 1 ft. shall be considered incidental to the curb item. No additional measurement for payment shall be made for Concrete Class A substituted for aggregate base course and hot bituminous base courses.

REPLACE SECTION 692 – MOBILIZATION

Item 692 – Mobilization

A. SCOPE

This item shall consist of preparatory work and operations, including, but not limited to, those necessary to the movement of personnel, equipment, supplies and incidentals to the site of the work and for all other work and operations which must be performed or for costs which must be incurred prior to beginning work on the various items. Also included in this item is the breakdown and transport of all equipment, supplies and material from the site (demobilization).

B. MATERIALS AND CONSTRUCTION

The Contractor shall furnish all materials, labor and equipment necessary for mobilization in accordance with relevant provisions of the NHDOT Standard Specifications for Road and Bridge Construction, latest edition as amended herein.

C. MEASUREMENT AND PAYMENT

Mobilization will be measured as a lump sum unit. Payment for mobilization shall be at the contract unit price, and shall include full compensation for material, equipment and labor to complete this portion of the Bid Schedule. Payment will be made at intervals for the prorated portion of the unit bid price for this item. Two payments at a rate of 50% of the unit bid price will be made. The first payment shall be made after complete mobilization to the project site and the second payment shall be made after complete demobilization from the project site and only after all final punch list items and clean-up work have been addressed. The total bid price for mobilization shall not exceed five percent (5%) of the total of all bid items excluding this item.

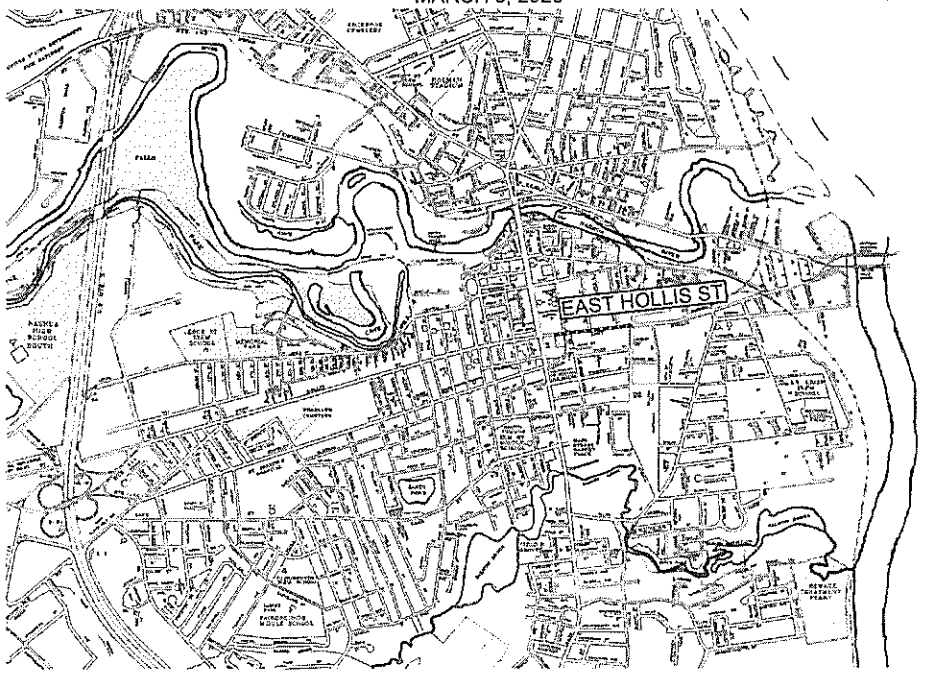
Item 692	Mobilization (not to exceed 5% of Bid)	Unit

CITY OF NASHUA, NEW HAMPSHIRE

2020 SIDEWALK PROGRAM

IFB0851-032720

MARCH 3, 2020



LOCUS PLAN

HORIZONTAL SCALE IN FEET

DRAWING INDEX

2020 SIDEWALK PROGRAM

DRAWING TITLE	PAGE NO
PROJECT LOCATION PLAN	2
EAST HOLLIS STREET SIDEWALK RECONSTRUCTION PLANS	3-8
SIDEWALK AND CURB DETAILS	9-10

STATE OF NEW HAMPSHIRE
MATTHEW E. FRANZ
No. 15783
2/6/2020
LICENSED
PROFESSIONAL ENGINEER

NO	REVISION DESCRIPTION	DATE

PROJECT DESCRIPTION

EAST HOLLIS STREET SIDEWALK RECONSTRUCTION

PREPARED BY

CITY OF NASHUA NEW HAMPSHIRE

CITY ENGINEER'S OFFICE
9 RIVERSIDE STREET
NASHUA, NEW HAMPSHIRE 03062

MAYOR

HONORABLE JIM DONCHESS

BOARD OF PUBLIC WORKS

JIM DONCHESS - CHAIR
G. FRANK TEAS - VICE CHAIR
KEVIN S. MORIARTY
MICHAEL O' BRIEN
TRACY PAPPAS
SHANNON I. SCHONEMAN

DIRECTOR OF PUBLIC WORKS

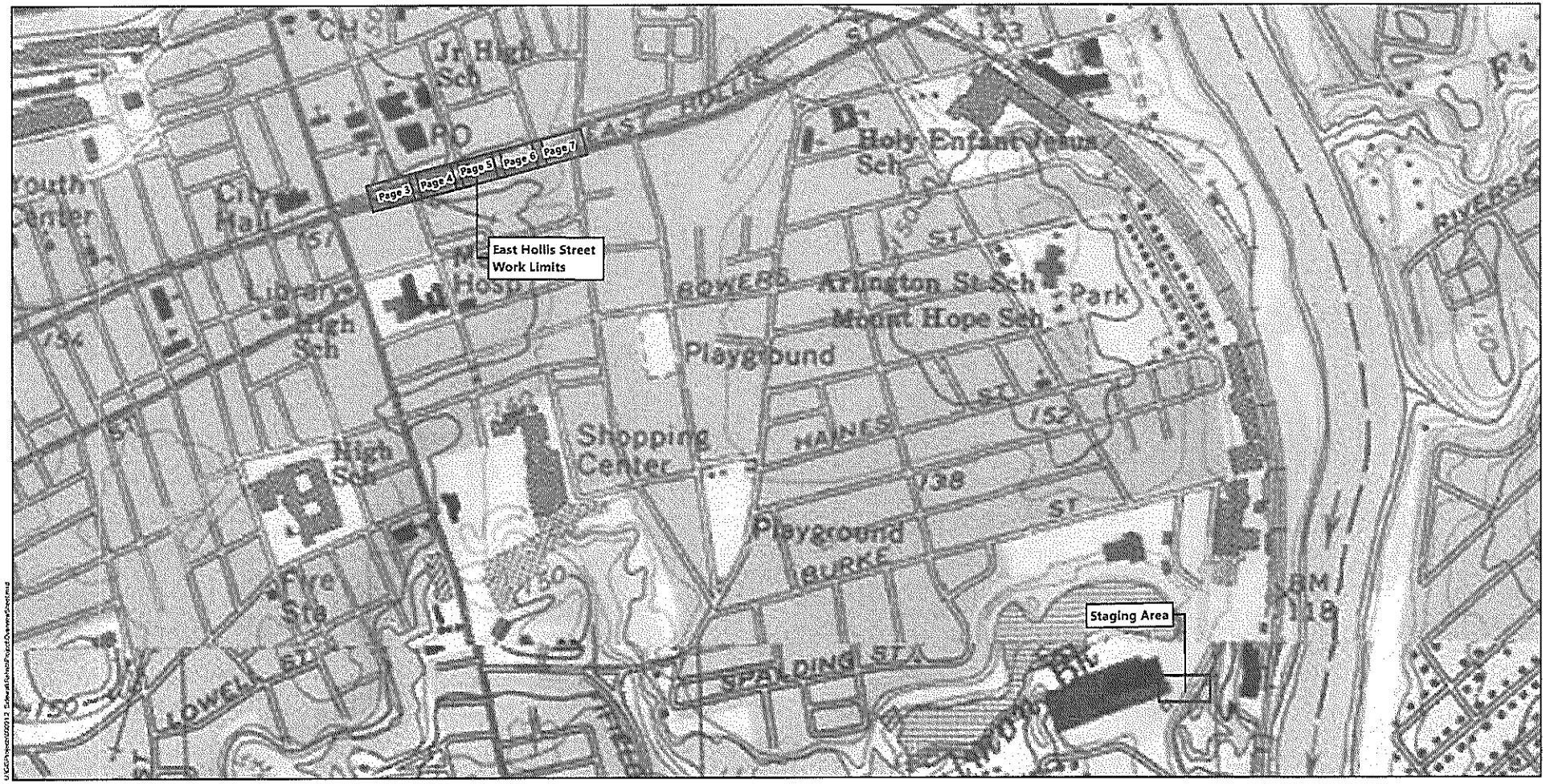
LISA FAUTEUX

CITY ENGINEER

DANIEL HUDSON, P.E

March 3, 2020

Nashua



Feet
0 300 600 1,200

Legend

Work Limits

2020 Sidewalk Program | Nashua, New Hampshire

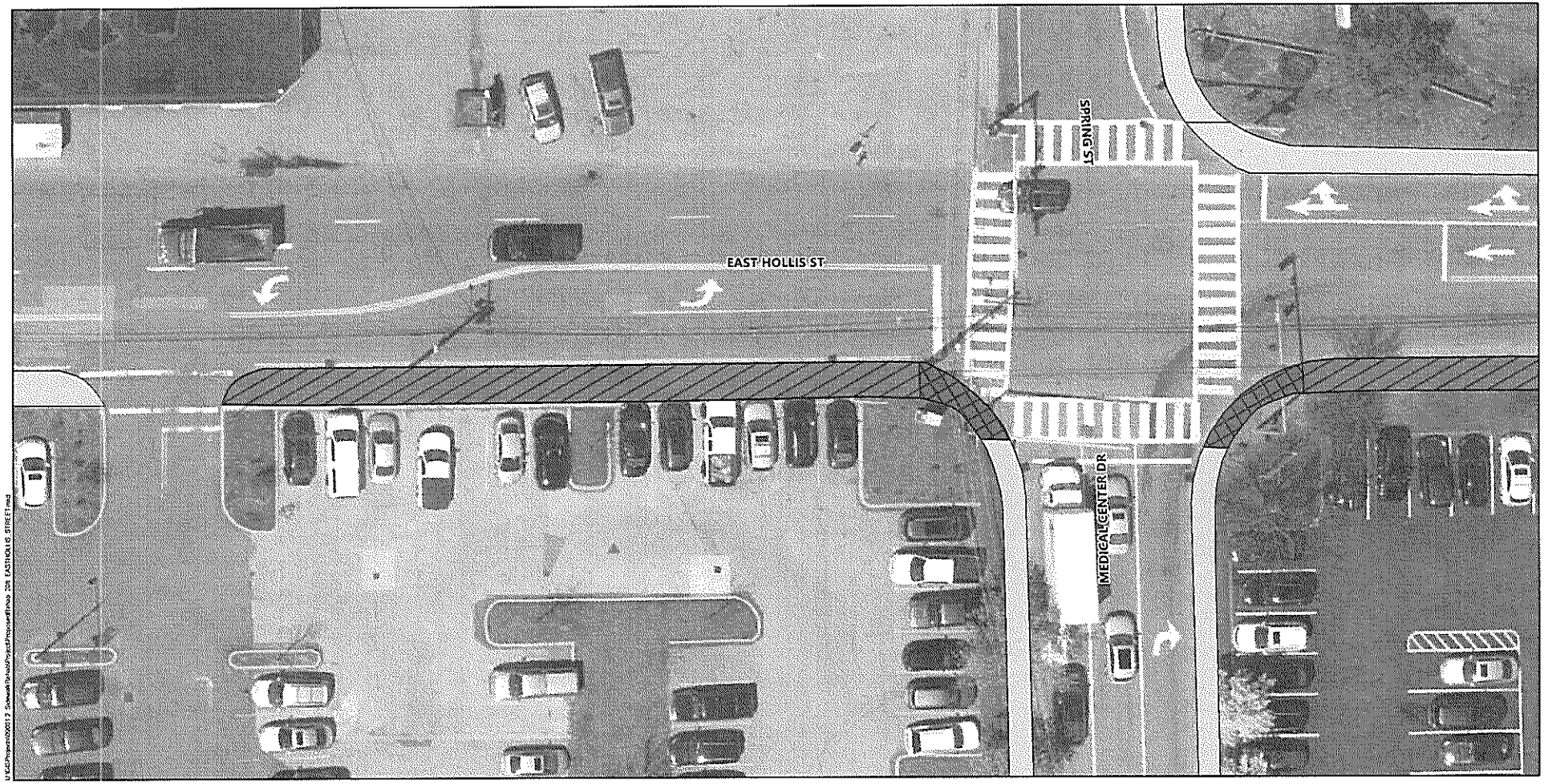
PROJECT LOCATION PLAN

Page 2 of 10

Source: Nashua DPW, ESRI

March 3, 2020

Nashua



0 10 20 40 Feet

Legend

- Proposed Ramp Work
- Proposed Sidewalk Replacement
- Existing Sidewalks

2020 Sidewalk Program | Nashua, New Hampshire

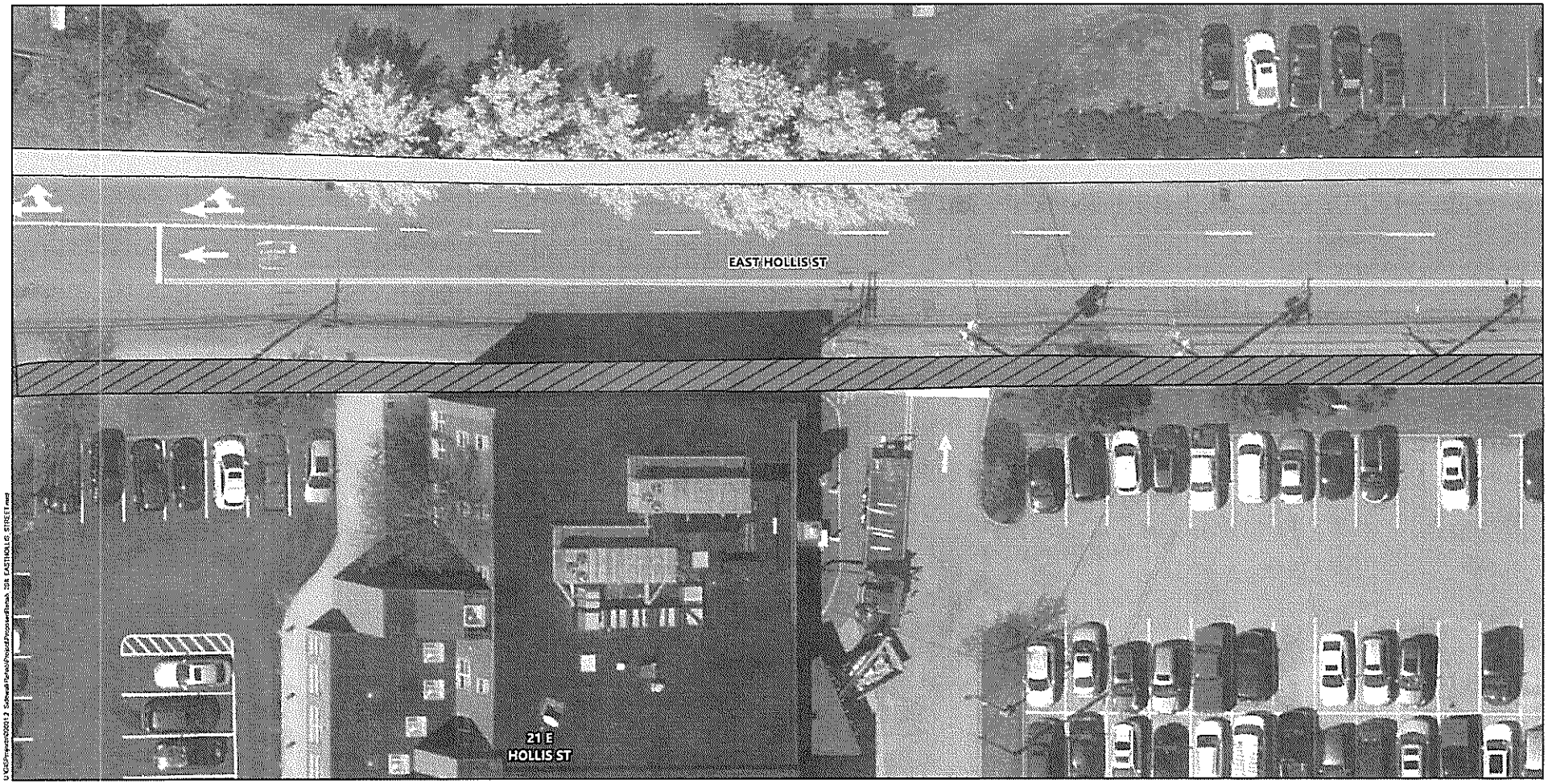
EAST HOLLIS STREET SIDEWALK RECONSTRUCTION PLAN

EAST HOLLIS ST & MEDICAL CENTER DR

Source: Nashua DPW

March 3, 2020

Nashua



0 10 20 40 Feet

Legend

- Proposed Ramp Work
- Proposed Sidewalk Replacement
- Existing Sidewalks

2020 Sidewalk Program | Nashua, New Hampshire

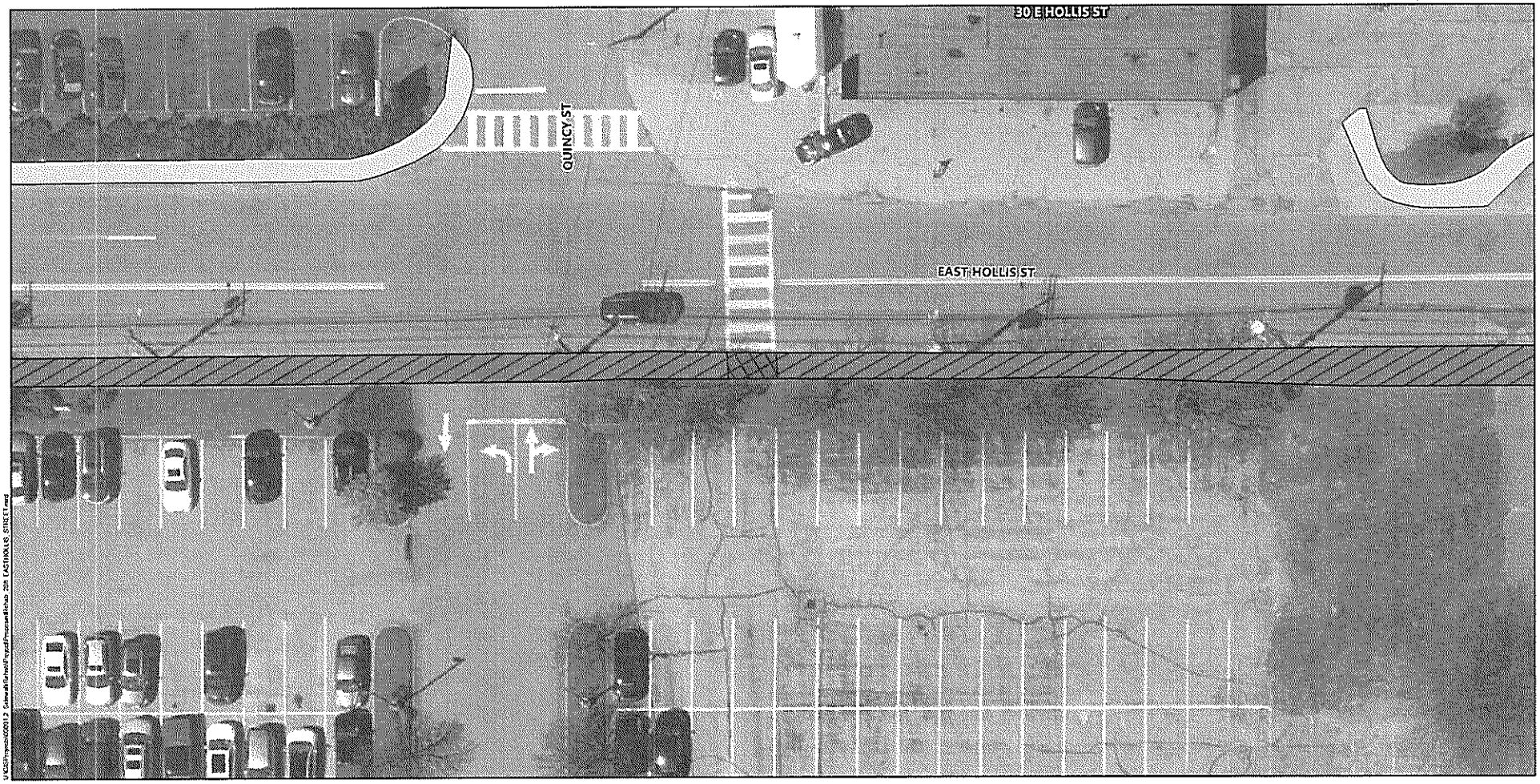
EAST HOLLIS STREET SIDEWALK RECONSTRUCTION PLAN

EAST HOLLIS ST

Source: Nashua DPW

March 3, 2020

Nashua



0 10 20 40 Feet

Legend

- Proposed Ramp Work
- Proposed Sidewalk Replacement
- Existing Sidewalks

2020 Sidewalk Program | Nashua, New Hampshire

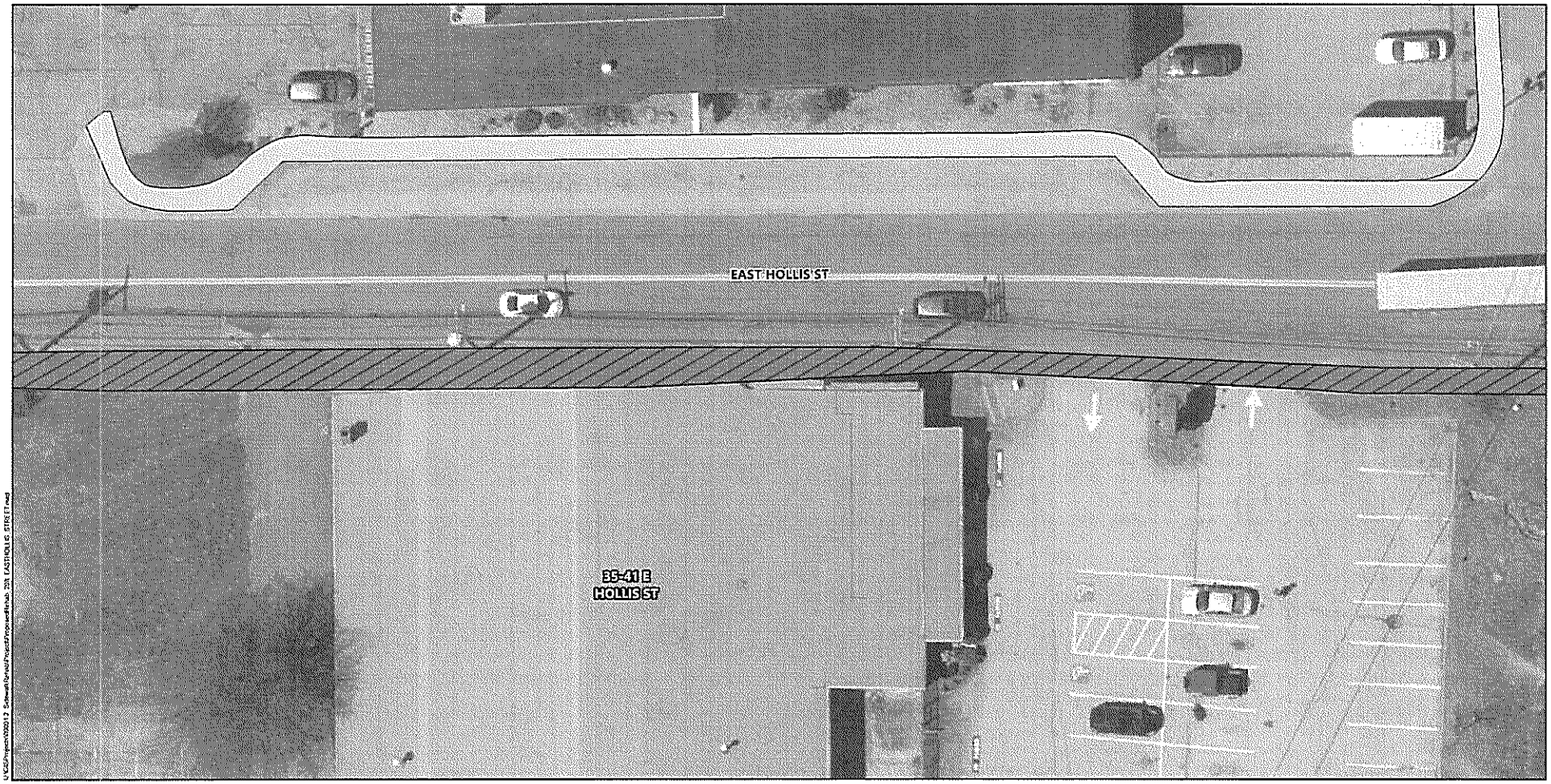
EAST HOLLIS STREET SIDEWALK RECONSTRUCTION PLAN

EAST HOLLIS ST

Source: Nashua DPW

March 3, 2020

Nashua



0 10 20 40 Feet

Legend

- Proposed Ramp Work
- Proposed Sidewalk Replacement
- Existing Sidewalks

2020 Sidewalk Program | Nashua, New Hampshire

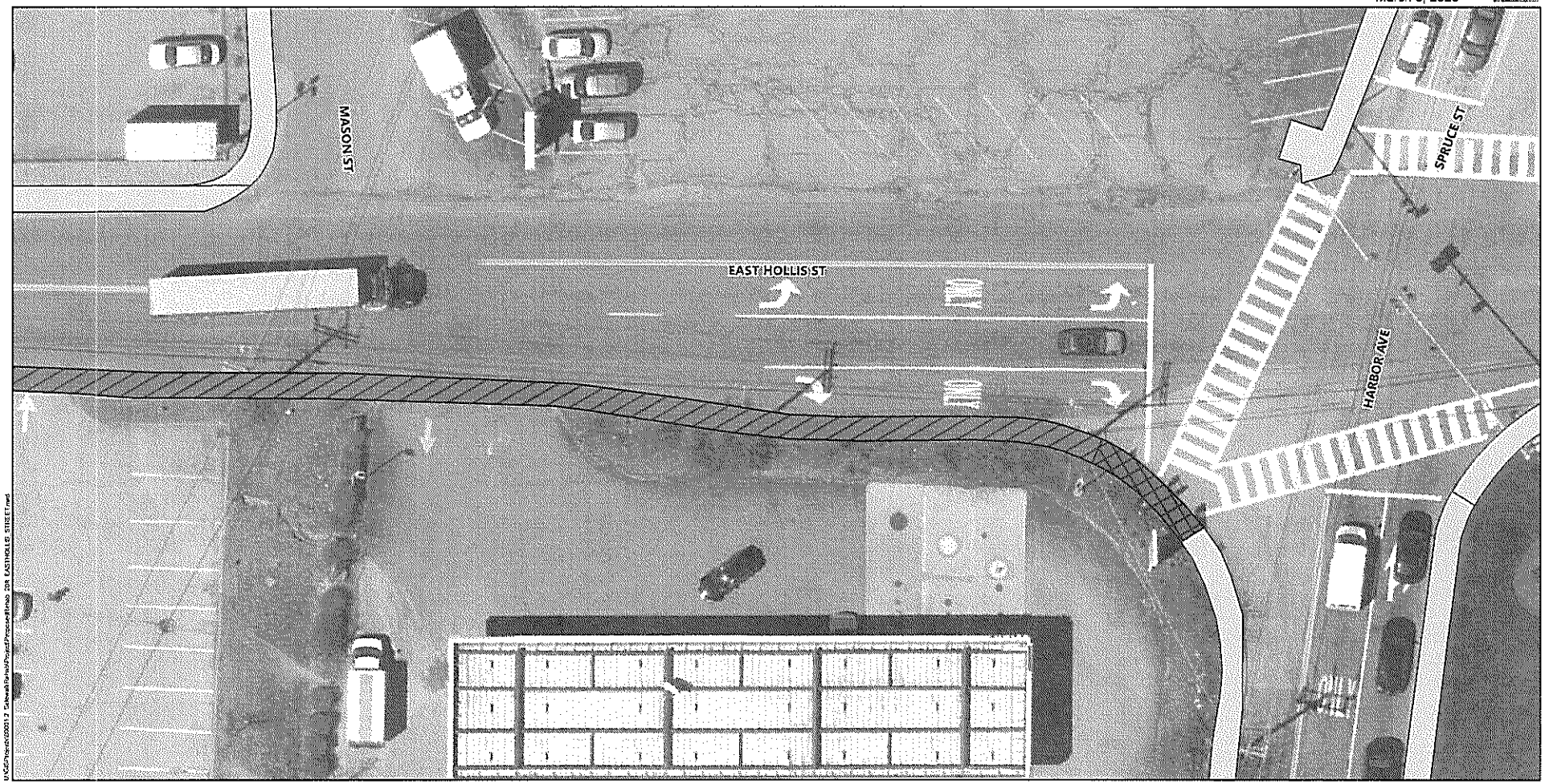
EAST HOLLIS STREET SIDEWALK RECONSTRUCTION PLAN

EAST HOLLIS ST

Source: Nashua DPW

March 3, 2020

Nashua



0 10 20 40 Feet

Legend

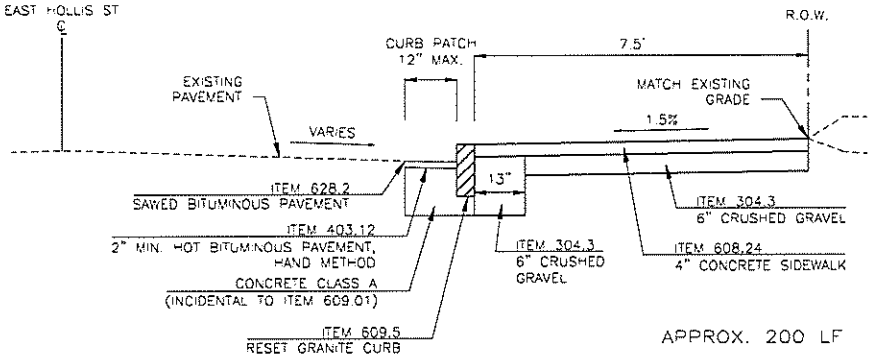
- Proposed Ramp Work
- Proposed Sidewalk Replacement
- Existing Sidewalks

2020 Sidewalk Program | Nashua, New Hampshire

EAST HOLLIS STREET SIDEWALK RECONSTRUCTION PLAN

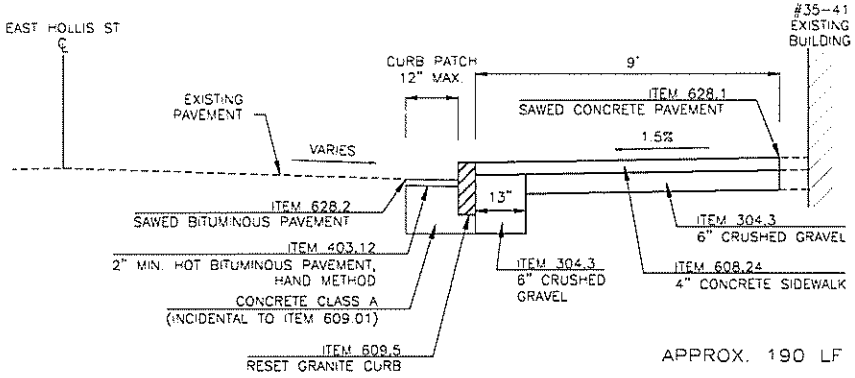
EAST HOLLIS ST & HARBOR AVE

Source: Nashua DPW



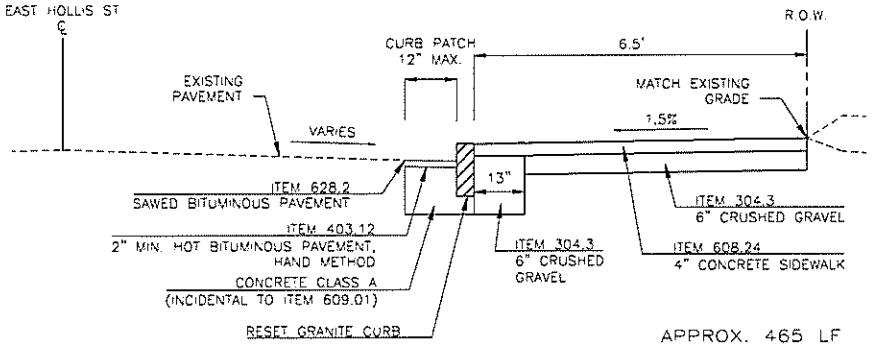
242 MAIN STREET TO 21 EAST HOLLIS ST

NOT TO SCALE



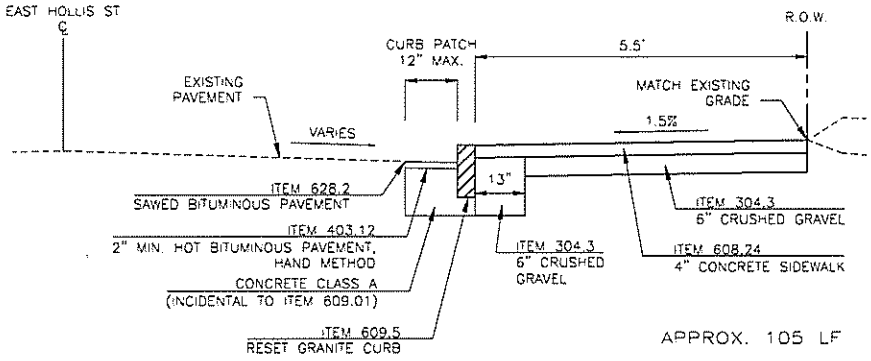
35-41 EAST HOLLIS ST

NOT TO SCALE



21 EAST HOLLIS ST TO 35-41 EAST HOLLIS ST

NOT TO SCALE



35-41 EAST HOLLIS ST TO HARBOR AVE

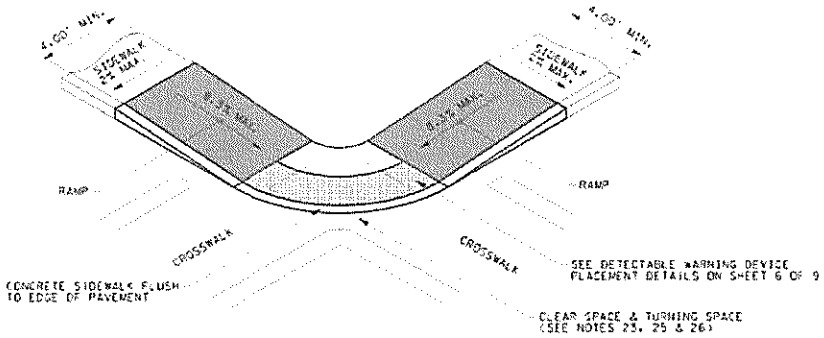
NOT TO SCALE

CITY OF NASHUA NEW HAMPSHIRE
CITY ENGINEER'S OFFICE
9 RIVERSIDE STREET
NASHUA, NEW HAMPSHIRE 03062

NO.	REVISION DESCRIPTION	DATE

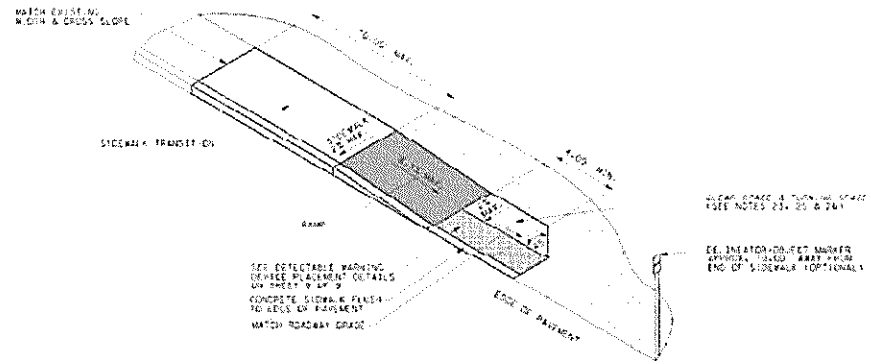
DRAWN BY. M. FRANZ
DESIGNED BY M. FRANZ
REVIEWED BY. P. KOHALMI

2020 SIDEWALK PROGRAM
EAST HOLLIS STREET
TYPICAL SECTIONS
MARCH 3, 2020



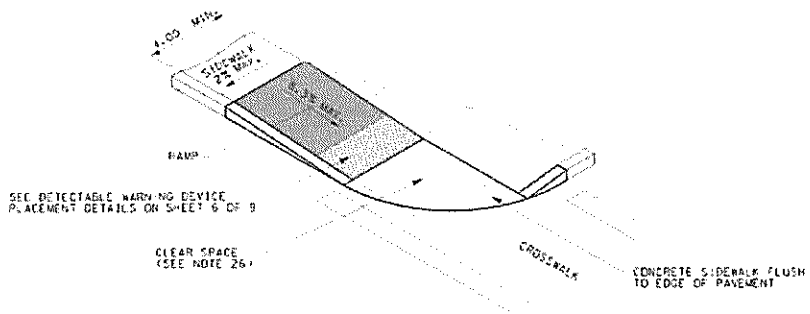
NHDOT CURB RAMP CONFIGURATIONS TYPE 4

NOT TO SCALE



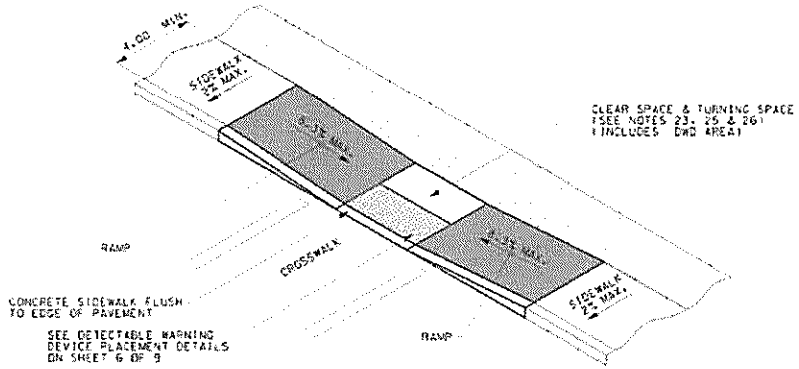
NHDOT CURB RAMP CONFIGURATIONS TYPE 14

NOT TO SCALE



NHDOT CURB RAMP CONFIGURATIONS TYPE 1

NOT TO SCALE



NHDOT CURB RAMP CONFIGURATIONS TYPE 8

NOT TO SCALE

NOTE:

1. NHDOT CURB RAMP CONFIGURATION DETAILS PROVIDED ON THIS SHEET ARE AN EXCERPT OF THE NHDOT STANDARD DETAIL SHEETS. FOR MORE INFORMATION, INCLUDING GENERAL NOTES, CURB RAMP NOTES, TURNING SPACE AND CLEAR SPACE NOTES, DETECTABLE WARNING DEVICE NOTES, DEFINITION OF TERMS, AND ADDITIONAL DETAILS, REFER TO THE NHDOT SIDEWALK CURB RAMP DETAILS, SHEETS 1 THROUGH 9 OF 9.

CITY OF NASHUA NEW HAMPSHIRE
CITY ENGINEER'S OFFICE
9 RIVERSIDE STREET
NASHUA, NEW HAMPSHIRE 03062

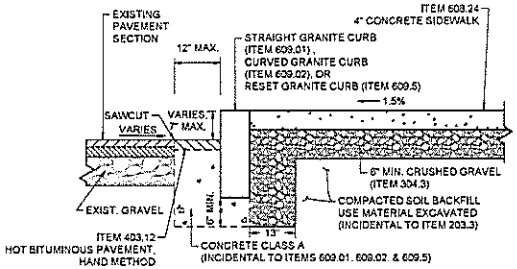
NO.	REVISION DESCRIPTION	DATE

DRAWN BY: M. FRANZ

DESIGNED BY: M. FRANZ

REVIEWED BY: P. KOHALMI

2020 SIDEWALK PROGRAM
SIDEWALK AND CURB DETAILS
SHEET 1 OF 2
MARCH 3, 2020

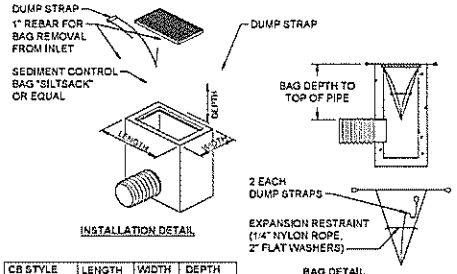


NOTES:

1. HOT BITUMINOUS WEARING COURSES PLACED ADJACENT TO THE CURB FOR A MAXIMUM WIDTH OF 1 FT. WILL BE PAID UNDER ITEM 403.12.
2. WEARING COURSE DEPTH SHALL BE 2 IN. MINIMUM.
3. CONCRETE CLASS A SHALL MEET THE REQUIREMENTS OF NHDOT SECTION 520.

VERTICAL GRANITE CURB & 4" CONCRETE SIDEWALK DETAIL

NOT TO SCALE



INSTALLATION DETAIL

BAG DETAIL

CB STYLE	LENGTH	WIDTH	DEPTH
TYPE 1 CB	24"	20"	VARIES
TYPE 1 CCI	29.5"	24"	VARIES

NOTES:

1. THE DIMENSION CHART BELOW IS FOR STANDARD CATCH BASINS AND INLETS ONLY. THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING THE CORRECT SIZE DEVICE FOR EACH INLET.
2. FOR NON-STANDARD CATCH BASINS AND INLETS, THE CONTRACTOR SHALL MEASURE DIMENSIONS IN THE FIELD AND ORDER THE APPROPRIATE SIZE(S).
3. THE INLET SEDIMENT CONTROL DEVICE SHALL BE OF HIGH FLOW DESIGN (200 GAL/MIN/FT), AS PER THE MANUFACTURER'S SPECS.
4. THE SEDIMENT CONTROL DEVICE SHALL BE INSPECTED DAILY BY THE CONTRACTOR AND MAINTAINED A MINIMUM ONCE PER MONTH OR WITHIN THE 48 HOURS FOLLOWING A STORM EVENT. FILTER SHALL BE CLEANED IN A MANNER WHICH ENSURES THAT ALL SEDIMENT REMAINS ON SITE.
5. SUBSTITUTION OF A SHEET OF FILTER FABRIC PLACED OVER THE OPENING OF THE INLET IS NOT APPROVED.
6. RECESSED CURB INLET CATCH BASINS MUST BE BLOCKED WHEN USING FILTER FABRIC INLET SACKS, SIZE OF FILTER INLET SACK TO BE DETERMINED BY MANUFACTURER.
7. THE FILTER SHALL BE REPLACED OR CLEANED WHEN THE BAG BECOMES HALF FULL.

CATCH BASIN INLET PROTECTION DETAIL

NOT TO SCALE

CITY OF NASHUA NEW HAMPSHIRE
CITY ENGINEER'S OFFICE
9 RIVERSIDE STREET
NASHUA, NEW HAMPSHIRE 03062

NO.	REVISION DESCRIPTION	DATE

DRAWN BY: M. FRANZ
DESIGNED BY: M. FRANZ
REVIEWED BY: P. KOHALMI

2020 SIDEWALK PROGRAM
SIDEWALK AND CURB DETAILS
SHEET 2 OF 2
MARCH 3, 2020

THE CITY OF NASHUA

Administrative Services

Purchasing Department

"The Gate City"

May 28, 2020
Memo #20-108

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CHANGE ORDER NO. 1 TO THE 2020 SEWER REPLACEMENT PROJECT (VALUE: $975,125)
DEPARTMENT: 169 WASTEWATER; FUND: BOND

Please see the attached communication from David L. Boucher, Superintendent Wastewater Department dated May 28, 2020 for the information related to this contract.

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

The Superintendent Wastewater Department, the Board of Public Works (May 28, 2020 meeting) and the Purchasing Department recommend this change order in the amount **$975,125** to SUR Construction West, Inc. of Winchester, NH.

Respectfully,

Dan Kooken
Purchasing Manager

Cc: D Boucher L Fautuex

229 Main Street • Nashua, New Hampshire 03061 • Phone (603) 589-3330 • Fax (603) 589-3233

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: May 28, 2020

From: Daniel Hudson, P.E., City Engineer
Engineering Department

Re: 2020 Sewer Replacement Project - Change Order No. 1

E. Motion: To approve Change Order No. 1 to the 2020 Sewer Replacement Project with SUR Construction West, Inc. of Winchester, NH for an amount not to exceed $975,125. Funding will be through Department: 169 Wastewater; Fund: Bond; Activity: Sewer Repair.

Attachments: 2020 Sewer Replacement Project, Change Order No. 1

Discussion: SUR Construction West was contracted for 2020 Sewer Replacement work under IFB0779-021220, has been underway since early April, and we have found their work to be satisfactory. Subsequent bidding, the Engineering Department has identified several additional pipes in need of replacement, some which have collapsed and have been temporarily repaired. The purpose of this Change Order is to expand SUR Construction West's contract to include replacement of additional deteriorated sewer pipes, as identified through previous video inspection, and/or partial pipe collapse.

The additional work proposes to replace some of the oldest sewer pipes in the City including (costs estimated):

Water St (Mechanic St to Factory St)	$532,705
Amherst St (Vernon St to Beacon St)	$178,480
Main St (Hollis St to Mulberry St)	$263,940
	$975,125

The above change order will allow for complete replacement of these pipe segments with accompanying sewer structures and sewer services, if necessary. If portions of these pipes are found to be in satisfactory condition or suitable for lining, they will be retained and funds used for repair or replacement of other sewer pipes and structures found to be in disrepair.

CHANGE ORDER

No. 1

PROJECT: 2020 Sewer Replacement Project

OWNER'S CONTRACT NO: IFB0779-021220

EXECUTED CONTRACT DATE: **03/17/20**

DATE OF ISSUANCE: 05/28/20 EFFECTIVE DATE: **Upon City Approval**

OWNER: **City of Nashua, NH**

OWNER's Purchase Order NO.: 155720

CONTRACTOR: SUR Construction West, Inc.

ENGINEER: **DPW Engineering**

You are directed to make the following changes in the Contract Documents:

Description:

Recent video of the existing sewer pipes on Water St, Amherst St and Main St shows them to be in very poor condition. Sink holes have already developed on Main St and Amherst St.

The City Engineering Department would like to have the existing sewer pipes on Water St replaced between Mechanic St and Factory St. Some existing water pipe owned by Pennichuck Water Works will also need relocation to allow for the sewer pipe replacement.

Additionally, video has also shown a partial collapse of a 12" sewer pipe on Amherst St at Vernon St. Replacement of this pipe will be necessary toward Beacon St.

And finally, video has shown a partial collapse of a 12" sewer pipe on Main St between Hollis St and Mulberry St. CIPP lining of this pipe is questionable which necessitates its replacement including lateral pipes to catch basins.

Road restoration of trenches will include three foot overcuts with 18" of gravel base and 5" of asphalt on Water St and 7" of asphalt on Amherst St and Main St.

Justification:

Failing sewer pipes were discovered on Water St, Amherst St and Main St after this contract was bid. Waiting to perform this pipe replacement risks loss of sewer service and collapse of the road above the pipe. SUR West was contracted under IFB0779-021220 to perform the City's 2020 sewer work and is actively working in Nashua.

Summary

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price **$1,497,993.00**	Original Contract Times Substantial completion: October 6, 2020 Ready for final payment: **November 6, 2020**
Net changes from previous Change Orders **$0**	Net change from previous Change Orders **0 days**
Contract Price prior to this Change Order **$1,497,993.00**	Contract Times prior to this Change Order Substantial completion: **October 6, 2020** Ready for final payment: **November 6, 2020**
Net Increase ~~(decrease)~~ of this Change Order **$975.125.00**	Net Increase ~~(decrease)~~ of this Change Order 210 days
Contract Price with all approved Change Orders **$2,473,118.00**	Contract Times with all approved Change Orders Substantial completion: **May 4, 2021** Ready for final payment: **June 4, 2021**

RECOMMENDED:	ACCEPTED:	APPROVED:
By: _____ DPW Engineer (Authorized Signature) Date: 05/26/2020	By: _____ Contractor (Authorized Signature) Date: _____	By: _____ Mayor Jim Donchess Owner (Authorized Signature) Date: _____

2020 Sewer Replacement Project
2020 Sewer Replacement Project (IFB0779-021220)

Water Street

Item No.	Units	Item Description	SUR Change Order Prices	Quantity	Units	Price Per Change Request
			SUR Change Order Estimate			
1B	LF	Remove Existing Sewer and Replace with 8" or 10" Sewer or Drain Pipe >9' to 13' Depth	$ 100.00	20	LF	$ 2,000.00
1C	LF	Remove Existing Sewer and Replace with 12" Sewer or Drain Pipe 0' to 9' Depth	$ 110.00	100	LF	$ 11,000.00
1D	LF	Remove Existing Sewer and Replace with 12" Sewer or Drain Pipe >9' to 13' Depth	$ 175.00	317	LF	$ 55,475.00
1DB	LF	Remove Existing Sewer and Replace with 12" Sewer or Drain Pipe >9' to 13' Depth (BRIDGE)	$ 350.00	104	LF	$ 36,400.00
1I	LF	Remove and Replace Existing Sewer Service with 6" Sewer Service All Depths	$ 100.00	120	LF	$ 12,000.00
3	VF	6" Pvc Chimney	$ 150.00	20	VF	$ 3,000.00
4A	EA	8"x6", 10"x6", or 12"x6" PVC Wye	$ 1,500.00	13	EA	$ 19,500.00
4C	EA	12"x10", 15"x10", 18"x10" or 18"x12" PVC Wye	$ 1,750.00	3	EA	$ 5,250.00
4E	EA	Core Existing Sewer Manhole for 12", 15", or 18" PVC SDR-35 Pipe	$ 750.00	1	EA	$ 750.00
5A	VF	Replace or Construct Sewer Manhole (4-foot Dia)	$ 605.00	28	VF	$ 16,940.00
5B	VF	Replace or Construct Sewer Manhole (5-foot Dia)				$ -
5B-B	VF	Replace or Construct Sewer Manhole (5-foot Dia) (BRIDGE)	$ 1,500.00	12	VF	$ 18,000.00
5D	VF	Sewer Manhole Internal Drop Assembly	$ 100.00	8	VF	$ 800.00
5G	EA	Connect New Sewer to Existing Sewer Manhole with Existing Hole	$ 750.00	1	EA	$ 750.00
5H	EA	Connect Existing Sewer Line or Drain Lateral to New Sewer Manhole	$ 1,500.00	3	EA	$ 4,500.00
7	CY	Flowable Fill For Pipe Abandoned In Place	$ 200.00	4.5	CY	$ 900.00
8A	CY	Crushed Gravel	$ 30.00	220	CY	$ 6,600.00
8B	SY	Temporary Bituminous Pavement Patch including 18" Crushed Gravel Base	$ 35.00	590	SY	$ 20,650.00
8C	TON	Hot Bituminous Pavement (Permanent Binder and Base Courses)	$ 175.00	290	TON	$ 50,750.00
8D	LF	Sawed Bituminous Pavement	$ 1.25	2,800	LF	$ 3,500.00
8E	CY	Unclassified Excavation	$ 27.50	660	CY	$ 18,150.00
9A	SY	2" Bituminous Sidewalk Repair Including Crushed Gravel Base	$ 50.00	32	SY	$ 1,600.00
10A	LF	Reset Granite Curb	$ 25.00	52	LF	$ 1,300.00
10C	LF	New Granite Curb (Sloped)	$ 40.00	8	LF	$ 320.00
11	SY	Loam and Seed (6-Inch Depth)	$ 25.00	80	SY	$ 2,000.00
12	EA	Silt Sack	$ 100.00	6	EA	$ 600.00
13	LS	Mobilization	$ 40,000.00	1	LS	$ 40,000.00
14	Allow	Uniformed Police Officers	$ 10,000.00	Allowance		$ 10,000.00
15	HR	Flaggers	$ 25.50	300	HR	$ 7,650.00
16	LS	Maintenance of Traffic	$ 8,000.00	1	LS	$ 8,000.00
17	Allow	Allowance for Unanticipated Hazardous Materials	$ 5,000.00	Allowance		$ 5,000.00
19	HR	Night Work Ordered by City	$ 175.00	100	HR	$ 17,500.00
20	Allow	Dewatering	$ 25,000.00	Allowance		$ 25,000.00
20	Allow	PWW Water Relocation	$ 126,820.00	Allowance		$ 126,820.00
		TOTAL ESTIMATE FOR WATER STREET		**SUR's Estimate - Total:**		**$ 532,705.00**

We expect that the infrastructure on Water Street will be completed above the existing water table. If ground water is encountered this will present a change in conditions and we will negotiate compensation based on actual conditions.

Amherst Street (Vernon to Beacon)

Item No.	Units	Item Description	SUR Change Order Prices	Quantity	Units	Price Per Change Request
1E	LF	Remove Existing Sewer and Replace with 15" Sewer or Drain Pipe 0' to 9' Depth	$115.00	340	LF	$39,100.00
1I	LF	Remove and Replace Existing Sewer Service with 6" Sewer Service All Depths	$100.00	200	LF	$20,000.00
2C	EA	15" to 18" Sewer Pipe Point Repair (0-9')	$5,800.00	1	EA	$5,800.00
4B	EA	15"x6" or 18"x6" PVC Wye	$1,650.00	9	EA	$14,850.00
5G	EA	Connect New Sewer to Existing Sewer Manhole with Existing Hole	$750.00	2	EA	$1,500.00
8A	CY	Crushed Gravel	$30.00	180.00	CY	$5,400.00
8B	SY	Temporary Bituminous Pavement Patch including 18" Crushed Gravel Base	$35.00	360.00	SY	$12,600.00
8C	TON	Hot Bituminous Pavement (Permanent Binder and Base Courses)	$175.00	290.00	TON	$50,750.00
8D	LF	Sawed Bituminous Pavement	$1.25	2200.00	LF	$2,750.00
8E	CY	Unclassified Excavation	$27.50	180.00	CY	$4,950.00
12	EA	Silt Sack	$100.00	2.00	EA	$200.00
14	At Cost	Uniformed Police Officers	$2,500.00	1	At Cost	$2,500.00
15	HR	Flaggers	$25.50	160	HR	$4,080.00
19	HR	Night Work Ordered by City	$175.00	80	HR	$14,000.00
		TOTAL ESTIMATED COST FOR AMHERST STREET (VERNON TO BEACON)				**$178,480.00**

Main Street (W. Hollis to Mulberry)

Item No.	Units	Item Description	SUR Change Order Prices	Quantity	Units	Price Per Change Request
1A	LF	Remove Existing Sewer and Replace with 8" or 10" Sewer or Drain Pipe 0' to 9' Depth	$105.00	230	LF	$24,150.00
1E	LF	Remove Existing Sewer and Replace with 15" Sewer or Drain Pipe 0' to 9' Depth	$115.00	395	LF	$45,425.00
1I	LF	Remove and Replace Existing Sewer Service with 6" Sewer Service All Depths	$100.00	80	LF	$8,000.00
2C	EA	15" to 18" Sewer Pipe Point Repair (0-9')	$5,800.00	1	EA	$5,800.00
4B	EA	15"x6" or 18"x6" PVC Wye	$1,650.00	4	EA	$6,600.00
4C	EA	12"x10", 15"x10", 18"x10" or 18"x12" PVC Wye	$1,750.00	6	EA	$10,500.00
5A	VF	Replace or Construct Sewer Manhole (4-foot Dia)	$605.00	10	VF	$6,050.00
5G	EA	Connect New Sewer to Existing Sewer Manhole with Existing Hole	$750.00	2	EA	$1,500.00
6	VF	Replace or Construct Catch Basin (7 CBs)	$315.00	70	VF	$22,050.00

8A	CY	Crushed Gravel	$30.00	220	CY	$6,600.00
8B	SY	Temporary Bituminous Pavement Patch including 18" Crushed Gravel Base	$35.00	435	SY	$15,225.00
8C	TON	Hot Bituminous Pavement (Permanent Binder and Base Courses)	$175.00	350	TON	$61,250.00
8D	LF	Sawed Bituminous Pavement	$1.25	2600	LF	$3,250.00
8E	CY	Unclassified Excavation	$27.50	220	CY	$6,050.00
9B	SY	4" Concrete Sidewalk Repair Including Crushed Gravel Base	$86.50	80	SY	$6,920.00
10A	LF	Reset Granite Curb	$25.00	70	LF	$1,750.00
12	EA	Silt Sack	$100.00	7	EA	$700.00
14	At Cost	Uniformed Police Officers	$5,000.00	1	At Cost	$5,000.00
15	HR	Flaggers	$25.50	240	HR	$6,120.00
19	HR	Night Work Ordered by City	$175.00	120	HR	$21,000.00
		TOTAL ESTIMATED COST FOR MAIN STREET (W. HOLLIS TO MULBERRY)				**$263,940.00**

SUMMARY OF THIS CHANGE ORDER REQUEST:

WATER STREET	$ 532,705.00
AMHERST STREET (VERNON TO BEACON)	$178,480.00
MAIN STREET (W. HOLLIS TO MULBERRY)	$263,940.00
TOTAL THIS CHANGE ORDER REQUEST	**$ 975,125.00**

THE CITY OF NASHUA
Financial Services
Purchasing Department

"The Gate City"

May 28, 2020
Memo #20-109

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CHANGE ORDER NO. 2 TO THE 2019 PAVING PROGRAM (VALUE: $94,510)
DEPARTMENT: 160 ADMIN/ENGINEERING; FUND: TRUST

Please see the attached communication from Daniel Hudson, City Engineer dated May 28, 2020 for 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.

The City Engineer, Board of Public Works (May 28, 2020 meeting) and the Purchasing Department recommend the award of change order No. 2 in an amount of **$94,510** to **Brox Industries** of **Dracut, MA.**

Respectfully,

Dan Kooken
Purchasing Manager

Cc: D Hudson L Fauteux

229 Main Street • Nashua, New Hampshire 03061 • Phone (603) 589-3330 • Fax (603) 589-3233

City of Nashua, Public Works Division

To: Board of Public Works Meeting Date: May 28, 2020

From: Daniel Hudson, P.E., City Engineer
Engineering Department

Re: 2019 Paving Program – Change Order No. 2
Sidewalk Repairs for ADA Compliance at South Main Street Roundabout

F. Motion: To approve Change Order No. 2 to the 2019 Paving Program contract with Brox Industries of Dracut, MA in an amount not-to-exceed $94,510 for the construction of ADA compliant sidewalks on South Main Street funded through the Southeast Quadrant Fund. Funding will be through Department: 160 Admin/Engineering; Fund: Trust; Account Category: 54 Property Services

Discussion: Sidewalks abutting the South Main Street Roundabout are on heavily traveled pedestrian routes due to proximity to Rivier University and Hayward's Ice Cream. These pedestrian routes are currently not compliant with the American with Disabilities Act (ADA).

The proposed work consists of the construction of ADA compliant ramps and landings (with detectable warning devices), and the repair of several severely cracked sidewalk panels. A total of 6 ramps will be reconstructed to meet current ADA standards along with adjacent panels.

The work will supplement paving work at the roundabout. Brox Industries is currently under contract for the 2019 Paving Program and has successfully completed sidewalk repair projects of similar size and scope.

CHANGE ORDER

No. 2

PROJECT: **2019 Paving Program Arterial Roadways**

OWNER'S CONTRACT NO: **IFB0660-020719**

EXECUTED CONTRACT DATE: **March 21, 2019**

DATE OF ISSUANCE: **Upon City Approval** EFFECTIVE DATE: **Upon City Approval**

OWNER: **City of Nashua, NH**

OWNER's Purchase Order NO.: **147649**

CONTRACTOR: **Brox Industries, Inc.**

ENGINEER: **DPW Engineering**

You are directed to make the following changes in the Contract Documents:

Description:

Add the reconstruction of sidewalk ramps and sidewalk panels at the South Main Street Roundabout in an amount not to exceed $94,510.00

Justification:

The proposed work consists of the construction of ADA compliant ramps and landings (with detectable warning devices), and to repair several severely cracked sidewalk panels. A total of 6 ramps will be reconstructed to meet current ADA standards along with adjacent panels. The work will supplement the paving work at the roundabout.

Summary

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price **$6,853,472.96**	Original Contract Times Substantial completion: **Oct 15, 2019** Ready for final payment: **Oct 31, 2019**
Net changes from previous Change Orders **$0**	Net change from previous Change Orders **365 Days**
Contract Price prior to this Change Order **$6,853,472.96**	Contract Times prior to this Change Order Substantial completion: **Oct, 15, 2020** Ready for final payment: **Oct, 31, 2020**
Net Increase ~~(decrease)~~ of this Change Order **$94,510.00**	Net Increase ~~(decrease)~~ of this Change Order **0 Days**
Contract Price with all approved Change Orders **$6,947,982.96**	Contract Times with all approved Change Orders Substantial completion: **October 15, 2020** Ready for final payment: **October 31, 2020**

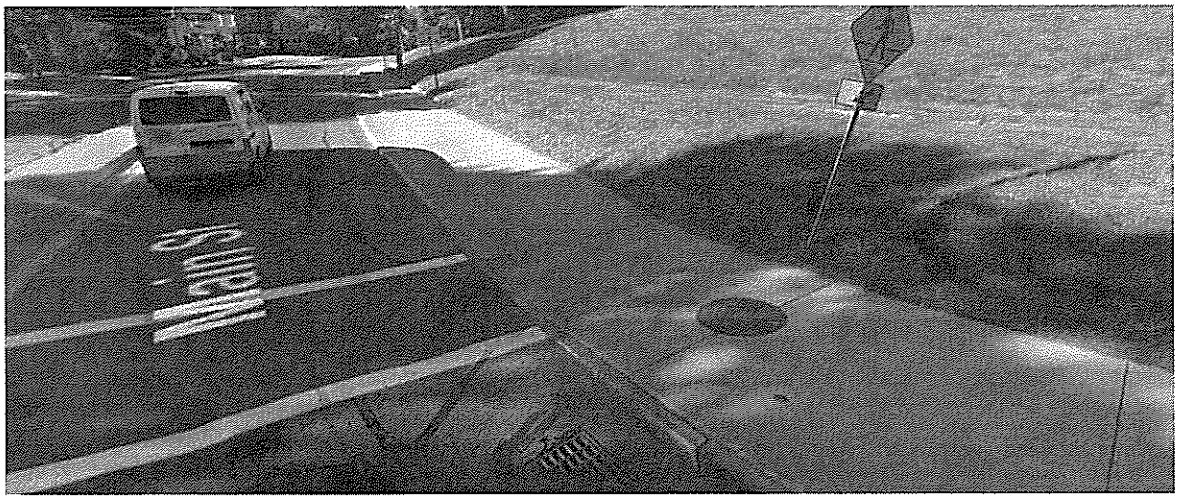
RECOMMENDED:	ACCEPTED:	APPROVED:
By: _____ DPW Engineer (Authorized Signature) Date: 05/26/2020	By: _____ Contractor (Authorized Signature) Date: _____	By: _____ Mayor Jim Donchess Owner (Authorized Signature) Date: _____

City of Nashua, New Hampshire
Division of Public Works
Brox Industries Change Order 2 - South Main Street Roundabout Sidewalk Repair

Item #	Estimated Quantity	Unit	Item Description	Unit Price In Figures	Total Price In Figures
203.1	55	CY	Common Excavation		
			Dollars and Cents	$ 300.00	$ 16,500.00
608.26	180	SY	6" Concrete Sidewalk (Includes Gravels)		
			Dollars and Cents	$ 150.00	$ 27,000.00
608.36	155	SY	6" Reinforced Sidewalk (Includes Gravels)		
			Dollars and Cents	$ 170.00	$ 26,350.00
608.54	7	SY	Detectable Warning Device Casting (Cast Iron)		
			Dollars and Cents	$ 630.00	$ 4,410.00
609.01	50	LF	Straight Granite Curb (Back Curb)		
			Dollars and Cents	$ 155.00	$ 7,750.00
609.5	100	LF	Reset Granite Curb		
			Dollars and Cents	$ 125.00	$ 12,500.00
			Total Price in Figures	$	94,510.00

Cracked Sidewalk Panels

Non-Compliant Ramp



Non-Complaint Ramp and Cracked Sidewalk Panels

THE CITY OF NASHUA

Administrative Services

Purchasing Department

"The Gate City"

May 28, 2020
Memo #20-111

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: MVR, TAX, ASSESSING, CITY CLERK REMODEL DUE TO COVID 19 (VALUE: $32,500)
DEPARTMENT: 129 CITY BUILDINGS; FUND: GOFEER

Please see the attached communication from Kim Kleiner, Director of Administrative Services, to Mayor Donchess, dated May 28, 2020 for information related to this purchase.

Pursuant to NRO **§ 5-83 Professional Services** (A) In the purchase of accounting, architectural, auditing, engineering, legal, medical and ambulance services and purchases of independent professional consultant services for personnel, data processing, actuarial, planning, management and other comparable purchases competitive bidding shall not be required.

The Director of Administrative Services and the Purchasing Department recommend the award of this contract to **Dennis Mires, PA** of **Manchester, NH** in the amount of **$32,500**.

Respectfully,

Dan Kooken
Purchasing Manager

Cc: K. Kleiner J. Graziano

THE CITY OF NASHUA

Administrative Services Division

"The Gate City"

To: Mayor Donchess

Finance Committee

From: Kim Kleiner, Director of Administrative Services

Cc: John Griffin, CFO

Jennifer Deshaies, Risk Manager

Sue Lovering, City Clerk

David Fredette, Treasurer

Date: May 28, 2020

Subject: Motor Vehicle, Tax, Assessing, and City Clerk Department Building Modifications

---

The Emergency Operations Center Safety team, along with department heads, Risk Management and the City Building Department conducted safety assessments on all departments within city hall. It was determined that in order to comply with CDC social distancing protocols significant building modifications would be required within the Motor Vehicle, Tax, Assessing and City Clerk departments.

The City Building Department scheduled 4 architects/space planners to visit the departments and submit proposals. Due to the required timeline and scope of the project, Dennis Mires P.A. was the only proposal received.

Dennis Mires P.A. has had a positive working relationship with the city in the past and has demonstrated a consistency in their work. Upon obtaining Finance committee approval and a schematic design layout, a request for proposals (RFP) will be issued for a general contractor to perform the work. The city departments are currently planning accommodations for the departments that will be impacted during construction. It is our hope that the majority of project will be completed while staff is working remotely or by appointment only. The architect and building costs will be reimbursed by state GOFEER funds.

CONTRACT FOR PROFESSIONAL SERVICES

MVR, TAX, ASSESSING, CITY CLERK BUILDING MODIFICATIONS
DUE TO COVID 19 PANDEMIC

A CONTRACT BETWEEN

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

DENNIS MIRES,PA.
and its successors, transferees and assignees (together "Professional Architect")
PROFESSIONAL ARCHITECT

697 UNION STREET
MANCHESTER, NH 03104
ADDRESS OF ARCHITECT

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

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

WHEREAS, Professional Architect 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, Professional Architect shall furnish all services, equipment, and materials and shall perform all operations necessary and

required to carry out and perform in accordance with the terms and conditions of the contract the work described.

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

4. COMPENSATION. Professional Architect agrees to perform the work for a total cost not to exceed **THIRTY TWO THOUSAND FIVE HUNDRED Dollars ($32,500.00)**

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

- Electronically via email to VendorAPInvoices@NashuaNH.gov

OR

- Paper Copies via US Mail to:

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

Please do not submit invoices both electronically and paper copy.

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

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

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

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

The City of Nashua will pay for work satisfactorily completed by Professional Architect. The City of Nashua will pay Professional Architect 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:

Kim Kleiner
Director of Administrative Services

John Griffin
Chief Financial Officer

229 Main Street

Nashua, NH 03062

REPRESENTATIVE:

Dennis B. Mires,

AIA, President.

697 Union Street

Manchester, NH 03104

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City of Nashua or Professional Architect 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.

_____ _____

(signature) *(signature)*

James Donchess, Mayor
Mayor
City of Nashua

Dennis B. Mires, AIA President
CDM Smith Inc.

*Date:*_____

*Date:*_____

EXHIBIT A TABLE OF CONTENTS GENERAL CONDITIONS

1.	DEFINITIONS	GC--2
2.	PROFESSIONAL ARCHITECT STATUS	GC--2
3.	STANDARD OF CARE	GC--2
4.	CITY OF NASHUA REPRESENTATIVE	GC--3
5.	CHANGES TO SCOPE OF WORK	GC--3
6.	CITY OF NASHUA COOPERATION	GC--3
7.	DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES	GC--3
8.	TERMINATION OF CONTRACT	GC--4
9.	DISPUTE RESOLUTION	GC--5
10.	NO DAMAGES FOR DELAY	GC--6
11.	INSURANCE	GC--6
12.	INDEMNIFICATION	GC--7
13.	FISCAL CONTINGENCY	GC--7
14.	COMPENSATION	GC--7
15.	COMPLIANCE WITH APPLICABLE LAWS	GC--7
16.	NONDISCRIMINATION	GC--8
17.	ENDORSEMENT	GC--8
18.	ASSIGNMENTS, TRANSFER, DELEGATION, OR SUBCONTRACTING	GC--8
19.	CITY INSPECTION OF CONTRACT MATERIALS	GC--9
20.	DISPOSITION OF CONTRACT MATERIALS	GC--9
21.	PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS	GC--9
22.	FINAL ACCEPTANCE	GC--10
23.	TAXES	GC--10
24.	NON-WAIVER OF TERMS AND CONDITIONS	GC--10
25.	RIGHTS AND REMEDIES	GC--10
26.	PROHIBITED INTERESTS	GC--10
27.	THIRD PARTY INTERESTS AND LIABILITIES	GC--11
28.	SURVIVAL OF RIGHTS AND OBLIGATIONS	GC--11
29.	SEVERABILITY	GC--11
30.	MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT	GC--11
31.	CHOICE OF LAW AND VENUE	GC--11

General Terms and Conditions

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

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

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

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

   Professional Architect shall furnish competent and skilled personnel to perform the work under this contract. The City of Nashua reserves the right to approve key personnel assigned by Professional Architect to perform work under this contract. Approved key personnel shall not be taken off of the project by Professional Architect without the prior written approval of the City of Nashua, except in the event of termination of employment. Professional Architect shall, if requested to do so by the City of Nashua, remove from the job any personnel whom the City of Nashua determines to be incompetent, dishonest, or uncooperative.

4. **CITY OF NASHUA REPRESENTATIVE** The City of Nashua may designate a City of Nashua representative for this contract. If designated, all notices, project materials, requests by Professional Architect, and any other communication about the contract shall be addressed or be delivered to the City of Nashua Representative.

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

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

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

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

7. **DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES** Professional Architect warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City of Nashua in writing, and has concluded that the City of Nashua's resolution of each matter is satisfactory to Professional Architect. All future questions Professional Architect may have concerning interpretation or clarification of this contract shall be submitted in writing to the City of Nashua within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Professional Architect's question or position. The City of Nashua representative shall render a

decision within 15 calendar days. The City of Nashua's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Professional Architect prior to having received the City of Nashua's resolution shall be at Professional Architect's risk and expense. At all times, Professional Architect shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City of Nashua. Professional Architect is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

8. **TERMINATION OF CONTRACT**

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

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

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

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

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

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

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

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the City of Nashua with a list of all unperformed services.

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

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

If after termination for the failure of Professional Architect 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 Professional Architect had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City of Nashua shall, if necessary, make an adjustment in the compensation paid to Professional Architect such that Professional Architect receives total compensation in the same amount as it would have received in the event of a termination-at-will.

C. General Provisions For Termination Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Professional Architect shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Architect assigned to the performance of the contract.
Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Professional Architect's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Architect's control.

9. **Dispute Resolution** The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and a Professional Architect Representative. At all times, Professional Architect shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute

as described above within 30 days, the parties may request that the dispute be submitted to the Finance committee for resolution. If the parties are dissatisfied with the decision of the Finance committee, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

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

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

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

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

Professional Architect 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. Professional Architect is responsible for filing updated certificates of insurance with the City of Nashua's Risk Management Department during the life of the contract.

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

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

12. **INDEMNIFICATION** Regardless of any coverage provided by any insurance, Professional Architect 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 Professional Architect or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Professional Architect'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 Professional Architect with a right of payment over any other entity. Any funds obligated by the City of Nashua under this contract that are not paid to Professional Architect shall automatically revert to the City of Nashua's discretionary control upon the completion, termination, or cancellation of the agreement. The City of Nashua shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Professional Architect. Professional Architect shall have no claim of any sort to the unexpended funds.

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

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

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

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

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

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

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

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

18. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** Professional Architect shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

19. **CITY INSPECTION OF CONTRACT MATERIALS** The books, records, documents and accounting procedures and practices of Professional Architect 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 Administrative Services Division, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

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

21. **PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS** Professional Architect expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Professional Architect (including those remitted to the City of Nashua by Professional Architect pursuant to paragraph 20), unless designated as confidential by a specific statue of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

    No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Architect in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Professional Architect. The City of Nashua shall have the right to reproduce any such materials. Notwithstanding any provision to the contrary contained in this Agreement, Professional Architect shall retain sole ownership to its preexisting information including but not limited to computer programs, software, standard details, figures, templates and specifications to the extent that Professional Architect identifies each element of all such information to the City of Nashua simultaneously with the provision of the same

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

    Professional Architect shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided

that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

22. **FINAL ACCEPTANCE** Upon completion of all work under the contract, Professional Architect shall notify the City of Nashua in writing of the date of the completion of the work and request confirmation of the completion from the City of Nashua. Upon receipt of the notice, the City of Nashua shall confirm to Professional Architect in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Architect with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Architect 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 Division of Administrative Services, mayor or other designated official accepts and approves the notice of completion.

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

24. **NON-WAIVER OF TERMS AND CONDITIONS** None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.

25. **RIGHTS AND REMEDIES** The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

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

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

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

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

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

28. **SURVIVAL OF RIGHTS AND OBLIGATIONS** The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

29. **SEVERABILITY** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

30. **MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT** This contract constitutes the entire contract between the City of Nashua and Professional Architect. 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 to AGREEMENT
BETWEEN
OWNER AND ARCHITECT

MVR, TAX, ASSESSING, CITY CLERK BUILDING MODIFICATIONS DUE TO COVID 19 PANDEMIC
SCOPE OF SERVICES, CONTRACT TIME, FEE SCHEDULE
PROFESSIONAL ARCHITECTING SERVICES

This is an exhibit attached to and made part of the Agreement dated **May 20, 2020** between Dennis Mires. PA (ARCHITECT) and the City of Nashua, New Hampshire (OWNER).

This exhibit describes the Scope of Services, Contract Time, and Fee Schedule for the project known as the MVR, TAX, ASSESSING, CITY CLERK BUILDING MODIFICATIONS DUE TO THE COVID 19 PANDEMIC.

1.0 The Basic Services of an ARCHITECT as described in Article 2 of said agreement as amended and supplemented as follows:

Scope of Work
This project involves consulting with the Administrative Services Division, City Clerk and Financial Services Division, as well as personnel in Information Technology and providing technical assistance as needed.

Tasks may include, but are not limited to:

This is a redesign of the office space to reconfigure the workstations and customer reception to keep up with ADA needs and the Covid19 separation requirements, as well as general updates to security and finishes that were already being discussed. There will be a new concept of how to receive customers (behind glass) and to provide partitions/sneeze guards between employees, as well as for the workstations and desks that provide for online registration and typical office operations. Customer queues will be rethought so customers don't have to touch doors and they can keep safe separation while in line. The main doors will need to have hold opens so they can be opened in the morning but will shut automatically when an alarm is sounded and may be tied in with the fire alarms. Additional security features will be integrated into the design solution like glass wall and doors for separation between the public and employee areas and glass kiosks that respect the distance between customers while in line or being assisted by a city employee.

The mechanical should be fine as is, unless walls are moved or added, but all the lighting will be updated with LED lights. The ceiling grid on the main level should be fine for reuse, but the lower level ceilings will be replaced. Integral with reconfiguring the desks for new millwork and separation the wall finishes will be updated. It is our intent to salvage as much of the flooring as possible, but the Main level floors will require ADA accessibility, thus eliminating the "raised floor" in the Motor Vehicle Division.

We feel the project does not require full MEP design. Along with our architectural design documents we will provide Electrical engineering to prepare a fire alarm narrative report, drawings for replacing existing fluorescent lights with LED fixtures, and preparation of construction documents and specifications for the building electrical systems including: Modifications to the existing Normal Power Distribution, power outlet system, Lighting, Emergency Lighting, Lighting Control and fire detection and signaling system. If Structural Engineering and/or Mechanical, Plumbing or Fire Protection Engineering is required we would provide that as an additional service.

We envision addressing the design solution by analyzing the customer queue first so the customer can enter one way and exit another in a fluid manner without backtracking into the customer line. Each customer will be assisted by a City employee at a "one-stop-shop" counter/kiosk that is sufficiently separated from the adjacent customer. Each counter will have a glass barrier (potentially a level 3 bullet resistant capacity) with a pass-through slot. We feel this will provide the best customer experience while protecting employees and customers alike. Likewise, we will provide a similar configuration between employees. It is important to understand how each division works to be able to set up adjacencies and specific work surface/storage needs so we anticipate some time interviewing division managers and observing/documenting the existing conditions.

2.0 Contract Fixed Fee Schedule

Timeline:

Design Team selected and Interviewing Managers begins	June 2nd
Site Visit of Engineering Consultants	Week of June 9th
Schematic Design layout presented	June 11th Final
Design layout refined Budget Review	June 18th
Select Contractor	June 22th
Construction Documents Begin (Millwork Schematic)	June 25th
Construction Documents complete- Final Budget	Week of July 13th
Construction Begins	July 20th

The total square footage of the project is 6,600sf. Some areas require moderate changes, while others may have more demolition, finishes and tailored casework to be capable with separation and safety requirements. We view this as a moderately involved tenant improvement since structural and mechanical will be avoided. We anticipate a budget of
$330,000 to $580,000 based on initial design considerations. Therefore, we propose a fee of $32,500 including electrical design according to the following services:

3.0 Fee Schedule, Compensation and Invoicing

Our services would include:

Verify existing conditions/base plan
$ 1,500
Electrical Engineering
$ 4,300
Develop a consensus plan/configuration
$ 7,400
Interior elevations/views
Proposed Finishes
Construction Documents & Millwork Drawings
$12,500
Specifications
$ 3,500
Budget
$ 800
Construction Administration
$ 2,500

Total Fee
$32,500

Printing and postage will be billed in addition to the fee at cost. Services not

provided include: Geotech. Engineering

Site / Civil / Landscape Engineering
Structural Engineering
(Additional Service)
Mechanical Engineering
(Additional Service) Fire
Protection Engineering
Hazardous Materials Survey & Abatement