FINANCE COMMITTEE

JUNE 5, 2019

7:00 pm

ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

From: Dan Kookan, Purchasing Manager
Re: Contract for Emerging Leaders in Public Health Consultant Engagement (Value: $32,500)
    Department: 171 Community Services; Funds: Grant Funds $30,500 and General Fund $2,000

From: Dan Kookan, Purchasing Manager
Re: HVAC Systems Upgrade for Server Room (Value: $47,625); Department: 129 City Buildings
    Fund: Trust Fund

From: Dan Kookan, Purchasing Manager
Re: Long Term Management of Wastewater Biosolids Contract (Value: Not-To-Exceed $1,507,050)
    Department: 169 Wastewater; Fund: Wastewater

From: Dan Kookan, Purchasing Manager
Re: Contract Award for Emergency Notification System (Value: $66,000 for 3 Years)
    Department 156: Emergency Management; Fund: General

From: Dan Kookan, Purchasing Manager
Re: CSO Flow Monitoring Services – Amendment #2 (Value: $56,100); Department: 169 Wastewater
    Fund: Wastewater

From: Dan Kookan, Purchasing Manager
Re: 2019 Pavement Markings Contract – Change Order 1 (Value: $82,000); Department: 161 Streets
    Fund: Prior Year Escrow

From: Dan Kookan, Purchasing Manager
Re: Contract Extension for Single Stream Recycling (Value: $400,000); Department: 168 Solid Waste
    Fund: Solid Waste

From: Dan Kookan, Purchasing Manager
Re: 2018 Sewer Replacement – Harvard Street – Change Order 3 (Value: $150,000); Department: 169
    Wastewater; Fund: Wastewater

From: Dan Kookan, Purchasing Manager
Re: 2019/2020 Sewer Rehabilitation – Engineering Services (Value: $393,075); Department: 169
    Wastewater; Fund: Bond
UNFINISHED BUSINESS – None

NEW BUSINESS – RESOLUTIONS

R-19-136
Endorsers: Mayor Jim Donchess
Alderman-at-Large Lori Wilshire
Alderman Mary Ann Melizzi-Golja
Alderman-at-Large Shoshanna Kelly
Alderman-at-Large Michael B. O’Brien, Sr.
Alderman Linda Harriott-Gathright
Alderman Patricia Klee
Alderman-at-Large Brandon Michael Laws
Alderman Jan Schmidt

AUTHORIZING THE FORMATION OF TWO VOLUNTARY NONPROFIT CORPORATIONS UNDER RSA 162-G FOR THE PERFORMING ARTS CENTER
• Board of Aldermen held Public Hearing on 5/20/2019

R-19-145
Endorsers: Mayor Jim Donchess
Alderman Mary Ann Melizzi-Golja
Alderman Jan Schmidt
Alderman Richard A. Dowd
Alderman Linda Harriott-Gathright
Alderman Tom Lopez
Alderman-at-Large Michael B. O’Brien, Sr.

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO AN AGREEMENT FOR EMERGENCY AMBULANCE SERVICES WITH AMERICAN MEDICAL RESPONSE, INC.

NEW BUSINESS – ORDINANCES - None

RECORD OF EXPENDITURES

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT
May 30, 2019
Memo #19-155

TO: MAYOR JIM DONCHESS
FINANCE COMMITTEE

SUBJECT: CONTRACT FOR EMERGING LEADERS IN PUBLIC HEALTH CONSULTANT ENGAGEMENT (VALUE: $32,500)
DEPARTMENT: 171 COMMUNITY SERVICES; FUNDS: GRANT FUNDS $30,500 AND GENERAL FUND $2,000

Please see attached communication from Bobbie Bagley, Director of Public Health & Community Services dated May 9, 2019 for the information related to this contract award.

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

The Director of Division of Public Health & Community Services and the Purchasing Department recommend the award of this contract in the amount of $32,500 to ML Branding Strategy of Boston, MA.

Respectfully,

[Signature]

Dan Kooken
Purchasing Manager

Cc: B Bagley  J Graziano
May 9, 2019

To: John Griffin, CFO; Daniel Kookan, Purchasing Manager  
From: Bobbie D. Bagley, Director, DPHCS  
Subject: ML Branding Strategy Consulting

The Division of Public Health and Community Services (DPHCS) has been awarded an Emerging Leaders in Public Health Transformative Applied Learning and Implementation Grant from the Kresge Foundation in the amount of $119,100. This award will enhance our leadership skills and transform our role as Public Health Prevention Strategist in the Greater Nashua Area. To do so, we are seeking branding and communication consultation support from ML Branding Strategy to take a multi-level approach to:

- Develop the brand of the Division as Chief Public Health Prevention Strategists in accordance with the deliverables for the ELPH Transformative Initiative
- Create internal systems and attitudes to support the transformed brand through training
- Develop a repeatable framework for branding and communication of projects and programs existing at the Division.
- In accordance with Special Purchasing Procedures under § 5-83(A) for Professional services, competitive bidding is not required for independent professional consultant services. Accordingly, we did not go out to bid for these services but are using a consultant that has performed these services for the New Hampshire Public Health Association.

The total cost for the services amount to $32,500. The cost to the city for the contracted consulting services represents 6.15% of the overall total budget for the services of this contract in the amount of $2,000.
May 2, 2019

Bobbie Bagley
Division Director
City of Nashua
Division of Public Health and Community Services

Dear Bobbie,

Many thanks to you and your team for a terrific meeting on Wednesday. I appreciate your taking time to help me understand the goals and nature of the ELPH work, and to provide a snapshot of your team’s branding and marketing challenges. I am thrilled at the prospect of working with you all!

As discussed, there are a number of layers to this work, and a number of different ways we could collaborate. This proposal outlines my recommended approach, as well as the associated deliverables, timing, and fees. I am happy to revise in order to accommodate your timing and funding parameters.

I look forward to reviewing this proposal with you at your convenience. Then...let’s get started!

Regards,

Michele Levy
Vision and Approach
This engagement is a perfect fit for my skill set and experience. For over 15 years, I have been working with nonprofit organizations to build compelling messaging and effective marketing communications programs that support strategic goals. I have also worked on the client side. As Interim Chief Marketing Officer for Walnut Hill School for the Arts and for The Cambridge School of Weston, I completely reinvented brands and built robust communications programs from scratch—I understand the challenges inherent in building a culture that embraces and supports a strong brand. In addition, I have a great deal of experience working with organizations focused on public health.

Understanding that most, if not all, of my clients have limited marketing resources, my approach is efficient and pragmatic. The deliverables are high quality, immediately actionable, and of enduring benefit. I take great pride in the fact that my clients use the tools I create for them over and over again, and that the work is typically transformational for their organizations. Also, in the interest of keeping costs low and quality high, I have carefully created a network of partners (designers, social media experts, public relations professionals, web strategists, etc.) who share my philosophy and values. Should we need additional support, I can tap into that network at any time during the process.

As discussed, there are number of levels to this work:

- Branding the Division as Chief Public Health Strategists (ELPH);
- Creating the internal systems and attitudes required to support that transformed brand (systems/training);
- Developing a repeatable framework for branding and communicating individual projects and programs (program)

These three levels are interdependent. Ideally, we would complete the ELPH brand work first, then use that as the foundation for the other two. However, funding requirements and other priorities may drive us to more of a parallel process, which is workable. This proposal uses the ELPH work to illustrate the overall process, then indicates the abbreviated process we will use to brand and communicate individual projects and programs.
Brand Messaging (ELPH): 6 – 8 weeks [depending on availability of internal and external stakeholders]

The goal of the brand messaging work is to answer the question, “Who are we and how do we present ourselves to our various stakeholders?” In order to arrive at these answers, we engage in a thoughtful, comprehensive discovery process, then use the findings from that process to create a brand message hierarchy that clearly and confidently positions the Division as Chief Public Health Strategists who should be active and valued participants in key local conversations. Based on our initial conversations, and on my experience in similar situations, I recommend the following approach:

- Create a brand steering committee who will work closely with me to provide insight, help refine messaging and planning, and review deliverables in advance of key presentations (as discussed, this would probably be the ELPH team + the marketing steering committee)
- Audit current communications, available research, and other background materials
- Conduct a two-hour workshop with the entire staff (discussion guide to be provided)
- Conduct 1:1 interviews with 8 - 10 key local thoughtleaders (the type of people who would be inviting the Division “to the table”)
- Conduct a survey with external partners, clients, etc. (<500 names)
- Complete a messaging audit of 6-8 peer/competitor organizations (regional and national)
- Present the brand steering committee with findings from the discovery work, and recommendations on most effective brand message hierarchy, then refine for presentation to the rest of the staff.

The deliverable of this inclusive yet efficient discovery process is a comprehensive brand message hierarchy that will guide future brand work and provide the foundation for all communications going forward. It includes the following core components:

- Elevator pitch (short answer to the question “Who is the Division of Public Health and Community Services?”)
- Proof points (also called “reasons to believe”—facts and data that back up your brand promise)
- Brand personality (emotional side of the brand, what it’s like to engage with the Division and its programs)
- Program/service brand hierarchy (how all of your work fits together)
- Audience message matrix (secondary messaging for each of your core audience segments)
- Content for an integrated brand style guide (your designer will provide the design components)

A word about audience messaging: While it is crucial that you have one consistent master brand message, the reality is that your various audiences have differing sets of needs and expectations. I will work with you to provide a “second layer” of messaging that allows you to effectively communicate what’s most compelling to each of your target audiences.

Integrated Communications Planning: 4 weeks

The brand strategy work will not have the desired impact without an integrated communications plan to tell your brand story across current and new stakeholder groups. I will partner with the brand steering committee to develop a plan to build awareness, familiarity, and long-term engagement with current and new stakeholders. This 12 – 18-month plan will include strategies, tactics, timing, budget, and success metrics. NOTE: process and deliverables are the same, regardless of type of project, although the communications plan for the master brand is likely to be more comprehensive than others.

Brand systems and training: 4 – 8 weeks

As discussed, your staff are your first, most powerful brand ambassadors. They need to deliver the updated messaging in a clear and confident manner and support your brand perception by adhering to the brand style guide. The two-hour workshop (see above) will be the first step in our brand training work. Once we have finalized the messaging and communications plan, we will introduce both to the staff in an interactive brand training session. I will work with your communications team to plan that session, and to implement/refine/reinforce systems that support ongoing adherence to, and support of, the brand.
Program Messaging (lead): 4 – 8 weeks (depending on scope of work and number of stakeholders)

The ELPH brand messaging work establishes both a process and a framework for program/project messaging going forward. As agreed, we will leverage that process and framework to update the messaging for the lead project:

- Agree on project team, conduct one-hour briefing session
- Audit current communications, available research, and other background materials
- Agree on stakeholder list and best way to gather input (often a short list of 1:1 interviews)
- Complete a messaging audit of 4-6 peer/competitor programs/projects (regional and national)
- Refine and present updated program messaging

Given the more focused nature of most programs/projects, the deliverables are more limited than those of the larger brand engagement:

- Elevator pitch
- Proof points
- Audience message matrix (secondary messaging for each of your core audience segments)

FEES

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NOTES: Project cost applies to provision of services and development of the elements discussed in this proposal. Fees do not include out of pocket costs (copying, deliveries, travel, etc.). Out of pocket is estimated to be minimal and will be invoiced to client at cost. Does not include design, writing or production of communications tools other than as outlined in this proposal. Should work cease for any reason, client will be billed for work completed up to date client indicates (in writing) that work is to cease. Projects are typically invoiced in two installments: first ½ upon approval to proceed, second ½ upon presentation of final deliverables. Invoices are net 15.

Thank you for the opportunity to provide this proposal. If this meets with your approval, please print a copy, sign and date to indicate acceptance.

Proposal accepted by (for City of Nashua: Division of Public Health and Community Services):

NAME:

TITLE:

DATE:
Background
Michele Levy is a seasoned brand strategist who leverages deep audience insight, comprehensive competitive intelligence, and proven facilitation skills to develop effective messaging and integrated communications programs that help organizations better achieve their goals.

Whether it’s building a new brand or updating an existing one, Michele has a proven talent for quickly understanding the needs, concerns, and expectations of diverse stakeholder groups, then using those insights to build brand strategies that work. With experience that spans nonprofit, education, healthcare, professional services, high technology, financial services, and life sciences, she skillfully translates complex strategic challenges into effective messaging that resonates across a client’s key audience segments.

Michele has worked with a wide range of corporate and nonprofit clients, adeptly bridging the sectors and leveraging best practices from both. Her work includes research, brand strategy, communications planning, and training. Prior to launching her own consulting practice, Michele led strategy and account service teams in a wide variety of agency settings, and in management consulting. She also served as Interim Chief Marketing Officer at Walnut Hill School for the Arts and The Cambridge School of Weston, building entire marketing and development communications programs from scratch. Michele brings a board perspective to her work, as well. As chair of the board for Circus Smirkus, a youth circus organization with a nationally-recognized traveling tour, camp, and artist-in-residence program, Michele led two capital campaigns and worked closely with the staff to create an effective integrated advancement communications effort. This “triple threat”—consultant + chief marketing officer + board chair—means that Michele understands the challenges her clients face, can get up to speed quickly, and can help them navigate the conversations that need to happen inside and outside an organization to build a strong brand.

The author of “Building Your Brand: A Practical Guide for Nonprofit Organizations,” Michele speaks regularly on topics of branding and integrated marketing communications. An honors graduate of Harvard College, Michele received her MBA in healthcare management from Boston University.

Relevant Client Experience (public health/healthcare/complex orgs)
The Activist Lab at Boston University School of Public Health
Blue Cross Blue Shield of Massachusetts
Boston Children’s Hospital
Hebrew SeniorLife
The Learning Center for the Deaf
National Association of County and City Health Officials
NE Institute of Addiction Studies
New England Public Health Training Center
Rhode Island Department of Health
Local Public Health Institute of Massachusetts
Massachusetts Alliance on Teen Pregnancy
Massachusetts General Hospital
The Schwartz Center for Compassionate Healthcare
May 30, 2019
Memo #19-156

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: HVAC SYSTEMS UPGRADE FOR SERVER ROOM (VALUE: $47,625)
DEPARTMENT: 129 CITY BUILDINGS; FUND: TRUST FUND

Please see the attached communication from Bruce Codagnone, CIO/IT Division Director, dated May 30, 2019 for information related to this contract.

Pursuant to § 5-92 Information Technology Division participation in purchasing process. For major purchases and contracts solicited in Accordance with § 5-78 which include computers or communications equipment or related software, including but not limited to workstations, servers, surveillance equipment and wired and wireless transmission equipment, the Information Technology Division shall participate in the purchasing process, providing advice, input and recommendations, which are so noted on the attached memo from Bruce Codagnone.

The CIO/IT Division Director and the Purchasing Department recommends the award of this contract in the amount of $47,625 to Palmer and Sicard of Nashua, NH.

Respectfully,

Dan Kookken
Purchasing Manager

Cc: B. Codagnone J. Graziano
May 30, 2019

TO: MAYOR Donchess
FINANCE COMMITTEE

SUBJECT: HVAC System Upgrade for Server Room

The HVAC equipment providing essential cooling of the IT Server Room is in need of replacement. Recent and repetitive failures of the single unit warrant this need. The unit is no longer capable of supplying the growing demands of the Server Room.

As you know the Server Room houses all of the electronic equipment which runs the City’s business. This equipment is vital to the operation of the City and requires adequate cooling to keep it running properly. High temperatures reduce the expected life of the equipment. Extremely high temperatures will result in equipment failure and if this were to occur, the consequence would be catastrophic.

Information Technology recommends awarding the bid to Palmer & Sicard, Inc. in the amount of $47,625. Funding is available in the Building Trust Fund account 29.5000 - 81200.

Respectfully,

Bruce Codagnone
CIO / IT Director

Cc: J. Griffin
D. Kookan
We hereby propose to furnish all material and labor necessary to complete the following scope of work:

* Remove existing HVAC unit, humidifier and ductwork
* Furnish and install two (2) new Trane air handler units
* Furnish and install two (2) new Trane air cooled condensing units on roof
* Furnish and install new ductwork as shown on drawing
* Furnish and install new automatic control and volume dampers
* Furnish and install new radiator units as shown on drawing
* Furnish and install new electrical line voltage wiring as necessary
* Fabricate and install new ductwork as shown on drawing
* Furnish and install new thermostat, humidistat and all necessary control wiring
* Furnish and install new electrical line voltage wiring as necessary
* Provide subcontractor for roofing
* All associated labor, permits, air balancing, rigging costs, and bond is included

Additional specifications and provisions:

Notes: All work to be performed during normal business hours. Scope of work is as described above. No additional HVAC, plumbing, gas piping, or control work is included in this proposal. No electrical is included in this proposal, beyond what is listed above. Any and all sheetrock, carpentry and/or construction is not included in proposal. Unforeseen circumstances may result in change of price and/or scope.

For the sum of: Forty Seven Thousand, Six Hundred Twenty Five dollars - $47,625.00

Payment to be made as follows:

Standard terms apply.

Authorized Signature:

Note: This proposal may be withdrawn by us if not accepted within 90 days.

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Unless otherwise specified, payment terms are as follows: 45% due at signing, 45% due when equipment / materials delivered on site and 10% due at completion.

Date of Acceptance:

Authorized Signature:

Energy Services Division

140 Epping Road
Exeter, New Hampshire 03833
Office: (603) 929-0910
Fax: (603) 929-0973
January 18, 2019

IFB0292-013119
IT Server Room HVAC Upgrades

ADDENDUM #1

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

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

ADDENDUM 1 is being issued to extend the bid due date to Thursday, February 28th 2019 at 3:00pm to allow for additional time to consult with an engineer.

All other aspects of the original document remain the same.

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

Sincerely,

Danielle Greenberg
City of Nashua - Purchasing Agent II
greenbergd@nashuanh.gov

Addendum #1 received and incorporated into bid submittal for IFB0292-013119. Please sign and include this addendum in your bid package.

Authorized Signature

[Signature]

Date

[Date]

Name of Firm

[Name]
February 13, 2019

IFB0292-013119
IT Server Room HVAC Upgrades

ADDENDUM #2

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

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

ADDENDUM 2 is being issued to extend the bid due date to Friday, March 29th 2019 at 3:00 p.m. to allow for additional time to provide specifications. The City has hired a Mechanical Engineering firm to provide the information needed to adequately bid this project. The City will do another Addendum once the information is available.

All other aspects of the original document remain the same.

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

Sincerely,

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

Addendum #2 received and incorporated into bid submittal for IFB0292-013119. Please sign and include this addendum in your bid package.

(Name of Firm)
May 1, 2019

IFB0292-013119
IT Server Room HVAC Upgrades
ADDENDUM #3

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

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

ADDENDUM 3 is being issued to provide a revised Scope of Work (Attachment A) and updated project timeline.

All other aspects of the original document remain the same.

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

Sincerely,

Danielle Greenberg
City of Nashua – Purchasing Agent II
greenbergd@nashuanh.gov

Addendum #3 received and incorporated into bid submittal for IFB0292-013119.
Please sign and include this addendum in your bid package.

[Signature]

(Date)

(name of firm)
May 16, 2019

IFB0292-013119
IT Server Room HVAC Upgrades
ADDENDUM #4

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

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

ADDENDUM 4 is being issued to respond to submitted questions.

Q: Where is this a city project is a permit still required?
   A: Yes, a permit is still required, but the fee will be waived.

All other aspects of the original document remain the same.

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

Sincerely,

Danielle Greenberg
City of Nashua – Purchasing Agent II
greenbergd@nashuanh.gov

Addendum #4 received and incorporated into bid submittal for IFB0292-013119. Please sign and include this addendum in your bid package.

[Signature]

5/19/19

[Date]

[Name of Firm]
CERTIFICATE OF LIABILITY INSURANCE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

IMPORTANT: If the certificate holder is an additional insured, the policy(ies) must be endorsed. If subrogation is waived, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsements.

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<th>CERTIFICATE HOLDER</th>
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<tr>
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<td>229 Main Street</td>
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<td>Nashua, NH 03061</td>
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CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Donna Bickford/DB

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ACORD 26 (2014/01)

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INS025 (p/n)
May 30, 2019
Memo #19-149

TO: MAYOR DONCHESS
    FINANCE COMMITTEE

SUBJECT: LONG TERM MANAGEMENT OF WASTEWATER BIOSOLIDS CONTRACT (VALUE: NOT-TO-EXCEED $1,507,050)
    DEPARTMENT: 169 WASTEWATER; FUND: WASTEWATER

Please see the attached communication from David L. Boucher, Superintendent Wastewater Department dated March 28, 2019 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 (March 28, 2019 meeting) and the Purchasing Department recommend the award of this contract in an amount not-to-exceed $1,507,050 from Resource Management, Inc. of Holderness, NH.

Respectfully,

Dan Kooken
Purchasing Manager

Cc: D Boucher L Fautuex
To: Board of Public Works  
Meeting Date: March 28, 2019

From: David L. Boucher, Superintendent  
Wastewater Treatment Facility

Re: Long Term Management of Wastewater Biosolids Contract

C. Motion: To approve the award of a three year contract for the long-term management of wastewater biosolids to Resource Management, Inc. of Holderness, NH in an amount not to exceed $1,507,050. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 54 Property Services.

Attachments: Long Term Management of Wastewater Biosolids Bid Comparison

Discussion: The Wastewater Facility generates Class B biosolids and is required to manage it in an environmentally sound manner and in accordance with all applicable federal, state and local rules and regulations. The request for proposals (RFP) went out on February 15, 2019. Pricing was requested for a three-year period on a per wet ton basis. Additional pricing was requested for three additional one-year extensions and for removal of non-Class B biosolids.

Only one bid was received from Resource Management, Inc. (RMI). The award is based on the estimated solids produced annually, 8500 wet tons, at the per wet ton unit bid price of $59.10 for the first three years, a total cost not to exceed $1,507,050.

Resource Management, Inc.  
Holderness, NH  
$59.10/wet ton

Casella Organics, who currently holds the biosolids contract, did not bid on the project due to being unable to meet land application requirements.

References for RMI have been checked and found to be satisfactory. They were the sludge hauler for the wastewater plant prior to Casella for approximately 13 years and performed well in that time.
CONTRACT FOR INDEPENDENT CONTRACTOR

LONG-TERM MANAGEMENT OF WASTEWATER BIOSOLIDS
RFP1088-031819

A CONTRACT BETWEEN
THE CITY OF NASHUA, 229 MAIN STREET, CITY HALL, NASHUA, NH 03060
AND
RESOURCE MANAGEMENT, INC
and its successors, transferees and assignees (together “Independent Contractor”)

NAME AND TITLE OF INDEPENDENT CONTRACTOR
1171 NH ROUTE 175, HOLDERNESS, NH 03245
ADDRESS OF INDEPENDENT CONTRACTOR

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

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

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

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

1. DOCUMENTS INCORPORATED. The Independent Contractor shall complete the work described in the Contract Documents. The following exhibits are by this reference incorporated herein and are made part of this contract:

   (1) This Agreement signed by the City of Nashua and Independent Contractor, including Exhibit A--General Conditions for Contracts;

   (2) Performance Bond;

   (3) Insurance Certificate;

   (4) Written change orders or orders for minor changes in the Work issued after execution of this Agreement; and

   (5) Fully Executed City of Nashua Purchase Order

AG 1 of 5
The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

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

2. WORK TO BE PERFORMED Except as otherwise provided in this contract, Independent Contractor shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described.

DESCRIPTION OF THE WORK:

Independent Contractor shall provide the appropriate containers for loading dewatered sludge cake for removal from the Nashua Wastewater Treatment Facility (NWTF). The Independent Contractor will remove the entire amount of dewatered wastewater Biosolids (approximately 30-35 wet tons per day) generated at the NWTF during regular work hours of Monday-Friday (7:00 am to 2:00 pm) and on weekends as necessary. There is no guarantee on the quantity of Biosolids. All Biosolids shall be hauled off site as soon as possible after dewatering, within 24 hours after notification. In general, there are 4-7 loads to be removed M-F, depending on the quantity of sludge being dewatered.

All Biosolids are the property of the Independent Contractor. All removal and hauling must be lawful, and must be performed under proper State permits. No Biosolids may be utilized or disposed of improperly or in a non-licensed, non-qualified/non-state approved manner. To do so will constitute a violation of this Agreement.

In the interest of utilizing the Biosolids in a manner most beneficial to the environment, the Independent Contractor shall have a plan for land application of Biosolids. Alternate means for beneficial use of Biosolids will also be considered and may be allowed with prior written consent of the City. Information should be provided in the proposal that demonstrate beneficial environmental use of Biosolids will occur.

The Independent Contractor will manage the Biosolids directly and will not act as a broker. Subcontracting to a qualified sludge hauler will be allowed upon written approval of the Director of Public Works N. A dedicated driver and/or Independent Contractor manager shall be provided who will be held accountable to work with NWTF on scheduling and shall inform the City of any delays in the schedule. The NWTF shall make reasonable attempts to contact the driver and/or Independent Contractor manager to report holding off on a delivery if the truck load is not full. There shall be no back charges for a driver who shows up but cannot take the load since it was not full provided the NWTF has made a reasonable attempt to contact the provider/Independent Contractor ahead of time. A list of other contacts shall be provided should the manager not be available to contact. The truck used for hauling shall have a valid Sludge Hauler Permit with New Hampshire Department of Environmental Services-Wq 800 regulations. All other governing laws and regulations for hauling sludge shall be followed.

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

The contract will be for initial period of three (3) years, with first year commencing on July 1, 2019 and terminating on June 30, 2022. The City will consider three (3) additional one (1) year extensions of the contract upon satisfactory performance of the vendor. Each year of the contract (the initial three (3) years
and any one (1) year extensions if awarded) is subject to annual budget appropriations and at the City of Nashua’s sole discretion. A separate/amended purchase order shall be issued for each year of the contract.

4. COMPENSATION. Independent Contractor agrees to perform the work for a total cost not to exceed

One Million Five Hundred Thousand Seven and Fifty Dollars ($1,507,050) for the three (3) year term

and in accordance with following Pricing Provisions:

Pricing Provisions

4.1 For the recycling services to be provided by Independent Contractor pursuant to this Agreement, City agrees to pay Independent Contractor an all-in recycling fee of $59.10 per wet ton for Class B biosolids recycled from the WWTF. It is understood that the recycling fee is based upon the current regulatory requirements in place in the State of New Hampshire at the time of signature of this Agreement. Any significant changes to the regulations governing the beneficial use of biosolids at the local, state or federal level shall be cause for re-negotiation of the scope of services and the recycling fees. In the event of such significant changes, Independent Contractor shall comply with this Agreement, including scope and fees, until new terms which are mutually agreeable are reached and memorialized in a writing signed by both parties.

4.2 In the event that City installs a Shincci-USA Dryer and produces a dried Class A biosolids product, the all-in recycling fee in Section 4.1 shall drop to $29.10 per ton of Class A biosolids.

4.3 For non-standard solids sent to alternative outlets, City agrees to reimburse Independent Contractor for the full amount of all payments actually made by Independent Contractor to process or dispose of non-standard solids in a reasonable manner, plus 20%, provided the payments made by Independent Contractor are approved in writing in advance by City.

4.4 Independent Contractor shall be reimbursed for trucking services it provides for transporting non-standard solids, or any other additional trucking services provided by Independent Contractor to City, at a rate of $115.00 per hour from point of origin to point of return. This shall be increased annually by 2%.

4.5 Independent Contractor shall pay for routine site permit filing fees and routine soil samples associated with biosolids utilization, at no cost to City.

4.6 City agrees to reimburse Independent Contractor for any additional out-of-pocket fees as may be required by authorized regulatory agencies at cost plus 20%, provided City approved the service in writing, in advance. This shall include, but not be limited to analytical testing fees for non-standard solids, and regulatory fee requirements.

4.7 City shall pay Independent Contractor a temporary diesel fuel surcharge when diesel fuel exceeds $3.50 per gallon based on the index provided by the US Department of Energy, specific to New England. Weekly diesel pricing information shall be based on the federal posting at http://tonto.eia.doe.gov/oeg/info/whdhp/diesel.asp. The surcharge shall be based on $0.25 increments to the price of diesel fuel and shall increase according to the schedule below for every load of wastewater solids hauled by Independent Contractor; this incremental increase shall continue as an escalator calculation indefinitely:
4.7 The fees in Sections 4.1 and 4.2 shall be increased by 3% annually on July 1st, starting July 1, 2020.

4.8 The fees in Sections 4.1 and 4.2 shall be increased by 3% annually on July 1st, starting July 1, 2020.

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

Unless Independent Contractor has received a written exemption from the City of Nashua, Independent Contractor shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such applications shall be supported by such data substantiating the Independent Contractor’s right to payment as the City of Nashua may reasonably require. Independent Contractor shall submit monthly requests for payment for services performed under this agreement directly to:

- 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.

Applications for Payment shall be submitted no later than fifteen (15) days after the end of each month. The City of Nashua will pay for work satisfactorily completed and accurately invoiced by Independent Contractor within thirty (30) days from the time of approval by the City of Nashua.

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:  REPRESENTATIVE:
David Boucher, Superintendent  Shelagh Connelly, Pres. RMI
Nashua Wastewater Treatment Facility  1171 NH Route 175
2 Sawmill Road  Holderness, NH 03245
Nashua, NH 03060

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

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

_____________________________  ________________________________
City of Nashua, NH (signature)  Resource Management, Inc. (signature)

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

_____________________________  ________________________________
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General Terms and Conditions

1. Definitions

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

2. Independent Contractor Status

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

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

3. Standard of Care

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

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

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

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

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

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

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

8. TERMINATION OF CONTRACT

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

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

Upon receipt of notice of termination, abandonment, or suspension at will, Independent Contractor shall:

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

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

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

Upon receipt of notice of termination for cause, Independent Contractor shall:

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

4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of Nashua of all orders or 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.

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

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

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

C. GENERAL PROVISIONS FOR TERMINATION Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Independent Contractor shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Independent 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 Independent Contractor's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Independent Contractor's control.

9. DISPUTE RESOLUTION The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and a Independent Contractor Representative. At all times, Independent Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination 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 Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

10. **NO DAMAGES FOR DELAY** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Independent Contractor for damages because of hindrances or delays in the progress of the work from any cause, and Independent Contractor agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City of Nashua may provide.

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

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

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

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

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- The specified insurance requirements do not relieve Independent Contractor of its responsibilities or limit the amount of its liability to the City of Nashua or other persons, and Independent Contractor is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
Independent Contractor is responsible for and required to remedy all damage or loss to any property, including property of the City of Nashua, caused in whole or part by Independent Contractor or anyone employed, directed, or supervised by Independent Contractor.

The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.

Independent Contractor is responsible for and required to remedy all damage or loss to any property, including property of the City of Nashua, caused in whole or part by Independent Contractor or anyone employed, directed, or supervised by Independent Contractor.

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

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

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

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

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

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

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

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

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

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

18. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING Independent Contractor shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

19. CITY INSPECTION OF CONTRACT MATERIALS The books, records, documents and accounting procedures and practices of Independent Contractor related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.
20. DISPOSITION OF CONTRACT MATERIALS  Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Independent Contractor in the performance of its obligations under this contract shall be the exclusive property of the City of Nashua and all such materials shall be remitted and delivered, at Independent Contractor's expense, by Independent Contractor to the City of Nashua upon completion, termination, or cancellation of this contract. Alternatively, if the City of Nashua provides its written approval to Independent Contractor, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Independent Contractor in the performance of its obligations under this contract must be retained by Independent Contractor for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City of Nashua, in writing, requests any or all of the materials, then Independent Contractor shall promptly remit and deliver the materials, at Independent Contractor's expense, to the City of Nashua. Independent Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Independent Contractor's obligations under this contract without the prior written consent of the City of Nashua.

21. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS  Independent Contractor expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Independent Contractor (including those remitted to the City of Nashua by Independent Contractor pursuant to paragraph 20), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Independent Contractor in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Independent Contractor. The City of Nashua shall have the right to reproduce any such materials.

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

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

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

24. **NON-WAIVER OF TERMS AND CONDITIONS**  None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.

25. **RIGHTS AND REMEDIES**  The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

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

In the event Independent Contractor (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, City of Nashua may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, Independent Contractor shall refund to the City of Nashua any profits realized under this contract, and Independent Contractor shall be liable to the City of Nashua for any costs incurred by the City of Nashua in completing the work described in this contract. At the discretion of the City of Nashua, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.
Independent Contractor warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Independent Contractor to any officer or employee of the City of Nashua with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract. If City of Nashua determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with paragraph 8.

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

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

28. SURVIVAL OF RIGHTS AND OBLIGATIONS The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

29. SEVERABILITY In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

30. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT This contract constitutes the entire contract between the City of Nashua and Independent Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

31. CHOICE OF LAW AND VENUE This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere.
May 30, 2019  
Memo #19-157

TO: MAYOR DONCHESS  
FINANCE COMMITTEE

SUBJECT: CONTRACT AWARD FOR EMERGENCY NOTIFICATION SYSTEM (VALUE: $66,000 FOR 3 YEARS)  
DEPARTMENT 156: EMERGENCY MANAGEMENT; FUND: GENERAL

Please see attached communication from Justin Kates, Emergency Management Director dated May 22, 2019 for the information related to this purchase.

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

This award is contingent upon the BOA approval of the FY2020 Budget.

The Emergency Management Director, the committee and the Purchasing Department recommend the award of this contract in a total amount of $66,000 for 3 years to OnSolve LLC of Ormand Beach, FL.

Respectfully,

Dan Kooken  
Purchasing Manager

Cc: J Kates J Graziano
May 22, 2019

TO: DAN KOOKEN
Purchasing Manager

SUBJECT: CONTRACT AWARD FOR EMERGENCY NOTIFICATION SYSTEM
(VALUE: $66,000)
DEPARTMENT: 156 EMERGENCY MANAGEMENT; FUND: GENERAL
ACCOUNTING CATEGORY: 54 PROPERTY SERVICES

The City has a need to provide notification services to citizens and businesses during emergency and non-emergency situations. Notification by phone, text message, e-mail, and social media can be widely utilized across all departments in the City. Experience during the past few emergencies in Nashua have demonstrated the need for this capability.

An Emergency Notification Committee, including representatives of Emergency Management, Mayor’s Office, Police, Fire, Public Works, Public Health, and Information Technology, met frequently throughout late 2018 and early 2019 to review the City’s existing service for emergency and non-emergency notifications, provided by CodeRED. After comparing many vendors in the field of notification systems and recognizing the value of retaining our existing caller database that has grown over the past three years, the committee determined the CodeRED notification system by OnSolve, LLC provided the best value, and best service for an unlimited access contract. The contract has been reviewed by our Legal and Risk Management Departments. Two additional services have been added to the contract at no cost to the City, language translation & true SMS texting.

Pursuant to NRO § 5-84 (A)(3), the new service will contain pricing and be purchased based on co-operative General Services Administration (GSA) Contract Schedule 70, Contract #GS-35F-0253W, Special Item Number 132-32. Additionally, other supplier pricing was investigated prior to determining this to be best value for the city. The Emergency Management Director was able to negotiate the standard GSA pricing down approximately 24 percent to a final cost of $22,000 per year for a three year net contract totaling $66,000. Our contract also provides unlimited service for Pennichuck Water for their entire service area if they choose to take advantage of it.

Pursuant to NRO § 5-74 (B) which states that a contract that extends from the current fiscal year into succeeding fiscal year(s) in which no funds have been appropriated nor otherwise designated for this purpose shall be approved by the full Board of Aldermen before the contract shall become binding on the City.

All three years will be funded by as a budgeted item in Department 156 Emergency Management.

Two additional contract addendums are included to provide local access to FEMA’s Integrated Public Alert & Warning System (IPAWS) and CodeRED’s Weather Warning functionality at no cost for as long as the State of NH retains a contract for these features as part of their NH Alerts service. These are some of the many benefits to
having a fully interoperable notification service with both the State of NH and the City of Nashua, both utilizing the CodeRED infrastructure.

The Emergency Management Director and the Emergency Notification Committee recommend awarding the contract in the amount of $66,000 to OnSolve LLC, Ormond Beach, FL.

Thank You,

Justin Kates

CC: J. Graziano
This Service Agreement (the "Agreement") by and between Provider (as defined below) and Customer (as defined below) is made as of July 1, 2019 (the "Effective Date").

<table>
<thead>
<tr>
<th>SERVICE ORDER</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Provider Information:</strong></td>
</tr>
<tr>
<td>Provider Name: ONSOLVE, LLC</td>
</tr>
<tr>
<td>Entity Type: Limited Liability Company</td>
</tr>
<tr>
<td>State of incorporation: Delaware</td>
</tr>
<tr>
<td>Provider Address: 780 W. Granada Boulevard Ormond Beach, FL 32174</td>
</tr>
</tbody>
</table>

| **Customer Information:** |
| Customer Name: City of Nashua |
| Entity Type: body politic |
| State of incorporation: New Hampshire |
| Customer Address: 229 Main Street Nashua, NH 03061 |
| Business Contact/Title: Justin Kates/Emergency Management Director |
| Phone: (603) 722-0288 |
| Email: katesi@nashuah.gov |

| Please complete below if the Primary User is different from the Business Contact |
| Primary User Name: |
| Phone: |
| Email: |

Unless otherwise specified on a Customer purchase order or below, Provider will send invoices to the Customer Business Contact address above.

| **Customer Invoice Name:** |
| Attention: |
| Address: |
| City, State, Zip: |
| Phone: |
| Email: |

Preferred method of receiving invoices: [ ] Email [ ] US Mail

<table>
<thead>
<tr>
<th>DETAILED SERVICE DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial Term (commencing on Effective Date):</strong></td>
</tr>
<tr>
<td>Three (3) Years</td>
</tr>
<tr>
<td>Renewal Term(s):</td>
</tr>
<tr>
<td>Three (3) Years</td>
</tr>
</tbody>
</table>

**CodeRED On-Demand Notification Service - Unlimited**

| Annual Notification Subscription Fee: | $22,000.00 |
| Initial Term Cost for Notification Service: | $66,000.00 |

**Additional Features**

- Commercially Available Data: Included
- Foreign Message Translation Subscription Fee: Included
- CodeRED Weather Warning Subscription Fee: Included
- IPAWS Submission App Subscription Fee: Included
- GIS Custom Map Subscription Fee: Included
- Initial Term Cost for all Additional Features: Included

| Annual Subtotal: | $22,000.00 |
| Initial Term Subtotal: | $66,000.00 |

May be paid in installments:

| Year 1: | $22,000.00 |
Year 2 $22,000.00
Year 3 $22,000.00

All amounts are stated in United States Dollars unless specifically indicated otherwise.

- GIS (Target Recipients by Geographic Location): City of Nashua, New Hampshire (the "Notification Area")
- Up to 89,999 Recipients. A deviation above 10% in the number of Recipients shall result in increased pricing at Provider's then-current rates.
- Annual Notification Subscription Fee includes Unlimited Message Units per year for Notifications sent via phone, SMS text or email.
- Provider reserves the right to increase the fees for any Renewal Term in an amount not to exceed five percent (5%) of the prior Initial Term or Renewal Term (as applicable).
Description of On-Demand Notification Service: The Service is an on-demand alerting and response software-as-a-service (SaaS) for the Notification Area. Use of the Service is by subscription and does not require Customer to purchase, install or maintain any dedicated hardware or software. The Service allows any Initiator to send a single alert to thousands of Contacts simultaneously via a combination of familiar communication devices including the ability to capture real-time responses.

Customer can access and activate the Service using any of the following methods:
- Web: log in 24/7/365 at https://www.onsolve.com/login/ to send alerts or to modify your account.
- Phone: call (866) 939-0911 for live operator assistance 24/7/365.

Description of Service. With subscription, Customer receives:
- Up to the number of Message Units stipulated on Service Order of the Agreement, which can be used as described on the Service Order and in Exhibit B.
- Unlimited messaging via email and to the CodeRED Mobile Alert App.
- "Message Unit" means:
  - Sixty (60) seconds or less of connected call time in the Service. As an example, a call connected for ninety (90) seconds shall be equal to two (2) Message Units
  - SMS messages that are 140 characters in length. SMS messages over 140 characters in length are separated into multiple Message Units.
- Transaction Fee (as defined on Exhibit B) for unlimited Service (for refund purposes only, where applicable) is equal to $0.09.
- Transaction Fee for Message Unit-based Service is equal to the Overage Message Unit price set forth on the Service Order
- Unlimited Initiators (those with role-based ability to access and activate the Service).
- Unlimited groups within accounts: A group is an alert distribution list.
- Standard upgrades. Standard upgrades include all maintenance releases.
- For optional features purchased (e.g. Conference Bridge, Bulletin Board) up to the number of Message Units stipulated on Service Order of the Agreement.
- Absent separate purchase of Commercially Available Data from Provider, Customer is responsible to provide data for use in the Service, and Provider shall not be responsible for Customer’s inability to use the Service due to Customer’s delay in providing data.
- Customer may purchase professional services ("Professional Services"), such as installations, implementations, software testing, custom modifications, data services or international training sessions from Provider. Professional Services will be described in a separate statement of work.

Contact List Maintenance. Provider provides multiple ways for Customer to enter and maintain the Contact list at no additional charge:
- Community Notification Enrollment ("CNE") Page (public self-registration): Contacts may sign up on the CNE Page and enrollment information will be transferred to Customer. Customer acknowledges and agrees that Provider may notify such individuals that their data will be transmitted to Customer, and that the transmission of such data to Customer may render it public record and is subject to Customer's privacy policies. Customer agrees that it will be solely responsible for providing such privacy policies to these individuals and that Provider shall not be responsible for the individual contribution of contact information through the CNE page.
- Contact Group Enrollment Page (internal self-registration): Customer's internal Contacts may sign up on the Contact Group Enrollment Page and enrollment information will be transferred to Customer.
- Customer agrees that it will, upon termination of the Agreement and Customer's request, provided all Fees are paid in full, transmit in Provider's standard format any Community Notification Enrollment data received on or after the Effective Date and all Contact Group Enrollment data, one (1) time, to Customer at no charge.
- Traditional Import: For its initial population of the Contact list, Customer may supply Provider with a spreadsheet (flat-file format) of Contact list data. Customer Support will scrub (examine) the submission as a courtesy for discernible data exceptions, or errors in formatting or content that might interfere with the proper loading of data or use of the Service. Provider generally updates data provided via traditional import within two (2) business days after receipt of such data. Customer may utilize this traditional flat-file import no more than one (1) time per year at no additional cost, unless otherwise set forth on the Service Order.
- On-Demand Entry: Customer may enter or edit Contact data directly within the Service through the User interface.

Customer Support. Provider provides Customer with 24/7/365 live phone support at no extra charge. Customer may dial (866) 939-0911, or the local support number provided to you by Provider. At Provider’s reasonable discretion, non-urgent after hours and off hours ("AHOH") inquiries may be deferred until conventional business hours to facilitate best handling.

Trainings. All training is customized and individual to the Customer. Provider training included with subscription at no extra charge:
- One (1) annual Initiator training session;
- Unlimited pre-recorded, web-based remote trainings
- New features training sessions; and
- Best practices feature training sessions (whenever applicable).

Provider Customer Support works with Customer to schedule training flexibly and to accommodate Customer’s schedule. All training is conducted via Web meeting/conference call.
Customer may request additional sessions, or onsite training in lieu of Web-based training. Such training is billable at a base $1,500 day rate (minimum half day fee applies). For any onsite training, Customer is responsible for all of Provider's reasonable and pre-approved travel/lodging/incidental expenses.

Support Documentation. Service documentation appears online. In addition to other online help documentation, Customer may download/print the current version of the Provider User Guide at any time.

Description of Additional Features. Customer may purchase (if set forth on the Services Order):

- **Commercially Available Data.** Provider shall include commercially available data (the "Commercial Data") for use by Customer in the Service. Provider will perform Commercial Data updates 3 to 4 times per year. Commercial Data is subject to licensing requirements that do not permit Provider to transfer ownership to Customer.

- **Foreign Message Translation.** All Notifications must be input in English. Once specified, languages may not be changed, absent execution of an updated Schedule 1. ONLY those Users that have opted-in to the Service will receive their selected FMT. Translation is supplied by a third party and is AS-IS.

- **CodeRED Weather Warning® (CRWW).** Includes automated Notifications generated from severe weather bulletins issued by the National Weather Service ("NWS"). CRWW Notifications are sent by matching the geographic locations associated with Users against the geographic polygon(s) associated with severe weather bulletins issued by NWS. CRWW Notifications are automatically launched 24 hours a day in response to the issuance of NWS severe weather bulletins. ONLY those Users that have opted-in to CRWW will receive CRWW Notifications. Consent for opt-in is required as set forth in the Agreement. CRWW Notifications are not deducted from Message Units.

- **Integrated Public Alert Warning System ("IPAWS") Submission App ("IPAWS App").** Permits Customer to submit Notifications to IPAWS. IPAWS Notifications may be reviewed by the Federal Emergency Management Agency ("FEMA") to determine appropriate dissemination. Initiators with access to the IPAWS App shall be authorized by FEMA to use IPAWS. In order to use the IPAWS App, Customer agrees to provide Provider, using best practices and secure means, with a copy of its IPAWS digital signature ("Signature") along with its associated keystore, Signature pass codes, application for IPAWS, and any other information reasonably requested by Provider. Customer authorizes Provider to use and keep such information on Provider’s servers for the purpose of allowing Customer and Provider to access, use and test IPAWS through the IPAWS App. Customer acknowledges and agrees that: (a) the dissemination of Notifications through IPAWS is not guaranteed nor controlled by Provider, and is the sole responsibility of FEMA; (b) Provider shall not be responsible or liable for the failure of Notifications to be disseminated through IPAWS; and (c) IPAWS may include additional features which are not supported through the IPAWS App (eg, the receipt of messages) and Provider shall not be required to provide such additional features. IPAWS App Notifications are not deducted from Message Units.

- **Bulletin Board.** Bulletin Board allows Customer to record messages by dialing an interactive voice response system. Customer may promote its assigned number, and callers may call to listen to the prerecorded messages. Bulletin Board will capture the caller's spoken responses and/or keypress information and provide a report in the Service. Upon termination or expiration of the Agreement, Provider will retain any numbers provided. Message Units for Bulletin Board will be deducted in sixty (60) second increments. All incoming calls whether made for the purpose of recording or listening to Notifications will result in call time deduction.

- **Conference Calling.** Conference lines are available on a first come, first serve basis. Conference lines are supplied by a third party and are AS-IS. Message Units for Conference Calling will be deducted in sixty (60) second increments. Each line invited into the call will result in call time deduction.

- **GIS Custom Map.** GIS information must be in a standard format recognizable and electronically transferable to the Service. A full GIS map must be provided by Customer for hosting by Provider in order to be used in the Service.
SCHEDULE 1 - FOREIGN MESSAGE TRANSLATION

Please select **Three (3)** languages.

<table>
<thead>
<tr>
<th>Selected Language</th>
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<tbody>
<tr>
<td>Catalan (Catalan)</td>
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<tr>
<td>Chinese (Simplified, PRC)</td>
</tr>
<tr>
<td>Chinese (Traditional, Hong Kong S.A.R.)</td>
</tr>
<tr>
<td>Chinese (Traditional, Taiwan)</td>
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<tr>
<td>Danish (Denmark)</td>
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<td>German (Germany)</td>
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<td>Japanese (Japan)</td>
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<td>Korean (Korea)</td>
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<td>Norwegian, Bokmal (Norway)</td>
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<td>Polish (Poland)</td>
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<td>Russian (Russia)</td>
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<tr>
<td>Spanish</td>
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<tr>
<td>Spanish (Mexico)</td>
</tr>
<tr>
<td>Spanish (Spain, International Sort)</td>
</tr>
<tr>
<td>Swedish (Sweden)</td>
</tr>
</tbody>
</table>

Additional Languages for FMT may be purchased in blocks of three (3) languages for $250/year, which shall not be prorated for any partial year.
Exhibit B

TERMS AND CONDITIONS

1. DEFINITIONS.

1.1. "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement, where "control" means the control, through ownership or contract, of more than 50% of all the voting power of the shares entitled to vote for the election of the entity's directors or members of the entity's governing body; provided that such entity shall be considered an Affiliate only for the time during which such control exists.

1.2. "API" means the application program interface for the Service.

1.3. "API Contacts" means an individual person whose information is stored in an external third party application database (not in the Service database) capable of only receiving and responding to Notifications. API Contacts are not permitted to log in to the Service. All API Contacts are included in Customer's total number of Contacts as set forth on the Service Order, whether or not they are transmitted to the Service.

1.4. "Applicable Law" means any domestic and/or foreign statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law, including US-EU Privacy Shield (where applicable).

1.5. "Contact" means an individual person capable of only receiving and responding to Notifications and, if permitted, updating its own profile. Contact includes API Contacts.

1.6. "Content" means content, data, text, messages and other material contained in a Notification.

1.7. "Data Processing Addendum" means Provider's data processing addendum (if applicable) that is executed by the Parties under this Agreement.

1.8. "Documentation" means any official, applicable documentation that Provider provides to Customer (electronic or written) regarding the Service.

1.9. "EU or Swiss Personal Data" means Standard Personal Information of any European Economic Area (EEA) resident as defined under the General Data Protection Regulation (EU 2016/679) ("GDPR") and any national laws implementing the GDPR, regulations and secondary legislation, or of any Swiss resident as defined under the Swiss Federal Data Protection Act and Data Ordinance 2017, each as amended or updated from time to time.

1.10. "Fees" means any fees due hereunder, including without limitation all Transaction Fees and Subscription Fees.

1.11. "Initiators(s)" means an individual person or application authorized to create and issue Notifications.

1.12. "Notification(s)" means messages issued by an Initiator through the Service, whether or not responded to by Contact.

1.13. "Sensitive Data" means any personally identifiable information relating to health/genetic or biometric information; religious beliefs or affiliations; political opinions or political party membership; labor or trade union membership; sexual preferences, practices or marital status; national, racial or ethnic origin; philosophical or moral beliefs; criminal record, investigations or proceedings or administrative proceedings; financial, banking or credit data; date of birth; social security number or other national id number, drivers' license information; or any other "sensitive data" category specifically identified under any Applicable Laws.


1.15. "Service Order" means the service order to which these Terms and Conditions are attached, which describes the specific Service to be provided to Customer.

1.16. "Standard Personal Information" means name, business contact details (work telephone number, cell phone number, e-mail address and office address and location), personal contact details (home telephone number, cell phone number, other telephone, e-mail address and physical address), geolocation, and employee ID or other non-identifying ID number.

1.17. "Subscription Fee" means the fees for access to and use of the Service, including any activation fees.

1.18. "Transaction Fee" means the fees for individual transactions of sending and/or receiving Notifications to and from devices.

1.19. "User" means, collectively, Initiator(s) and Contact(s).

2. SCOPE OF THE SERVICE.

2.1. Service. Subject to these Terms and Conditions (this "Agreement"), including the Exhibits attached hereto, Provider shall provide Customer with access to the Service in accordance with Provider's Documentation. Customer will not, and will not allow or assist any other entity to, sublicense, assign, transfer, distribute, rent or sell use or access to the Service, or remove, alter or obscure any product identification, copyright or other notices. Only Customer, its Affiliates' and their respective employees and agents may act as Initiators; all use of the Service by Customer, its Affiliates' and their respective employees and agents is subject to the restrictions set forth in this Agreement.

2.2. Ownership and Service Components. All rights not expressly granted to Customer herein are expressly reserved by Provider. The Service is and shall remain the exclusive property of Provider and its licensors. Customer represents and warrants it has the right and authority to provide Provider with the Content for use in connection with the Service and Provider agrees that Content shall be owned by Customer. Provider and its third-party providers shall have a royalty-free, worldwide, transferable, sub-licensable license to use the Content to perform the Service. Provider may gather Service data for the purpose of optimizing the Service. This information includes data regarding memory usage, connection speed and efficiency. Users are subject to Provider's terms of service and privacy policy available on Provider's website, www.onsolve.com/privacy-statement. Customer shall not, and shall not allow or assist any other entity to, create derivative works, modify, decrypt, disassemble, or otherwise reverse engineer or attempt to discover any source code or underlying ideas of any component of the Service, except to the extent that Applicable Law prohibits such restrictions. Customer agrees that any suggestions, enhancement requests, recommendations, or other improvements (collectively, "Feedback") provided by Customer to Provider may be incorporated by Provider into the Service. Feedback is provided without warranty of any kind. Customer grants Provider the right to copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate, and reformat the Feedback, and the right to sublicense such rights to others. No compensation will be paid with respect to the use of Feedback.
2.3. **Contact Limit.** During the term of the applicable Service Order and for a period of one (1) year thereafter, Provider shall have the right (at its own expense, upon reasonable notice, and no more frequently than once per calendar year unless prior breach has been uncovered) to inspect the number of Contacts. If Provider determines that Customer has exceeded the licensed number of Contacts, Customer shall pay Provider for the additional Contacts and the costs of such review within ten (10) days of Provider’s invoice.

3. **PAYMENT AND TAXES**

3.1. **Payment.** Customer shall pay the Fees as set forth on the Service Order to this Agreement without setoff or deductions, within thirty (30) days from the invoice date. Payment shall be in advance, excluding any Transaction Fees which will be billed in arrears. Unpaid balances will be subject to interest at a rate of one and a half percent (1.5%) per month or the highest rate permitted by Applicable Law, whichever is lower, commencing on the date that payment was due.

3.2. **Taxes.** In addition to the Fees, Customer agrees to pay any taxes (including any VAT or sales tax), whether foreign, federal, state, local or municipal that may be imposed upon or with respect to the Service exclusive of taxes on Provider’s net income.

3.3. **Message Surcharges.** Provider will not be liable to Customer, to any Contact or to any other person for any charges or fees that arise from sending or receipt of a Notification using the Service, including as a result of increases in pass-through charges by telecommunications providers.

4. **TERM AND TERMINATION**

4.1. **Initial Term and Renewal Term.** Unless earlier terminated in accordance with the terms of this Agreement, the Initial Term of this Agreement shall begin on the Effective Date and continue for the period set forth on the applicable Service Order. Upon completion of the Initial Term, Customer may renew this Agreement for successive renewal terms (each a “Renewal Term”) as set forth on the applicable Service Order, by providing any of the following to Provider prior to the end of the Initial Term or then-current Renewal Term: a signed Service Order for the Renewal Term (in electronic or hard copy format); a purchase order for payment for one additional year; or payment for one additional year.

4.2. **Termination.** If either party defaults in any of its material obligations under this Agreement and such default has not been cured within thirty (30) days after written notice of such default, or if either party makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent, is subject to appointment of a receiver or is a party in any proceeding in any jurisdiction to which it is subject that has an effect similar or equivalent to any of the events mentioned, the non-defaulting party may immediately terminate this Agreement in addition to its other rights and remedies.

4.3. **Suspension.** Provider may suspend the Service: (a) effective immediately upon notice if Customer breaches any provision under Section 5 (Customer Obligations); or (b) if payment for any portion of the Fees is not received by Provider within fifteen (15) days after receipt of written notice that payment is past due. Such suspension shall not modify or lengthen the term of this Agreement or any then current Service Order, nor shall any rights or obligations hereunder be waived during the suspension period.

4.4. **Effects of Termination.** Upon termination or expiration of this Agreement: (i) Provider will, upon written request of Customer, erase Customer data from the production servers controlled by Provider, except that: (a) any data stored on Provider’s backup servers shall be deleted as soon as technically feasible, and in any event within ninety (90) days from deletion from production, and Provider agrees that it (1) shall discontinue processing such data; and (2) shall maintain the confidentiality of such data in accordance with this Agreement; and (b) Provider may retain report data (e.g., date/time of Notification and number of Notifications sent) necessary to support its billing and accounting records; (ii) Customer will immediately pay to Provider all amounts due and payable for Services delivered prior to the date of termination; (iii) Customer shall immediately cease all use of the Service and return or destroy all copies, extracts, derivatives and reflections of the Service, and, upon Provider’s request, provide written notice that Customer has fully complied with this clause, and (iv) remedies for breach, rights to accrued payments and Sections 1 (Definitions), 2.2 (Ownership and Service Components), 2.3 (Contact Limit), 3.2 (Taxes), 4.4 (Effects of Termination), 5 (Customer Obligations), 6 (Confidentiality and Security), 8 (Indemnification and Responsibility), 9 (Limitation of Liability), and 10 (General) will survive. Upon termination of this Agreement for Customer’s breach: (a) Customer will immediately pay to Provider all unpaid Fees that would become due under the then-current term if such termination did not occur; and (b) Provider shall retain any Fees paid to date. Upon termination of this Agreement for Provider’s breach, Provider will refund an amount equal to the prorated amount of Fees paid for the remainder of the then current term, less any expenses for transactions completed prior to the date of termination, which shall be calculated based upon the Transaction Fees.

5. **CUSTOMER OBLIGATIONS**

5.1. **Customer Obligations.** The Service is subject to pass-through terms from certain telephony, facsimile, GIS and/or Short Message Service (SMS) vendors and as such, Provider may modify these terms upon thirty (30) days written notice to Customer if reasonably necessitated due to changes in services by the third-party providers. Failure to comply with these terms could result in the termination of certain critical services from Provider’s vendors which would impact all of Provider’s customers.

5.2. **Acceptable Use Policy.** Customer will use the Service in accordance with all Applicable Laws and the Acceptable Use Policy attached to the Agreement as Exhibit C.

5.3. **Data Security.** Customer acknowledges and agrees that Provider does not require or “pull” any specific data from Customer; that Customer controls which data and Content is input through the Service and which data is sent and to whom such data is sent; that Provider only specifically tracks the privacy regulations of the United States, Canada, and the European Economic Area, Switzerland and Japan with respect to the Standard Personal Information and shall have no obligations with respect to privacy regulations in other countries or for other types of data. Accordingly: (i) Customer shall not under any circumstances, transmit or store any Sensitive Data to or through the Service; and (ii) Customer shall not transmit or store any EU or Swiss Personal Data to or through the Service unless: (a) Customer is certified under the US-EU Privacy Shield Framework and complies with the Privacy Shield’s principles in connection with the protection and handling of its Standard Personal Information or Customer hereby represents to Provider that its protection and handling of Standard Personal
6. CONFIDENTIALITY AND SECURITY.

6.1. Confidential Information. During the course of this Agreement, each party may have access to confidential, proprietary or trade secret information disclosed by the other party, including, without limitation, ideas, trade secrets, procedures, methods, systems, and concepts, whether disclosed orally or in writing or stored within the Service, or by any other media (“Confidential Information”). Any information related to the Service, including Documentation, security information, and API information, shall be deemed to be Confidential Information of Provider, and any Content shall be deemed to be Confidential Information of Customer. Each party (the “Receiving Party”) acknowledges that the Confidential Information of the other party (the “Disclosing Party”) contains valuable trade secrets and other proprietary information of the Disclosing Party and that any such Confidential Information will remain the sole and exclusive property of the Disclosing Party. Each party will use Confidential Information only for the purpose of performing under this Agreement, restrict disclosure of Confidential Information arising from (i) any gross negligence or willful misconduct by Provider; or (ii) any breach of Section 6 by Provider.

6.2. Security. Provider has put in place commercially reasonable information security procedures designed to protect and prevent unauthorized access to Content and Contact data. Provider will only process Content in accordance with the terms and conditions of this Agreement and Customer’s instructions. Provider’s security procedures include physical security, network security, hosted/data security and web security. Provider may modify its security procedures from time to time in accordance with changes to industry standards, but only in a manner that retains or increases the stringency of Provider’s security obligations.

7. REPRESENTATIONS AND DISCLAIMER

7.1. Mutual Representations. Each party represents and warrants that: (i) it has the full corporate right, power and authority to enter into this Agreement, to grant the rights granted hereunder and to fully perform its obligations under this Agreement; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations hereunder, does not and will not violate or conflict with any agreement to which such party is a party or by which it is otherwise bound; and (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

7.2. Additional Provider Representations. Provider represents and warrants that: (i) the Service will conform in all material respects to Applicable Law, Provider’s Documentation; and (ii) all customer support, training and other services to be performed hereunder shall be performed in a professional and workmanlike manner consistent with industry standards.

7.3. Disclaimer. Provider makes no representation, warranty or guaranty, that the Service will work with, or be supported by, all protocols, networks, operating systems or environments; will be error-free, or that all Notifications will be delivered. Customer acknowledges and agrees that the Service is provided on a best efforts basis and is not designed, intended, authorized or warranted to be suitable for hosting life-support or EMT-based applications or other critical applications where the failure or potential failure of the Service can cause injury, harm, death, or other grave problems, including delays in getting medical care or other emergency services, and that any use of the Service to support such applications is fully at Customer’s risk and Customer acknowledges that Provider will not have any liability for issues related to such use. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTY OF ANY KIND. PROVIDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY OR OTHERWISE, REGARDING THE SERVICE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. INDEMNIFICATION AND RESPONSIBILITY

8.1. Provider General Indemnification. Provider will defend, indemnify, and hold harmless Customer and its employees (“Customer Indemnities”) from and against any and all third party actions, losses, awards, liabilities, claims, expenses, damages, settlements, fees, penalties and costs of every kind and description, including reasonable legal fees and government regulatory fines (collectively, "Losses"), arising from or relating to: (i) any gross negligence or willful misconduct by Provider; or (ii) any breach of Section 6 by Provider.

8.2. Provider IP Indemnification. Provider will defend, indemnify, and hold harmless the Customer Indemnities from and against all Losses arising out of a claim that the Service directly infringes a copyright or patent issued as of the Effective Date, or other intellectual property right of a third party. The foregoing obligation of indemnification does not apply where: (a) Customer’s use of the Service is not in compliance with the terms of this Agreement; or (b) Customer has modified the Service or any part thereof without Provider’s express, written
authorization; (c) Customer has combined the Service with software, hardware, system, data, or other materials not supplied or authorized by Provider where the infringement or misappropriation relates to such combination, unless Provider expressly authorized such combination or the combination was provided for in the Documentation; (d) the Loss is as a result of Content or Contact data; or (e) Customer continues use of the Service after being provided modifications that would have avoided the alleged infringement. In the event Provider believes that the Service is, or is likely to be, the subject of an infringement claim, Provider may, at its option, (1) procure for Customer the right to continue using the Service under this Agreement, (2) replace or modify the Service so that it becomes non-infringing but substantially equivalent in functionality and performance, or (3) if neither clause (1) or (2) are feasible in spite of Provider’s reasonable efforts, terminate this Agreement and refund a prorated portion of the Subscription Fees based on the days left in the Initial Term or then-current Renewal Term, less any expenses for usage accrued prior to the date of termination. The foregoing obligations are Provider’s only obligations and liability in connection with infringement by the Service.

8.3. Customer Indemnification. Customer agrees to indemnify, defend and hold harmless Provider and its Affiliates, licensors and suppliers from and against all Losses arising out of: (i) Customer’s breach of Sections 5 and 8, (ii) third party claims that Customer’s Content infringes on any intellectual property rights; or (iii) Customer’s gross negligence or willful misconduct.

8.4. Indemnification Procedures. Each party seeking indemnification hereunder shall provide the other party with: (i) prompt written notice of any Claim for which indemnification is sought; (ii) complete control of the defense and settlement of such claim; and (iii) reasonable assistance and cooperation in such defense at the indemnifying party’s expense. In any proceeding the indemnified party shall have the right to retain, at its expense, its own counsel. Notwithstanding the foregoing, the indemnifying party may not enter into a settlement of a claim that involves a remedy other than the payment of money by the indemnified party (which amounts must be subject to indemnification by the indemnifying party) without the indemnified party’s written consent.

9. LIMITATION OF LIABILITY

9.1. Limitation on Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO BREACH OF SECTION 5.2 OR SECTION 5.3 (CUSTOMER OBLIGATIONS) OR SECTION 6 (CONFIDENTIALITY AND SECURITY) OR ANY OBLIGATIONS UNDER SECTION 6 (INDEMNIFICATION AND RESPONSIBILITY): (a) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY LOSS OF DATA, REVENUES, PROFITS OR OTHER ECONOMIC ADVANTAGE, OR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR OTHER SIMILAR DAMAGES OF ANY KIND OR NATURE, (HOWEVER ARISING, INCLUDING NEGLIGENCE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SERVICE OR THIS AGREEMENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (b) IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF EITHER PARTY, ITS AFFILIATES AND ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS EXCEED TWO (2) TIMES THE FEES ACTUALLY PAID OR PAYABLE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH SUCH CLAIM AROSE.

10. GENERAL

10.1. Force Majeure. Neither party shall be responsible for delays or failures of performance resulting from acts beyond the reasonable control of such party, including acts of God, acts of war, riots, acts of terror and other acts or omissions of third parties such as interruptions, delays, or malfunctions of service by third-party service providers.

10.2. Dispute Resolution. Each party to this Agreement agrees that any dispute arising under this Agreement shall be submitted, to non-binding mediation according to the rules and regulations of, and administered by, the commercial mediation division of the American Arbitration Association, and that any agreement which is executed by both parties during such mediation may be enforced in any court of competent jurisdiction. Notwithstanding herein, either party may seek injunctive relief and the enforcement of judgments in any court of competent jurisdiction, no matter where located. If either party engages attorneys to enforce any rights out of or relating to this Agreement, the prevailing party in any action to enforce or interpret this Agreement shall be entitled to recover all and costs and expenses of any nature including, without limitation, attorneys’ and experts’ fees, whether in arbitration, a court of first jurisdiction and any courts of appeal.

10.3. Governing Law/Venue. This Agreement shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this Agreement shall be brought in Hillsborough County of New Hampshire Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court of Nashua and not elsewhere.

10.4. Publicity. For the duration of this Agreement, Provider may use Customer’s name and logo on the Provider web site and in Provider’s collateral marketing materials identifying Customer as a purchaser of the Service. If Provider’s expected use of Customer’s name and/or logo includes more than basic identification of Customer, Provider shall provide Customer with a copy of such content for approval. Such approval not to be unreasonably withheld.

10.5. Survival of Terms. The rights and obligations of either party that by their nature would continue beyond the termination or expiration of this Agreement shall survive termination or expiration of this Agreement. For example, the provisions of this Agreement regarding indemnification and/or limitation of liability shall survive termination of this Agreement as to any cause of action arising under the Agreement.

10.6. Independent Contractor. Provider’s relationship with Customer shall be that of an independent contractor, and nothing in this Agreement shall be construed to create a partnership, joint venture, principal-agent, or employee-employee relationship. Neither party will have or represent that it has the right, power or authority to bind, contract or commit the other party or to create any obligation on behalf of the other party.
10.7. Severability. If any term or provision of this Agreement or the application thereof is to any extent held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision hereof shall be valid and enforced to the fullest extent of the law.

10.8. Entire Agreement. This Agreement constitutes the entire agreement and understanding between Customer and Provider with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written negotiations, agreements and understandings, if any, between the parties. This Agreement cannot be modified except by a writing signed by an authorized representative of each party. The terms of this Agreement shall take precedence over any conflicting terms in purchase or procurement documentation, such as a purchase order, acknowledgement form, or other similar documentation and any pre-printed terms and conditions or on or attached to Customer’s purchase orders or invoices will be of no force or effect. The failure of either party to enforce any provision of this Agreement, unless waived in writing by such party, will not constitute a waiver of that party’s right to enforce that provision or any other provision of this Agreement.

10.9. Notice. All notices and consents required or permitted under this Agreement must be in writing; must be personally delivered or sent by registered or certified mail (postage prepaid), by overnight courier or other nationally recognized carrier, or by facsimile (receipt confirmed), in each case to Provider’s address on the Service Order, Attn: Legal, and to Customer’s Business Contact on the Service Order, and will be effective upon receipt. Each party may change its address for receipt of notices by giving notice of the new address to the other party.

10.10. Counterparts. This Agreement may be executed in facsimile and in counterparts.

10.11. Export Compliance. The Service and other Provider technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Customer represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use the Service in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation, and will not permit any U.S.-sanctioned persons or entities to act as Users.

10.12. U.S. Government End Users. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all software and accompanying documentation provided in connection with this Agreement are “commercial items,” “commercial computer software,” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by the terms of this Agreement. Customer will ensure that each copy used or possessed by or for the government is labeled to reflect the foregoing.

10.13. Assignments. Neither party may assign this Agreement without the prior written consent of the other party, except to an Affiliate or an entity that acquires all or substantially all of its business or assets, whether through merger, reorganization or otherwise. Any assignment in violation of the foregoing shall be void and of no effect.

10.14. Non-Appropriation. Customer may terminate this Agreement at the end of Customer’s then-current fiscal year by providing a minimum of thirty (30) days’ prior written notice, provided that: (1) funds for this Agreement are not appropriated by the Customer for the Service or any similar or competing service; or (2) funds for this Agreement that are or were to be provided by grant or through an outside funding source are withheld, denied, or are otherwise not available to the Customer. In the event of a termination under this paragraph, Provider will retain all Fees paid to date. Customer will immediately pay to Provider all amounts due and payable through the date of termination, and Provider agrees to waive all unpaid Subscription Fees that would become due after the termination date.

PROVIDER: ONSOLVE, LLC
CUSTOMER: CITY OF NASHUA, NEW HAMPSHIRE

Signed:_____________________________  Signed:_____________________________
Printed Name:_____________________  Printed Name:_____________________
Title:______________________________  Title:___________________________
Date:______________________________  Date:__________________________

Executed for Exhibits B and C
1. General Terms.
   1.1 All Content is Customer's sole responsibility. Customer is solely responsible for the integrity and quality of the Content. Customer shall be responsible for, and under no circumstances will Provider or its Affiliates or any of their licensors or suppliers be responsible, for any loss, damage or liability arising out of any Content, including any mistakes contained in the Content or the use or subject matter of the Content. Further, Customer is responsible for: (i) any Notifications that are sent through its accounts (other than if caused by the Service itself or breaches by Provider); (ii) all Fees accruing from the use of the Service through its account, whether by its Affiliates and its and its employees and consultants; and (iii) all actions of its Affiliates, and its and their employees consultants, as if such actions had been conducted by Customer.
   1.2 Customer shall be responsible for procuring any necessary consents or having other legal basis to contact Contacts with respect to the provision of any data transmitted through the Service.
   1.3 Customer shall use any data it uploads into the Service in accordance with any and all restrictions applicable to such data and all Applicable Laws.
   1.4 Customer will use and permit its Users to use the Service in accordance with this Agreement and all Applicable Laws, including the Telephone Consumer Protection Act, Fair Debt Collections Practices Act, Federal Communications Commission ("FCC") or Federal Trade Commission ("FTC") rules or regulations and any and all other Applicable Laws related to pre-recorded telephone and/or text messages and the use of automated dialing equipment.
   1.5 Customer will include, at the beginning of each Notification, its official business or government name. Customer will include, at the end of each Notification, a telephone number for Customer.
   1.6 Customer will not send any Notifications to mobile devices owned by a Contact unless Customer has obtained such Contact's "opt-in" consent to receive, or Customer has other legal basis to send such Contact, pre-recorded, telephone and text Notifications using automated dialing equipment.
   1.7 Customer must provide Contacts with a simple mechanism for opting out or unsubscribing from receiving Notifications, including information on how to "opt-out" or unsubscribe.
   1.8 Customer will not send Notifications to phone numbers that are emergency numbers and/or other numbers that may not be called using automated dialing equipment under Applicable Law.
   1.9 Customer's total Notifications to an individual Contact will not exceed an average of one (1) Notification per day (via any contact method), absent an emergency or a specific use case for the Contact. Should Customer exceed this fair use, the parties will meet to discuss the reasons, review best practices and determine if an adjustment to Customer's Service plan is necessary. Due to vendor requirements for ensuring Notifications sent by the Service are not blacklisted, Customer shall adhere to this fair use policy.
   1.10 Customer will not send any Content that it knows, or has reason to know: (i) infringes another's rights in intellectual property; (ii) invades any privacy laws including without limitation another's right to privacy and/or any privacy policies of Customer or any third-party; and/or (iii) justifies a complaint to the FCC and/or FTC.
   1.11 Customer will not, and will not permit its Users or any third parties to: (i) engage or facilitate any unethical, deceptive or misleading practices in connection with the use of the Service; (ii) use the Service in connection with any telemarketing, solicitations, donations, sales, spamming or any unsolicited messages (commercial or otherwise); and/or (iii) provide Content to be transmitted in the Service which: (a) is defamatory, libelous, obscene, pornographic, or is otherwise harmful; (b) promotes violence, discrimination, illegal activities, gambling, alcoholic beverages, guns or tobacco; and/or (c) contains or otherwise links to viruses, worms, cancelbots or any other harmful code or computer programs designed to disrupt the functionality of any computer software or hardware or telecommunications equipment.
   1.12 Customer acknowledges and agrees that Notifications may not be delivered to the phone if not in range of a transmission site, or if sufficient network capacity is not available at a particular time. Even within a coverage area, factors beyond the control of the carrier may interfere with message delivery, including the Customer's equipment, terrain, proximity to buildings, foliage, and weather. Customer acknowledges that urgent Notifications may not be timely received and that the carrier does not guarantee that messages will be delivered.
   1.13 Customer acknowledges that Provider may block Notifications (e.g., based on instructions from Contacts, carriers, aggregators, government agencies, etc.).
   1.14 Customer agrees to maintain all security regarding its (and its Users') account ID, password, and connectivity with the Service. If Customer's account ID or password are stolen, or otherwise compromised Customer is obligated to immediately change the password and inform Provider of the compromise.

EXHIBIT C
ACCEPTABLE USE POLICY

1. General Terms.
   1.1 All Content is Customer's sole responsibility. Customer is solely responsible for the integrity and quality of the Content. Customer shall be responsible for, and under no circumstances will Provider or its Affiliates or any of their licensors or suppliers be responsible, for any loss, damage or liability arising out of any Content, including any mistakes contained in the Content or the use or subject matter of the Content. Further, Customer is responsible for: (i) any Notifications that are sent through its accounts (other than if caused by the Service itself or breaches by Provider); (ii) all Fees accruing from the use of the Service through its account, whether by its Affiliates and its and its employees and consultants; and (iii) all actions of its Affiliates, and its and their employees consultants, as if such actions had been conducted by Customer.
   1.2 Customer shall be responsible for procuring any necessary consents or having other legal basis to contact Contacts with respect to the provision of any data transmitted through the Service.
   1.3 Customer shall use any data it uploads into the Service in accordance with any and all restrictions applicable to such data and all Applicable Laws.
   1.4 Customer will use and permit its Users to use the Service in accordance with this Agreement and all Applicable Laws, including the Telephone Consumer Protection Act, Fair Debt Collections Practices Act, Federal Communications Commission ("FCC") or Federal Trade Commission ("FTC") rules or regulations and any and all other Applicable Laws related to pre-recorded telephone and/or text messages and the use of automated dialing equipment.
   1.5 Customer will include, at the beginning of each Notification, its official business or government name. Customer will include, at the end of each Notification, a telephone number for Customer.
   1.6 Customer will not send any Notifications to mobile devices owned by a Contact unless Customer has obtained such Contact's "opt-in" consent to receive, or Customer has other legal basis to send such Contact, pre-recorded, telephone and text Notifications using automated dialing equipment.
   1.7 Customer must provide Contacts with a simple mechanism for opting out or unsubscribing from receiving Notifications, including information on how to "opt-out" or unsubscribe.
   1.8 Customer will not send Notifications to phone numbers that are emergency numbers and/or other numbers that may not be called using automated dialing equipment under Applicable Law.
   1.9 Customer's total Notifications to an individual Contact will not exceed an average of one (1) Notification per day (via any contact method), absent an emergency or a specific use case for the Contact. Should Customer exceed this fair use, the parties will meet to discuss the reasons, review best practices and determine if an adjustment to Customer's Service plan is necessary. Due to vendor requirements for ensuring Notifications sent by the Service are not blacklisted, Customer shall adhere to this fair use policy.
   1.10 Customer will not send any Content that it knows, or has reason to know: (i) infringes another's rights in intellectual property; (ii) invades any privacy laws including without limitation another's right to privacy and/or any privacy policies of Customer or any third-party; and/or (iii) justifies a complaint to the FCC and/or FTC.
   1.11 Customer will not, and will not permit its Users or any third parties to: (i) engage or facilitate any unethical, deceptive or misleading practices in connection with the use of the Service; (ii) use the Service in connection with any telemarketing, solicitations, donations, sales, spamming or any unsolicited messages (commercial or otherwise); and/or (iii) provide Content to be transmitted in the Service which: (a) is defamatory, libelous, obscene, pornographic, or is otherwise harmful; (b) promotes violence, discrimination, illegal activities, gambling, alcoholic beverages, guns or tobacco; and/or (c) contains or otherwise links to viruses, worms, cancelbots or any other harmful code or computer programs designed to disrupt the functionality of any computer software or hardware or telecommunications equipment.
   1.12 Customer may send SMS Texts in text format only.
   1.13 Customer acknowledges and agrees that Notifications may not be delivered to the phone if not in range of a transmission site, or if sufficient network capacity is not available at a particular time. Even within a coverage area, factors beyond the control of the carrier may interfere with message delivery, including the Customer's equipment, terrain, proximity to buildings, foliage, and weather. Customer acknowledges that urgent Notifications may not be timely received and that the carrier does not guarantee that messages will be delivered.
   1.14 Customer acknowledges that Provider may block Notifications (e.g., based on instructions from Contacts, carriers, aggregators, government agencies, etc.).
   1.15 Customer agrees to maintain all security regarding its (and its Users') account ID, password, and connectivity with the Service. If Customer's account ID or password are stolen, or otherwise compromised Customer is obligated to immediately change the password and inform Provider of the compromise.
May 30, 2019
Memo #19-150

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CSO FLOW MONITORING SERVICES – AMENDMENT #2 (VALUE: $56,100)
DEPARTMENT: 169 WASTEWATER, FUND: WASTEWATER

Please see the attached communication from David L. Boucher, Superintendent Wastewater Department dated May 23, 2019 for the information related to this contract.

Pursuant to § 5-84 Special purchase procedures A. (7) Purchases under extensions of contracts when no price increase exceeds 10% per year.

The Superintendent Wastewater Department, the Board of Public Works (May 23, 2019 meeting) and the Purchasing Department recommend the award of this contract in an amount of $56,100 to Flow Assessment Services of Auburn, NH.

Respectfully,

[Signature]
Dan Kooker
Purchasing Manager

Cc: D Boucher L Fautuex
City of Nashua, Public Works Division

To: Board of Public Works               Meeting Date: May 23, 2019

From: David L. Boucher, Superintendent
       Wastewater Department

Re: Combined Sewer Overflow Flow Monitoring Program

F. Motion: To approve Amendment No.2 in the amount of $56,100 to the contract with Flow Assessment of Auburn, NH for the Combined Sewer Overflow Monitoring Program. Funding will be through Department: 169 - Wastewater; Fund: Wastewater; Account Classification: 53 Professional Services.

Attachments: Flow Assessment Cost Proposal

Discussion: The Combined Sewer Overflow (CSO) Monitoring Program monitors flow at all of the CSO discharge structures and three rain gauges throughout the City. The data collected provides information for reporting to the USEPA and the NH Dept. of Environmental Services as required by the National Pollutant Discharge Elimination System (NPDES) permit for the Wastewater Treatment Facility.

The current contract with Flow Assessment is scheduled to end on June 30, 2019. They have provided excellent reporting and a user friendly web site. Their equipment is already in place and will remain so until the new contract starts. It is beneficial to the City to continue with this service provider due as there are not many service providers in this field and we have not been successful with a past service provider. Hence it is recommended that they be awarded a new one-year contract. The total cost for monitoring all the CSO sites is $56,100, which is the same as last year's costs.
April 17, 2019

Attn: William Keating

Re: Continuation of contract for CSO Flow Monitoring, Data Analysis & Alarming

Dear Bill,

Please find below the scope and fee schedule for the extension of the CSO Flow Monitoring and Data Analysis. The extension duration of this project would start on July 1, 2019 and continue until June 30, 2020. This project can be extended at a rate of $56,100.00 per year (billed at $4,675.00 per month).

Thanks very much for the opportunity to continue working with the City of Nashua on your CSO monitoring program. Please give us a call if you have any questions regarding the proposal.

FEE SCHEDULE

<table>
<thead>
<tr>
<th>Item #</th>
<th>Description of Tasks</th>
<th>Total Quantity</th>
<th>Unit Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Operation, Maintenance &amp; Rental (Including Monthly Data Analysis, Data Web Hosting and Cellular Charges) 11 Sites x 12 Months = 132 Site Months</td>
<td>132 Site Months</td>
<td>$425.00</td>
<td>$56,100.00</td>
</tr>
</tbody>
</table>

Best regards,
Flow Assessment Services, LLC

Paul P. Casey
Managing Partner
AMENDMENT No.2
TO
CONTRACT FOR INDEPENDENT CONTRACTOR
CSO FLOW MONITORING
BETWEEN
CITY OF NASHUA
AND
FLOW ASSESSMENT SERVICES, LLC

This AMENDMENT No. 2, dated ____________ is attached to and made part of the CONTRACT FOR INDEPENDENT CONTRACTOR between the City of Nashua, New Hampshire and Flow Assessment, LLC for CSO Flow Monitoring dated January 5, 2018 (“AGREEMENT”).

WHEREAS, Section 30 of the AGREEMENT’s General Terms and Conditions allows for written amendments to the Agreement when signed by both parties;

WHEREAS, Section 3 of the AGREEMENT states the period of performance is from January 1, 2018 to June 30, 2018 and Section 4 describes compensation; and

WHEREAS, both parties wish to extend the term and renew the pricing for an additional year.

NOW, therefore, in consideration of the mutual covenants contained herein, the parties hereby mutually agree as follows:

1. That the period of performance of the AGREEMENT shall be extended for one (1) year commencing on July 1, 2019 and terminating on June 30, 2020.

2. INDEPENDENT CONTRACTOR agrees to perform the work, under this AMENDMENT No. 2, in accordance with Fee Schedule, attached, for a total cost not to exceed FIFTY-SIX THOUSAND ONE HUNDRED DOLLARS ($56,100.00).

3. All other terms and conditions of the AGREEMENT shall remain in force until the completion of the work authorized under this AMENDMENT No. 2.

4. This AMENDMENT No. 2, with attachments, along with the AGREEMENT and AMENDMENT No. 1 dated July 18, 2019, constitutes the entire AGREEMENT and understanding between the parties and supersedes all prior agreements and understandings relating hereto.
AMENDMENT No. 2
TO
CONTRACT FOR INDEPENDENT CONTRACTOR
CSO FLOW MONITORING
BETWEEN
CITY OF NASHUA
AND
FLOW ASSESSMENT SERVICES, LLC

OWNER:  INDEPENDENT CONTRACTOR

City of Nashua, NH (signature)  Flow Assessment Services, LLC (signature)

James Donchess, Mayor  (Printed Name and Title)

Date  Date
May 30, 2019
Memo #19-151

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: 2019 PAVEMENT MARKINGS CONTRACT – CHANGE ORDER 1 (VALUE: $82,000)
DEPARTMENT: 161 STREETS; FUND: PRIOR YEAR ESCROW

Please see the attached communication from Jon Ibarra, Superintendent Street Department, dated May 23, 2019 for information related to this purchase.

The Superintendent of Street Department, Board of Public Works (May 23, 2019 meeting) and the Purchasing Department recommend the award of Change Order 1 in an amount of $82,000 to Hi-Way Safety Systems of Rockland, MA.

Respectfully,

Dan Kooken
Purchasing Manager

Cc: J Ibarra    L Fauteux
City of Nashua, Public Works Division

To:            Board of Public Works  
Meeting Date:  May 23, 2019

From:        Jon Ibarra, Superintendent  
Street Department

Re:           2019 Pavement Markings Program  
Change Order No. 1

A. Motion:  To approve Change Order No. 1 to the 2019 Pavement Markings Contract with Highway Safety of Rockland, MA in the amount of $82,000. Funding for this contract will be through Department 161: Streets; Fund: Prior Year Escrow; Account Classification: 54 Other Services.

Attachment: Change Order No. 1

Discussion: Highway Safety was awarded a $162,000 contract in the last contract and continues to provide prompt professional service to the City of Nashua.

This Change Order No. 1, in the amount of $82,000, is to add additional striping, including bike routes. This Change Order 1 results in a revised total contract amount of $244,000.
CHANGE ORDER

No.1

PROJECT: Pavement Markings Program

DATE OF ISSUANCE: May16, 2019    EFFECTIVE DATE: Upon City Approval

OWNER: City of Nashua, NH

OWNER’s PURCHASE ORDER NO.: 134421

CONTRACTOR: Hi-Way Safety Systems

SUPERINTENDENT: Jon Ibarra - DPW Street Department

You are directed to make the following changes in the Contract Documents:

➢ To add additional quantities;
➢ To set a fixed per unit cost for the period July 1, 2019 through June 30, 2019

CHANGE IN CONTRACT PRICE

<table>
<thead>
<tr>
<th>Original Contract Price</th>
<th>$162,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net changes from previous Change Orders</td>
<td>$0.00</td>
</tr>
<tr>
<td>Contract Price prior to this Change Order</td>
<td>$162,000</td>
</tr>
<tr>
<td>Net increase (decrease) of this Change Order</td>
<td>$82,000</td>
</tr>
<tr>
<td>Contract Price with all approved Change Orders</td>
<td>$244,000</td>
</tr>
</tbody>
</table>

RECOMMENDED:
By: [Signature]
Superintendent
(Authorized Signature)
Date: 5/16/19

ACCEPTED:
By: [Signature]
Contractor
(Authorized Signature)
Date: 

APPROVED:
By: [Signature]
Owner
(Authorized Signature)
Date: 

Change Order #1
Hi Way Safety - Pavement Markings
## HIWay Safety Systems, Inc.

9 Rockview Way  
Rockland MA 02370  
Tel: 781-982-0220 Fax 781-982-4220

---

**Customer:** Nashua NH  
**Job Location:** Nashua NH - 2019 Quote  
**Date:** 05/17/2019  
**Estimate:** 230542

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Est. Qty</th>
<th>Units</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOTE 4</td>
<td>3% Increases per Extension year 2021, 2022 and 2023</td>
<td>0</td>
<td>BF</td>
<td>0.00000</td>
<td>$0.00</td>
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<tr>
<td>600.54</td>
<td>SOLID RED PAINT</td>
<td>0</td>
<td>EA</td>
<td>0.00000</td>
<td>$0.00</td>
</tr>
<tr>
<td>000.55CS</td>
<td>SINGLE LINED CAR STALL PAINT</td>
<td>0</td>
<td>EA</td>
<td>4.50000</td>
<td>$0.00</td>
</tr>
<tr>
<td>032.02</td>
<td>PAVEMENT MARKING SYMBOL OR WORD PAINT</td>
<td>0</td>
<td>SF</td>
<td>1.75000</td>
<td>$0.00</td>
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<tr>
<td>032.0112</td>
<td>12&quot; WHITE PAINT</td>
<td>0</td>
<td>LF</td>
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<td>$0.00</td>
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<tr>
<td>832.041</td>
<td>4&quot; WHITE PAINT HANDWORK</td>
<td>0</td>
<td>LF</td>
<td>0.24000</td>
<td>$0.00</td>
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<tr>
<td>832.0104</td>
<td>4&quot; WHITE / YELLOW PAINT TRUCKMOUNTED</td>
<td>0</td>
<td>LF</td>
<td>0.04000</td>
<td>$0.00</td>
</tr>
<tr>
<td>890.04</td>
<td>4&quot; WHITE / YELLOW EPOXY HANDWORK</td>
<td>0</td>
<td>LF</td>
<td>1.00000</td>
<td>$0.00</td>
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<tr>
<td>888.04</td>
<td>4&quot; WHITE / YELLOW EPOXY TRUCKMOUNTED</td>
<td>0</td>
<td>LF</td>
<td>0.30000</td>
<td>$0.00</td>
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<tr>
<td>688.E</td>
<td>BIGE STENCIL WITH ARROW/HARROW EPOXY</td>
<td>0</td>
<td>EA</td>
<td>100.00000</td>
<td>$0.00</td>
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<tr>
<td>688.5LC8</td>
<td>SINGLE LINED CAR STALL EPOXY</td>
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<td>$0.00</td>
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<tr>
<td>032.3112</td>
<td>12&quot; WHITE THERMO</td>
<td>0</td>
<td>LF</td>
<td>1.76000</td>
<td>$0.00</td>
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<tr>
<td>032.33</td>
<td>PAVEMENT MARKING SYMBOL OR WORD THERMOPLASTIC (DOESN'T INCLUDE PREFORMED THERMO)</td>
<td>0</td>
<td>BF</td>
<td>0.00000</td>
<td>$0.00</td>
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<tr>
<td>032.3104</td>
<td>4&quot; WHITE / YELLOW THERMOPLASTIC</td>
<td>0</td>
<td>LF</td>
<td>0.41000</td>
<td>$0.00</td>
</tr>
<tr>
<td>032.2</td>
<td>PAVEMENT MARKING REMOVAL/GROUNDING</td>
<td>0</td>
<td>LF</td>
<td>1.00000</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

**PLEASE NOTE:** Unit Pricing will prevail. The above quantities are for estimate purposes only.

**Total:** $0.00

*** PLEASE SIGN & FAX BACK IF YOU'D LIKE TO SCHEDULE ***

---

Signature  
Date
TO:             MAYOR DONCHESS
                    FINANCE COMMITTEE

SUBJECT:     CONTRACT EXTENSION FOR SINGLE STREAM RECYCLING (VALUE: $400,000)
                    DEPARTMENT: 168 SOLID WASTE; FUND: SOLID WASTE

Please see the attached communication from Jeff Lafleur, Solid Waste Department Superintendent dated May 23, 2019 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 Solid Waste Department Superintendent, Board of Public Works (May 23, 2019 meeting) and the Purchasing Department recommend the award of this contract extension in an amount of $400,000 to Casella Recycling LLC of Charlestown, MA.

Respectfully,

/Dan Kooker
Purchasing Manager

Cc: J Lafleur     L Fauteux

"The Gate City"
To: Board of Public Works               Meeting Date: May 23, 2019

From: Jeff Lafleur, Superintendent of Solid Waste

Re: Single Stream Recycling Contract

A. Motion: To approve Amendment #1 for a one year extension to the contract with Casella Recycling LLC of Charlestown, MA for the transportation and processing of the City’s single stream recyclables for an amount not to exceed $400,000 pending approval of the FY20 operating budget. Funding through Department 168 Solid Waste; Fund: Solid Waste; Account Classification: 55 Other Contracted Services.

Discussion: Markets for recycling in general have plummeted and are showing no sign of recovery in the near future. The City’s contract for recycling ends on June 30, 2019, therefore the City of Nashua needed to secure a vendor. The Solid Waste Superintendent opted to solicit bids for a one-year contract and re-evaluate market conditions next spring.

The Solid Waste Department has worked with Casella Recycling for five years and their strength in today’s difficult market conditions leads us to recommend that the FY20 one-year renewal contract for Single Stream recycling be awarded to Casella of the amount not to exceed $400,000 pending FY20 budget approval.
AMENDMENT No. 1
TO
CONTRACT
FOR INDEPENDENT CONTRACTOR
SINGLE STREAM RECYCLABLE MATERIAL PROCESSING
RFP1058-022318
BETWEEN
CITY OF NASHUA
AND
CASELLA RECYCLING, LLC

This AMENDMENT No. 1, dated ___________ is attached to and made part of the CONTRACT FOR INDEPENDENT CONTRACTOR between the City of Nashua, New Hampshire and Casella Recycling, LLC for Single Stream Recyclable Material Processing (RFP1058-022318) dated September 10, 2018 ("AGREEMENT").

WHEREAS, Section 28 of the AGREEMENT’s General Terms and Conditions allows for written amendments to the Agreement when signed by both parties;

WHEREAS, Section 3 of the AGREEMENT states the period of performance is from July 1, 2018 to June 30, 2019 and Section 4 describes compensation; and

WHEREAS, both parties wish to extend the term and renew the pricing for an additional year.

NOW, therefore, in consideration of the mutual covenants contained herein, the parties hereby mutually agree as follows:

1. That the period of performance of the AGREEMENT shall be extended for one (1) year commencing on July 1, 2019 and terminating on June 30, 2020.

2. INDEPENDENT CONTRACTOR agrees to perform the work, under this AMENDMENT No. 1, in accordance with pricing formula, attached, for a total cost not to exceed

   FOUR HUNDRED THOUSAND DOLLARS ($400,900.00)

3. All other terms and conditions of the AGREEMENT shall remain in force until the completion of the work authorized under this AMENDMENT No. 1.
AMENDMENT No. 1
TO
CONTRACT
FOR INDEPENDENT CONTRACTOR
SINGLE STREAM RECYCLABLE MATERIAL PROCESSING
RFP1058-022318
BETWEEN
CITY OF NASHUA
AND
CASELLA RECYCLING, LLC

4. This AMENDMENT No. 1, with attachments, along with the AGREEMENT and, CHANGE ORDER No. 1 dated April 12, 2019, constitutes the entire AGREEMENT and understanding between the parties and supersedes all prior agreements and understandings relating hereto.

OWNER: INDEPENDENT CONTRACTOR:

______________________________________________  _______________________________________________
City of Nashua, NH  (signature)  Casella Recycling, LLC. (signature)

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

______________________________________________  _______________________________________________
Date  Date
## CITY OF NASHUA DIVISION OF PUBLIC WORKS SOLID WASTE DEPARTMENT

**REQUEST FOR PROPOSALS**  
**SINGLE STREAM RECYCLABLE MATERIALS PROCESSING**  
**RFP1058-022318**

### ATTACHMENT B – PROPOSAL COSTS

<table>
<thead>
<tr>
<th><strong>CEILING PRICE per ton</strong></th>
<th><strong>$150.00</strong> / ton</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest cost per ton that could be charged for processing recyclables from City</td>
<td></td>
</tr>
<tr>
<td>(estimated annual tonnage: 5000 – 5500 tons)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>TRANSPORTATION COST per load</strong></th>
<th><strong>$275.00</strong> / load</th>
</tr>
</thead>
<tbody>
<tr>
<td>(estimated annual loads: 300)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Name of Hauling company, if different from vendor</strong></th>
<th>Casoli</th>
</tr>
</thead>
</table>

| **Formula that would reduce Processing Costs or produce revenue sharing** | Casoli’s ACC (Average Cost Calculation) and 15% threshold of 180% with a 35% revenue since when ACC is primarily paid and $100 for DOLLAR change to customers when under threshold. Current change to Nature. |

<table>
<thead>
<tr>
<th><strong>List indexes used to calculate recycling costs</strong></th>
<th>Based on this the ACC Formula Price calculation is:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>$ 74.56</strong> for the change / February</td>
</tr>
</tbody>
</table>

### EXCEPTIONS:

\[ \text{N/A} \]

**ATTACHMENT B**
CITY OF NASHUA DIVISION OF PUBLIC WORKS SOLID WASTE DEPARTMENT

REQUEST FOR PROPOSALS
SINGLE STREAM RECYCLABLE MATERIALS PROCESSING
RFP1058-022318

Bidder: [Name]
Authorized Signature: [Signature]
Address: [Address]
Email Address: [Email]
Phone: [Phone] Fax: [Fax]

ATTACHMENT B
May 30, 2019
Memo #19-153

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: 2018 SEWER REPLACEMENT – HARVARD STREET – CHANGE ORDER 3 (VALUE: $150,000)
DEPARTMENT: 169 WASTEWATER; FUND: WASTEWATER

Please see the attached communication from Stephen Dookran, P.E., City Engineer, dated May 23, 2019 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 23, 2019 meeting) and the Purchasing Department recommend the approval of Change Order 3 in an amount of $150,000 to Northeast Earth Mechanics of Pittsfield, NH.

Respectfully,
Dan Kooker
Purchasing Manager

Cc: S Dookran L Fauteux
To: Board of Public Works

From: Stephen Dookran, P.E., City Engineer
Engineering Department

Re: 2018 Sewer Replacement – Harvard St (and Chase St)
Change Order 3

C. Motion: To approve Change Order No. 3 to the construction contract for the 2018 Sewer Replacement – Harvard St project to Northeast Earth Mechanics of Pittsfield, NH in an amount of $150,000. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Activity: Bond; Activity: Sewer Infrastructure Improvements.

Discussion: The original contract to Northeast Earth Mechanics was for the replacement of the 1887 cement sewer pipe on Harvard St but when the 1885 sewer on Chase St suddenly failed, the replacement of that pipe was added to the contract by previous change orders. The current contract value is $1,132,932.30.

All of the underground pipe work on Chase St was completed over the winter. However, because of the sewer being very deep and the street being very narrow, the road and sidewalk had to be completely removed to access the sewer. The cost of rebuilding the street and sidewalk is not in the current contract and needs to be added by change order. This Change Order, #3 will add funds needed to reconstruct the road and sidewalk.

Upon approval of Change Order 3, the total value of this contract will be $1,282,932.30.
CHANGE ORDER

PROJECT: 2018 Sewer Replacement Harvard St

OWNER'S CONTRACT NO: IFB0779-053118

EXECUTED CONTRACT DATE: August 13, 2018

DATE OF ISSUANCE: May 28, 2019  EFFECTIVE DATE: Upon City Approval

OWNER: City of Nashua, NH

OWNER's Purchase Order NO.: 143673

CONTRACTOR: Northeast Earth Mechanics, Inc.

ENGINEER: DPW Engineering

Reason for Change Order:

The purpose of this Change Order No. 3 is to add the cost for repairing the road and rebuilding the sidewalks that were removed during the sewer rehabilitation of Chase Street.

You are directed to make the following changes in the Contract Documents:

Add quantities and value in the attached Table into the contract for work related to the repairing the road and rebuilding the sidewalks on Chase St.
## Summary

<table>
<thead>
<tr>
<th><strong>CHANGE IN CONTRACT PRICE:</strong></th>
<th><strong>CHANGE IN CONTRACT TIMES:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Price</td>
<td>Original Contract Times</td>
</tr>
<tr>
<td>$692,905.20</td>
<td>Substantial completion: 60 days from NTP</td>
</tr>
<tr>
<td></td>
<td>Ready for final payment: 74 days from NTP</td>
</tr>
<tr>
<td>Net changes from previous Change Orders</td>
<td>Net change from previous Change Orders</td>
</tr>
<tr>
<td>$440,037.10</td>
<td>Substantial completion: n/a</td>
</tr>
<tr>
<td></td>
<td>Ready for final payment: n/a</td>
</tr>
<tr>
<td>Contract Price prior to this Change Order</td>
<td>Contract Times with all approved Change Orders</td>
</tr>
<tr>
<td>$1,132,942.30</td>
<td>Substantial completion: June 30, 2019</td>
</tr>
<tr>
<td></td>
<td>Ready for final payment: July 30, 2019</td>
</tr>
<tr>
<td>Net Increase of this Change Order</td>
<td>Net Increase (decrease) of this Change Order</td>
</tr>
<tr>
<td>$150,000.00</td>
<td>Substantial completion: 153 calendar days</td>
</tr>
<tr>
<td></td>
<td>Ready for final payment: 153 calendar days</td>
</tr>
<tr>
<td>Contract Price with all approved Change Orders</td>
<td>Contract Times with all approved Change Orders</td>
</tr>
<tr>
<td>$1,282,942.30</td>
<td>Substantial completion: November 30, 2019</td>
</tr>
<tr>
<td></td>
<td>Ready for final payment: December 31, 2019</td>
</tr>
</tbody>
</table>

**RECOMMENDED:**
By: [Authorized Signature]  
DPW Engineer  
[Authorized Signature]  
Date: 29 May 2019

**ACCEPTED:**
By: [Authorized Signature]  
Northeast Earth Mechanics, LLC  
[Authorized Signature]  
Date: __________________________

**APPROVED:**
By: Mayor Jim Donchess  
Owner  
[Authorized Signature]  
Date: __________________________

Change Order # 3  
2018 Sewer Replacement – Harvard St.
## Preliminary Opinion of Probable Cost - Chase Street Road Restoration 28May19

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Quantity</th>
<th>UNIT</th>
<th>Unit Price</th>
<th>Cost</th>
</tr>
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<tbody>
<tr>
<td>5a</td>
<td>Calcium Chloride</td>
<td>1000</td>
<td>LB</td>
<td>0.25</td>
<td>$250.00</td>
</tr>
<tr>
<td>5b</td>
<td>Silt Sack</td>
<td>6</td>
<td>EA</td>
<td>50.00</td>
<td>$300.00</td>
</tr>
<tr>
<td>6a</td>
<td>Crushed Gravel (or Reclaimed Stabilized Base) 12&quot; Depth</td>
<td>300</td>
<td>CY</td>
<td>35.00</td>
<td>$10,500.00</td>
</tr>
<tr>
<td>6b(1)</td>
<td>Fine Grading (Roadway Gravels Prior to Base Paving)</td>
<td>1,000</td>
<td>SY</td>
<td>$0.75</td>
<td>$750.00</td>
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<tr>
<td>6c</td>
<td>3-1/2&quot; Binder (Base) Course Material-Hot Bituminous Pavement</td>
<td>170</td>
<td>TON</td>
<td>$75.00</td>
<td>$12,750.00</td>
</tr>
<tr>
<td>6d</td>
<td>1-1/2&quot; Wearing Course Material-Hot Bituminous Pavement</td>
<td>75</td>
<td>TON</td>
<td>$120.00</td>
<td>$9,000.00</td>
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<tr>
<td></td>
<td>Adjust Castings to Grade</td>
<td>8</td>
<td>EA</td>
<td>$350.00</td>
<td>$2,800.00</td>
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<td>6(1)</td>
<td>Common Excavation for Roadway Gravel, Pavement &amp; Increase of Curb Reveal</td>
<td>600</td>
<td>CY</td>
<td>$12.50</td>
<td>$7,500.00</td>
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<tr>
<td>6g</td>
<td>Sawed Bituminous Pavement</td>
<td>250</td>
<td>LF</td>
<td>$0.01</td>
<td>$2.50</td>
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<tr>
<td>6i</td>
<td>Remove &amp; Reset Granite Curbing (Assume Used Granite Curb Available)</td>
<td>830</td>
<td>LF</td>
<td>$20.00</td>
<td>$16,600.00</td>
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<td></td>
<td>New Vertical Curved Granite Curbing</td>
<td>60</td>
<td>LF</td>
<td>$60.00</td>
<td>$3,600.00</td>
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<tr>
<td></td>
<td>Remove &amp; Replace 4&quot; P.C. Concrete Sidewalk 5' Wide (Including 6&quot; Crushed Gravel Base)</td>
<td>350</td>
<td>SY</td>
<td>$75.00</td>
<td>$26,250.00</td>
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<tr>
<td></td>
<td>Remove &amp; Replace 6&quot; P.C. Concrete Sidewalk 6' Wide Driveways &amp; HC Ramp (Including 6&quot; Crushed Gravel Base)</td>
<td>150</td>
<td>SY</td>
<td>$100.00</td>
<td>$15,000.00</td>
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**Subtotal:** $126,502.50  
**15% Construction Contingency:** $18,497.50  
**Survey & Engineering:** $5,000.00  
**Total Estimated Cost:** $150,000.00

### Notes:
1. Numbered unit prices based on Northeast Earth Mechanics bid prices.
2. Unnumbered unit prices are Engineer's estimate
3. Assume new Curb ramps at East Hollis Street
4. Assume no Curb ramps at Crown Street
May 30, 2019
Memo #19-154

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: 2019/2020 SEWER REHABILITATION – ENGINEERING SERVICES (VALUE: $393,075)
DEPARTMENT: 169 WASTEWATER; FUND: BOND

Please see the attached communication from Stephen Dookran, P.E., City Engineer, dated May 23, 2019
for information related to this purchase.

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

The City Engineer, Board of Public Works (May 23, 2019 meeting) and the Purchasing Department
recommend the approval award of this contract in an amount of $393,075 to Hayner Swanson Inc. of
Nashua, NH.

Respectfully,

Dan Kookan
Purchasing Manager

Cc: S Dookran L Fauteux
To: Board of Public Works  
From: Stephen Dookran, P.E., City Engineer  
Re: FY20 Sewer Rehabilitation - Engineering Services

B. Motion: To approve the contract with Hayner Swanson Inc. (HSI) of Nashua in the amount of $393,075.00 for professional services in the FY20 Sewer Rehabilitation Program. Funding through Department 169 Wastewater; Fund: Bond; Activity: Sewer Infrastructure Improvements.

Attachment: Hayner Swanson Inc. Scope and Fee

Discussion: This City is planning to expend a budget of approximately $5 million in 2020 to address the increased amount of failing and deteriorated aging sewer infrastructure. With City Engineering staff currently managing several large sewer rehabilitation projects and the expanded street paving program, the City wishes to continue using the engineering services of Hayner Swanson Inc. of Nashua to develop and implement the 2019/2020 Sewer Rehabilitation projects.

The scope of services includes but is not limited to selecting priority sewers based on record information for inspection and rehabilitation, coordinate with utility projects and the paving program, prepare plans and specifications for bidding and provide construction administration. The complete scope of work and fee proposal is attached.

HSI has broad experience in similar sewer work. They provided designs and construction administration for the City on the Harbor Ave and Haines St sewer separation projects and are currently implementing sewer construction projects in the city and in communities in Massachusetts. Additionally, HSI's current work on the City's paving program will make the coordination of sewer, paving and utility projects more efficient.

HSI's current work on the City's paving program will make the coordination of sewer, paving and utility projects more efficient.
CONTRACT FOR PROFESSIONAL SERVICES

2019/2020 SEWER REHABILITATION PROGRAM
ENGINEERING SERVICES

A CONTRACT BETWEEN

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

AND

HAYNER/SWANSON, INC.
and its successors, transferees and assignees (together “Professional Engineer”)

NAME AND TITLE OF PROFESSIONAL ENGINEER
3 CONGRESS STREET, NASHUA, NH 03062
ADDRESS OF PROFESSIONAL ENGINEER

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

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

WHEREAS, Professional Engineer 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

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

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

2. WORK TO BE PERFORMED. Except as otherwise provided in this contract, Professional Engineer shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described.

AG 1 of 3
DESCRIPTION OF WORK:

To provide professional services in support of the City of Nashua's Rehabilitation Program of existing sewerage pipe and structures. The work shall focus on planning, investigation and engineering related to the 2020 program.

3. PERIOD OF PERFORMANCE. Professional Engineer shall perform and complete all work by June 30, 2020 and shall only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Professional Engineer shall begin performance upon receipt of an Executed Contract and a valid Purchase Order issued from the City of Nashua.

4. COMPENSATION. Professional Engineer agrees to perform the work for a total cost not to exceed THREE HUNDRED NINETY-THREE THOUSAND SEVENTY-FIVE DOLLARS ($ 393,075.00)

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

Unless Professional Engineer has received a written exemption from the City of Nashua, Professional Engineer shall submit monthly requests for payment for services performed under this agreement in accordance with the values stated in the Agreement. Such requests shall be supported by such data substantiating the Professional Engineer's right to payment as the City of Nashua may reasonably require. Professional Engineer 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 Engineer agrees to provide the following with each request for payment:

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

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

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

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

6. NOTICES. All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:

CITY OF NASHUA REPRESENTATIVE:  REPRESENTATIVE:
Stephen Dookran, P.E. – City Engineer  John Vancor, P.E. – Vice President
Division of Public Works, Engineering  Hayner/Swanson, Inc.
9 Riverside Street  3 Congress Street
Nashua, NH 03062  Nashua, NH 03062

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

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

City of Nashua, NH (signature)  Hayner/Swanson, Inc. (signature)

James Donchess, Mayor  (Printed Name and Title)

Date

AG 3 of 3
# Exhibit A
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### General Conditions
1. Definitions (GC--2)  
2. Professional Engineer Status (GC--2)  
3. Standard of Care (GC--2)  
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6. City of Nashua Cooperation (GC--3)  
7. Discovery of Conflicts, Errors, Omissions, Ambiguities, or Discrepancies (GC--3)  
8. Termination of Contract (GC--4)  
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12. Indemnification (GC--7)  
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20. Disposition of Contract Materials (GC--9)  
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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)  
31. Choice of Law and Venue (GC--11)
General Terms and Conditions

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

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

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

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

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

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

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

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

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

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

8. TERMINATION OF CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

C. GENERAL PROVISIONS FOR TERMINATION Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Professional Engineer shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Engineer assigned to the performance of the contract. Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Professional Engineer's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Engineer's control.

9. DISPUTE RESOLUTION The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and a Professional Engineer Representative. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute
as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

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

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

- General Liability insurance in the amount of $1,000,000 per occurrence; $2,000,000 aggregate;
- $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 Engineer shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Professional Engineer are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Professional Engineer under this contract. The City of Nashua shall not maintain any insurance on behalf of Professional Engineer. Subcontractors are subject to the same insurance requirements as Professional Engineer and it shall be the Professional Engineer's responsibility to ensure compliance of this requirement.

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

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

Professional Engineer is responsible for and required to remedy all damage or loss to any property, including property of the City of Nashua, caused in whole or part by Professional Engineer or anyone employed, directed, or supervised by Professional Engineer.

12. INDEMNIFICATION Regardless of any coverage provided by any insurance, Professional Engineer agrees to indemnify and 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 Engineer or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Professional Engineer's indemnity and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

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

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

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

15. COMPLIANCE WITH APPLICABLE LAWS Professional Engineer, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Professional Engineer shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City of Nashua in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.
16. NONDISCRIMINATION If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Professional Engineer agrees to the following terms. Professional Engineer will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Professional Engineer agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

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

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

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

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

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

18. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING Professional Engineer shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

19. CITY INSPECTION OF CONTRACT MATERIALS The books, records, documents and accounting procedures and practices of Professional Engineer related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.
20. DISPOSITION OF CONTRACT MATERIALS  Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the exclusive property of the City of Nashua and all such materials shall be remitted and delivered, at Professional Engineer's expense, by Professional Engineer to the City of Nashua upon completion, termination, or cancellation of this contract. Alternatively, if the City of Nashua provides its written approval to Professional Engineer, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract must be retained by Professional Engineer for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City of Nashua, in writing, requests any or all of the materials, then Professional Engineer shall promptly remit and deliver the materials, at Professional Engineer's expense, to the City of Nashua. Professional Engineer shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Professional Engineer's obligations under this contract without the prior written consent of the City of Nashua.

21. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS  Professional Engineer expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Professional Engineer (including those remitted to the City of Nashua by Professional Engineer pursuant to paragraph 20), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Professional Engineer. The City of Nashua shall have the right to reproduce any such materials.

Professional Engineer 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 Engineer 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 Engineer infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Professional Engineer infringes any patent.

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

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

24. **NON-WAIVER OF TERMS AND CONDITIONS** None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.

25. **RIGHTS AND REMEDIES** The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

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

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

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

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

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

28. **SURVIVAL OF RIGHTS AND OBLIGATIONS** The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

29. **SEVERABILITY** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

30. **MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT** This contract constitutes the entire contract between the City of Nashua and Professional Engineer. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

31. **CHOICE OF LAW AND VENUE** This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in any way 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.