FINANCE COMMITTEE

JULY 10, 2019

7:00 pm Aldermanic Chamber

ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

From: Dan Kookan, Purchasing Manager
Re: Contract with Sapphire Digital for Smartshopper (Value: $0); Department: 113 Benefits
Fund: Self Insurance

From: Dan Kookan, Purchasing Manager
Re: Contract Renewal with the Humane Society of Greater Nashua for FY20 (Value: $99,081)
Department: 109 Civic & Community Services; Fund: General

From: Dan Kookan, Purchasing Manager
Re: Purchase of Various Chemicals for the Wastewater Treatment Facility (Value Total of: $601,000)
Department: 169 Wastewater; Fund: Wastewater

From: Dan Kookan, Purchasing Manager
Re: FY20 Purchase of Trash and Recycling Toters (Value: $145,000); Department: 168 Solid Waste;
Fund: Solid Waste

From: Dan Kookan, Purchasing Manager
Re: Purchase of Catepillar 826K Compactor Teeth (Value: $34,250); Department: 168 Solid Waste
Fund: Solid Waste

From: Dan Kookan, Purchasing Manager
Re: Contract for Canal Street Bridge Repairs to Abutment (Value: $39,905); Department: 160
Admin/Engineering; Fund: Capital

UNFINISHED BUSINESS – None

NEW BUSINESS - None

RECORD OF EXPENDITURES

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT
July 4, 2019
Memo #20-002

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CONTRACT WITH SAPPHIRE DIGITAL FOR SMARTSHOPPER (VALUE: $0)
DEPARTMENT: 113 BENEFITS; FUND: SELF INSURANCE

Please see the attached communication from Larry Budreau, Human Resources Director, dated June 27, 2019 for information related to this purchase.

Pursuant to NRO § 5-83 Professional Services (A) In the purchase of accounting, architectural, auditing, engineering, legal, medical and ambulance services and purchases of independent professional consultant services for personnel, data processing, actuarial, planning, management and other comparable purchases competitive bidding shall not be required.

The Human Resources Director and the Purchasing Department recommend the approval of this contract with $0 cost to Sapphire Digital of Lyndhurst, NJ.

Respectfully,

Dan Kooker
Purchasing Manager

Cc: L Budreau J Graziano
To: Finance Committee

From: Larry Budreau, Human Resources Director

Subject: SmartShopper Contract Approval

Date: June 27, 2019

The City introduced “SmartShopper” to employees, retirees, and dependents of the City and School District who are enrolled in health insurance (members) during its April/May 2019 Open Enrollment period. Please see page 2 (attached) of the Open Enrollment brochure.

The program incentivizes covered members to “shop” on the SmartShopper website or with a representative on the telephone. When a member selects a lower-cost high-quality service provider for one of 50 common procedures, he or she receives a monetary reward ranging from $25 for blood testing to $500 for knee surgery. The cost savings reduces the City’s health insurance claims cost. Digital Sapphire retains 30% of the savings. SmartShopper determines cost savings by mining Anthem’s claim data for like services. The cost range for identical services at different providers can be astounding – sometimes thousands of dollars.

SmartShopper, operated for-profit by Sapphire Digital of Lyndhurst, NJ, has been in operation for several years in the City of Manchester (2009) and the State of New Hampshire. Both speak highly of the program. Plan results posted on Manchester’s website reflect a 350% return on investment. Results are expected to grow slowly as health care “consumerism” requires a cultural shift.

Adopting the program is supported by the School and City Human Resources staffs; Workplace Benefits Solutions, the City’s health insurance consultant; Kim Kleiner, Administrative Services Director, and Mayor Donchess. Anthem includes SmartShopper in its fully insured contracts, and is paying the fixed fee on the City’s behalf for the 3-year contract period.

In summary, though Sapphire Digital is paid for its service, the program will provide a net savings to the City.

Thank you,

Larry Budreau
Become a “SmartShopper”
We are happy to announce two new benefits available to employees and their dependents enrolled in the City’s health insurance plans.

SmartShopper - How It Works:
1. Your doctor recommends a necessary medical procedure
2. You call SmartShopper at 1-800-824-9127, or go to vitalsmartshopper.com to shop for the most cost effective location in your area for the procedure
3. SmartShopper helps you schedule your appointment
4. You receive a cash reward -- a check will be sent directly to you! (45-60 days following the procedure) No forms, no hassles!

You earn cash rewards for many common procedures, such as:
Lab Work ~ Mammogram ~ Colonoscopy ~ MRI ~ X-Ray
And many more... complete list of rewards can be found online at www.nashuanh.gov or www.nashua.edu

Want to become a better healthcare consumer for all of your healthcare needs?
You can find more healthcare cost saving opportunities at: www.nhhealthcost.nh.gov
You can find price ranges for prescriptions and medical services at: www.anthem.com

Mobile Health - How It Works:
1. You need to register in one of the following ways:
   - Download the free Mobile Health Consumer App from the app store on your Apple or Android phone or tablet
   - Go to www.mobilehealthconsumer.com, choose the user button, then register now
2. Access Mobile Health via mobile, tablet or web to get access to your medical deductible, find a SmartShopper provider, see a doctor using Live Health Online, print ID cards, view your medical, dental, vision, pharmacy, flexible spending, HSA benefits, and more!
3. Get alerts on health, wellness, and Citywide events
4. Dependents over the age of 18 covered on City health plans are also eligible to download the free app
SmartShopper Services Agreement

This SmartShopper Services Agreement ("Agreement") is dated June 5, 2019 and is between MDX Medical Inc. d/b/a Sapphire Digital, a Delaware Corporation, located at 160 Chubb Avenue, Lyndhurst, Suite 301, New Jersey 07071 ("Sapphire Digital") and the City of Nashua, located at 229 Main Street Nashua, New Hampshire 03060 ("Customer"). Sapphire Digital and Customer are each referred to herein as a "Party" and collectively as the Parties.

The Customer provides an incentive benefit program to public sector employers who are enrolled on the Customer’s Medical benefit plans. Sapphire Digital is in the business of offering cost savings services with respect to employer group health plans.

The Customer wishes to engage Sapphire Digital as an independent contractor to provide the SmartShopper Program and associated services as described in "Attachment A".

1. Term. This Agreement shall become effective on July 1, 2019 ("Effective Date") and shall continue for a period of three (3) years ("Initial Term"). Initial Term means the term beginning July 1, 2019 and extending to saved shopping transactions in the Sapphire Digital system ending on June 30, 2022. There will be a six-month wind-down period of claims run out for the calculation and invoicing of fees generated during the wind-down period, and for the determination of incentives through September 30, 2022. Subsequent to the Initial Term, the Agreement shall only renew upon the mutual written agreement of the Parties (each a "Renewal Term").

2. Definitions. For purposes of this Agreement, the following definitions apply:

   a. "Member" means any Customer employee or dependent of that employee’s family that is insured through the Customer’s self-funded health benefit program and has access to the SmartShopper Program.

   b. "SmartShopper Program" or "Program" means a program aimed to reduce medical plan claim costs by providing incentives to covered employees and their dependents that utilize Cost-Effective Providers.

   c. Cost-Effective Provider" means a provider that has been identified through the SmartShopper Program who a Member may utilize and thereby qualify for an Incentive Reward Payment.

   d. "Incentive Fund" means an account held by Sapphire Digital and funded by the Customer for the use by Sapphire Digital in providing Incentive Reward Payments to Members when care is received at a Cost-Effective Provider.

   e. "Incentive Reward Payment" means a payment sent to the Member by Sapphire Digital written out of the Incentive Fund. Checks for Members under the age of 18 will be made payable to and mailed to the subscriber.

3. Customer Expectations.
   a. Customer and Sapphire Digital shall mutually agree in writing to a Member engagement plan ("Engagement Plan") which shall be based in part on the claim’s history of the Customer. Sapphire Digital shall notify the Customer of any changes affecting the Customer'
obligations under the Engagement Plan mutually agreed to pursuant to this Agreement at least thirty (30) days prior to implementing such changes and shall require mutual consent between Sapphire Digital and the Customer. Pursuant to the Engagement Plan, Sapphire Digital may send to Members SmartShopper Program awareness communications, transactional communications or communications related to the Member’s individual SmartShopper Program transaction or experience via telephone, email, text and mailings. All printing, materials and associated postage will be paid by Sapphire Digital as agreed to in the Engagement Plan. To the extent necessary for Sapphire Digital to send such communications and upon request from Sapphire Digital, Customer will provide contact information if available for such Members. Customer agrees that for any contact information that Customer provides for use in connection with this Agreement, Customer is responsible for obtaining from the Member consent necessary for the use of that information. Customer acknowledges and agrees that Sapphire Digital shall not become or be considered a plan fiduciary as a result of such communications or any other actions taken under the SmartShopper Program.

b. On or before the Effective Date, Customer agrees to:
   i. Deliver a leadership announcement in a form and format to be mutually agreed upon by the Parties to all Members announcing the SmartShopper program and encouraging Members to utilize the SmartShopper Program whenever they are to procure a healthcare service covered under the SmartShopper Program.
   ii. Deliver where applicable, communications to covered Members regarding the SmartShopper Program.

c. In the event the Customer fails to comply with the Engagement Plan mutually agreed to or otherwise comply with the obligations set forth in this Section 3, Sapphire Digital shall provide written notice of such breach to Customer. In the event Customer fails to remediate such breach within thirty (30) days of receipt of written notice, Sapphire Digital shall be permitted to stop investing hard costs into the Engagement Plan (including but not limited to mailers). If such breach is not remediated within sixty (60) days of written notice, the Agreement may be terminated by either Party.

4. Incentive Reward Payments.
   a. Sapphire Digital shall provide Incentive Reward Payments to Members that fully comply with the terms of the SmartShopper Program and utilize a Cost-Effective Provider for a medical procedure described in "Attachment B". Sapphire Digital shall make the authorized Incentive Reward Payments from the Incentive Fund. Funds held in the Incentive Fund account shall be used by Sapphire Digital for the sole purpose of making Incentive Reward Payments. Sapphire Digital shall return any unused funds upon termination or expiration of this Agreement, after all outstanding Incentive Reward Payments have been made, but no later than ninety (90) days after the termination or expiration date. Following the termination of this Agreement for any reason, Sapphire Digital shall continue to provide runout Services during the wind-down period (as provided in Section 1 above) of six (6) months following the termination effective date. Such Services shall include, without limitation, processing the payment of any and all Incentive Reward Payments with respect to eligible claims incurred by Enrollees prior to the date of such termination. Enrollees are required to shop for the service prior to the effective date of the termination of the Agreement and Sapphire Digital must receive and process the confirmatory claims data for the service of a Cost-Effective Provider prior to such termination date. Incentive Fund accounts do not bear interest. Furthermore, Customer shall have the right to request, upon thirty (30) days advanced written notice, an updated accounting of the funds in the Incentive Fund account.
b. Customer acknowledges and agrees that: (a) it has had the opportunity to review tax, wage withholding and reporting laws and regulations applicable to the Incentive Reward Payments under the SmartShopper Program; and (b) assumes full legal responsibility for compliance with such laws and regulations regardless of whether Sapphire Digital is the payer of the Incentive Reward Payments and shall be solely responsible for determining the form and method of any income tax reporting and withholding applicable to Incentive Reward Payments. Based on Customer’s decision to report the income for Members related to the Incentive Reward Payments under an IRS Form 1099-MISC, Sapphire Digital shall perform such tax reporting to the Members for those Members that earn more than the 1099-MISC applicable threshold in any given calendar year under the tax identification number of Sapphire Digital. Sapphire Digital shall be responsible for performing the 1099-MISC reporting in an accurate and timely manner. Notwithstanding the foregoing services being performed by Sapphire Digital, Sapphire Digital shall not be responsible for Customer’s decision to report the income for Members related to Incentive Reward Payments under IRS Form 1099-MISC. Customer shall indemnify and hold Anthem and Sapphire Digital harmless with respect to any tax issues or claims related to the Program.

5. Fees; Incentive Fund.

a. Fees.
   i. The administrative fee payable to Sapphire Digital for the Initial Term to administer the SmartShopper program shall be based on a hybrid arrangement with a fixed cost of $0.20 Per Member Per Month (PMPM) paid by Anthem to Sapphire Digital for the three years of this agreement, and a fee payable to Sapphire Digital by Customer equal to Thirty Percent (30%) of the Claims Savings portion for the Smart Shopper Program. The thirty percent (30%) percent of Claim Savings portion of the compensation shall be Sapphire Digital’s sole compensation payable by Customer under this Agreement with the Customer.
   ii. The fees for any Renewal Term shall be mutually agreed upon by the Parties. All invoices shall be paid within thirty (30) days of receipt by the Customer.

For purposes herein, Gross Savings shall be calculated in accordance with the standard methodology for calculating savings under the Anthem Vendor Contract dated January 1, 2014 as amended between Sapphire Digital and Anthem, Inc.

Claims Savings means Gross Savings less the Incentive Reward Payments paid under the Program. Should a Member use the SmartShopper Program and intend to use a provider prior to shopping that happens to be a Cost Effective Provider and receives an incentive eligible procedure at such provider (i.e. Gross Savings between Point A - Point B = $0), the SmartShopper Member would still earn an Incentive Reward Payment and the Claims Savings calculation would result in a savings amount of $0.00.

b. Incentive Fund.
   i. Sapphire Digital shall invoice Customer an amount equal to $10,000 (“Initial Incentive Fund Amount”) for the purpose of establishing the working Incentive Fund to be used for providing Incentive Reward Payments to Members. The Initial Incentive Fund Amount shall be due to Sapphire Digital within ten (10) days after the Effective Date of the Agreement.
   ii. Incentive Reward Payments shall be invoiced monthly to Customer by Sapphire Digital and shall be paid by Customer within thirty (30) days of receipt of an invoice.
   iii. The sufficiency of the amount of the Incentive Fund shall be reviewed periodically by the Parties. The Parties mutually agree to increase the Incentive Fund upon determination that the initial up-front funding amount is insufficient based on the volume of Incentive Reward Payments.
made. Sapphire Digital shall have the right in its sole and reasonable discretion to cease the processing of Incentive Reward Payments until sufficient funds are deposited into the Incentive Fund. The Incentive Fund shall not bear interest.

6. Confidentiality. Any information provided to Customer that specifically references a Member’s name or other individually identifiable information by Claims Administrator or Sapphire Digital regarding Member’s use of the Program will be limited to information needed for tax reporting or financial accounting purposes only. Except as set forth herein, no reporting regarding Program utilization and/or performance provided to Customer by Sapphire Digital shall identify any individual Member. The Parties acknowledge and agree that Customer is a Covered Entity (as defined under HIPAA) and Sapphire Digital is a Business Associate (as defined under HIPAA) of Customer in connection with the provision of services under this Agreement. The Parties agree that they will each perform their obligations under this Agreement and with respect to the Program in compliance with all applicable requirements of HIPAA. Sapphire Digital’s duties and responsibilities in connection with requirements imposed by HIPAA are set forth in the Business Associate Agreement attached hereto as Attachment C.

7. Authority to Authorize Incentive Reward Payment. Sapphire Digital has the sole authority to determine if the Member has complied with the terms of the SmartShopper Program requirements and is eligible to receive Incentive Reward Payment(s), and to authorize or deny such payment based on Sapphire Digital’s compliance and eligibility determination.

8. Cancellation. Each Party will have the right to terminate this Agreement if a Party breaches any material term or condition of this Agreement and such breaching Party fails to cure such breach within thirty (30) days after receipt of written notice of the same. Sapphire Digital reserves the right to cancel the administration of the SmartShopper Program if any invoices are not paid within thirty (30) days of receipt, for two (2) consecutive months. Subsequent to the termination of the expiration of this Agreement, in addition to any administrative fees owed, Customer shall be responsible for reimbursing Sapphire Digital all Incentive Reward Payments earned by Members prior to the termination or expiration of the Agreement.

9. Intellectual Property. As between Customer and Sapphire Digital, Sapphire Digital retains all rights, title and interest in and to all intellectual property rights and any and all technology developed or used to provide the SmartShopper Program to Customer (collectively, the “Sapphire Digital IP”), and Customer acquires no rights with respect to the Sapphire Digital IP, by implication or otherwise, except for those expressly granted in this Agreement. Sapphire Digital shall own all data generated from the Smartshopper Program, including any user registrations.

10. Limitation of Liability. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (OR TO ANY OTHER PERSON CLAIMING RIGHTS DERIVED THEREFROM) FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, LOSS OF USE, LOSS OF COST OR OTHER SAVINGS, LOSS OF GOODWILL OR REPUTATION) OR LOSS OF DATA WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING FROM OR RELATING TO THE SMARTSHOPPER PROGRAM, OR OTHERWISE ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. Customer acknowledges that the limitation of liability set forth in this Section 10 shall not apply to Sapphire Digital’s claims for unpaid fees and that Sapphire Digital has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set
forth herein, and that the same form an essential basis of the bargain between the parties. The Parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

11. Assignment. The Parties may not assign their rights or delegate their duties under this Agreement either in whole or in part without the prior written consent of the other Party. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each Party’s successors and permitted assigns. Notwithstanding the foregoing, (i) either Party shall be permitted, without any obligation to obtain the consent of the other Party to assign, delegate or otherwise transfer this Agreement or any of its rights or duties hereunder to an affiliate of Sapphire such Party and (ii) the merger, consolidation, sale of equity interests or acquisition of all or substantially all of the assets of a Party or of its line of business to which this Agreement relates shall be deemed not to be an assignment of the rights, or delegation of the duties, of such Party hereunder and such Party shall have no obligation to obtain the consent of the other Party in connection with any of the foregoing.

12. Force Majeure. Neither Party will be liable for or be considered to be in breach of or default under this Agreement, other than monetary obligations, as a result of any cause or condition beyond such Party’s reasonable control.

13. Waiver. No oral modifications shall be effective, and no delay or failure on the part of either Party to insist on compliance with any provision hereof shall constitute a waiver of such Party’s right to enforce such provision.

14. Notice. All notices and other communications hereunder will be in writing or by written telecommunication, and will be deemed to have been duly given if delivered personally or if mailed by certified mail, return receipt requested or by written telecommunication to the address of the Party set forth above, or to such address as the recipient of such notice or communication will have specified to the other Party hereto in accordance with this section.

15. Governing Law. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of New Hampshire (except that body of law controlling conflicts of law). The Parties irrevocably consent to jurisdiction and venue in the Federal and state courts of New Hampshire.

16. Promotion. Customer agrees to provide a high-resolution logo image file to Sapphire Digital for use within the Engagement Plan and understands that Sapphire Digital may distribute press releases indicating that Customer is a client of Sapphire Digital.

17. Scope of Agreement; Entire Agreement. This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. The section headings used in this Agreement are intended for reference purposes only and shall not affect the interpretation of this Agreement. The illegality, invalidity, or unenforceability of any provision of this Agreement shall not in any manner affect or render illegal, invalid or unenforceable any other provision of this Agreement, and that provision, and this Agreement generally, shall be reformed, construed and enforced so as to most nearly give lawful effect to the intent of the parties as expressed in this Agreement. If an ambiguity or question arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of authorship of any of the provisions of this Agreement.
Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Signatures exchanged via facsimile, pdf/email or other electronic method shall be binding. A photocopy of a fully- or partially-executed original of this Agreement, including for example a facsimile or graphical-image copy, will be admissible in evidence for all purposes in any proceeding as between the Parties to the same extent (if any) as the original.

18. **Insurance.** Sapphire Digital shall comply with the insurance provisions attached hereto as Exhibit D.

[SIGNATURE PAGE FOLLOWS]
Attachment A

SmartShopper Program.

Except as the parties may otherwise agree and document in an amendment, Sapphire Digital shall adhere to the following requirements for the SmartShopper Program:

A. A Member shall be able to obtain provider related cost information for select medical procedures as well as information regarding the availability of any associated Incentive Reward Payment, by either contacting Sapphire Digital through a toll free telephone number or a website, both of which shall be provided for by Sapphire Digital.

B. The list of medical procedures included in the SmartShopper Program are described in “Attachment B”.

C. Sapphire Digital shall issue Incentive Reward Payments to Members in the amounts mutually agreed upon by the Customer and Sapphire Digital as described in Attachment B.

D. Prior to providing any information, Sapphire Digital shall require the Member to verify Member’s eligible status to use the SmartShopper Program.

E. Following Sapphire Digital’s verification of eligibility, the Member shall indicate the healthcare procedure to be performed as well as his/her initial preference, if they were to have one, on the location to have the procedure performed.

F. Sapphire Digital shall provide to the Member cost-related information related to Customer’s participating providers who can perform the requested procedure. Sapphire Digital shall also inform the Member which providers, if any, will qualify the Member for an Incentive Reward Payment.

G. Upon Sapphire Digital’s verification of the Member’s use of a provider that qualified him/her for an Incentive Reward Payment, Sapphire Digital shall send the Incentive Reward Payment to the Member. Sapphire Digital shall verify Member’s qualification for an Incentive Reward Payment by confirming, utilizing claims payment information provided by Anthem Inc. that a request for payment from the provider for the specific service in question was received and processed by Anthem Inc.

H. Reporting: Sapphire Digital will provide the Customer with Standard Performance Reports monthly, no later than the last day of the month following the applicable reporting month (e.g., Sapphire Digital provides January reports by the last day of February).

I. Website and Phone Support: Sapphire Digital will make available and maintain the Sapphire Digital website for use by Members for the delivery of the Program. The website will be hosted by Sapphire Digital, using industry standard security measures, and shall be available twenty-four (24) hours per day to provide Members the capability to search and identify relative costs and Member Incentive Reward information for select medical procedures included in the applicable Program, with the exception of regularly scheduled maintenance and downtime, which shall not occur during Sapphire Digital’s regular business hours. Sapphire Digital shall also make available telephonic support through a dedicated toll free telephone number to its Call Center during its standard operating hours.
Attachment B – Incentive Scale

The list of medical procedures and incentive amounts included in the Program shall be the standard list of procedures for Customer’s geographic market. A copy of incentive list will be provided to the Customer upon the request of Customer. Please provide a copy or include it when you send the revised contract for review.
Attachment C – Business Associate Agreement

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("Addendum") by and between MDx Medical Inc. dba Sapphire Digital and City of Nashua ("Covered Entity"), is entered into for the purposes of complying with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191, the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), Public Law 111-005, and the regulations promulgated thereunder; 45 C.F.R. Parts 160 and Part 164, Subparts A, C, D and E (Subpart E, together with the definitions in Subpart A is known as the "Standards for Privacy of Individually Identifiable Health Information" (the "Privacy Rule") and Subpart C, together with the definitions in Subpart A, is known as the "Security Standards for the Protection of Electronic Protected Health Information" (the "Security Rule") Subpart D, together with the definitions in Subpart A is known as the "Breach Notification Rule" ("Breach Notification Rule") (the Privacy Rule, Breach Notification Rule and the Security Rule are collectively called the "Privacy and Security Rules") Sapphire Digital and Covered Entity are each referred to herein as a "Party" and collectively referred to as the "Parties."

WHEREAS, Covered Entity is a "Covered Entity" as that term is defined under HIPAA, which requires Covered Entities and certain of their service providers to enter into business associate agreements;

WHEREAS, Sapphire Digital may create on behalf of, or receive from, the Covered Entity or the Covered Entity’s other service providers protected health information ("PHI"); and

WHEREAS, upon creation or receipt of such PHI, Sapphire Digital would be a "Business Associate" in relation to the Covered Entity, as that term is defined under HIPAA.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, Covered Entity and Sapphire Digital hereby agree as follows:

1. Capitalized Terms. All capitalized terms herein not otherwise defined shall have the meaning ascribed to such terms under HIPAA, the HITECH Act and the Privacy and Security Rules, as may be amended from time to time.

2. Sapphire Digital’s Responsibilities with Respect to Use and Disclosure of PHI. Sapphire Digital hereby agrees, with regard to its Use and/or Disclosure of the PHI, to do the following:

a. to Use and/or Disclose the PHI only: (i) in conjunction with the services it provides to Covered Entity ("the Services"); (ii) consistent with the manner in which Covered Entity is permitted to Use and Disclose by 45 C.F.R. 164.502 (as amended from time to time) and/or 45 C.F.R. § 164.512; (iii) for Sapphire Digital’s proper management and administration; (iv) to fulfill any present or future legal responsibilities; (v) as otherwise permitted or required by this Addendum; or (vi) as otherwise permitted or required by law.

b. to report to Covered Entity, in writing, any material Use and/or Disclosure of the PHI by Sapphire Digital that is not permitted or required by this Addendum of which Sapphire Digital becomes aware;

c. to use commercially reasonable efforts to maintain the security of the PHI and to prevent its Use and/or Disclosures contrary to this Addendum;
d. to the extent that Sapphire Digital creates, receives, maintains or transmits Electronic Protected Health Information as that term is defined by the Security Rule, on behalf of Covered Entity to report to Covered Entity any Security Incident of which Sapphire Digital becomes aware to the extent such incidents represent successful unauthorized access, use, disclosure, modification, or destruction of Unsecured Electronic Protected Health Information of Covered Entity; and

e. to require all of Sapphire Digital’s subcontractors and agents utilized in providing the Services which Use and/or Disclose the PHI, to agree, in writing, to adhere to equivalent restrictions and conditions on the Use and/or Disclosure of the PHI that apply to Sapphire Digital pursuant to this Addendum.

3. **Safeguards.** Sapphire Digital shall employ appropriate administrative, technical and physical safeguards, consistent with the size and complexity of Sapphire Digital’s operations, to protect the confidentiality of PHI and to prevent the use or disclosure of PHI in any manner inconsistent with the terms of this Addendum, including meeting the requirements of 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316, which includes Sapphire Digital’s obligation to have written policies and procedures in place to document its administrative, technical and physical safeguards.

4. **Access Requests.** Sapphire Digital shall process Covered Entity’s requests to access records in the Designated Record Set and identified by Covered Entity so that Covered Entity can comply with 45 C.F.R. § 164.524.

5. **Amendment Requests.** Sapphire Digital shall process Covered Entity’s requests for amendment of the PHI in Sapphire Digital’s possession, solely upon Covered Entity’s request and in a manner that allows Covered Entity to comply with 45 C.F.R. § 164.526 and in a manner that is consistent with the manner in which Covered Entity is amending the PHI in Covered Entity’s possession.

6. **Accounting of Disclosures.** The Parties agree that Sapphire Digital shall track and keep a record of all Disclosures of PHI, and that Sapphire Digital shall provide to Covered Entity the information necessary for Covered Entity to provide an accounting of Disclosures, in a manner compliant with 45 C.F.R. §164.528, to individuals who request an accounting. In each case to the extent feasible, Sapphire Digital shall provide at least the following information with respect to each such Disclosure: (a) the date of the Disclosure; (b) the name of the entity or person who received the PHI; (c) a brief description of the PHI disclosed; (d) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure. In the event that Sapphire Digital receives a request for an accounting directly from an individual, Sapphire Digital shall forward such request to Covered Entity in writing.

7. **De-Identification.** Sapphire Digital may de-identify PHI for lawful purposes, so long as such de-identification conforms to the requirements of 45 C.F.R. § 164.514, as may be amended from time to time and may use the PHI to provide data aggregation services relating to Covered Entity’s health care operations.

8. **Meet Covered Entity Obligations where Appropriate.** If Sapphire Digital will perform a service for Covered Entity that is an obligation of Covered Entity under the Privacy Rule, to meet the applicable requirements in the performance of that service;

9. **Requests from Secretary of Health and Human Services.** If Sapphire Digital receives a request, made by or on behalf of the Secretary of the United States Department of Health and Human Services (the “Secretary”), requiring Sapphire Digital to make its internal practices, books, and records relating to the Use and Disclosure of the PHI created or received by Sapphire Digital on behalf of Covered
Entity available to the Secretary for the purpose of determining Covered Entity’s and/or Sapphire Digital’s compliance with HIPAA, then Sapphire Digital shall make its internal practices, books and records available to the Secretary or the Secretary’s authorized representative.

10. **Minimum Necessary.** Covered Entity shall provide, and Sapphire Digital shall request, Use and Disclose, only the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure. The Parties acknowledge that the Secretary may issue guidance with respect to the definition of “minimum necessary” from time to time, and agree to stay informed of any relevant changes to the definition.

11. **Reporting of Security Breaches.** In the event of a “Breach” of any “Unsecured” PHI that Sapphire Digital accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Covered Entity, Sapphire Digital shall report such Breach to Covered Entity as soon as practicable, but in no event later than thirty (30) days after the date on which the Breach is discovered. “Breach” shall mean the unauthorized acquisition, access, Use, or Disclosure of Unsecured PHI which compromises the security or privacy of such information, except where an unauthorized person to whom the information is disclosed would not reasonably have been able to retain such information. “Unsecured PHI” shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary (e.g., encryption). Notice of a Breach shall include, to the extent such information is available: (i) the identification of each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach, (ii) the date of the Breach, if known, and the date of discovery of the Breach, (iii) the scope of the Breach, and (iv) Sapphire Digital's response to the Breach.

12. **Responsibilities of Covered Entity.** With regard to the Use and/or Disclosure of the PHI by Sapphire Digital, Covered Entity hereby agrees:

    a. that the Uses and Disclosures of the PHI by Sapphire Digital pursuant to this Addendum are, at the time of execution and throughout the term of this Addendum will be, consistent with the form of notice of privacy practices (the “Notice”) that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520.

    b. to notify Sapphire Digital, in writing and in a timely manner, of any arrangements permitted or required of Covered Entity under 45 C.F.R. parts 160 and 164 that may impact in any manner the Use and/or Disclosure of the PHI by Sapphire Digital under this Addendum including, but not limited to, restrictions on Use and/or Disclosure of the PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, and to hold Sapphire Digital harmless from the financial impact of any such agreement by Covered Entity; and

    c. to obtain any consent or authorization that may be required under HIPAA or state law prior to furnishing the PHI to Sapphire Digital.

13. **Term.** Unless otherwise terminated as provided in Section 14, this Addendum shall become effective on the Effective Date and shall have a term that shall run concurrently with that of any oral or written agreement by Sapphire Digital to provide Services to Covered Entity and will terminate without any further action of the Parties upon the termination of all such agreements.

14. **Termination**

    a. If either Party determines that the other Party has engaged in a pattern of activity that constitutes
a material breach of the other Party’s obligations under this Addendum, the non-breaching Party shall, within twenty (20) days of that determination, notify the breaching Party and the breaching Party shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to effect such a cure within such a time period, the non-breaching Party may terminate all or part of the service relationship. In no event shall such termination have any effect on sums due from Covered Entity for any services provided by Sapphire Digital under the engagement.

b. Where either Party has knowledge of a material breach by the other Party, and cure is not possible, the non-breaching Party shall terminate the portion of the arrangement for Services affected by the breach.

15. **Effect of Termination.** Upon the event of termination of this Addendum, Sapphire Digital agrees, where feasible, to return or destroy the PHI, which Sapphire Digital still maintains in any form. Prior to doing so, Sapphire Digital further agrees, to the extent feasible, to request the destruction of the PHI that is in the possession of its subcontractors or agents. If in Sapphire Digital’s opinion, it is not feasible for Sapphire Digital or any subcontractors to return or destroy portions of the PHI, Sapphire Digital shall, upon Covered Entity’s written request, inform Covered Entity as to the specific reasons that make such return or destruction infeasible and limit any further use or disclosures to the purposes that make the return or destruction of those portions of the PHI infeasible and provide the protections described herein to that PHI.

16. **Third Party Beneficiaries.** Nothing in this Addendum shall be construed to create any third party beneficiary rights in any person.

17. **Counterparts.** This Addendum may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile and pdf copies thereof shall be deemed to be originals.

18. **Informal Resolution.** If any controversy, dispute or claim arises between the Parties with respect to this Addendum, the Parties shall make good faith efforts to resolve such matters informally.

19. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in any other agreements between Sapphire Digital and Covered Entity that may conflict or appear inconsistent with any provision of this Addendum. This Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA and the HITECH Act. The Parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies with and is consistent with HIPAA and the HITECH Act.
CITY OF NASHUA

CYBER INSURANCE REQUIREMENTS

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;
- Cyber Liability insurance in the amount of $1,000,000 per incident, covering the City of Nashua’s cost for computer and data loss restoration, notification costs, credit monitoring, and liability to third parties from the Contractor’s failure to handle, manage, store and control personally identifiable information.

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 Contractor are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this contract. The City of Nashua shall not maintain any insurance on behalf of Contractor. Subcontractors are subject to the same insurance requirements as Contractor and it shall be the Contractor’s responsibility to ensure compliance of this requirement.

The Parties agree that 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 and Contractor, and nothing in this contract shall create any contractual relationship between the City and Contractor’s consultants, sub consultants, contractors, or subcontractors. The Parties also agree that Contractor is not a City employee and that there shall be no:

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

Contractor will provide the City of Nashua with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the City 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. General Liability policies must name the City of Nashua as an additional insured and reflect on the certificate of insurance. Contractor is responsible for filing updated certificates of insurance with the City of Nashua’s Risk Management Department during the life of the contract.

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

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

Regardless of any coverage provided by any insurance, Contractor agrees to indemnify and shall defend and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, 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 Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Contractor's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.
July 4, 2019  
Memo #20-003

TO: MAYOR DONCHESS  
FINANCE COMMITTEE

SUBJECT: CONTRACT RENEWAL WITH THE HUMANE SOCIETY OF GREATER NASHUA FOR FY20 (VALUE: $99,081)  
DEPARTMENT: 109 CIVIC & COMMUNITY SERVICES; FUND: GENERAL

Please see attached communication from Heidi Peek-Kukulka, Health Officer, for the information related to this request.

In accordance with § 5-84 A (4) Special Purchasing Procedures for Sole Source Procurements

Heidi Peek-Kukulka, Health Officer, Division of Public Health and the Purchasing Department recommend approval of the contract with the **Humane Society of Greater Nashua** in the amount of $99,081.

Respectfully,

Dan Kookken  
Purchasing Manager

Cc: H. Peek-Kukulka  J. Graziano
June 28th, 2019

To: John Griffin, CFO; Daniel Kooker, Purchasing Manager
From: Heidi Peek-Kukulka, Health Officer
Subject: Renewal of Humane Society Contract for FY20

The Humane Society for Greater Nashua Corporation (HSFN) has provided shelter, pound, isolation, and quarantine services for the City of Nashua and has provided these services for over 20 years.

Nashua Revised Ordinances section 93-7 states, "The Mayor, with the assistance and cooperation of the Dog Officer, shall select a suitable place of confinement for impounded animals and those held under suspicion of rabies and after biting." HSFN has a proven record of providing impoundment and quarantine services, has the facility space to accommodate the needs of the City of Nashua's Pound, and HSFN staff has worked closely with City staff throughout the years to develop sound policies and procedures to adequately provide efficient and effective methods of handling impoundment and quarantine services.

The Division of Public Health and Community Services, Environmental Health Department and the Nashua Police Department Animal Control Officer work closely with HSFN and oversee the contract deliverables and communications with HSFN.

The attached contract is effective July 1, 2019 through June 30, 2020 in the amount of $99,081, to be paid in equal monthly installments. Services include shelter for dogs, cats, rabbits and various other small animals, adoption of stray animals, veterinary services for stray animals surrendered to the HSFN, owner location of stray animals, quarantine of unvaccinated dogs and cats which have bit a human or another animal, and processing of animals found to be positive for rabies.

In accordance with § 5-84 A (4) Special Purchasing Procedures for Sole Source Procurements, the Division of Public Health recommends that the contract with HSFN located at 24 Ferry Road, Nashua, NH, be renewed for an additional year.
AGREEMENT

Humane Society for Greater Nashua Corporation and the City of Nashua, NH

AGREEMENT made this __________ day of __________, 2019 by and between the City of Nashua, New Hampshire (hereinafter “City”), a municipal corporation with a principal place of business at 229 Main Street, Nashua, New Hampshire 03061 (the “City”) and Humane Society for Greater Nashua Corporation (HSFN) of 24 Ferry Road, Nashua, NH, 03064, (hereinafter “Contractor”) (collectively referred to as the “Parties”). The Parties hereby enter into this Independent Contractor Agreement (hereinafter “Agreement”) under the terms and conditions set forth below.

SCOPE OF SERVICES

The Contractor agrees to perform the following services for the City:

The Humane Society for Greater Nashua Corporation shall be the designated “Pound” for the City of Nashua, NH and will be responsible for animal impoundment services to the City of Nashua, NH as outlined in this Scope of Services.

1. The HSFN will provide the following impoundment and quarantine services for animals impounded by the Animal Control Officer or a Nashua Police Officer:

   10-Day Bite Quarantine of canines (stray and owned);
   10-Day Bite Quarantine of owned felines;
   10-Day Bite Quarantine of owned ferrets;
   7-Day Impoundment of stray canines;
   Impoundment of stray felines for those with permanent ID only
   Impoundment of stray ferrets for those with permanent ID only

2. In accordance with RSA 466:18-a, and Nashua Revised Ordinances 93-6 Impoundment of dogs, cats and ferrets found at large, HSFN will become the lawful owner of any unclaimed animals as follows:

   Canines – After 7 days
   Felines – Immediately if no permanent identification is found
   Felines – After 7 days if permanent identification was found, but the animal remained unclaimed
   Ferrets – Immediately if no permanent identification is found
   Ferrets – After 7 days if permanent identification was found, but the animal remained unclaimed

The HSFN shall be responsible for the care of any animal of which it becomes the lawful owner.
3. The HSFN shall provide 24/7 access to the facilities to the Animal Control Officer and/or officers of the Nashua Police Department.

4. In accordance with Nashua Revised Ordinances Chapter 93-6 Impoundment of dogs, cats and ferrets found at large, the Contractor will post a monthly listing of all strays available for adoption on the HSFN website.

5. In accordance with State of New Hampshire Law, no wildlife of any kind will be accepted into the shelter living or dead.

6. HSFN will be required to provide the following services for any animal subject to impoundment from the Animal Control Officer or Nashua Police Department:
   - HSFN will maintain records of all animals accepted at the shelter;
   - If contact information is provided, HSFN will be responsible for notifying by telephone, text, email, fax or postal mail, within a reasonable time period not to exceed 24 hours, the owners of all animals brought to the shelter by the Animal Control Officer or Nashua Police Officers;
   - HSFN will retain confirmatory proof of notification of the owner;
   - HSFN will verify Rabies vaccinations for post-quarantine animals;
   - Provide impounded animals with adequate food, water and shelter;

7. HSFN will provide, or ensure provision and payment of, all rabies-related services for canines, felines and ferrets for the City of Nashua impounded by the Animal Control Officer or a Nashua Police Officer only, in accordance with RSA 436 Rabies Control.

8. HSFN will ensure the proper handling of any remains of animals that have been prepared for rabies testing.

9. HSFN will provide a copy of Post Bite Veterinarian Reports to the Nashua Environmental Health Department within 48 hours of veterinarian exam for animals impounded/quarantined at HSFN. Post Bite reports may be submitted by postal mail or electronically to EH@NashuaNH.Gov.

CITY RESPONSIBILITIES

The City of Nashua will be responsible for the oversight of the Contract with the Humane Society for Greater Nashua and will work with HSFN to develop service procedures including but not limited to: animal impoundment procedures; rabies protocols; provide coverage of Animal Control Officer responsibilities during times that the ACO is not available; assist the HSFN with owner-identification and notification; cooperate with NH Fish & Game for the handling of wild or feral animals; the ACO will obtain, become trained in the use of, and utilize a microchip scanner to determine if an animal is owned or stray; and will pay $50.00 each for the replacement of facility keys lost by the Animal Control Officer or Nashua Police Department employees. The City will not impose any adoption criteria to be used as HSFN has policies and procedures in place regarding adoption of animals. No obviously sick or injured animals will be deposited at HSFN by any city agent.
PLACE OF PERFORMANCE

The work described above shall be performed at Humane Society for Greater Nashua Corporation, 24 Ferry Road, Nashua, NH 03064 or in Humane Society approved foster families or facilities.

TIME PERIOD

The Contractor agrees to commence work on July 1, 2019 and complete all functions required in a timely, professional and competent manner. This Agreement will expire on June 30, 2020.

TERMINATION CLAUSES

The City or Contractor can terminate this Agreement, with a 90-day written notice. The City will pay the Contractor a prorated amount for all services performed up to that date. The City is entitled to all contract-related notes, drafts and documents produced by the Contractor up to that date.

PAYMENT FOR SERVICES

The Contractor will be paid as follows:

The Contractor will be paid in monthly increments of $8,256.75. Payment will be made through the City payment system. Total contract amount for program expenses cannot exceed $99,081.00.

REPORTING

The City shall not supervise or directly control the work of the Contractor. The City does reserve the right to inspect the work being performed. The Contractor shall have the ultimate authority to determine the hours of work, the length of workdays, the means and methods of performance of the work, and the City shall not interfere in this regard.

The designated City Representative for this Agreement is the Director of Public Health and Community Services. All notices, project materials, requests by Contractor, invoice forms, monthly reports, and any other communication about the contract, shall be addressed or be delivered to the City Representative.

The City of Nashua’s Health Officer and Animal Control Officer both have Statutory Authority over the Impoundment and Quarantine activities within the City of Nashua. By signing this Agreement, the Contractor agrees to abide by the Statutory Authority granted the Health Officer and the Animal Control Officer under NH RSA 436 and 466, as well as by the Nashua Revised Ordinances, Chapter 93, Animals.

All concerns regarding this Agreement and the Scope of Services described within this Agreement shall first be directed to the Division of Public Health and Community Services
Director. The Director shall bring forward any concerns to the appropriate City department or City Official.

The Contractor shall submit by e-mail, an electronic copy of the required Impoundment & Quarantine Monthly Report to the Division of Public Health and Community Services Director.

The Executive Director and/or the designated Directors of the HSFN shall meet with the following City staff at least two (2) times per year to review the monthly reports and contract deliverables: Director of the Division of Public Health and Community Services, Health Officer, Animal Control Officer, Chief of Police or designee, and Finance Manager for the Division of Public Health and Community Services.

CITY INSPECTION OF PLACE OF PERFORMANCE AND CONTRACT MATERIALS

The Contractor’s Place of Performance shall be subject to inspection and compliance with the City of Nashua’s Revised Ordinance 93-3, Keeping and Housing Animals. This shall include: the location, construction, erection and sanitary condition of all structures used in the fulfillment of the Scope of Services of this Agreement. In accordance with NRO 93-3, the Contractor shall submit any plans to the Board of Health before any building used in the keeping and housing of animals under this Agreement shall be constructed, altered, extended or moved.

The books, records, documents and accounting procedures and practices of the Contractor related to this contract shall be subject to inspection, examination and audit by the City, including, but not limited to, the contracting agency and Corporation Counsel.

The City will provide at least 48 hours notice of inspection.

SUBCONTRACTORS

The Contractor may, at his/her discretion and at his/her own expense, employ such subcontractors as may be necessary for the performance of work. The Contractor agrees to pay any wages, taxes, unemployment insurance, withholding taxes, and workers’ compensation insurance required by law for subcontractors. Said subcontractors will not be paid or supervised by the City. The Contractor shall provide the City with prior notice of the Contractor’s intent to employ subcontractors to perform any services required by this Agreement. The City shall have the right to reject any subcontractors for good cause. Prior approval by the City of a subcontractor is not required in emergency situations.

INSURANCE

The Contractor agrees to provide his/her own workers’ compensation and liability insurance for work performed, naming the City as additional insured. The contractor must maintain required limits of coverage for the duration of the contract/project.

Prior to commencement with the project, the selected agency/individual will be required to provide proof of insurance, ten (10) days prior to commencing work under the contract document and will notify the City of any changes in coverage or change of carrier should they deviate from the following:
- Comprehensive General Liability - $1,000,000 per occurrence/$2,000,000 aggregate - City of Nashua must be named as an additional insured.

- Workers’ Compensation by a Class A Carrier as required by statute/Employers’ Liability of $500,000/$500,000/$500,000.

Contractor shall maintain for the duration of the contract all required insurance coverage. Coverage must be written with an insurance carrier licensed to do business in the State of New Hampshire. City of Nashua requires thirty (30) days written notice of cancellation or material change in coverage.

Contractor is responsible for filing updated Certificates of Insurance with the City of Nashua Risk Management Department during the life of the contract. A copy of the current Certificates of Insurance must be submitted to the Director of the City of Nashua’s Division of Public Health and Community Services within thirty (30) days of the signing of the Agreement.

Regardless of the coverage provided by any insurance, the Contractor agrees to indemnify and shall defend and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorneys’ fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of the 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. The Contractor’s indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless. The City agrees to indemnify, defend and hold harmless the Contractor, 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 resulting or arising from the City’s, its agents’ or representatives’ sole negligence or willful conduct.

COMPLIANCE WITH APPLICABLE LAWS

The 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 state and local laws and requirements regarding the impoundment and quarantining of animals, federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. The 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 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.

MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT
This contract constitutes the entire contract between the City and the 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.

In the event that any current law, regulation, or ordinance, either local or state, is amended, rescinded, newly enforced or enacted which affects this Agreement, the parties shall, in good faith, amend this Agreement in order to be in compliance with said Legislative changes. If said changes cause an increase in fees or costs by either party, the parties in good faith shall amend this Agreement to reflect the treatment of said fees or costs.

INDEPENDENT CONTRACTOR

The Contractor agrees that HSFN is completely independent from the City and is not an employee of the City. The Contractor warrants that HSFN may work for other individuals and/or entities.

CHOICE OF LAW AND VENUE

This Agreement shall be governed exclusively by the laws of the State of New Hampshire and any litigation regarding the interpretation or enforcement of this Agreement shall only be brought in a court located in the State of New Hampshire.

______________________________  ______________________________
Douglas Barry, Executive Director                James Donchess, Mayor
Humane Society for Greater Nashua Corporation             City of Nashua, NH

_________________________  ____________________________
Date                                                        Date
July 4, 2019
Memo #20-001

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: PURCHASE OF VARIOUS CHEMICALS FOR THE WASTEWATER TREATMENT FACILITY (VALUE TOTAL OF: $601,000) DEPARTMENT: 169 WASTEWATER; FUND: WASTEWATER

Please see the attached communications from David Boucher, Superintendent Wastewater Department dated June 27, 2019 for the information related to these purchases.

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

The Wastewater Treatment Facility will be purchasing the following chemicals from the vendors as noted:

**Polydyne NE2180** Polydyne of Riceboro, GA $1.18/LB Delivered/5,000 gal load @ $1.12/LB Amount $412,000

**Polydyne C-6266** $1.18/LB Delivered/5,000 gal load @ $1.12/LB

**Sodium Hypochlorite** $0.0855/WET LB
#104 15%, Bulk Borden & Remington, Fall River, MA Amount $125,000

**Sodium Bisulfite** $0.1196/WET LB
#79 38%, Bulk PVS Chemical Solutions Amount $64,000

The Superintendent Wastewater Department, Board of Public Works (6/27/2019 meeting) and Purchasing recommend the purchase of the items above.

Respectfully,

Dan Kooker
Purchasing Manager

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

To: Board of Public Works

Meeting Date: June 27, 2019

From: David Boucher, Superintendent
Wastewater Department

Re: Polymer

D. Motion: To approve the purchase of polymer from Polydyne of Riceboro, GA in the amount of $412,000. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 61 Supplies & Materials.

Attachments: Vendor quote

Discussion: Polymer is a product used at the plant to coagulate sludge.

Periodically, the Facility has different companies come in and do bench testing to ensure we are using the best polymer for the best price to meet our needs. Our current product continues to perform well, producing a dry product that saves the City money in trucking and disposal costs. The Polydyne products we are currently using are Clarifloc NE2180 for the screw presses and Clarifloc C-6266 for the belt filter presses.

Polydyne is offering the City a unit price of $1.18/lb for both of these products for the FY20 year, with a potential savings for a full 5000 gallon load at $1.12/lb. Our annual estimated cost for these two polymers is $412,000.
Emailed to: osbornen@nashuanh.gov

May 31, 2019

Ms. Noelle Osborne
City of Nashua
2 Sawmill Road
Nashua, NH 03060

Subject: Polymer Price Quotation

Dear Ms. Osborne:

Polydyne Inc. is pleased to offer the following price quotation:

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>PRICE</th>
<th>PACKAGE</th>
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</thead>
<tbody>
<tr>
<td>CLARIFLOC® NE-2180</td>
<td>$1.12/LB. DELIVERED*</td>
<td>FULL BULK – 5,000 GAL MIN.</td>
</tr>
<tr>
<td></td>
<td>$1.18/LB DELIVERED*</td>
<td>LTL BULK – 2,000 GAL MIN. 2300 LB. TOTES</td>
</tr>
<tr>
<td>CLARIFLOC® C-6266</td>
<td>$1.18/LB DELIVERED*</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>2300 LB. TOTES</td>
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</table>

*Freight/Tariff Surcharge may apply


Payment Terms: Net 30 days – No Discounts

Thank you for your business. If you have any questions, feel free to contact Alex Krantz, Technical Sales Representative, at (856) 745-1936. Orders may be placed online at: www.polydyneinc.com/polydyne-online-order-form/ or through our Customer Service Department at (800) 848-7659. Your Customer Service Representative is Heather James. Heather’s direct extension is 8735.

Best regards,

[Signature]
Boyd Stanley
Vice-President
City of Nashua, Public Works Division

To: Board of Public Works  
Meeting Date: June 27, 2019

From: David Boucher, Superintendent  
Wastewater Department

Re: Sodium Hypochlorite

B. Motion: To approve the purchase of the chemical Sodium Hypochlorite in the amount of $125,000 from Borden & Remington of Fall River, MA. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 61 Supplies & Materials.

Attachment: NEMVCC 2019/20 Bid sheet

Discussion: The Wastewater Department again participated in the Northeast/Merrimack Valley Chemical Consortium (NEMVCC) bid process. Sealed bids were due by May 23, 2019 electronically or on paper to the Groton Water Department.

Borden & Remington was the low bidder for Sodium Hypochlorite. Sodium Hypochlorite is used to disinfect the wastewater before it is discharged into the Merrimack River. It is also used in odor control for the air scrubber system. This chemical is used at the Wastewater Treatment Facility.

#104 – Sodium Hypochlorite 15%, Bulk, price/ wet lb.

<table>
<thead>
<tr>
<th>Company</th>
<th>Location</th>
<th>Price</th>
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<tbody>
<tr>
<td>Borden &amp; Remington</td>
<td>Fall River, MA</td>
<td>$0.0855</td>
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<tr>
<td>Univar U.S.A., Inc</td>
<td>Morrisville, PA</td>
<td>$0.0890</td>
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<tr>
<td>98</td>
<td>SODIUM FLUORIDE (FOREIGN)</td>
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<td>FULL 40 BAG PALLET</td>
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<td>DRY LB.</td>
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<td>Harcros Chemicals, Inc.</td>
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<tr>
<td></td>
<td>CHEMIRITE INC.</td>
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<td>Borden &amp; Remington Corp.</td>
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<table>
<thead>
<tr>
<th>99</th>
<th>SODIUM HEXAMETAPHOSPHATE</th>
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<tr>
<td></td>
<td>50 LB. BAG</td>
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<tr>
<td>100</td>
<td>Sodium Hexametaphosphate (PRISTINE 5K-7641)</td>
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<tr>
<td></td>
<td>55 GAL DRUM</td>
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<td>250 GAL. TOTE.</td>
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<td>NO BIDDERS</td>
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<td>102</td>
<td>SODIUM HYPOCHLORITE-12.5%</td>
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<tr>
<td></td>
<td>5 GALLON CARBOYS</td>
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<td></td>
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<td>ROBERTS CHEMICAL CO.</td>
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<td>SODIUM HYPOCHLORITE-12.5%</td>
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<td>BULK (500 - 2,000 GALLON DELIVERY)</td>
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<td>Borden &amp; Remington Corp.</td>
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<td>UNIVAR.</td>
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<td>104</td>
<td>SODIUM HYPOCHLORITE-15%</td>
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<tr>
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<td>BULK (400 - 5,000 GALLON DELIVERY)</td>
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<td>WET LB.</td>
<td></td>
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<td>Borden &amp; Remington Corp.</td>
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<td>105</td>
<td>SODIUM HYPOCHLORITE-15%</td>
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<td>BULK (400 - 5,000 GALLON DELIVERY)</td>
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<td>CERTIFIED REFRIGERATED STORAGE &amp; DELIVERY</td>
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</tr>
<tr>
<td></td>
<td>NO BIDDERS</td>
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</tr>
</tbody>
</table>
City of Nashua, Public Works Division

To: Board of Public Works
Meeting Date: June 27, 2019

From: David Boucher, Superintendent
Wastewater Department

Re: Sodium Bisulfite

C. Motion: To approve the purchase of the chemical Sodium Bisulfite in the amount of $64,000 from PVS Chemical Solutions of Detroit, MI. Funding will be through: Department: 169 Wastewater; Fund: Wastewater; Account Classification: 61 Supplies & Materials.

Attachment: NEMVCC 2019/20 Bid sheet

Discussion: The Wastewater Department again participated in the Northeast/Merrimack Valley Chemical Consortium (NEMVCC) bid process. Sealed bids were due by May 23, 2019 electronically or on paper to the Groton Water Department.

PVS Chemical Solutions was the low bidder for sodium bisulfite for the FY20 bid. Sodium bisulfite is used to remove residual chlorine in the wastewater before it is discharged. This chemical is used at the Wastewater Treatment Facility.

#79 – Sodium Bisulfite 38%, Bulk, price/ wet lb.

<table>
<thead>
<tr>
<th>Company</th>
<th>Location</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>PVS Chemical Solutions</td>
<td>Detroit, MI</td>
<td>$0.1196</td>
</tr>
<tr>
<td>Univar U.S.A., Inc</td>
<td>Morrisville, PA</td>
<td>$0.1740</td>
</tr>
<tr>
<td>Holland, Co</td>
<td>Adams, MA</td>
<td>$0.1650</td>
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# NORTHEAST/MERRIMACK VALLEY
## CHEMICAL CONSORTIUM

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<tr>
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<tr>
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<td>HARCROS CHEMICAL, INC. -</td>
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<td><strong>POTASSIUM PERMANGANATE (FOREIGN-ALTERNATE BID)</strong></td>
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<tr>
<td>5 LB. PAIL</td>
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<td></td>
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<tr>
<td>NO BIDDER</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SODIUM ALUMINATE, 38%</strong></td>
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<tr>
<td>BULK</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WET LB.</td>
<td>1</td>
<td>$0.2650</td>
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<td>Holland CO -</td>
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<td><strong>SODIUM BICARBONATE (AWWA/NSF 60)</strong></td>
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<tr>
<td>BULK</td>
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<td>DRY LB.</td>
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<td>Monson Companies Inc. -</td>
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<td><strong>SODIUM BICARBONATE (AWWA/NSF 60)</strong></td>
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<tr>
<td>50 LBS. BABS - FULL TRUCKLOAD</td>
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<tr>
<td>DRY LB.</td>
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<td></td>
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<tr>
<td>Church &amp; Dwight -</td>
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<td>$0.2835</td>
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<td>Monson Companies Inc. -</td>
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<tr>
<td><strong>SODIUM BICARBONATE (wastewater use)</strong></td>
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<td>50 LB. BAGS - FULL TRUCKLOAD</td>
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<tr>
<td>DRY LB.</td>
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<td>Monson Companies Inc. -</td>
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<td><strong>SODIUM BICARBONATE (wastewater use)</strong></td>
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<tr>
<td>50 LBS BAGS - PALLET LOADS</td>
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<td>DRY LB.</td>
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<tr>
<td>Monson Companies Inc. -</td>
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<td>$0.3430</td>
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<td>ASTRO CHEMICAL -</td>
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<td>Borden &amp; Remington Corp. -</td>
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<td><strong>SODIUM BISULFITE - 38% SOLUTION</strong></td>
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<td>BULK (1,000+ GALLON DELIVERY)</td>
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<td>WET LB.</td>
<td></td>
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<tr>
<td>PVS CHEMICAL SOLUTIONS -</td>
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<tr>
<td>Holland CO -</td>
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<td>$0.1650</td>
</tr>
<tr>
<td>UNIVAR -</td>
<td>1</td>
<td>$0.1740</td>
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</table>
July 4, 2019
Memo #20-004

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: FY20 PURCHASE OF TRASH AND RECYCLING TOTERS (VALUE: $145,000)
DEPARTMENT: 168 SOLID WASTE; FUND: SOLID WASTE

Please see the attached communication from Jeff Lafleur, Solid Waste Department Superintendent dated June 27, 2018 for the information related to this contract.

The Solid Waste Department Superintendent, Board of Public Works (June 27, 2019 meeting) and the Purchasing Department recommend the award of this purchase in an amount of $145,000 to Toter, Inc. of Statesville, NC.

Respectfully,

Dan Koonen
Purchasing Manager

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

To: Board of Public Works

Meeting Date: June 27, 2019

From: Jeff Lafleur, Superintendent
Solid Waste Department

Re: To approve the purchase of Recycling and Trash carts from Toter, Inc.

B. Motion: To approve the purchase of recycling and trash carts, and cart lids for curbside collection in an amount not-to-exceed $145,000 from Toter, Inc. of Statesville, NC. Funding will be through: Department: 168 Solid Waste; Fund: Solid Waste; Account Classification: 71 Equipment.

Discussion: Toter Inc. has been the vendor supplying trash and recycling carts for the City of Nashua since 2003 when the automated trash collection program started. The curbside recycling program has grown immensely and the demands for recycling carts are on the rise.

In October 2002 (RFP #0721-110802), a nine member committee comprised of DPW, BPW, and Purchasing officials as well as a representative of the Board of Aldermen and the general public interviewed prospective vendors and evaluated their proposals. Toter Inc. was chosen and has been providing a quality product and excellent service as well as honoring warranty claims presented.
July 4, 2019
Memo #20-005

TO: MAYOR DONCHESS
    FINANCE COMMITTEE

SUBJECT: PURCHASE OF CATEPILLAR 826K COMPACTOR TEETH (VALUE: $34,250)
         DEPARTMENT: 168 SOLID WASTE; FUND: SOLID WASTE

Please see the attached communication from Jeff Lafleur, Solid Waste Department Superintendent dated June 27, 2018 for the information related to this contract.

The Solid Waste Department Superintendent, Board of Public Works (June 27, 2019 meeting) and the Purchasing Department recommend the award of this purchase in an amount of $34,250 to Caron Compactor Company of Escalon, CA.

Respectfully,

[Signature]
Dan Kobren
Purchasing Manager

Cc: J Lafleur L Fauteux
To: Board of Public Works                          Meeting Date: June 27, 2019

From: Jeff Lafleur, Superintendent of Solid Waste

Re: Caterpillar 826K Compactor Teeth

A. Motion: To approve the purchase of a set of teeth for the front wheels on the Caterpillar 826K compactor from Caron Compactor Company of Escalon, CA in the amount of $34,250. Funding through Department 168 Solid Waste; Fund: Solid Waste; Account Classification: 54 Vehicle Repairs & Maintenance.

Discussion: The teeth on the front wheels of the Caterpillar 826K compactor are extremely worn and due for replacement soon. These replacements are necessary to ensure good compaction of the waste coming into the landfill and to reduce unnecessary wear on the compactor by requiring trash to be rolled more in order to properly compact it. The teeth for the rear wheels were done last year.

The Solid Waste Department has used Caron’s compactor teeth on the last two compactors and they have been proven to be both durable and reliable.
# OVER 50 YEARS OF SERVICE TO THE SOLID WASTE DISPOSAL INDUSTRY

## QUOTATION TO:

City of Nashua

## ATTENTION:

Matt LeBlanc

## ADDRESS:

840 W. Hollis Street

## CITY:

Nashua

**Manufacturer:** CAT  
**Model:** 826K  
**Year:** 2015  
**Machine Serial No.:** 23206023  
**Wheel/Blade Serial No.:** 15400

## QUOTATION NO.:

19Q0208A.BH

## PHONE:

(603) 557-2020

## FAX:

Email: leblancm@nashuanh.gov

## DATE:  
2/19/2019

## LF #:  
4332

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Quantity</th>
<th>Description of Material and Labor</th>
<th>Material</th>
<th>Labor</th>
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</thead>
<tbody>
<tr>
<td>7224-SYB.2/</td>
<td>Half Set</td>
<td>826K Half Set 8&quot; SUPERMega Pin-On Teeth in a 5 Row/8 Teeth</td>
<td>$31,793.00</td>
<td></td>
</tr>
<tr>
<td>15400</td>
<td></td>
<td>Per Row Pattern (Half Set Consists of 48 Traction and 32 B MEGA Base Adapters, Caps, Pins and Springs Assembled with 309L Cap to Base Weld).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Caron Compactor Company appreciates your business.**

**ALL APPLICABLE TAXES, TARIFFS, DUTIES, OVERSEAS PACKAGING AND INSURANCE IS THE FULL RESPONSIBILITY OF THE PURCHASER.**

**PIN-ON TEETH** $31,793.00  
**FREIGHT** $2,457.00  
**GRAND TOTAL** $34,250.00

---

1. Terms are subject to credit approval.  
2. If payment is not received within 30 days or according to terms, a late payment charge of 1.5% will be added for each month the account remains unpaid. Should this amount be referred for collection, all collection costs including reasonable attorney's fees shall be added to the unpaid balance.  
3. Prices and terms listed are not subject to verbal changes or other agreements unless approved in writing by an authorized CARON representative.  
4. Delivery of orders based on this estimate may be delayed by the seller due to strikes, accidents, fire, availability of material and other causes beyond our control.  
5. Data entry, clerical or computation errors are subject to corrections.  
6. Conditions not specified herein shall be governed by established trade customs.  
7. Terms inconsistent with this estimate will not be binding on the seller.  
8. Orders will be priced in accordance with quantities quoted and released for shipment at one time unless customer is notified of a variation.

**QUOTED BY:** Barbara Humphrey  
**TITLE:** Assistant Sales Coordinator  
cc: MS, DW, RB and City of Nashua LF-4332 (file)
July 4, 2019
Memo #20-006

TO: MAYOR DONCHESS
FINANCE COMMITTEE

SUBJECT: CONTRACT FOR CANAL STREET BRIDGE REPAIRS TO ABUTMENT (VALUE: $39,905)
DEPARTMENT: 160 ADMIN/ENGINEERING; FUND: CAPITAL

Please see the attached communication from Stephen Dookran, P.E., City Engineer, dated June 27, 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 (June 27, 2019 meeting) and the Purchasing Department recommend the award of this contract in an amount of $39,905 to William P. Davis Excavation, of Hampton, NH.

Respectfully,

[Signature]
Dan Kooken
Purchasing Manager

Cc: S Dookran L Fauteux
City of Nashua, Public Works Division

To: Board of Public Works

Meeting Date: June 27, 2019

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

Re: Canal Street Bridge Repairs to Abutment

D. Motion: To award the construction contract for the installation of weep holes at the Canal Street Bridge to William P. Davis Excavation of Hampton, NH in the amount of $39,905. Funding is through Department: 160 Admin/Engineering; Fund: Capital; Activity: Bridge Rehab.

Discussion: The Canal Street Bridge over Nashua River is part of a significant east-west arterial road seeing approximately 30,000 vehicles per day. In the routine NHDOT inspections, the bridge currently has a rating of 4 for the substructure. The main issue in the substructure is the East Abutment concrete spalling.

Fuss & O’Neil of Manchester, NH CLD designed the repairs and prepared the bid package for construction. Work includes the installation of weep holes at the east abutment. The function of the weep holes is to drain water that is currently seeping through and causing further deterioration of the concrete. Once this water seepage issue is resolved, a later phase of work will be repairs to the deteriorated concrete. The concrete repair work cannot be done until the water seepage has subsided.

The construction package for the repairs was advertised on March 7, 2019. The Engineer’s Estimate prepared by Fuss & O’Neil was $47,000. Two bids were received on June 20, 2019 as follows:

- William P. Davis Excavation of Hampton, NH $39,905
- Defelice Corporation of Dracut, MA $47,500

The low bidder has recently completed work for the Division with satisfactory results. Example projects include a Yard Hydrant and a Siphon Covers Installation project for the Wastewater Department and a Guardrail Installation project on Temple St for the Engineering Department.

Pending approval, this work will be completed by October of this year.
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR

This agreement is made:

BETWEEN the OWNER:  City of Nashua, New Hampshire
                        229 Main Street
                        Nashua, NH 03060-2019

And the CONTRACTOR:  William P. Davis Excavation
                        PO Box 758
                        Hampton, NH 03843
                        and its successors, transferees and assignees
                        (together “CONTRACTOR”)

For the following Project:  CANAL STREET BRIDGE REPAIRS
                           WEEP HOLES
                           IFB0281-062019

ARTICLE 1 – THE CONTRACT DOCUMENTS

The CONTRACTOR shall complete the work described in the Contract Documents for this project. The documents consist of:

1. This Agreement signed by the OWNER and CONTRACTOR, including the General Terms and Conditions;
2. Drawings and Specifications provided in the bid documents;
3. Payment and Performance Bonds, if applicable;
4. Insurance Certificate;
5. Written change orders for minor changes in the Work issued after execution of this Agreement; and
6. Fully Executed OWNER Purchase Order

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 Proposals and the terms of this Agreement, a written change order and/or fully executed OWNER Purchase Order, the terms of this Agreement, the written change order or the fully executed OWNER Purchase Order shall control over the terms of the Proposals
ARTICLE 2 – WORK TO BE PERFORMED

Except as otherwise provided in this contract, 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.

SCOPE OF SERVICE:

Installation of five (5) weep holes at the east abutment wall of the Canal Street Bridge. The purpose of the weep holes installations is to drain entrapped water behind the wall. The water is seeping through deteriorated portions of the wall. The water needs to be drained away by the weep holes before we can perform concrete repairs to the abutment wall.

ARTICLE 3 – PERIOD OF PERFORMANCE

CONTRACTOR shall perform and complete work by October 8, 2019 which date 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. CONTRACTOR shall begin performance upon receipt of an Executed Contract and a valid Purchase Order issued from the City of Nashua.

ARTICLE 4 – CONTRACT SUM

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

THIRTY-NINE THOUSAND NINE HUNDRED AND FIVE DOLLARS ($39,905.00)

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

ARTICLE 5 – INSURANCE AND INDEMNIFICATION

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;
- Motor Vehicle Liability: $1,000,000 Combined Single Limit; **Coverage must include all owned, non-owned and hired vehicles;** and
- Workers’ Compensation Coverage in compliance with the State of NH Statutes, $100,000/$500,000/$100,000.

The parties agree that 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, or subcontractor’s. The only contractual relationship created by this contract is between the OWNER and CONTRACTOR, and nothing in this contract shall create any contractual relationship between the OWNER and CONTRACTOR’s consultants, sub consultants, or subcontractor’s. The parties also agree that CONTRACTOR is not an OWNER employee and that there shall be no:
1. Withholding of income taxes by the **OWNER**;
2. Industrial insurance coverage provided by the **OWNER**;
3. Participation in group insurance plans which may be available to employees of the **OWNER**;
4. Participation or contributions by either the independent **CONTRACTOR** or the **OWNER**
   to the public employee’s retirement system;
5. Accumulation of vacation leave or sick leave provided by the **OWNER**;
6. Unemployment compensation coverage provided by the **OWNER**.

**CONTRACTOR** will provide the **OWNER** with certificates of insurance for coverage as listed
below and endorsements affecting coverage required by the contract within ten calendar days after
the **OWNER** issues the notice of award. The **OWNER** 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 OWNER as an
additional insured** and reflect on the certificate of insurance. **CONTRACTOR** is responsible for
filing updated certificates of insurance with the **OWNER**'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 **CONTRACTOR** of its
  responsibilities or limit the amount of its liability to the **OWNER** or other persons, and
  **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 **OWNER
  shall be called upon to contribute to a loss.
- **CONTRACTOR** is responsible for and required to remedy all damage or loss to any
  property, including property of the **OWNER**, caused in whole or part by **CONTRACTOR
  or anyone employed, directed, or supervised by **CONTRACTOR**.
- The insurance provided herein is primary, and no insurance held or owned by the
  **OWNER**, shall be called upon to contribute to a loss.
- **CONTRACTOR** is responsible for and required to remedy all damage or loss to any
  property, including property of the **OWNER**, caused in whole or part by **CONTRACTOR
  or anyone employed, directed, or supervised by **CONTRACTOR**.

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

ARTICLE 6 – GENERAL PROVISIONS

1. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification.

2. The term “Work” means the construction and services required by the Contract Documents, and include all other labor, materials, equipment and services provided by the CONTRACTOR to fulfill the CONTRACTOR's obligations.

3. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CONTRACTOR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

4. In the case of a discrepancy, calculated dimensions will govern over scaled dimensions, Contract Drawings will govern over Standard Specifications, and Technical Specifications will govern over both Contract Drawings and Standard Specifications. In the case of a discrepancy between the Agreement and other Contract Documents, the more specific or stringent obligation or requirement to the benefit of the OWNER shall take precedence.

5. The CONTRACTOR shall take no advantage of any apparent error or omission in the Contract Drawings or Technical Specifications, and the Engineer will be permitted to make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract Documents.

ARTICLE 7 – OWNER

1. Except for permits and fees, which are the responsibility of the CONTRACTOR under the Contract Documents, the OWNER shall obtain and pay for other necessary approvals, easements, assessments and charges.

2. If the CONTRACTOR fails to correct Work that is not in accordance with the Contract Documents, the OWNER may direct the CONTRACTOR in writing to stop the Work until the correction is made.

3. If the CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the OWNER to correct such default or neglect with diligence and promptness, the OWNER may, without prejudice to other remedies, correct such deficiencies. In such case, a Change Order shall be issued deducting the cost of correction from payments due the CONTRACTOR.

4. The OWNER reserves the right to perform construction or operations related to the project with the OWNER’s own forces, and to award separate contracts in connection with other portions of the project.

5. The CONTRACTOR shall coordinate and cooperate with separate CONTRACTORS employed by the OWNER.

6. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.
ARTICLE 8 – CONTRACTOR

1. Execution of the Contract by the CONTRACTOR is a representation that the CONTRACTOR has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

2. The CONTRACTOR shall carefully study and compare the Contract Documents with each other and with information furnished by the OWNER. Before commencing activities, the CONTRACTOR shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the CONTRACTOR with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the OWNER.

3. Within ten (10) days of notification of award, and prior to commencement of work, the CONTRACTOR shall obtain and forward to OWNER a Payment Bond and a Performance Bond representing 100% of the contract work.

4. The CONTRACTOR shall supervise and direct the Work, using the CONTRACTOR's best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

5. The CONTRACTOR, as soon as practicable after award of the Contract, shall furnish in writing to the OWNER the names of subcontractors or suppliers for each portion of the Work. The OWNER will promptly reply to the CONTRACTOR in writing if, after due investigation, he has reasonable objection to the subcontractors or suppliers listed.

6. Unless otherwise provided in the Contract Documents, the CONTRACTOR shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work.

7. The CONTRACTOR shall deliver, handle, store and install materials in accordance with manufacturers’ instructions.

8. The CONTRACTOR warrants to the OWNER that (1) materials and equipment furnished under the contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

9. The CONTRACTOR shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

10. The CONTRACTOR shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

11. The CONTRACTOR shall comply with and give notices required by agencies having jurisdiction over the Work. If the CONTRACTOR performs Work knowing it to be contrary to laws, statutes, ordinances building codes, and rules and regulations without notice to the OWNER, the CONTRACTOR shall assume full responsibility for such Work and shall bear the attributable costs. The CONTRACTOR shall promptly notify the OWNER in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

12. The CONTRACTOR shall promptly review, approve in writing and submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.
13. The CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the OWNER.

14. The CONTRACTOR shall be responsible for cutting, fitting or patching required completing the Work or to make its parts fit together properly.

15. The CONTRACTOR shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work.

16. Upon completion of WORK, CONTRACTOR warrants and guarantees to OWNER, for one (1) year, and that all WORK was completed in accordance with the Contract Documents and will not be defective. CONTRACTOR’s warranty and guarantee hereunder excludes defects or damage caused by:

- Abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, subcontractors, suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
- Normal wear and tear under normal usage.

ARTICLE 9 – CHANGES IN THE WORK

1. After execution of the Contract, changes in the Work may be accomplished by Change Order or by order for a minor change in the Work. The OWNER, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

2. A Change Order shall be a written order to the CONTRACTOR signed by the OWNER to change the Work, Contract Sum or Contract Time.

3. Change Order requests must include material and equipment cost plus labor with a profit margin of no more than 10%. Change Orders may require approval by the Board of Public Works and the OWNER’s Finance Committee vote prior to proceeding.

4. The OWNER will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be written orders and shall be binding on the OWNER and CONTRACTOR. The CONTRACTOR shall carry out such written orders promptly.

5. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment following authorization of the OWNER to the charges.

ARTICLE 10 – TIME

1. Time limits stated in the Contract Documents are of the essence to the Contract.

2. If the CONTRACTOR is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the CONTRACTOR’s control, the Contract Time shall be extended by Change Order for such reasonable time as may be determined.
ARTICLE 11 – PAYMENTS AND COMPLETION

1. The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the OWNER to the CONTRACTOR for performance of the Work under the Contract Documents.

2. Once every thirty (30) days, the CONTRACTOR shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such application shall be supported by such data substantiating the CONTRACTOR’s right to payment as the OWNER may reasonably require.

3. Application for Payment 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 OWNER requires that all submitted invoices contain a valid PURCHASE ORDER NUMBER.

4. The CONTRACTOR warrants that title to all Work covered by an Application for Payment will pass to the OWNER no later than the time of payment. The CONTRACTOR further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the OWNER shall, to the best of the CONTRACTOR’s knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the OWNER’s interests.

5. OWNER shall make payments, for work satisfactorily completed and accurately invoiced, on the basis of CONTRACTORs Application for Payment, within 30 days of approval by the OWNER.

6. The CONTRACTOR shall promptly pay each subcontractor and supplier out of the amount paid to the CONTRACTOR on account of such entities’ portion of the Work.

7. The OWNER shall have no responsibility for the payment of money to a subcontractor or supplier.

8. An Application for Payment, a progress payment, or partial or entire use or occupancy of the project by the OWNER shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

9. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the OWNER can occupy or utilize the Work for its intended use.

10. When the Work or designated portion thereof is substantially complete, the CONTRACTOR and OWNER shall establish responsibilities for completion and shall fix the time within which the CONTRACTOR shall finish all items on the list accompanying
the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

11. Upon receipt of a final Application for Payment, the OWNER will inspect the Work. When he finds the Work acceptable and the Contract fully performed, the OWNER will promptly issue a final Certificate for Payment.

12. Acceptance of final payment by the CONTRACTOR, a subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 12– RETAINAGE

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

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

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

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

2. Upon final completion and acceptance of the Work, OWNER shall hold 2% retainage during the 1 (one) year warranty period and release it only after the project has been accepted.

ARTICLE 13 – PROTECTION OF PERSONS AND PROPERTY

1. The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The CONTRACTOR shall promptly remedy damage and loss to property caused in whole or in part by the CONTRACTOR, or by anyone for whose acts the CONTRACTOR may be liable.

ARTICLE 14 – CORRECTION OF WORK

1. The CONTRACTOR shall promptly correct Work rejected by the OWNER as failing to conform to the requirements of the Contract Documents. The CONTRACTOR shall bear the cost of correcting such rejected work

2. In addition to the CONTRACTOR’s other obligations including warranties under the Contract, the CONTRACTOR shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.
3. If the CONTRACTOR fails to correct nonconforming Work within a reasonable time, the OWNER may correct it and the CONTRACTOR shall reimburse the OWNER for the cost of the correction.

ARTICLE 15 – PROHIBITED INTERESTS

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

ARTICLE 16 – TERMINATION OF THE CONTRACT

TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL

The OWNER, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the OWNER chooses to terminate, abandon, or suspend all or part of the project, it shall provide CONTRACTOR 10 day’s written notice of its intent to do so. If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or that part of the project and contract.

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

a. Immediately discontinue work on the date and to the extent specified in the notice.
b. Provide the OWNER with a list of all unperformed services.
c. 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.
d. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the OWNER of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the OWNER any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
e. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the OWNER to resume performance.

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

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

Upon receipt of notice of termination for cause, **CONTRACTOR** shall:

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

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

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

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

ARTICLE 17 – 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 OWNER Representative and the CONTRACTOR Representative. At all times, CONTRACTOR shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the OWNER. If the parties are unable to resolve their dispute as described above within 30 days, the parties may request that the dispute be submitted to the Board of Public Works for resolution. If the parties are dissatisfied with the decision of the Board of Public Works, the parties’ reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

ARTICLE 18 – 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

ARTICLE 19 – MISCELLANEOUS PROVISIONS

1. Neither party to the Contract shall assign the Contract as a whole without written consent of the other.
2. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time.
3. If additional testing is required, the CONTRACTOR shall perform these tests.
4. The OWNER shall pay for tests except for testing Work found to be defective for which the CONTRACTOR shall pay.
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)  
James Donchess, Mayor  
(Printed Name and Title)  
Date

CONTRACTOR (signature)  
(Printed Name and Title)  
Date
To: Board of Public Works                          Meeting Date: June 27, 2019
From: Stephen Dookran, P.E., City Engineer Engineering Department
Re: Canal Street Bridge Repairs to Abutment

D. Motion: To award the construction contract for the installation of weep holes at the Canal Street Bridge to William P. Davis Excavation of Hampton, NH in the amount of $39,905. Funding is through Department: 160 Admin/Engineering; Fund: Capital; Activity: Bridge Rehab.

Discussion: The Canal Street Bridge over Nashua River is part of a significant east-west arterial road seeing approximately 30,000 vehicles per day. In the routine NHDOT inspections, the bridge currently has a rating of 4 for the substructure. The main issue in the substructure is the East Abutment concrete spalling.

Fuss & O’Neil of Manchester, NH CLD designed the repairs and prepared the bid package for construction. Work includes the installation of weep holes at the east abutment. The function of the weep holes is to drain water that is currently seeping through and causing further deterioration of the concrete. Once this water seepage issue is resolved, a later phase of work will be repairs to the deteriorated concrete. The concrete repair work cannot be done until the water seepage has subsided.

The construction package for the repairs was advertised on March 7, 2019. The Engineer’s Estimate prepared by Fuss & O’Neil was $47,000. Two bids were received on June 20, 2019 as follows:

William P. Davis Excavation of Hampton, NH  $39,905
Defelice Corporation of Dracut, MA           $47,500

The low bidder has recently completed work for the Division with satisfactory results. Example projects include a Yard Hydrant and a Siphon Covers Installation project for the Wastewater Department and a Guardrail Installation project on Temple St for the Engineering Department.

Pending approval, this work will be completed by October of this year.