

FINANCE COMMITTEE

OCTOBER 21, 2020

7:00 PM

To Join Zoom

Meeting: <https://us02web.zoom.us/j/82984632861?pwd=M3VkbzRRdGEzemZiZWtNYW1QU3h6Zz09>

Meeting ID: 829 8463 2861

Passcode: 119696

Join by telephone: 1-929-205-6099

Meeting ID: 829 8463 2861

Passcode: 119696

If there is a problem with the audio, please dial 603-821-2049 to advise and someone will help you connect.

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ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

From: Kelly Parkinson, Purchasing Manager

Re: Copier Replacement Lease & Maintenance funded by Photocopier Lease Account & Copier Maintenance Contracts Account for 8 copiers in the amount of \$93,395 in the Police Department

From: Kelly Parkinson, Purchasing Manager

Re: Amendment to Transit Operations Contract from Funding Source 55690 Regular Transportation Services in the amount of \$372,057

From: Kelly Parkinson, Purchasing Manager

Re: Riverfront Lighting Installation from Funding Source \$407,781 in FY21 Escrow and \$200,000 in TIFF funding

From: Kelly Parkinson, Purchasing Manager

Re: Vehicle Purchase for Parks & Recreation funded from FY21 CERF in the amount of \$39,060

From: Kelly Parkinson, Purchasing Manager

Re: Software Maintenance for Hyland Onbase (annual) from fund source Software Maintenance in the amount of \$50,154.47

UNFINISHED BUSINESS

NEW BUSINESS – RESOLUTIONS

NEW BUSINESS – ORDINANCES

RECORD OF EXPENDITURES

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT



# THE CITY OF NASHUA

Administrative Services  
Purchasing Department

*"The Gate City"*

October 14, 2020  
Memo #21-036

TO: Mayor Donchess  
Finance Committee

SUBJECT: Copier Replacement Lease & Maintenance funded by Photocopier Lease Account &  
Copier Maintenance Contracts Account

Please see attached communications from Karen Smith, Business Manager dated October 13, 2020 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Lease for 8 Copiers & Maintenance (5 year term)  
Value: \$93,395  
Vendor: Conway Technology Group/US Bank  
Department: 150 Police Department  
Source Fund: 54828 Photocopier Lease & 54421 Copier Maintenance Contracts

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

The Nashua Police Department, and the Purchasing Department respectfully request your approval of this contract.

Regards,  
*Kelly Parkinson*  
Purchasing Manager

Cc: K Smith



## Intradepartmental Communication

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To: Kelly, Parkinson Purchasing Manager

From: Karen A. Smith, Business Manager

Subject: Nashua Police Department Copiers

The Nashua Police Department's lease for copier/scanner with US Bank has expired. We are seeking the following replacement make and models with a pooled quarterly service contract from Conway Technology Group.

- (3) Xerox VersaLink B7030S2
- (3) Xerox AltaLink B8155H2
- (2) Xerox AltaLink C8145H2

The Nashua Police Department recommends the Lease with USBank and the maintenance agreement with Conway Technology Group for a total amount of \$93,395 over five years. Agreements are included for your review.

Sincerely,

A handwritten signature in black ink, appearing to read "K.A. Smith", written over a horizontal line.

Karen A. Smith  
Business Manager



Lease Agreement

APPLICATION NO.

AGREEMENT NO.

EQUIPMENT FINANCE

Send Account Inquiries to: 1310 Madrid Street, Suite 101 • Marshall, MN 56258 • Phone: (800) 328-5371 • Fax: (800) 328-9092
Send Payments to: P.O. Box 790448 • St. Louis, MO 63179-0448

The words Lessee, you and your refer to Customer. The words Lessor, we, us and our refer to U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance").

CUSTOMER INFORMATION

FULL LEGAL NAME CITY Of Nashua STREET ADDRESS 229 Main St

CITY STATE ZIP PHONE FAX
Nashua NH 03060 603-589-3333

BILLING NAME (IF DIFFERENT FROM ABOVE) BILLING STREET ADDRESS

CITY STATE ZIP E-MAIL
purchasing@nashuanh.gov

EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)
Nashua Police Department- 28 Officer James Roche Drive, Nashua, NH 03062

SUPPLIER INFORMATION

NAME OF SUPPLIER STREET ADDRESS
Conway Office Solutions 10 Capitol Street

CITY STATE ZIP PHONE FAX
Nashua NH 03063 800-343-7777 603-889-4275

EQUIPMENT DESCRIPTION

MAKE/MODEL/ACCESSORIES SERIAL NO.
(3) Xerox VersaLink B7030S2
(3) Xerox AltaLink B8155H2
(2) Xerox AltaLink C8145H2

together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.

See attached Schedule A

PAYMENT & TERM INFORMATION

60 Payments\* of \$ 1,108.25 The payment ("Payment") period is monthly unless otherwise indicated. plus applicable taxes

END OF TERM OPTION

You will have the following option, which you may exercise at the end of the term, provided that no event of default under this Agreement has occurred and is continuing. Fair Market Value means the value of the Equipment in continued use. Purchase all of the Equipment for its Fair Market Value, renew this Agreement, or return the Equipment.

Upon acceptance of the Equipment, THIS AGREEMENT IS NONCANCELABLE, IRREVOCABLE AND CANNOT BE TERMINATED.

LESSOR ACCEPTANCE

U.S. Bank Equipment Finance LESSOR SIGNATURE TITLE DATED

CUSTOMER ACCEPTANCE

BY SIGNING BELOW OR AUTHENTICATING AN ELECTRONIC RECORD HEREOF, YOU CERTIFY THAT YOU HAVE REVIEWED AND DO AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT ON THIS PAGE AND ON PAGE 2 ATTACHED HERETO. You acknowledge and agree that the Equipment has been delivered to you and you hereby accept such Equipment on an "AS-IS, WHERE-IS" basis for all purposes as of the date hereof. Upon you signing below, your promises herein will be non-cancelable, irrevocable and unconditional in all respects.

CUSTOMER (as referenced above) SIGNATURE TITLE DATED

- 1. AGREEMENT:** You agree to lease from us the goods ("Equipment") and, if applicable, finance certain software, software license(s), software components and/or professional services in connection with software (collectively, the "Financed Items," which are included in the word "Equipment" unless separately stated) from software licensor(s) and/or supplier(s) (collectively, the "Supplier"), all as described in this Agreement and in any attached schedule, addendum or amendment hereto ("Agreement"). You represent and warrant that you will use the Equipment for business purposes only. You agree to all of the terms and conditions contained in this Agreement, which, with the acceptance certification, is the entire agreement between you and us regarding the Equipment and which supersedes any purchase order, invoice, request for proposal, response or other related document. This Agreement becomes valid upon execution by us. The term shall start on the date we pay Supplier. Interim rent/due date adjustments will be in an amount equal to 1/30th of the Payment, multiplied by the number of days between the Agreement start date and the first Payment due date. If any provision of this Agreement is declared unenforceable, the other provisions herein shall remain in full force and effect to the fullest extent permitted by law.
- 2. OWNERSHIP; PAYMENTS; TAXES AND FEES:** We own the Equipment, excluding any Financed Items. Ownership of any Financed Items shall remain with Supplier thereof. You will pay all Payments, as adjusted, when due, without notice or demand and without abatement, set-off, counterclaim or deduction of any amount whatsoever. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or, if less, the maximum charge allowed by law. The Payment may be adjusted proportionately upward or downward: (i) if the shipping charges or taxes differ from the estimate given to you; and/or (ii) to comply with the tax laws of the state in which the Equipment is located. You shall pay all applicable taxes, assessments and penalties related to this Agreement, whether levied or assessed on this Agreement, on us (except on our income) or you, or on the Equipment, its lease, sale, ownership, possession, use or operation. If we pay any taxes or other expenses that are owed hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense we pay on your behalf. You agree to pay us a fee of \$35.00 for filing and/or searching costs required under the Uniform Commercial Code ("UCC") or other laws. You agree to pay us an origination fee of \$99.00 for all closing costs. We may apply all sums received from you to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for insufficient funds, you will pay us a service charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.
- 3. EQUIPMENT; SECURITY INTEREST:** At your expense, you shall keep the Equipment: (i) in good repair, condition and working order, in compliance with applicable laws, ordinances and manufacturers' and regulatory standards; (ii) free and clear of all liens and claims; and (iii) at your address shown on page 1, and you agree not to move it unless we agree in writing. You grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, except amounts secured by land and buildings in addition to the Equipment. You authorize and ratify our filing of any financing statement(s). You will not change your name, state of organization, headquarters or residence without providing prior written notice to us. You will notify us within 30 days if your state of organization revokes or terminates your existence.
- 4. INSURANCE; COLLATERAL PROTECTION; INDEMNITY; LOSS OR DAMAGE:** You agree to keep the Equipment fully insured against all risk, with us named as lender's loss payee, in an amount not less than the full replacement value of the Equipment until this Agreement is terminated. You also agree to maintain liability insurance with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. You will provide written notice to us within 10 days of any modification or cancellation of your insurance policy(s). You agree to provide us certificates or other evidence of insurance acceptable to us. If you do not provide us with acceptable evidence of property insurance within 30 days after the start of this Agreement, we may, at our sole discretion, charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, as would be further described on a letter from us to you. We may make a profit on this program. **NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT.** We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, leasing, manufacture, use, condition, inspection, removal, return or storage of the Equipment. All indemnities will survive the expiration or termination of this Agreement. You are responsible for any loss, theft, destruction or damage to the Equipment ("Loss"), regardless of cause, whether or not insured. You agree to promptly notify us in writing of any Loss. If a Loss occurs and we have not otherwise agreed in writing, you will promptly pay to us the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated residual value of the Equipment, both discounted to present value at 2%. Any proceeds of insurance will be paid to us and credited against the Loss. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to a Loss.
- 5. ASSIGNMENT: YOU SHALL NOT SELL, TRANSFER, ASSIGN, ENCUMBER, PLEDGE OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT,** without our prior written consent. You shall not consolidate or merge with or into any other entity, distribute, sell or dispose of all or any substantial portion of your assets other than in the ordinary course of business, without our prior written consent, which shall not be unreasonably withheld, and the surviving, or successor entity or the transferee of such assets, as the case may be, shall assume all of your obligations under this Agreement by a written instrument acceptable to us. No event shall occur which causes or results in a transfer of majority ownership of you while any obligations are outstanding hereunder. We may sell, assign, or transfer this Agreement without notice to or consent from you. You agree that if we sell, assign or transfer this Agreement, our assignee will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that our assignee will not be subject to any claims, defenses, or offsets that you may have against us. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.
- 6. DEFAULT AND REMEDIES:** You will be in default if: (i) you do not pay any Payment or other sum due to us or you fail to perform in accordance with the covenants, terms and conditions of this Agreement or any other agreement with us or any of our affiliates; (ii) you make or have made any false statement or misrepresentation to us; (iii) you or any guarantor dies, dissolves, liquidates, terminates existence or is in bankruptcy; (iv) you or any guarantor suffers a material adverse change in its financial, business or operating condition; or (v) any guarantor defaults under any guaranty for this Agreement. If you are ever in default, at our option, we can cancel this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of term plus the anticipated residual value of the Equipment, both discounted to present value at 2%. We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any remedies available to us under the UCC and any other law and we may require that you immediately stop using any Financed Items. If we take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement and you will be responsible for any deficiency. In the event of any dispute or enforcement of our rights under this Agreement or any related agreement, you agree to pay our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. **WE SHALL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE.** Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-508 through 522 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will refund such excess to you, which will be your sole remedy.
- 7. INSPECTIONS AND REPORTS:** We have the right, at any reasonable time, to inspect the Equipment and any documents relating to its installation, use, maintenance and repair. Within 30 days after our request, you will deliver all requested information which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. Financial information will generally not be required unless your exposure with us exceeds \$1,000,000. Unless otherwise accepted by us, each financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains. You authorize us to obtain credit bureau reports for credit and collection purposes and to share them with our affiliates and agents.
- 8. END OF TERM:** Unless the purchase option is \$1.00, at the end of the initial term, this Agreement shall renew for successive 12-month renewal term(s) under the same terms hereof unless you send us written notice between 90 and 150 days before the end of the initial term or at least 30 days before the end of any renewal term that you want to purchase or return the Equipment, and you timely purchase or return the Equipment. You shall continue making Payments and paying all other amounts due until the Equipment is purchased or returned. As long as you have given us the required written notice, if you do not purchase the Equipment, you will return all of the Equipment to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. **YOU ARE SOLELY RESPONSIBLE FOR REMOVING ANY DATA THAT MAY RESIDE IN THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO HARD DRIVES, DISK DRIVES OR ANY OTHER FORM OF MEMORY.**
- 9. USA PATRIOT ACT NOTICE:** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each customer who opens an account. When you enter into a transaction with us, we ask for your business name, address and other information that will allow us to identify you. We may also ask to see other documents that substantiate your business identity.
- 10. MISCELLANEOUS:** Unless otherwise stated in an addendum hereto, the parties agree that: (i) this Agreement and any related documents hereto may be authenticated by electronic means; (ii) the "original" of this Agreement shall be the copy that bears your manual, facsimile, scanned or electronic signature and that also bears our manually signed signature and is held by us; and (iii) to the extent this Agreement constitutes chattel paper (as defined by the UCC), a security interest may only be created in the original. Notwithstanding the foregoing, (i) for evidentiary purposes, any faxed, scanned or electronic copy of this Agreement may be considered the original, and you waive the right to challenge in court the authenticity or binding effect of any such copy or signature thereon; and (ii) we reserve the right to require you to sign any instrument manually and to deliver to us an original of such document. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing us with a telephone number for a cellular phone or other wireless device, including a number that you later convert to a cellular number, you are expressly consenting to receiving communications, including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system, from us and our affiliates and agents at that number. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls for non-marketing purposes. Calls and messages may incur access fees from your cellular provider. You authorize us to make non-material amendments (including completing and conforming the description of the Equipment) on any document in connection with this Agreement. Unless stated otherwise herein, all other modifications to this Agreement must be in writing and signed by each party or in a duly authenticated electronic record. This Agreement may not be modified by course of performance.
- 11. WARRANTY DISCLAIMERS: WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS." YOU HAVE SELECTED SUPPLIER AND THE EQUIPMENT BASED UPON YOUR OWN JUDGMENT. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF SUPPLIER, AND NOTHING SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATIONS HEREUNDER. YOU WILL MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, INFRINGEMENT OR ANY OTHER ISSUE IN REGARD TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS. SO LONG AS YOU ARE NOT IN DEFAULT UNDER THIS AGREEMENT, WE ASSIGN TO YOU ANY WARRANTIES IN THE EQUIPMENT GIVEN TO US.**
- 12. LAW; JURY WAIVER:** This Agreement will be governed by and construed in accordance with Minnesota law. You consent to jurisdiction and venue of any state or federal court in Minnesota and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, **BOTH PARTIES WAIVE ALL RIGHTS TO A TRIAL BY JURY.**



STATE AND LOCAL  
GOVERNMENT ADDENDUM

EQUIPMENT FINANCE

AGREEMENT #

Addendum to Agreement # \_\_\_\_\_, between \_\_\_\_\_, as Customer and U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance"), as Lessor. The words "you" and "your" refer to Customer. The words "we," "us" and "our" refer to Lessor.

The parties wish to amend the above-referenced Agreement by adding the following language:

**REPRESENTATIONS AND WARRANTIES OF CUSTOMER:** You hereby represent and warrant to us that: (i) you have been duly authorized under the Constitution and laws of the applicable jurisdiction and by a resolution or other authority of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (ii) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (iii) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (iv) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (v) you have funds available to pay Payments until the end of your current appropriation period, and you intend to request funds to make Payments in each appropriation period, from now until the end of the term of this Agreement; and (vi) your exact legal name is as set forth on page one of this Agreement.

**NON-APPROPRIATION OR RENEWAL:** If either sufficient funds are not appropriated to make Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed either automatically or by mutual ratification, this Agreement shall terminate and you shall not be obligated to make Payments under this Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which Payments have been appropriated or the term of this Agreement has been renewed, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after (i) your failure to appropriate funds sufficient for the payment of the Payments or (ii) to the extent required by applicable law, (a) this Agreement is not renewed or (b) this Agreement is renewed by you (in which event this Agreement shall be mutually ratified and renewed), provided that your failure to give any such notice under clause (i) or (ii) of this sentence shall not operate to extend this Agreement or result in any liability to you.

**TITLE TO THE EQUIPMENT:** If the selected purchase option for this Agreement is \$1.00 or \$101.00, unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

The parties wish to amend the above-referenced Agreement by restating the following language:

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions contained in this Agreement, which, with the acceptance certification, is the entire agreement between you and us regarding the Equipment and which supersedes any purchase order, invoice, request for proposal, response or other related document."

Any provision in the Agreement stating that this Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "Unless the purchase option is \$1.00 or \$101.00, at the end of the initial term, this Agreement shall renew on a month-to-month basis under the same terms hereof unless you send us written notice at least 30 days before the end of any term that you want to purchase or return the Equipment, and you timely purchase or return the Equipment."

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement and any supplements hereto. You authorize and ratify our filing of any financing statement(s) and the naming of us on any vehicle title(s) to show our interest."

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from this Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you are responsible for and shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of this Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under this Agreement when due or you fail to perform in accordance with the covenants, terms and conditions of this Agreement; (ii) you make or have made any false statement or misrepresentation to us; or (iii) you dissolve, liquidate, terminate your existence or are in bankruptcy."

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

**U.S. Bank Equipment Finance**

\_\_\_\_\_  
Lessor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Customer

X

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

NOTE: CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.





A Xerox Company

# MAINTENANCE AGREEMENT

4010 004 15074

Delivery Date: **TBD**

BILL TO		SHIP TO	
Company:	City Of Nashua - CO257-100912	Company:	Nashua Police Department - NP00:102995
DUNS #	026059233	Contact:	Kelly Parkinson
Address:	229 Main St	Address:	28 Officer James Roche Drive
Address 2:		Address 2:	
City/State/ZIP:	Nashua, NH 03060	City/State/ZIP:	Nashua, NH 03062
Phone / Fax:	603-589-3333	Phone / Fax:	603-589-3333

Salesperson	Agreement #	Billing Cycle Preference	Value Lease	Begin Date	10/xx/2020
Emma Humphrey		Quarterly	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	End Date	10/xx/2025

Equipment	Description	Serial #	ID#	Meter	Min. Charge	Copies Inc.	Overage	Cycle
	<b>Pooled Quarterly B&amp;W Service Contract:</b>							
	6 B&W Copiers on a pooled Quarterly allowance							
	<b>\$495 Base Charge Per Quarter Includes:</b>							
	90,000 B&W Copies/ Quarter Overage billed at \$ 0055/copy							
B7030S2	(3) Xerox VersaLink B7030's			B&W			\$0.00550	Quarterly
100S14557	(3) Xerox AltaLink B8155's			B&W			\$0.00550	Quarterly
	<b>Pooled Quarterly Color Service Contract:</b>							
	2 Color C8145's on pooled Quarterly allowance							
	<b>\$850 Base Charge Per Quarter Includes</b>							
	40,000 B&W Copies Per Quarter. B&W Overage							
	Billed at \$ 0055/copy & 14,000 Color Copies Per							
	Quarter. Color Overage Billed at \$ .045/copy							
100S14516	(2) Xerox AltaLink C8145's			B&W			\$0.00550	Quarterly
				Color			\$ 0.045	Quarterly
	Includes all service, labor, parts, & consumable supplies							
	(Except paper and staples)							

<input checked="" type="radio"/> Equip. Maint. & Supplies Includes	<input type="radio"/> Equip. Maint. Only Includes	<input type="radio"/> Fax/Printer Agreement Includes
1. Toner	1. Parts	1. Parts
2. Developer	2. Labor	2. Labor
3. Drums	3. Filters	3. Prevent. Maint. (no supplies)
4. Filters	4. Fuser Oil	4. Does not include:
5. Parts	5. Webs	paper, labels, staples, transparencies, toner /cartridges
6. Preventive Maintenance	6. Prevent. Maint. (no supplies)	
7. Labor	7. Does not include:	
8. Does not include:	paper, labels, staples or	
paper, labels, staples or	transparencies, drums, toner	
transparencies	and developer	

**Must Be Completed**

Upgrade  YES  NO

Remove Current Equipment  YES  NO

Change Current Contract  YES  NO

Machine ID#\_CX340, TG070, TG081, TG080, TG043, TG084, & TG082 Ending Meter \_\_\_\_\_

**Advanced Networking Maintenance**

\_\_\_\_\_ Single MFP per year \_\_\_\_\_ We have opted out of this program.

\_\_\_\_\_ Multiple MFPs per year \_\_\_\_\_ We have opted out of this program.

**May Require authorizing a WebEx remote PC connection.**

<b>ACCEPTED BY CONWAY TECHNOLOGY GROUP, LLC.</b>		<b>CUSTOMER SIGNATURE</b>	
By:	Date:	By:	Date:
<b>AUTHORIZED SIGNER</b>			
Title:		Name (print):	Title:

Customer promises to pay to Conway Technology Group, LLC all fees and charges established pursuant to this Agreement.

**IMPORTANT: TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE OF THIS FORM ARE INCORPORATED HEREIN BY REFERENCE**

## Service Terms and Conditions

**1. Definitions.** The first page of this Sales Order/Service Agreement is called the Cover Page. The Cover Page and these Terms and Conditions, along with a listing of additional products on Schedule A (if attached), represent the agreement (the "Agreement") between Conway Technology Group, LLC ("Company") and the Customer, with respect to the acquisition of those Products identified on the Cover Page and/or Schedule A and the service for such Products. "Products" shall mean the equipment ("Equipment") and any Software Licenses. "Service" shall mean the service as set forth in paragraph 4 below. Throughout this Agreement the words "We," "Our," and "Us" refer to Company. The words "You" and "Your" refer to the Customer indicated on the reverse.

**2. Services.** This Agreement covers both the labor and materials for adjustments, repairs, and replacement of parts necessitated by normal use of the Equipment listed on the face of this Agreement ("Services"). Services do not include the following: (a) repairs due to (i) misuse, neglect, or abuse (including, without limitation, improper voltage or use of supplies that do not conform to the manufacturers' specifications), (ii) use of options, accessories, products, supplies not provided by Company, (iii) non-Company alterations, relocation, or service; and/or (iv) loss or damage resulting from accidents, fire, water, or theft; (b) maintenance requested outside Company's normal business hours or this Agreement, (c) relocation, (d) software or connected hardware, (e) hard drive replacement, (f) Thermal heads, process units, and fuser units for Facsimile Machines, (g) Thermal Heads and MICR Toner for Laser Printers, and parts and labor for all non-laser printers, and/or (h) parts for Scanners. Replacement parts may be new, reprocessed, or recovered. Supplies provided by Company are in accordance with the copy volumes set forth on the face of this Agreement and within the manufacturer's stated yields, and do not include staples. Supplies are to be used exclusively for the Equipment and remain Company property until consumed. You will return, or allow Company to retrieve, any unused supplies at the termination/expiration of this Agreement. You are responsible for the cost of excess supplies. You authorize Equipment to be connected to automatic meter reading software and/or device or, if we otherwise request, You will provide us with accurate meter readings for each item of Equipment when and by such means as we request. If You do not permit the Company to use automatic meter reading software and/or devices, Company may charge a monthly fee for manually performing meter reads. If You do not provide meter reads as required, Company may estimate the reading and bill accordingly. You shall provide adequate space and electrical service for the operation of the Equipment in accordance with UL and/or manufacturer's specifications. Supplies will be shipped via UPS Ground. Unless otherwise stated herein, Customer will be billed for shipping, including, but not limited to, UPS Ground, Overnight, and/or Messenger Service. Additional fees may be charged for Services provided outside Company's standard business hours or for computer/network issues and will be at Company hourly rates in effect at the time of Services. If, at any time during the Term of this Agreement, Customer upgrades, modifies, or adds equipment, Customer shall promptly notify Company and provide Company right of first refusal to provide Services for added equipment. Company maintains the right to inspect any upgrades and modifications to Equipment and/or additional equipment and, in its sole discretion, determine whether equipment is eligible for Services. If approved for Services, the Agreement will be amended to include such changes, including pricing modifications. Unless otherwise agreed to in writing, Customer remains solely responsible to secure any sensitive data and permanently delete such data from the internal media storage prior to removal of Equipment or termination of this Agreement.

**3. Term and Payment.** Except as may otherwise be provided for herein, this Agreement is non-cancelable and shall remain in effect throughout the Term; and, unless notified in writing sixty (60) days prior to its expiration, this Agreement shall automatically renew for additional one (1) year periods. In the event the fees herein are included in Your lease payment, the Term shall run concurrently with the lease agreement and be subject to the renewal provisions provided for therein. The meter count at installation or, in the case of owned printers, at assessment will be used for meter/overage calculations. You agree to pay Company all amounts due in accordance with the payment terms set forth on the face of this Agreement or in accordance with the applicable lease agreement, and all other sums when due and payable. Any Minimum Monthly Payment entitles You to Services for a specific number and type (i.e. black & white, color, scan) of Prints/Copies as identified on the face of this Agreement and will be billed in advance. In addition, You agree to pay the Overage Rate for each Print/Copy that exceeds the applicable number and type of Prints/Copies provided in the Minimum Monthly Payment which amount shall be billed in arrears and is payable as indicated on the face of this Agreement. A Print/Copy is defined as standard 8.5"x11" copy (larger size copies may register two meter clicks). No credit will be applied towards unused copies/prints. Your obligation to pay all sums when due shall be absolute and unconditional and is not subject to any abatement, offset, defense or counterclaim. If any payment is not paid within 10 days of its due date, You will pay a late charge not to exceed 7% of each late payment (or such lesser rate as is the maximum allowable by law). Company has the right to withhold Services and supplies, without recourse, for any non-payment. Unless otherwise stated on the face of this Agreement, Company may increase the rates hereunder on an annual basis. Company retains the right to have all or some of the amounts due hereunder billed and/or collected by third parties. If Customer requires any specialized billing procedure or invoicing, Company reserves the right to bill an administrative fee not to exceed \$100 per invoice.

**4. Taxes.** Payments are exclusive of all state and local sales, use, excise, privilege and similar taxes. You will pay when due, either directly or to Us upon demand, all taxes, fines and penalties relating to this Agreement that are now or in the future assessed or levied.

**5. Limited License to Use Software.** Company grants (and is hereby authorized by its licensor's to grant) you a non-exclusive, non-transferable license to use in the U.S. (a) software and accompanying documentation ("Base Software") only with the Equipment with which it was delivered; and (b) Software that is set forth as a separate line item in this Agreement ("Application Software") (including its accompanying documentation), as applicable, for as long as you are current in the payment of all applicable software license fees. "Base Software" and "Application Software" are referred to collectively as "Licensed Software". You have no other rights and may not: (1) distribute, copy, modify, create derivatives of, decompile, or reverse engineer Licensed Software; (2) activate Licensed Software delivered with the Equipment in an inactivated state; or (3) allow others to engage in same. Title to, and all intellectual property rights in, Licensed Software will reside solely with Company and/or its licensors (who will be considered third-party beneficiaries of this Section). Licensed Software may contain code capable of automatically disabling the Equipment. Disabling code may be activated if: (x) Company is denied access to periodically reset such code; (y) you are notified of a default under this Agreement or (z) your license is terminated or expires. The Base Software license will terminate: (i) if you no longer use or possess the Equipment or (ii) upon the expiration or termination of this Agreement, unless you have exercised your option to purchase the Equipment. Neither Company nor its licensors warrant that Licensed Software will be free from errors or that its operation will be uninterrupted. The foregoing terms do not apply to Diagnostic Software or to Licensed Software/documentation accompanied by a clickwrap or shrink-wrap license agreement or otherwise made subject to a separate license agreement.

**6. Diagnostic Software.** Software used to evaluate or maintain the Equipment ("Diagnostic Software") may be included with the Equipment. Diagnostic Software is a valuable trade secret of Company or its Licensors. Title to Diagnostic Software will remain with Company or its licensors. If so included, Company does not grant Customer any right to use Diagnostic Software unless authorization is specifically provided in writing, and Customer will not access, use, reproduce, distribute or disclose Diagnostic Software for any purpose (or allow third parties to do so) unless so authorized. Customer will allow Company reasonable access to the Equipment to remove or disable Diagnostic Software if Customer is no longer receiving Service from Company.

**7. Software Support.** Except for Products and/or Third-Party Products identified as "No Svc.", Company (or a designated services) will provide the software support set forth below or in accordance with an attached statement of work ("Software Support") for Base Software for Equipment. Software Support will be provided during the initial Term and any renewal period but in no event longer than 5 years after Company stops taking customer orders for the subject model of Equipment. For Application Software, Software Support will be provided as long as you are current in the payment of all applicable software license and support fees. Company will maintain a web-based or toll-free hotline during Company's standard working hours to report Licensed Software problems and answer Licensed Software-related questions. Company, either directly or with its vendors, will make reasonable efforts to: (a) assure that Licensed Software performs in material conformity with its user documentation; (b) provide available workarounds or patches to resolve Licensed Software performance problems; and (c) resolve coding errors for (i) the current Release and (ii) the previous Release for a period of 6 months after the current Release is made available to you. Company will not be required to provide Software Support if you have modified the Licensed Software. New releases of Licensed Software that primarily incorporate compliance updates and coding error fixes are designated as "Maintenance Releases" or "Updates." Maintenance Releases or Updates that Company may make available will be provided at no charge and must be implemented within six months. New releases of Licensed Software that include new content or functionality ("Feature Releases") will be subject to additional license fees at then-current pricing. Maintenance Releases, Updates and Feature Releases are collectively referred to as "Releases." Each Release will be considered Licensed Software governed by the Software License and Licensed Software Support provisions of this Agreement (unless otherwise noted). Implementation of a Release may require you to procure, at your expense, additional hardware and/or software from Company or another entity. Upon installation of a Release, you will return or destroy all prior Releases. For Third Party Software identified as "No Svc.", you shall enter into a support agreement with a Third-Party Software vendor or its support services provider, who shall be solely responsible for the quality, timeliness and other terms and conditions of such support services. Company shall have no liability for the acts or omissions of such third-party support services provider.

**8. Warranty.** You acknowledge that the Products covered by this Agreement was selected by You based upon Your own judgment. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF NON-INFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE SPECIFICALLY AND UNRESERVEDLY EXCLUDED.

**9. Limitation of Liability.** In no event, shall Company be liable for any indirect, special, incidental, consequential damages, loss of profits, or punitive damages whether based in contract, tort, or any other legal theory and irrespective of whether Company has notice of the possibility of such damages.

**10. Default Remedies.** Any of the following events or conditions shall constitute an Event of Default under this Agreement: (a) failure to make payment when due of any indebtedness to Company or for the Products, whether or not arising under this Agreement, without notice or demand by Company; (b) breach by You of any obligation herein; or (c) if You cease doing business as a going concern. If You default, Company may (1) require future Services, including supplies, be paid for in advance, (2) require You to immediately pay the amount of the remaining unpaid balance of the Agreement, (3) terminate any and all agreements with You, and/or (4) pursue any other remedy permitted at law or in equity. In the Event of Default, remaining payment amounts due will be calculated using the average of the last six months billing or the amount set forth on the face of the Agreement, whichever is greater, multiplied by the remaining months of the Agreement. You agree that any delay or failure of Company to enforce its rights under this Agreement does not prevent Company from enforcing any such right at a later time. All of Company's rights and remedies survive the termination of this Agreement. In the event of a dispute arising out of this Agreement or the Products listed herein, should it prevail, Company shall be entitled to collection of its reasonable costs and attorneys' fees incurred in defending or enforcing this Agreement, whether or not litigation is commenced.

**11. Assignment.** You may not sell, transfer, or assign this Agreement without the prior written consent of Company. Company may sell, assign or transfer this Agreement.

**12. Notices.** All notices required or permitted under this Agreement shall be by overnight courier or by registered mail to such party at the address set forth in this Agreement, or at such other address as such party may designate in writing from time to time. Any notice from Company to You shall be effective three days after it has been deposited in the mail, duly addressed, or one day if sent via overnight courier.

**13. Indemnification.** You are responsible for and agree to indemnify and hold Us harmless from, any and all (a) losses, damages, penalties, claims, suits and actions (collectively "Claims"), whether based on a theory of contract, tort, strict liability or otherwise caused by or related to Your use or possession of the Products, and (b) all costs and attorneys' fees incurred by Us relating to such claim.

**14. Electronic Execution.** An electronically transmitted version of this Agreement may be considered the original and You will not have the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. This Agreement may be signed in counterparts and all counterparts will be considered and constitute the same Agreement.

**15. Miscellaneous.** (a) Choice of Law. This Agreement shall be governed by the laws of the state of New Hampshire (without regard to the conflict of laws or principles of such states); (b) Jury Trial. YOU EXPRESSLY WAIVE TRIAL BY JURY AS TO ALL ISSUES ARISING OUT OF OR RELATED TO THIS AGREEMENT. (c) Entire Agreement. This Agreement constitutes the entire agreement between the parties with regards to the subject matter herein and supersedes all prior agreements, proposals or negotiations, whether oral or written; (d) Enforceability. If any provision of this Agreement is unenforceable, illegal or invalid, the remaining provisions will remain in full force and effect; (e) Amendments. This Agreement may not be amended or modified except by a writing signed by the parties; provided You agree that we are authorized, without notice to You, to supply missing information or correct obvious errors provided that such change does not materially alter Your obligations; (f) Force Majeure. Company shall not be responsible for delays or inability to provide Products or Services caused directly or indirectly by strikes, accidents, climate conditions, parts availability, unsafe travel conditions, or other reasons beyond our control; (g) Company has the right to modify/correct any clerical errors.



# THE CITY OF NASHUA

Administrative Services  
Purchasing Department

"The Gate City"

October 14, 2020  
Memo #21-037

TO: Mayor Donchess  
Finance Committee

SUBJECT: Amendment to Transit Operations Contract from Funding Source 55690 Regular  
Transportation Services

Please see attached communications from Sarah Marchant, Community Development Divisional Director dated September 28, 2020 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Contract Amendment to the existing 5-year contract for Transit Operations Services  
Value: \$372,057  
Vendor: First Transit  
Department: 186 Transportation  
Source Fund: 55690 Regular Transportation Services

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

The Director of Community Development, the Transportation Department and the Purchasing Department respectfully request your approval of this contract.

Regards,  
*Kelly Parkinson*  
Purchasing Manager

Cc: S Marchant  
J Graziano



**City of Nashua**  
**Community Development Division**

City Hall, 229 Main Street, PO Box 2019  
Nashua, New Hampshire 03061-2019  
www.nashuanh.gov

Community Development 589-3095  
Planning and Zoning 589-3090  
Building Safety 589-3080  
Code Enforcement 589-3100  
Urban Programs 589-3085  
Conservation Commission 589-3105  
Transportation 880-0100  
FAX 589-3119

Date: September 28, 2020

To: Donchess, Mayor

From: Sarah Marchant, Community Development Division Director

Re: AMENDMENT TO TRANSIT OPERATIONS CONTRACT

The Division of Community Development, Transportation Department is proposing a contract amendment to the existing five-year contract for Transit Operations Services with First Transit.

In June of 2019, the City of Nashua entered into a five-year contract for Transit Operations with the option to extend for up to three (3) years at one (1) year intervals with First Transit. The contract was awarded through an RFP process in accordance with the City's purchasing policy and the FTA's procurement guidelines.

The contract amendment changes the language to Section 5. Compensation a Contracting Fee as by replacing the Variable Costs with the following:

Variable Costs;	Year 1	Year 2 (7/1/20 – 11/30/20)	Year 2 (12/1/20 – 6/30/21)	Year 3	Year 4	Year 5
	\$ 28.90/hr	\$ 30.85/hr	\$ 33.82/hr	\$ 34.83/hr	\$ 35.96/hr	\$ 37.06/hr

Since the original contract was executed, the transportation industry in the northeast has experienced a significant decrease in available CDL and non-CDL drivers, driving up industry wages in the region. Many surrounding transit and school bus agencies have struggled to successfully hire and retain staff to maintain their operations and have had to raise wages significantly. The COVID-19 situation has only exacerbated this situation. First Transit is currently facing a dire situation where operation costs must rise in order to hire and maintain a fully staffed operation. In order to do this the First Transit contract will be increased by \$372,057 over the remaining three and one half years of the contract, an increase of approximately 3% of the overall cost.

The Transportation Department finds First Transit is a responsive and responsible contractor.

The proposed changes are shown on the following page.

The contract amendment changes the language in Section 5. Compensation a. Contracting Fee – Variable Costs and,

1. All language referring specifically to 5. Compensation a. Contracting Fee– Variable Costs; shall be changed to the following:

Variable Costs;	Year 1	Year 2		Year 3	Year 4	Year 5	Totals
		Jul. 1, 20 – Nov. 30, 20	Dec. 1, 20 – Jun. 30, 21				
<b>Original Variable Rate</b>	\$28.90	\$30.85	\$30.85	\$32.29	\$33.69	\$35.33	<b>\$33.04 Average</b>
<b>New Variable Rate</b>	\$ 28.90	\$ 30.85	\$ 33.82	\$ 34.83	\$ 35.96	\$ 37.06	<b>\$35.42 Average</b>
<b>Rate Adjustment</b>	\$0.00	\$0.00	\$2.97	\$2.54	\$2.27	\$1.73	<b>\$1.62 Average</b>
<b>Rate Adjustment Impact based on Estimated Hours</b>	\$0.00	\$ 0.00	\$ 74,523	\$ 115,734	\$ 103,299	\$ 78,501	<b>\$372,056</b>

**First Amendment to Agreement**  
**By and between**  
**City of Nashua, NH and First Transit**

An agreement was made by and between the **City of Nashua**, whose address is 229 Main Street, Nashua, NH 03061 ("City") and **First Transit**, whose address is 1020 Center Street, Suite 16 Horseheads, NY 14845 on the *5<sup>th</sup> day of June 2019* ("Agreement").

WHEREAS, Section 5 of the Agreement set forth compensation; and,

WHEREAS, Section 30 of the Agreement provides that all amendments to the Agreement be in writing and executed by both parties specified the City agrees to pay the Contractor a variable cost only for hourly costs the Contractor incurs while operating the service at a rate as follows:

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby mutually agree as follows:

1. Section 5 a. "Contracting Fee" of the Agreement shall be amended by deleting the following language:

Variable Costs;	Year 1	Year 2	Year 3	Year 4	Year 5
	\$ 28.90/hr	\$ 30.85/hr	\$ 32.29/hr	\$ 33.69/hr	\$ 35.33/hr

and replacing it with this language:

	Year 1	Year 2	Year 2	Year 3	Year 4	Year 5
Variable		(7/1/20 –	(12/1/20 –			
Costs;		11/30/20)	6/30/21)			
	\$ 28.90/hr	\$ 30.85/hr	\$ 33.82/hr	\$ 34.83/hr	\$ 35.96/hr	\$ 37.06/hr

2. All other terms and conditions of the Agreement not changed by this or prior amendment(s) remain in full force and effect.

Effective Date:

**City of Nashua**

**First Transit**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:



# THE CITY OF NASHUA

Administrative Services  
Purchasing Department

*"The Gate City"*

October 14, 2020

Memo #21-038

TO: Mayor Donchess  
Finance Committee

SUBJECT: Riverfront Lighting Installation from Funding Source \$407,781 in FY21 Escrow and \$200,000 in TIFF funding

Please see attached communications from Sarah Marchant, Community Development Divisional Director dated September 28, 2020 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Installation of Riverfront Lighting to include the Cotton Transfer Bridge and the North side of the Riverfront Walk

Value: \$607,781 (\$104,439 for Cotton Transfer Bridge & \$502,342 for Northside Walk)

Vendor: Guardian Energy Management

Department: 181 Community Development

Source Fund: 55699 Other Contracted Services, 81100 Capital Improvements, 53999 Other Professional Services

Ordinance: 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.

A competitive bidding RFP for this project was issued on June 1, 2020 and the following bids were received:

Vendor	Location	Amount	Note
Moulison	Biddeford ME	\$1,370,000	Incomplete bid, did not submit all Addenda
Dagle Electrical Construction	Plaistow NH	\$3,558,000	
Guardian Energy Management Systems	Marlborough MA	\$859,569	

We recommend this bid to be awarded to Guardian Energy Management who is the lowest total cost vendor who met the RFP specified requirements.

The Community Development Division and the Purchasing Department respectfully request your approval of this contract.

Regards,  
*Kelly Parkinson*  
Purchasing Manager

Cc: J Graziano  
S Marchant



**City of Nashua**  
**Community Development Division**

City Hall, 229 Main Street, PO Box 2019  
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Community Development 589-3095  
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Code Enforcement 589-3100  
Urban Programs 589-3085  
Conservation Commission 589-3105  
Transportation 880-0100  
FAX 589-3119

Date: September 28, 2020

To: Jim Donchess, Mayor

From: Sarah Marchant, Community Development Director

Re: Finance Committee – Installation of the Riverfront Lighting by Guardian Energy

The Downtown Riverfront Master Plan was approved in the fall of 2017 as the comprehensive vision for Nashua’s downtown riverfront. Moving that plan forward, the City issued RFP 0365-111918 and ultimately entered into contract with Lumen Studios to create a detailed lighting design and electrical plan for the core downtown riverfront.

Working with Lumen Studios to elicit community feedback a quality, cost-effective, energy efficient, and low-maintenance pedestrian scale lighting system was designed to connect the community to their riverfront. Once installed, the lighting will provide improved public safety; highlight the connectivity of trails, bridges, and walking paths; provide visual access to the river; and illuminate the beauty and recreational opportunities of the river and its riverbanks.

Moving installation forward, the City issued a bid (IFB0285-070220) to complete a partial installation of the lighting, focusing on the areas of the Riverfront that will not see substantial modifications as part of the larger engineering and design project. Specifically the bid included lighting for the Cotton Transfer bridge, the northern riverbank along the existing paved Riverwalk trail (in front of Cotton Mill and the Greeley House) and Main Street bridge.

The City received three responses from Dagle Electrical Construction, Guardian Energy Management and Moulison Heavy Electrical. The Moulison bid was disqualified as they did not include all the required addenda.

<b>Bid Responses</b>	<b>Cotton Transfer Bridge</b>	<b>Riverfront Walkway</b>	<b>Main Street Bridge</b>	<b>Total</b>
Dagle Electrical Construction	\$468,000	\$2,428,000	\$662,000	\$3,558,000
Guardian Energy Management	\$105,439	\$502,342	\$251,788	\$859,569
Moulison Heavy Electrical*	\$195,000	\$895,000	\$280,000	\$1,370,000
* Incomplete bid, did not submit all Addenda				

Based on the lowest bid response, experience and qualifications the City entered into negotiations with Guardian Energy Management to reduce the total scope to lower the overall cost of the project. After clarifications of the project scope regarding access to electricity and removing the installation of lighting on the Main Street Bridge the Community Development Division recommends awarding the Riverfront Lighting Installation project to Guardian Energy Management for a final contract price of \$607,781, including \$105,439 for the Cotton Transfer Bridge and \$502,342 for the north side of the riverfront walk.

## Installation Schedule

### Nashua Riverwalk

Oct 16, 2020 - Jun 25, 2021

Grid Board Timeline

	Name	Start	Finish	Durati...
1	<input type="radio"/> Contract Signed	10/16/2020	10/16/2020	1 day
2	<input type="radio"/> Project Kickoff	1/4/2021	1/4/2021	1 day
3	<input type="radio"/> Confirm Bill of Materials for Fixture Orders	1/5/2021	1/22/2021	14 days
4	<input type="radio"/> Site Work - Kickoff & Mobilization	3/15/2021	3/15/2021	1 day
5	<input type="radio"/> Order Materials & Lead Time	2/1/2021	5/3/2021	66 days
6	<input type="radio"/> Installation of Conduit on Cotton Transfer Bridge	4/5/2021	4/9/2021	5 days
7	<input type="radio"/> Installation of Lighting on Cotton Transfer Bridge and Demolition of existing lighting	4/12/2021	4/23/2021	10 days
8	<input type="radio"/> Installation of Conduit and Pole Bases West of EX-1	4/12/2021	4/23/2021	10 days
9	<input type="radio"/> Installation of Conduit and Pole Bases East of EX-1	4/26/2021	5/7/2021	10 days
10	<input type="radio"/> Installation of Poles and Lights West of EX-1 and Demolition of Existing Lighting	4/26/2021	5/14/2021	15 days
11	<input type="radio"/> Installation of Poles and Lights East of EX-1 and Demolition of Existing Lighting	5/10/2021	5/28/2021	15 days
12	<input type="radio"/> System Start-up and Testing	5/31/2021	6/1/2021	2 days
13	<input type="radio"/> Punchlist	6/2/2021	6/18/2021	13 days
14	<input type="radio"/> Project Closeout	6/21/2021	6/25/2021	5 days

## Pricing

Item / Scope	Price
Cotton Transfer Bridge	\$105,439
Riverfront Walkway	\$502,342
Main Street Bridge	Not in Scope

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Domenic Armano, President  
Guardian Energy Management Solutions, LLC

420 NORTHBORO ROAD CENTRAL, MARLBOROUGH, MA 01752

PHONE 508-597-1333, WWW.GUARDIAN-ENERGY.COM



# 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:** Guardian Energy Management Solutions  
420 Northboro Road Central  
Marlborough, MA 01752

and its successors, transferees and assignees  
(together "CONTRACTOR")

For the following Project: **INSTALLATION OF OUTDOOR LIGHTING SYSTEMS FOR  
NASHUA RIVERWALK. SCOPE INCLUDES COTTON  
TRANSFER BRIDGE & RIVERFRONT WALKWAY AS PER  
PLANS & SPECIFICATIONS.**

## 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. Scope of Work;
3. Drawings and Specifications provided in the bid documents;
4. Payment and Performance Bonds, if applicable;
5. Insurance Certificate;
6. Written change orders for minor changes in the Work issued after execution of this Agreement; and
7. 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.

## **ARTICLE 3 – PERIOD OF PERFORMANCE**

**CONTRACTOR** shall perform and complete all work by SEPTEMBER 30, 2021 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:

**SIX HUNDRED SEVEN THOUSAND SEVEN HUNDRED EIGHTY-ONE DOLLARS AND ZERO CENTS (\$607,781.00)**

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 Aldermen 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 [VendorAPIInvoices@NashuaNH.gov](mailto:VendorAPIInvoices@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 Aldermen for resolution. If the parties are dissatisfied with the decision of the Board of Aldermen, 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.

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*City of Nashua, NH (signature)*

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

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*Date*



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**CONTRACTOR (signature)**

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**Domenic Armano, President**  
*(Printed Name and Title)*

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**September 25, 2020**

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*Date*



# THE CITY OF NASHUA

Administrative Services  
Purchasing Department

*"The Gate City"*

October 14, 2020  
Memo #21-039

TO: Mayor Donchess  
Finance Committee

SUBJECT: Vehicle Purchase for Parks & Recreation funded from FY21 CERF

Please see attached communications from John Stewart, Fleet Manager, dated October 22, 2020 and David Fredette, Treasure, dated September 22, 2020 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Vehicle: Ford F350 Truck, 2019  
Value: \$39,060  
Vendor: MHQ Vehicles, Equipment & Gear  
Department: 161 Streets  
Source Fund: Capital Equipment Reserve Fund (CERF)

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

The Parks and Recreation Department, and the Purchasing Department respectfully request your approval of this contract.

Regards,  
*Kelly Parkinson*  
Purchasing Manager

Cc: C O'Connor  
J Stewart



**City of Nashua**  
Office of The Treasurer  
229 Main Street - Nashua, NH 03060

(603) 589-3193  
Fax (603) 589-3228

To: Board of Aldermen

September 22, 2020

From: David G. Fredette, Treasurer/Tax Collector

Re: Purchase replacement for one (1) 2019 Ford F350 Pickup – Vehicle Id #638  
From FY 2021 Capital Equipment Reserve Fund (CERF)

The purpose of this communication is to give additional information related needed to replace one (1) 2019 Ford Pickup that was not listed on the FY2021 vehicle replacement schedule. Unfortunately, this vehicle was totaled in an accident on **June 10, 2020**. The cost to CERF will be \$39,060. Funds are available in CERF due to several cost savings on several items in FY 2020. It is also anticipated additional escrows or supplemental appropriations will be used to transfer additional funds into CERF during the first quarter of FY 2021. This vehicle was scheduled to be replaced in 2027.

Pursuant to NRO 5-127.1 D Capital Equipment Reserve Fund, which states: “During that fiscal year, the city may purchase that equipment, or equipment that will serve the same stated purpose as the listed equipment as long as the price does not vary by more than ten percent of the estimated replacement value. All purchases from the Capital Equipment Reserve Fund must comply with the city’s purchasing approval process. Any other requests to use funds from the Capital Equipment Reserve Fund must be approved by the board of aldermen.”

*I respectfully request the approval from the Board of Aldermen for the purchase of a 2020 Ford F350 XL 4WD Cab Pickup for the Park and Recreation department as requested. This vehicle will replace the 2019 Ford 2019 Ford F-350 Ford Pickup Vehicle Id #638 which was totaled in a recent accident.*

Cc: Mayor James W. Donchess  
John Griffin, CFO/Comptroller  
Nick Caggiano, Superintendent –Park/Recreation Dept.  
Carolyn O’Connor, DPW Finance & Admin. Mgr.  
Kelly Parkinson, Purchasing Department Manager  
Legal Department

## City of Nashua, Public Works Division

To: Board of Public Works

Meeting Date: October 22, 2020

From: John Stewart, Fleet Manager  
Street Department

**XX Informational:** Park and Recreation Pickup Replacement.

**Discussion:** The Parks and Recreation Department pickup #20-638 was involved in an accident on June 10, 2020. The vehicle was a total loss from the damages from the accident. Some of the accessories that were installed by the city were removed and will be reinstalled into the new pickup. The quote does not include a plow as that was not involved. The replacement truck will be an exact make and model as the pickup in the collision.



# QUOTE

## CUSTOMER

Contact Name: Mr. John Stewart  
 Company/Dept: Nashua Parks and Recreation Dept  
 Street Address: 9 Stadium Drive  
 City, State, Zip: Nashua NH 03062  
 Phone: \_\_\_\_\_  
 E-Mail: stewartj@nashuanh.gov

Date: July 29, 2020  
 Valid for: \_\_\_\_\_  
 Customer #: \_\_\_\_\_  
 Contract: MAPC/GBPC  
 Sales Rep: Brian Fleming

CONTRACT LINE REFERENCE	LINE DESCRIPTION	UNIT PRICE	QTY	EXTENDED PRICE
F3B	2020 Ford F350 XL 4WD Regular Cab Pickup		1	\$28,995.00
	6.2L V8 w/10sp Auto Trans.			standard
	Vinyl seats and Floors			standard
	Am/Fm Radio with hands Free Phone U-Connect			standard
	Air Conditioning			standard
	Trailer Hitch receiver ( Class III )			standard
	Green Gem		1	\$647.00
	18" Wheels		1	\$446.00
	AllTerrain Tires		1	\$260.00
	Power group ( Windows, Locks, & Mirrors)		1	\$897.00
	Upfitter Switches		1	\$162.00
	Snow Plow Prep. Package		1	\$245.00
	Dual Batteries ( Required w/Snow Plow Prep)		1	\$206.00
	240 Amp Alt. ( Required w/Snow Plow Prep )		1	\$83.00
	Trailer Brake Controller		1	\$265.00
	Running Boards		1	\$314.00
	EQUIPMENT			
	Steel Cab Guard (Back Rack)		1	\$550.00
	Back Rack Mounting plates for Beacons	35.00	2	\$70.00
	Whelen Super LED Roof Beacon	510.00	2	\$1,020.00
	Whelen TAN85F Traffic Advisor		1	\$980.00
	Whelen Vertex LED Hideaway Warning Lights		4	\$525.00
	Rhino Spray on Bedliner		1	\$595.00
	Fisher Truck Side Only Plow Hitch wiring Harness and Plow Control		1	\$2,800.00
			TAX:	
			<b>TOTAL:</b>	<b>\$39,060.00</b>

### TERMS AND CONDITIONS

\*This quote is valid for 60 days from the date of quote. Any purchase orders or approved quotes received outside of the 60 day quote period will be subject to price adjustments. By signing this quote, the customer is agreeing to pay, in full, for all items listed above. Any requests for changes, modifications, replacements, removals or additional items may be subject to additional fees and/or adjusted delivery dates.



**Company** 0010 - CITY OF NASHUA  
**Requesting Location** C-352 - STREET  
DEPARTMENT  
**Requisition** 67569 - Unreleased

**Cost Default Vendor** 14471 - MHQ INC  
**Requisition Description**

**Requester** befumos - STEPHANIE  
BEFUMO

**Purchase From  
Buyer**

**Deliver To**

Item	Item Type	Quantity Ordered	UOM	Unit Cost	Extended Cost	Distributions	Activity / Account Category	Distribution Allocation	Requested Delivery Date	Sourcing Event Required
2020 FORD F350	Special	1.00	EA	39060.00	39060.00	TF18.7026-081500-0000	CERF77.2181500	100.0%		No
2020 Ford F350 XL 4WD regular Vendor : MHQ INC 2020 Ford F350 XL 4WD regular cab pickup										
<b>Totals: 1 Lines</b>		<b>1.00</b>			<b>39060.00 USD</b>					



# THE CITY OF NASHUA

Administrative Services  
Purchasing Department

"The Gate City"

October 14, 2020

Memo #21-040

TO: Mayor Donchess  
Finance Committee

SUBJECT: Software Maintenance for Hyland Onbase (annual) from funding source Software Maintenance

Please see attached communications from Bruce Codagnone, CIO/IT Director, dated October 1, 2020 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Hyland Onbase Annual Software Maintenance  
Value: \$50,154.47  
Vendor: Hyland Software  
Department: 122 Information Technology  
Source Fund: 54407 Software Maintenance

Ordinance: Pursuant to NRO : § 5-84 Special purchase procedures A. (4) Sole-source procurements, where the proposed purchase is manufactured by only one company.

The Information Technology Department and the Purchasing Department respectfully request your approval of this contract.

Regards,

*Kelly Parkinson*

Purchasing Manager

Cc: J Graziano  
B Codagnone



# THE CITY OF NASHUA

Information Technology

"The Gate City"

October 1, 2020

TO: MAYOR Donchess

FINANCE COMMITTEE

SUBJECT: Annual Software Maintenance

This request is for the annual software maintenance required for the continued operation of Hyland Onbase.

*Bruce Codagnone*

Bruce Codagnone  
CIO / IT Director

Cc: K. Kleiner

K. Parkinson



Hyland Software, Inc.  
 28500 Clemens Road  
 Westlake, OH 44145  
 United States of America

**MAINTENANCE INVOICE**

LE01-173148

**BILL TO** City of Nashua, NH  
 Accounts Payable  
 PO Box 2019  
 Nashua, NH 03061-2019  
 United States of America

SEP 30 2020

INVOICE DATE	09/23/2020
PO NUMBER	NONE 9-30-20
DUE DATE	12/31/2020
FEDERAL TAX ID	34-1699247
BILL TO CUSTOMER NO.	13625

**SHIP TO** City of Nashua, NH  
 Accounts Payable  
 PO Box 2019  
 Nashua, NH 03061-2019  
 United States of America

Customer No.	Customer Name	Version	Salesperson
13625	City of Nashua, NH		

Maintenance Period: 01/01/2021 - 12/31/2021					
	Product Code	Description	Quantity	Unit Price	Extended Price
1		Maintenance Fees Product:OnBase	1	43,612.58	43,612.58
2	EXSUP1	Extended Support Fee Extended Support has been added to your invoice because our records currently indicate you are running a version that has been designated as an Extended Support version by Hyland Software. If you upgrade from your current version on or before the invoice due date, you will not be required to pay Extended Support. If you upgrade from your current version after the invoice due date, you will be required to pay Extended Support. For your current version and a list of Extended Support versions, please visit the My OnBase page on the Community website. The Extended Support versions are located on the General Information tab under Hyland Software's OnBase Version Support Lifecycle.	1	6,541.89	6,541.89

This proforma invoice is for maintenance fees which cover technical support and the latest software updates and enhancements for the billing period. If you have any questions regarding this invoice or you elect to discontinue maintenance coverage please contact your account manager or email [accountsreceivable@hyland.com](mailto:accountsreceivable@hyland.com). To continue maintenance coverage, please process this invoice for payment.

\*A 10% reinstatement fee will be charged for maintenance fees received more than 30 days after the due date.

These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations. Further, if you are located in a European Union Member State, Norway or Switzerland, The software is also subject to Council Regulation (EC) No 428/2009. The software must not be transmitted outside of the European Union, Norway or Switzerland without a licence or authorisation being issued by the export control authority of the relevant Member State or the applicable authorities in Norway or Switzerland or as otherwise authorized by law or regulations in the relevant Member State or applicable authorities in Norway or Switzerland.



Hyland Software, Inc.  
 28500 Clemens Road  
 Westlake, OH 44145  
 United States of America

**MAINTENANCE INVOICE**

LE01-173148

Electronic Remittance Information	
<b>Mail Checks to:</b> Hyland Software, Inc. PO Box 846261 Dallas, TX 75284-6261	<b>Wire/ACH Payments:</b> Bank Name: Bank of America, N.A. SWIFT: BOFAUS3N ACH Routing No: 071000039 Wire Routing No: 026009593 Account No: 8670616576 CHIPS No: 0959 Account Name: Hyland Software, Inc.

Subtotal	50,154.47 USD
Tax	0.00 USD
<b>Total Invoice Amount</b>	<b>50,154.47 USD</b>
<i>Amount Due After 01/30/2021 *</i>	<i>55,169.92 USD</i>

For billing or payment inquiries, please call 1-440-788-5045 and select Option 1 for Accounts Receivable or email [accountsreceivable@hyland.com](mailto:accountsreceivable@hyland.com).

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