RESOLUTION

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A CONTRACT WITH BAE FOR TRANSIT SERVICES

CITY OF NASHUA

In the Year Two Thousand and Eighteen

RESOLVED by the Board of Aldermen of the City of Nashua that the City is authorized to enter into the contract substantially in the attached form with BAE for transit services for the period of October 1, 2018 through September 30, 2019, with the option to extend for two (2) years at six (6) month increments.
LEGISLATIVE YEAR 2018

RESOLUTION: R-18-069

PURPOSE: Authorizing the City of Nashua to enter into a contract with BAE for transit services.

SPONSOR(S): Mayor Jim Donchess

COMMITTEE ASSIGNMENT:

FISCAL NOTE: The total agreed upon contribution due to NTS by BAE is $260,000 per year for the period of October 1, 2018 to September 30, 2019. In addition, BAE will provide contributions of $40,000 for the purchase and installation of a transit shelters to be located at the Crown Street Park and Ride and the intersection of Canal and Nashua Streets.

ANALYSIS

This resolution authorizes the City of Nashua to enter into a contract with BAE for transit services for the period October 1, 2018 through September 30, 2019, with the option to extend for two (2) years at six (6) month increments.

Approved as to account structure, numbers, and amount: Financial Services Division

By: 

Approved as to form: Office of Corporation Counsel

By: 

Date: August 8, 2018
City of Nashua, New Hampshire
Nashua Transit System
and
BAE Systems Information and Electronic Systems Integration Inc.
TRANSPORTATION AGREEMENT
Fiscal Year 2018 - 2019

THIS AGREEMENT is entered into as of September 15, 2018, by and between the City of Nashua, New Hampshire/Nashua Transit System ("NTS"), and BAE Systems Information and Electronic Systems Integration Inc. ("BAE Systems"). NTS is a municipal transit system, with a principal mailing address of 11 Riverside Street, Nashua, NH 03062; and BAE Systems maintains a principal mailing address of 65 Spill Brook Road, Nashua, NH 03060.

1. UNLIMITED FIXED-ROUTE ACCESS PRIVILEGES

1.1 NTS shall issue bus passes to current BAE Systems employees at least annually ("BAE Systems Staff Pass"). BAE Systems Staff Passes shall be valid for transportation during all scheduled hours of service, on all fixed-route NTS bus routes. Riders presenting a valid BAE Systems Staff Pass identification (either hard copy or via the mobile phone) will be excused from paying a fare at the time of the trip. Annual contributions made by BAE Systems, per Section 4 of this agreement, shall cover all fares by all such users of NTS service as described in Section 2 of this agreement.

1.2 Ridership on any NTS bus by BAE Systems staff under this Agreement and/or with a BAE Systems Staff Pass is subject to all NTS rules, terms and conditions of bus ridership. Without limiting the foregoing, NTS expressly reserves the right to refuse service to any person not complying with the same.

2. SERVICES

2.1 NTS shall provide its established and regularly publicized fixed-route bus service and any additional bus service that it may at its sole discretion activate. All routes operated by NTS are open to and available for public use.

2.2 NTS reserves the right to modify bus routes and schedules as needed and in compliance with federally mandated public transportation regulations per 49 CFR 5307.

3. TERM OF AGREEMENT

3.1 The term of this Agreement, including contributions, at the amounts stated in Section 4, shall be from October 1, 2018 to September 30, 2019 with the option to extend for two years at six month increments, pending a mutually agreed upon annual rate increase as of July 1 of each year.
3.2 If BAE Systems desires to continue this program after September 30, 2019, NTS must receive written notification by March 31, 2019. Upon such notification, NTS will review the request and the parties can enter into negotiations.

4. COMPENSATION

4.1 The total agreed upon contribution due to NTS by BAE Systems for the BAE Systems Staff Pass program is $260,000 per year.

4.2 BAE Systems shall provide the following contributions for the BAE Systems Staff Pass program to NTS as follows:
   a. $52,000 due by September 30, 2018
   b. $52,000 due by October 30, 2018
   c. $52,000 due by December 30, 2018
   d. $52,000 due by March 30, 2018
   e. $52,000 due by June 30, 2018

4.3 BAE Systems will provide a contribution of $20,000 by September 30, 2018 to NTS, which shall be designated exclusively for the purchase and installation of a transit shelter to be located at the Crown Street Park and Ride. BAE Systems will also provide a contribution of $20,000 by October 15, 2018 to NTS, which shall be designated exclusively for the purchase and installation of a second transit shelter to be located at the intersection of Canal Street and Nashua Street, along with a license agreement to the NTS, acceptable to BAE Systems, for the exclusive right for the purposes of NTS to construct, install and maintain a passenger waiting shelter and ancillary facilities such as seating, bicycle racks and trash receptacles on land owned by BAE Systems, provided that the location and size of the shelter and facilities shall be subject to approval by BAE Systems, which approval will not be unreasonably withheld and will be deemed given if BAE Systems does not respond within thirty (30) calendar days. There will be no cost to NTS for the license agreement. The purchase and installation of the shelters will be done by NTS at its sole expense and within six (6) months after the contributions by BAE Systems referenced in this section. NTS shall have sole responsibility for the shelters and their construction including but not limited to design, materials, upkeep, maintenance, and ensuring compliance with all accessibility and safety standards. BAE Systems will have no ownership interest in the bus shelters. NTS will be responsible for all maintenance and repairs to the bus shelters.

5. RECORDS

5.1 NTS will have the capacity to provide boarding data at any bus stop throughout its transit system if requested by BAE Systems. BAE Systems and NTS will work cooperatively to obtain and share any other information deemed necessary by either or both parties.
6. ADMINISTRATION

6.1 BAE Systems shall not have, and shall not exercise any control over NTS’s bus service. BAE Systems shall not have and shall not exercise any control or supervision over drivers of the buses used in said service.

6.2 It is understood that BAE Systems will be responsible for marketing the BAE Systems Staff Pass program to staff except that BAE Systems shall not use marketing materials that contain, or reference, the NTS trademark images or properties without the prior written approval of NTS. NTS will work cooperatively with BAE Systems, if necessary, to develop a marketing plan to market the BAE Systems Staff Pass program.

7. INTERRUPTION OF SERVICE/NON-PERFORMANCE

7.1 NTS shall not be in default of any provisions of this Agreement for failure to perform where such failure is due to strikes, walk-outs, civil insurrections or disorders, order of civil authorities, shortages of motor fuel or equipment, significant funding reductions, acts of God, or for any other cause or causes beyond the control of NTS.

8. TERMINATION

8.1 Failure to make a contribution, as outlined on Section 4.2, shall result in termination of this Agreement, at NTS’s sole and exclusive option, provided that NTS shall give BAE Systems notice of its failure to timely make a contribution as outlined under Section 4.2 and shall allow ten (10) business days before exercising its termination option. Should it be necessary for NTS to exercise its termination option under the terms and conditions of this paragraph, NTS shall not be liable to BAE Systems for any claimed damages, personal or property, including any consequential damages, resulting from the loss of bus services under this Agreement. Should this Agreement be terminated under the terms and conditions of this paragraph, and BAE Systems then subsequently provides contribution as required, NTS may require 30 calendar days to reinstate the terms of this agreement.

8.2 If at any time during the term of this Agreement, either party shall fail to satisfactorily meet the provisions of this Agreement, or if at any time the NTS system makes or notifies BAE Systems of what BAE Systems considers to be an adverse change in any of the bus service routing covered by this Agreement, the dissatisfied party shall so advise the other party by certified mail indicating in specific detail the nature and basis of its dissatisfaction. The party to whom the complaint is addressed shall have an opportunity to correct the situation giving rise to the complaint within forty-five (45) days from its receipt; if such corrections are not made to the reasonable satisfaction of the complaining party within said period, the complaining party may terminate this Agreement upon forty-five (45) days written notice.
8.3 Should NTS or BAE Systems be unable to fulfill the requirements of this agreement because of expected lack of funds, then either NTS or BAE Systems may provide written notice of such expected lack of funds upon thirty (30) days prior written notice and this agreement shall be terminated.

8.4 No refunds shall issue in the event of termination for whatever reason or expiration of this Agreement.

9. AMENDMENT/SEVERABILITY

9.1 This Agreement contains all terms, provisions, and conditions of the understanding regarding the Transportation Agreement between the parties. This Agreement constitutes the entire agreement between the Parties related to the matters specified herein, and supersedes all prior oral or written statements or agreements between the Parties related to such matter.

9.2 If any provision of this Agreement shall be held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. The intent of the parties is to provide as broad an indemnification as possible under the laws of the State of New Hampshire. In the event that any aspect of this Agreement is deemed unenforceable, the Court is empowered to modify this Agreement to give the broadest possible interpretation permitted by the laws of the State of New Hampshire.

9.3 This Agreement may be amended at any time by mutual agreement of NTS and BAE Systems. Any amendment to this Agreement shall be in writing, signed by both parties, and attached to a copy of the original of this Agreement.

10. NOTICE

10.1 Any notices issued, pursuant to the terms of this Agreement, shall be in writing and delivered in person or by certified mail, return receipt requested, and mailed to the address indicated in the execution of this Agreement, unless either party is notified, in writing, to the contrary.

11. MISCELLANEOUS

11.1 This contract shall be governed under the laws of the State of New Hampshire.

11.2 NTS shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct.

11.3 Any claim or action brought relating to this agreement, 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.
11.4 This Agreement may be signed in counterparts

11.5 Each Party warrants that the individuals who have signed this Agreement have the actual legal authority and right to make this Agreement and bind each respective Party.

11.6 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppels, or otherwise.

11.7 Indemnification. BAE Systems shall fully defend, indemnify, and hold harmless NTS/NASHUA from any and all claims, lawsuits, demands and causes of action, liability, loss, damage and/or injury or any kind whatsoever (including without limitation all claims for monetary loss, property damage, equitable relief, personal injury, and/or wrongful death), whether brought by an individual or other entity, or imposed by a court of competent jurisdiction or by administrative action of any federal, state, or local government body or agency, arising out of, in any way whatsoever, any acts, omissions, negligence, or other misconduct related to BAE Systems employee use of the NTS busses or BAE Systems Staff Pass. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and any reimbursements to NTS/Nashua for all legal fees, expenses, and costs incurred by them.

NTS shall fully defend, indemnify and hold harmless BAE Systems from any and all claims, lawsuits, demands and causes of action, liability, loss, damage and/or injury or any kind whatsoever (including without limitation all claims for monetary loss, property damage, equitable relief, personal injury, and/or wrongful death), whether brought by an individual or other entity, or imposed by a court of competent jurisdiction or by administrative action of any federal, state, or local government body or agency, arising out of, in any way whatsoever, any acts, omissions, negligence, or other misconduct related to NTS's (including by or through any of its employees and agents) performance of the services or discharging its responsibilities set forth in this Agreement. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and any reimbursements to BAE Systems for all legal fees, expenses, and costs incurred by them.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by duly authorized representatives as of the day and year aforesaid.
CITY OF NASHUA/NTS

BY: ____________________________
Mayor James W. Donchess, duly authorized

BAE Systems Information and Electronic Systems Integration Inc.

BY: ____________________________
(Print Name & Title)

______________________________
(signature), duly authorized